

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002081-MR

MARK STEPHENSON

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 99-CI-00020

GRANT COUNTY AMBULANCE SERVICE, INC.;
AND OVER THE TOP, INC.

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, HENRY, AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Mark Stephenson has appealed from the September 12, 2003, order of the Grant Circuit Court granting summary judgment in favor of the Grant County Ambulance Service, Inc.¹

¹ We note that the record on appeal in this case is incomplete. It begins with the motion to set pretrial conference filed on March 18, 2003. The general index fails to provide page numbers for the various pleadings (Kentucky Rules of Civil Procedure (CR) 75.07(11)). Counsel for the appellant is reminded that the responsibility to see that the record on appeal is properly prepared and transmitted to this Court involves "reciprocal duties imposed upon the appealing party and the clerk by CR 75.07[.]" Belk-Simpson Co. v. Hill, 288 S.W.2d 369, 370 (Ky. 1956).

Having concluded that Stephenson's claim for "civil battery" relates back to the date of the original complaint and that the trial court erred in denying Stephenson's motion to amend his complaint and in granting the Ambulance Service's motion for summary judgment, we reverse and remand.

On January 15, 1999, Stephenson filed a complaint in the Grant Circuit Court against the Ambulance Service, alleging that while he was working for Over the Top, Inc. on January 19, 1998, he fell from a ladder and sustained various injuries, and that he suffered numerous complications from those injuries² due to the negligent care provided him by the Ambulance Service. The Ambulance Service first transported Stephenson from the scene of the accident to St. Luke's Hospital, then, due to the severity of his injuries, to University Hospital in Cincinnati. Stephenson claimed that while in route to St. Luke's Hospital he repeatedly requested the ambulance medical personnel not to treat his fractured leg, but that they did not abide by his wishes. An expert witness for Stephenson, Donna Adkins, R.N.,³ stated in her deposition that Stephenson's fracture "should have been secured, padded, but not reduced, due to reduction causing

² The injuries referred to in the complaint included the non-union of a leg fracture, and a permanent lung injury, known as acute respiratory distress syndrome (ARDS), which developed during Stephenson's stay in the hospital following his injury.

³ Adkins has been the President/CEO of Medical Claims Analysis and Management Services, Inc., and consults with insurance companies, individuals, attorneys, and employers.

the potential for significant complications in the form of infection at the site of the fracture . . . which caused the patient to develop sepsis and develop ARDS. . . " [emphasis original]. Adkins also stated that if Stephenson "requested of the EMS personnel that they not do anything to his leg, then they breached the consent."

On October 26, 2000, the Ambulance Service filed a motion for summary judgment claiming Stephenson had failed to produce evidence sufficient to prove that any complications from his injuries were caused by the actions of the Ambulance Service. More specifically, it argued that Adkins was not qualified to testify regarding the cause of Stephenson's ARDS. Therefore, even if the trial court, for the purpose of addressing the motion for summary judgment, were to accept as fact Adkins's opinion that the ambulance personnel had breached the standard of care regarding Stephenson's leg fractures,⁴ Stephenson's lawsuit should be dismissed for failing to establish the cause of the complications from his injuries.

After Stephenson filed numerous requests for extensions of time to respond to the motion for summary judgment, he finally responded by arguing that it would be premature to grant summary judgment since he had not been afforded sufficient opportunity to depose all of the witnesses.

⁴ Stephenson fractured both legs during the fall.

The trial court granted Stephenson additional time to develop his medical proof, but it eventually granted summary judgment in favor of the Ambulance Service on March 20, 2001. The trial court reasoned that although Stephenson had provided expert medical testimony that the Ambulance Service had breached the standard of care, he had failed to present any medical proof to establish the cause of the complications from his injuries. On appeal, this Court reversed the trial court on the grounds there were genuine issues as to a material fact.⁵

On March 18, 2003, Stephenson filed a motion for the trial court to schedule a pre-trial conference and a trial date. On July 9, 2003, Stephenson filed a motion for leave to amend his complaint, wherein he asserted "additional causes of action that became known during the discovery process in this matter, such as civil battery[.]" He also asked the trial court to strike from the allegations in his complaint "the medical issues related to [his] development of ARDS and the delay in the achieving union at the fracture site." The Ambulance Service filed an objection and response on July 15, 2003, arguing that Stephenson's claim of civil battery did not relate back to his original complaint for negligence and was barred by the statute of limitations. The Ambulance Service further argued that even

⁵ Case No. 2001-CA-000770-MR, rendered June 28, 2002, not-to-be-published, dis. rev. denied March 12, 2003.

if the trial court allowed Stephenson to amend his complaint, it was entitled to summary judgment because Stephenson could not establish that the alleged actions of the Ambulance Service had caused the complications from his injuries.

On August 8, 2003, the trial court denied Stephenson's motion to amend his complaint; and on August 22, 2003, the Ambulance Service filed a renewed motion for summary judgment. While Stephenson apparently did not file a written response to the motion, he argued before the trial court that its refusal to allow him to amend his complaint would effectively eliminate his ability to respond to the motion for summary judgment. On September 12, 2003, the trial court entered an order granting summary judgment in favor of the Ambulance Service. This appeal followed.

Stephenson argues that the trial court erred by granting summary judgment to the Ambulance Service after denying his motion to amend his original complaint. Based on CR 15.03(1) and the case law applying that rule, we agree. CR 15.03(1) states, in relevant part as follows:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

In discussing this rule, it has been noted that "[t]he important consideration is not whether the amended pleading presents a new claim or defense or presents a new theory, but whether the amendment relates to the general factual situation which was the basis of the original controversy" [citation omitted].⁶

The most cited case in Kentucky on CR 15.03(1) is Perkins v. Read,⁷ where the plaintiff had been unsuccessful before the trial court in seeking to amend her complaint to add a claim for the personal injuries she sustained in an automobile accident that had occurred over three years earlier. After first allowing plaintiff's motion to amend, the trial court later dismissed her claim "as being barred by the one-year statute of limitations for personal injury actions."⁸ In reversing this Court, which had affirmed the trial court, the Supreme Court relied on Wimsatt v. Haydon Oil Co.,⁹ and stated, "the automobile collision was the sole factual situation giving rise to the cause of action in the case at bar. In this respect it represented the 'conduct, transaction or occurrence' which formed the basis for the original complaint." In Wimsatt, the Court had stated as follows:

⁶ 6 Philipps, Kentucky Practice §15.03 (5th ed. 1995).

⁷ 616 S.W.2d 495, 496 (Ky. 1981).

⁸ Id. at 495.

⁹ 414 S.W.2d 908 (Ky.App. 1967).

There was only one cause of action, and that arose by reason of the negligently induced collision. The damage claims arising out of that single "conduct, transaction or occurrence" consisted of the claims for wrongful death of Mrs. Carrico, personal injuries to Thomas Carrico, and property damage to the Carrico car. All of these claims arose from one tortious act, and by the express language of CR 15.03 the amended complaint asserting Thomas Carrico's personal injuries related back to the date of the original complaint.¹⁰

Similarly, in the case before us, Stephenson sought to amend his original complaint for the purpose of alleging a claim of "civil battery". Since Stephenson's additional claim of civil battery "arose out of the conduct, transaction, or occurrence" consisting of the Ambulance Service's transporting him and providing medical care to him, the trial court erred by denying his motion to amend his complaint on the grounds that his civil battery claim did not relate back under CR 15.03(1) to his original complaint.

Thus, the order of the Grant Circuit Court is reversed and this matter is remanded for further proceedings consistent with this Opinion.

ALL CONCUR.

¹⁰ Wimsatt, 414 S.W.2d at 911.

BRIEF FOR APPELLANT:

Robert N. Trainor
Covington, Kentucky

BRIEF FOR APPELLEE:

John G. McNeill
Christopher W. Goode
Lexington, Kentucky