

IN THE COURT OF APPEALS OF IOWA

No. 1-739 / 10-1685
Filed October 19, 2011

MARK A. DAVISON,
Plaintiff-Appellant,

vs.

**DUBUQUE COUNTY SHERIFF'S
OFFICE and DUBUQUE COUNTY JAIL,**
Defendants-Appellees.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Mark Davison appeals from the dismissal of his lawsuit. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.**

J. Barton Goplerud of Hudson, Mallaney, Shindler & Anderson, P.C., West Des Moines, and Jeremy Feitelson of Feitelson Law, L.L.C., Des Moines, for appellant.

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellees.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

DOYLE, J.

To paraphrase an old lawyers' adage, terrible problems "inevitably arise in suits brought on the eve of the running of the statute of limitations." See *Bean v. Midwest Battery & Metal, Inc.*, 449 N.W.2d 353, 354 (Iowa 1989). This case once again confirms the adage. See *id.* The district court dismissed plaintiff Mark Davison's "last-minute" suit because the wrong parties were named as defendants. The district court also denied Davison's motion for leave to amend the pleadings to add Dubuque County and "specific individuals" as defendants. We affirm in part, reverse in part, and remand for further proceedings.

I. Background Facts and Proceedings.

Davison was arrested on May 14, 2008, and was incarcerated in the Dubuque County Jail. While in jail, Davison attempted suicide. He filed suit against defendants Dubuque County Sheriff's Office and the Dubuque County Jail on May 10, 2010, just four days before expiration of the two-year statute of limitations. He alleged, among other things, the sheriff's office and the jail were negligent in failing to exercise care regarding suicidal patients. The petition and original notice were served June 22, 2010, on Kenneth Runde, the Dubuque County Sheriff.

The defendants filed a pre-answer motion to dismiss pursuant to Iowa Rule of Civil Procedure 1.421(1)(f) ("failure to state a claim upon which any relief may be granted"). They argued (1) they were not legally capable of being sued and (2) even if Davison was permitted to amend the petition to name the correct defendants, his claim was barred by the statute of limitations for failure to comply

with the relation back rules set forth in Iowa Rule of Civil Procedure 1.402(5). Davison resisted, and a hearing was held. On September 17, 2010, the district court entered its order granting defendants' motion to dismiss and denying Davison's motion to amend the pleadings to add defendants. Davison appeals.

II. Scope and Standards of Review.

"The grant or denial of a motion to dismiss is reviewed for errors at law." *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010) (citation omitted). We accept as true the facts alleged in the petition. *Id.* We cannot consider facts contained in the motion to dismiss except those of which the court may take judicial notice. *Geisler v. City Council of City of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009).

III. Discussion.

Davison alleged in his petition that defendants Dubuque County Sheriff's Office and Dubuque County Jail were "governmental entit[ies] providing law enforcement services to Dubuque County." In their motion to dismiss, defendants argued a "sheriff's office" and a "jail" were neither municipalities or units of local government within the meaning of Iowa Code chapter 670, Iowa's Municipal Tort Claims Act, and were therefore not "suable entities" under Iowa law. In considering the argument, the district court found:

The jail is a building as the sheriff's office is also a place where the sheriff physically works. Jails are governed by the provisions of Iowa Code chapter 356 and under the responsibility of the county sheriff, an elected official. Pursuant to Iowa Code section 356.15, jails are financed through the respective counties. The sheriff's office is created under the provisions of Iowa Code sections 331.651[through 331.661]. The statutory provisions do not permit for direct causes of action for money damages against either a "jail" or "sheriff's office."

A party must be legally capable of being sued in order to maintain an action against that party. *Brubaker v. Estate of DeLong*, 700 N.W.2d 323, 326 (Iowa 2005).

A. Dubuque County Jail.

Davison alleges the Dubuque County Jail is a governmental entity. We disagree. A jail is a building. Black's Law Dictionary 968 (4th ed. 1968). A county jail is in the charge of the sheriff. Iowa Code § 356.1(1) (2009). Additionally, it is the sheriff who has "charge and custody of the prisoners in the jail." *Id.* § 356.2; see also *id.* § 331.653(35) (stating the sheriff shall "[h]ave charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356"). We conclude a jail, a building, is not capable of being sued. We affirm the district court's ruling on this issue.

B. Dubuque County Sheriff's Office.

A sheriff's office may be a place where the sheriff physically works. As a building, like a jail, the sheriff's office is not capable of being sued. But, Davison alleges the Dubuque County Sheriff's Office is a governmental entity. Indeed, the office of sheriff is a governmental entity; it is an elected office. *Id.* § 331.651(1). The office-holder is a person, either elected or appointed to the office. *Id.* § 331.651(2). As a county officer, a sheriff is amenable to suit under chapter 670. See *Id.* §§ 670.5, .8, .9, .12, .13.

We are obligated to view "the well-pled facts of the petition 'in the light most favorable to the plaintiff with doubts resolved in that party's favor.'" *Geisler*, 769 N.W.2d at 165 (citation omitted). With this principle in mind, we construe

Davison's naming the "Dubuque County Sheriff's Office" as a defendant not as where the sheriff physically works, but as the office holder, the sheriff. Finding the Dubuque County Sheriff named, although inartfully, as a party in the lawsuit, we conclude the original petition served to effectively bring a claim against a proper party, the sheriff. We therefore reverse the district court's dismissal as to the sheriff, and remand for further proceedings as to that defendant.

C. Dubuque County and Other Defendants.

However, we affirm the district court's denial of Davison's motion for leave to amend to add Dubuque County and specific individuals as defendants. Davison's suit was filed May 10, 2010. The statute of limitations expired four days later on May 14. In order to successfully add new parties to his suit, Davison's amendment must relate back to the filing of his petition. Iowa Rule of Civil Procedure 1.402(5) outlines the criteria for allowing an amendment to relate back.

Relation back is dependent upon four factors, all of which must be satisfied: (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Porter v. Good Eavespouting, 505 N.W.2d 178, 181 (Iowa 1993) (citation omitted).

Davison argues the county received notice of his suit when a "subdivision" of the county, the sheriff's office, was served. The return of service indicates the original notice and petition were received for service by the Dubuque County

Sheriff's Office on June 22, 2010, and served the same day upon Kenneth Runde, the Dubuque County Sheriff. An amendment can relate back only if an added defendant receives notice of the institution of the action prior to expiration of the statute of limitations. *Alvarez v. Meadow Lane Mall Ltd. P'ship*, 560 N.W.2d 588, 592 (Iowa 1997). Even if we accept Davison's argument that the county received proper notice through service on the sheriff, the record is clear that the notice was not received until after the statute of limitations had expired, too late for any amendment adding the county as a new party to relate back to the filing of the petition.

Davison did not identify the other "specific individuals" he wished to add as defendants. He presented no facts and made no argument to the district court, or this court, that these unidentified individuals received notice of suit before the statute of limitations expired. With no such showing, an amendment adding "specific individuals" cannot relate back to the filing of the petition.

The district court has considerable discretion in ruling on a motion for leave to amend the petition. *Rife v. D.T. Comer, Inc.*, 641 N.W.2d 761, 766 (Iowa 2002). We will reverse only if the record indicates the court clearly abused its discretion. *Id.* We find no abuse of discretion under the circumstances before us. We therefore affirm the district court's denial of Davison's motion for leave to amend his petition.

We affirm the district court's dismissal of the jail as a defendant. We reverse the district court's dismissal of the Dubuque County Sheriff as a

defendant. We affirm the district court's denial of Davison's motion for leave to amend his petition to add additional defendants.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.