STATE OF MICHIGAN

COURT OF APPEALS

BEVERLY CHRZANOWSKI,

Plaintiff-Appellee,

v

KEITH A. WILLIS and VALERIE SUE WILLIS,

Defendants-Appellants.

UNPUBLISHED
October 21, 1997

No. 196174
Oakland Circuit Court
LC No. 94-481948-CE

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendants appeal as of right from the judgment entered in favor of plaintiff after a bench trial. We affirm.

On appeal, defendants claim that the trial court abused its discretion in denying their motion to amend their answer because it deprived them of two defenses. We disagree. This Court reviews the denial of a motion for leave to amend pleadings for an abuse of discretion. *Noyd v Claxton, Morgan, Flockhart & VanLiere*, 186 Mich App 333, 340; 463 NW2d 268 (1990). Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies through previous amendments, undue prejudice to the other party, or where amendment would be futile. *Id*.

Here, plaintiff brought her claim under several statutory and common law theories. The first was under the Michigan Environmental Response Act (MERA), which provided in part at the time that plaintiff filed her complaint:

> (1) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in sections 12a and 12b, if there is a release or threatened release from a facility that causes the incurrence of response activity costs, the following persons shall be liable under this section:
>
> (a) The owner or operator of the facility.

(b) The owner or operator of the facility at the time of disposal of a hazardous substance.

(c) The owner or operator of the facility since the time of disposal of a hazardous substance not included in subdivision (a) or (b).

(d) A person that by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, by any other person, at the facility owned or operated by another person and containing the hazardous substance.

(e) A person that accepts or accepted any hazardous substance for transport to the facility selected by that person. [MCL 299.612(1); MSA 13.32(12)(1).]

Because defendants were intervening owners of the property, they could be liable for response activity under subsection (c). However, after plaintiff filed her complaint, MCL 299.612; MSA 13.32(12) was repealed by 1994 PA 451, § 90101, effective March 30, 1995, and was replaced by MCL 324.20126; MSA 13A.20126. The new statute limited potential liability for cleanup costs to persons who were responsible for an activity causing a release or threat of release.

The issue of whether amendment of defendants' answer would be futile depends on which statute applies to the case at bar. Statutes are generally applied prospectively, unless the Legislature expressly or impliedly indicates its intent to give retroactive effect or unless the statutes are remedial or procedural in nature. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 37; 539 NW2d 526 (1995). Here, because the new statute, MCL 324.20126; MSA 13A.20126, changed the basis for liability for environmental cleanup cost, the change was clearly substantive rather than procedural in nature. Therefore, MCL 299.612; MSA 13.32(12), which was in effect at the time plaintiff filed her complaint, applies to the case at bar. Because defendants could not have raised an "as is" defense under this statute, amendment of their answer to include that defense would have been futile. The trial court did not abuse its discretion in denying defendants' motion for leave to amend their answer.

Defendants next argue that plaintiffs' case was barred by the statute of limitations, and that the trial court's denial of defendants' motion to amend their complaint deprived them of this defense. Specifically, defendant's claim is that the limitation provision of MCL 299.617(2); MSA 13.32(17)(2) is applicable in this case because the contamination of the property occurred prior to the effective date of the statute. We disagree.

MCL 299.617(1); MSA 13.32(17)(1) provides that an action to recover damages under MERA must be brought "within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility." MCL 299.617(2); MSA 13.32(17)(2) provides a different period of limitations for actions that accrued before the effective date of the act. The plain language of the statute indicates that the cause of action accrues on the initiation of the remedial activity, unless the remedial activity was initiated prior to the effective date of the statute. In the present case, the remedial activity began no earlier than March 6, 1992, when plaintiff received a

proposal from Site Assessment Specialists to do the work on her property. Because plaintiff brought her claim in August 1994, she was within the six-year period of limitations, and the claim was not barred. Therefore, amendment of defendants' answer to include an affirmative defense of the statute of limitations would also have been futile, and the trial court did not abuse its discretion in denying defendants' motion to amend.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard A. Griffin
/s/ Joel P. Hoekstra