

STATE OF MICHIGAN
COURT OF APPEALS

BUDDY D. MILLER, II,

Plaintiff-Appellant,

v

CHAPMAN CONTRACTING, RAMZY KIZY,
JR., KEVIN R. PAPERD, and SWEEPMASTER,
INC.,

Defendants-Appellees.

UNPUBLISHED
February 16, 2006

No. 256676
Oakland Circuit Court
LC No. 03-053572-NI

Before: Meter, P.J., and Whitbeck, C.J. and Schuette, J.

PER CURIAM.

Plaintiff appeals as of right from the trial court order denying his motion to amend his complaint and granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(5) based on lack of standing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's complaint alleged that on December 28, 2000, defendant Kevin Paperd was operating an automobile that was owned by one or more of the remaining defendants when he negligently struck plaintiff's vehicle, causing plaintiff to suffer a serious impairment of an important body function and/or serious permanent disfigurement. Defendants sought summary disposition pursuant to MCR 2.116(C)(5), contending that plaintiff was not the real party in interest and lacked standing to sue. Defendants alleged that plaintiff had filed a petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code on March 6, 2002, and that all of plaintiff's rights regarding the December 28, 2000, accident were therefore transferred to the bankruptcy trustee, who was the sole party who could pursue the lawsuit.

In response, plaintiff filed a motion for leave to file an amended complaint in order to correct the "misidentification" of the named plaintiff. Plaintiff stated that Wendy Turner Lewis, the trustee for his bankruptcy estate, had authorized plaintiff's counsel to file a complaint on behalf of the bankruptcy estate, and that counsel, through no fault of plaintiff or Lewis, had misidentified the plaintiff.

The trial court entered an order denying as futile plaintiff's motion to amend and granting defendants' motion for summary disposition, stating:

There is no dispute the real party in interest is the bankruptcy trustee, not Plaintiff. Thus, the issue is whether Plaintiff should be granted leave to amend to add the bankruptcy trustee.

Under MCR 2.118(A)(2), leave to amend pleadings should be freely given when justice so requires. 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 by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile. *Ben Fyke & Sons v Gunter*, 390 Mich 649; 213 NW2d 134 (1973). In [*Employers Mutual Casualty Co v Petroleum Equipment, Inc*, 190 Mich App 57, 63; 475 NW2d 418 (1991)], the court held that "Although an amendment generally relates back to the date of the original filing if the new claim asserted arises out of the conduct, transaction, or occurrence set forth in the original pleading, MCR 2.118(D), the relation-back doctrine does not extend to the addition of new parties."

The court is satisfied that because the bankruptcy trustee was the real party in interest prior to the filing of the Complaint, this is a motion to add a party and is not merely a request to correct a misnomer. Thus, the court finds that based on the binding precedent in *Employers*, the amendment would be futile as the addition of the new party cannot relate back to the original Complaint.

MCR 2.201(B) provides that, generally, "[a]n action must be prosecuted in the name of the real party in interest" "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Blue Cross & Blue Shield of Michigan v Eaton Rapids Comm Hosp*, 221 Mich App 301, 311; 561 NW2d 488 (1997). "This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy." *Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997). It is undisputed that the bankruptcy trustee is the real party in interest and that she should have been named as the plaintiff.¹

MCR 2.118(A)(2) provides that leave to amend a pleading "shall be freely given when justice so requires." But "leave to amend a complaint may be denied for particularized reasons, such as . . . where amendment would be futile." *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

MCR 2.118(D) provides:

An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading

¹ See 11 USC 541; 11 USC 323; *Cottrell v Schilling*, 876 F2d 540 (CA 6, 1989).

arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

However, “[t]he relation-back doctrine does not apply to the addition of new parties.” *Cowles v Bank West*, 263 Mich App 213, 229; 687 NW2d 603 (2004); see also *Employers Mutual, supra* at 63.

Plaintiff contends, nevertheless, that the requested amendment would do no more than correct a misnomer and that the *Employers Mutual* rule therefore does not bar the amendment and its relation back. “As a general rule, . . . a misnomer of a plaintiff or defendant is amendable unless the amendment is such as to effect an entire change of parties.” *Parke, Davis & Co v Grand Trunk Ry System*, 207 Mich 388, 391; 174 NW 145 (1919) (citation omitted). The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties, for example, “[w]here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name” *Wells v Detroit News, Inc*, 360 Mich 634, 641; 104 NW2d 767 (1960), quoting *Daly v Blair*, 183 Mich 351, 353; 150 NW 134 (1914); see also *Detroit Independent Sprinkler Co v Plywood Products Corp*, 311 Mich 226, 232; 18 NW2d 387 (1945) (allowing an amendment to correct the designation of the named plaintiff from “corporation” to “partnership”) and *Stever v Brown*, 119 Mich 196; 77 NW 704 (1899) (holding that an amendment to substitute the plaintiffs’ full names where their first and middle names had been reduced to initials in the original complaint would have been permissible). Where, as here, the plaintiff seeks to substitute or add a wholly new and different party to the proceedings, the misnomer doctrine is inapplicable. See *Voigt Brewery Co v Pacifico*, 139 Mich 284, 286; 102 NW 739 (1905); *Rheaume v Vandenberg*, 232 Mich App 417, 423 n 2; 591 NW2d 331 (1998).

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette