

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD F. KINNEY and EVA J. KINNEY,

Plaintiffs-Appellees,

v

RICHARD LEE OWENS,

Defendant/Third-Party Plaintiff-  
Appellant,

v

STEPHEN KINNEY,

Third-Party Defendant-Appellee.

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UNPUBLISHED

August 3, 1999

No. 211784

Berrien Circuit Court

LC No. 96-001363 NI

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Third-party plaintiff Richard Owens (Owens) appeals the trial court's order granting third-party defendant Stephen Kinney's (Stephen) motion for summary disposition. Because we agree that there remains a genuine issue of material fact concerning whether plaintiffs<sup>1</sup> and Stephen signed their release in good faith, we reverse and remand for an evidentiary hearing.

We review a trial court's order granting summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) may be granted when, except with regard to damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(7) applies only where a release is granted "before commencement of the action." MCR 2.116(C)(7). Because the release in this case occurred after the action commenced, we review the motion for summary disposition pursuant to MCR 2.116(C)(10).

Owens and Stephen were involved in a car accident. Plaintiffs in this case are Stephen's parents. Stephen's father, Ronald Kinney (Ronald), was a passenger in the car Stephen was driving. Ronald and his wife sued Owens. Owens in turn sued Stephen for contribution, alleging that Stephen shared liability for the accident. After Owens settled his claim with plaintiffs, plaintiffs settled with Stephen and executed a release exempting him from any further liability. Relying on the release, Stephen moved for summary disposition under MCL 600.2925d; MSA 27A.2925(4), which, he argued, barred Owens' contribution claim. Owens argued that Stephen and plaintiffs had not signed the release in good faith, as the statute requires. The trial court disagreed and granted Stephen's motion for summary disposition.

## I

Owens first argues that MCL 600.2925d; MSA 27A.2925(4) does not bar his contribution claim because Stephen was not liable in tort at the time he signed the release. At the time this case commenced, the statute provided, in relevant part:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide.

(b) It reduces the claim against the other tort-feasors to the extent of any amount stipulated by the release or the covenant or to the extent of the amount of the consideration paid for it, whichever amount is the greater.

(c) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor. [MCL 600.2925d; MSA 27A.2925(4).]<sup>2</sup>

Owens argues that Stephen's parents could not release him from liability because the statute of limitations had expired on the principal claim, effectively dissolving any liability he might have had. We find this argument unpersuasive. If Stephen was not liable on the principal claim, then Owens could not recover contribution under MCL 600.2925a; MSA 27A.2925(1), which requires, among other things, joint liability on the part of a plaintiff and a defendant and that a defendant's liability be extinguished by settlement. *Klawiter v Reurink*, 196 Mich App 263, 267; 492 NW2d 801 (1992).

Owens next argues that, because the statute of limitations had run on plaintiffs' claim against Stephen, the parties must have signed the release in bad faith. Insofar as plaintiff argues that the mere passing of the statute of limitations establishes bad faith, we disagree. In *Miller v Riverwood Recreation Center*, 215 Mich App 561, 566-572; 546 NW2d 684 (1996), this Court addressed the statute's "good faith" requirement:

Instead of concentrating on whether the settlement amount is reasonably related to the settling defendant's proportional liability as compared to other tortfeasors, we conclude

that ‘good faith’ should be analyzed with respect to the settling parties’ negotiations and intent. [*Id.* at 570.]

Owens argues that the running of the statute of limitations precludes a settlement in good faith. In light of the reasoning embodied in *Miller*, we disagree. In that case we declined to interpret “good faith” so as to compromise the finality of settlements and expose a settling party to further liability under the contribution statute. Such a holding would undermine the Legislature’s goal of inducing settlements. *Id.* at 567-569.

Further, we agree with courts in other jurisdictions where they have held that the mere running of the statute of limitations does not establish a lack of good faith. See *Ballweg v City of Springfield*, 114 Ill2d 107, 122-123; 499 NE2d 1373 (1986) (settlement was in good faith even though the underlying claim was potentially time barred); *Vertecs Corp v Fiberchem, Inc.*, 669 P2d 958, 961 (Alas, 1983) (third-party defendant’s desire to avoid contribution did not necessarily establish bad faith); *Missouri v Meyers*, 803 SW2d 65, 67-68 (Mo App, 1990) (where the statute does not state whose “good faith” is at issue, it is the faith in which the release is given that governs, even where the tort-feasor’s intent may be to avoid contribution, because of the policy to encourage settlements; the issue of an unfair result should be addressed to the Legislature).

## II

Although we agree with Stephen that the mere passing of the statute of limitations on his parents’ claim against him does not establish bad faith, we agree with Owens that the facts in this case suggest that Stephen and his parents might have colluded to bar Owens’ third-party action, and therefore the trial court should not have granted summary disposition. When we consider the parties’ family relationship in the context of when, how, and for how much the release was negotiated, we find that a genuine issue of material fact exists regarding whether their negotiations and intent were consistent with good faith. See *Miller, supra* at 570. Under these circumstances, Owens should at least have the opportunity to make his case that the parties colluded, in bad faith, to sign the release.

Reversed and remanded for an evidentiary hearing on whether plaintiff released third-party defendant in good faith. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

<sup>1</sup> Eva Kinney’s claims were for loss of services, companionship, and consortium.

<sup>2</sup> The Michigan contribution statute was amended by 1995 PA 161; however, the amendment did not become effective until after this case was filed.