

STATE OF MICHIGAN  
COURT OF APPEALS

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ELLIOT CHRISTOPOULOS,

Plaintiff-Appellant,

v

ALLAN DEAN SOCALL,

Defendant-Appellee,

and

KATHERINE SOCALL,

Defendant.

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UNPUBLISHED

May 29, 2008

No. 277611

Wayne Circuit Court

LC No. 05-534758-NI

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant, Allan Dean Socall,<sup>1</sup> and denying plaintiff's motion to amend his complaint. We affirm in part, reverse in part, and remand for further proceedings.

I. Basic Facts and Proceedings

This case involves allegations that defendant, who is plaintiff's uncle, abused plaintiff from the time he was nine years old until he was age 17. Plaintiff filed a complaint against defendants on November 3, 2004, in LC No. 04-434198-NI. The parties agreed to dismiss that case and entered a consent order to toll the statute of limitations and use November 3, 2004, as the date for determining the limitations period. Plaintiff re-filed his complaint against defendants on December 5, 2005, and defendant moved for summary disposition. Defendant argued that plaintiff's claims were barred by the statute of limitations and the one-year grace period for minors contained in MCL 600.5851(1) did not apply because plaintiff did not file his complaint

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<sup>1</sup> Defendant, Katherine Socall, is not a party to this appeal. Therefore, we will refer to defendant, Allan Dean Socall, as "defendant" in the singular throughout this opinion.

within one year of attaining 18 years of age. Plaintiff moved to amend his complaint to add claims for fraudulent concealment and intentional infliction of emotional distress. The trial court granted defendant summary disposition on the grounds that plaintiff had not filed his complaint within one year of turning 18 and fraudulent concealment did not apply because plaintiff was aware of the basis of his claim. The trial court denied plaintiff's motion to amend his complaint, concluding that amendment would be futile.

## II. Summary Disposition

Plaintiff argues that the trial court erred in granting summary disposition based on the statute of limitations because the fraudulent concealment rule extends the statute of limitations. Although we agree with the trial court that fraudulent concealment does not apply, as will be discussed, *infra*, we reverse because the trial court erroneously concluded that any issue of fact regarding when the last incident occurred was irrelevant.

We review de novo a motion for summary disposition pursuant to MCR 2.116(C)(7). *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007). This Court also reviews de novo questions of statutory interpretation, and, in the absence of disputed facts, issues regarding whether a cause of action is barred by the applicable statute of limitations. *Id.* When reviewing a ruling on a motion for summary disposition, we view the evidence in the light most favorable to the nonmoving party, *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006), considering "all affidavits, pleadings, and other documentary evidence submitted by the parties and constru[ing] the pleadings in plaintiff's favor", *Doe v Roman Catholic Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004).

The statute of limitations for assault and battery is two years. MCL 600.5805(2). Plaintiff filed his first complaint on November 3, 2004. Therefore, absent an extension, claims for any conduct occurring before November 3, 2002, would be barred. Plaintiff testified that the abuse stopped immediately after he informed defendant Katherine Socall, his aunt, about it. In his deposition and affidavit, plaintiff asserted that he told Katherine about the abuse when he was 17 years old, some time in 2002, and the abuse stopped when he was 17 years old. Katherine testified that plaintiff told her about the abuse on April 1, 2003. Given that plaintiff turned 17 in January 2002 and was unable to specify when the abuse stopped or when he told Katherine about it, the last incident could have occurred between November 3, 2002, and December 31, 2002. Given Katherine's testimony, the abuse could have continued into 2003. Therefore, there is a question of fact regarding when plaintiff told Katherine about the abuse and when the last incident occurred. Viewing the evidence in the light most favorable to plaintiff, the nonmoving party, the last incident occurred after November 3, 2002. *Joliet, supra* at 35.

Given that plaintiff filed his first complaint on November 3, 2004, his claims were not barred by the two-year statute of limitations, and the trial court erred in granting defendant summary disposition. The trial court properly noted that there is a one-year grace period for minors. MCL 600.5851(1) provides, in pertinent part, as follows:

[I]f the person first entitled to make an entry or bring an action under this act is under 18 years of age . . . at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through

death or otherwise, to make the entry or bring the action *although the period of limitations has run*. [Emphasis added.]

However, § 5851(1) operates as an exception to statutes of limitations, as indicated by the plain language, “although the period of limitations has run.” MCL 600.5851(1); *Hatcher v State Farm Mut Automobile Ins Co*, 269 Mich App 596, 604; 712 NW2d 744 (2005). Plaintiff filed his claims within the applicable limitations period, and there is no need to apply this exception. The trial court actually shortened the limitations period by applying § 5851(1). We reverse the trial court’s order granting defendant summary disposition.

### III. Motion to Amend Plaintiff’s Complaint

Plaintiff contends that the trial court abused its discretion in denying his motion to amend his complaint to add a fraudulent concealment claim and an intentional infliction of emotional distress claim. We agree with the trial court that adding a fraudulent concealment claim would be futile but reverse with respect to plaintiff’s proposed intentional infliction of emotional distress claim.

#### A. Standards of Review

We review a trial court’s decision regarding a motion to amend a complaint for an abuse of discretion. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 400-401; 729 NW2d 277 (2006). An abuse of discretion occurs when the trial court chooses an outcome that falls “outside the range of principled outcomes.” *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007). The interpretation and application of a court rule is reviewed de novo. *Haliw v Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005).

#### B. Fraudulent Concealment

In the instant case, plaintiff was required to obtain leave of the court or written consent of the adverse party to amend his complaint. MCR 2.118(A)(2). It is well established that motions to amend pleadings should be “denied only for particularized reasons, which include undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Casey, supra* at 401 (quotation marks and citations omitted). The trial court denied plaintiff’s motion to amend and add a fraudulent concealment claim on the basis that it would be futile because it would not apply to extend the expired statute of limitations.

As discussed *supra*, the trial court erred in determining that the statute of limitations had expired. The fraudulent concealment rule, MCL 600.5855, provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the

identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

However, “[i]f there is a known cause of action there can be no fraudulent concealment which will interfere with the operation of the statute, and in this behalf a party will be held to know what he ought to know. . . .” *Doe, supra* at 642 (citations and internal quotation marks omitted). Given that plaintiff was aware of the abuse and defendant’s identity, there was a known cause of action, and fraudulent concealment is not available to plaintiff. Amendment of the complaint to add a fraudulent concealment claim would therefore be futile. Although the trial court reached the correct result using the wrong reasoning, it will be upheld on appeal. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Gleason v Dep’t of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003). Therefore, the trial court did not abuse its discretion in denying plaintiff’s motion to amend his complaint to add a fraudulent concealment claim.

### C. Intentional Infliction of Emotional Distress

The trial court denied plaintiff’s motion regarding intentional infliction of emotional distress on the ground that amendment would be futile because plaintiff failed to file his claim within one year of attaining age 18. The statute of limitations for intentional infliction of emotional distress is three years. MCL 600.5805(10); *Doe, supra* at 639. Even assuming that the tolling order did not apply to an intentional infliction of emotional distress claim, plaintiff filed his complaint in the instant action on December 5, 2005. There was some evidence that the last act occurred some time in 2002, when plaintiff was 17 years old, or as late as April 2003. As a result, we cannot definitively say when the statute of limitations expired or whether plaintiff’s claim was filed within the limitations period.

The latest date the evidence supported for the last incident of abuse is April 2003, and the latest date the statute of limitations would expire is April 2006. Because the three-year statute of limitations would have expired between the time plaintiff filed his claim in the instant case on December 5, 2005, and the time he sought to amend his complaint on December 27, 2006, the relation-back doctrine must be considered. 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 arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.” See *Smith v Henry Ford Hosp*, 219 Mich App 555, 558; 557 NW2d 154 (1996). In plaintiff’s initial complaint in the instant case, he alleged that defendant had committed repeated acts against plaintiff, while plaintiff was a child and entrusted to defendant’s care. Plaintiff sought to amend his complaint to add an intentional infliction of emotional distress claim, asserting that defendant had committed abusive acts against him for eight years while he was a child. This proposed claim arises out of the same conduct as the claims in the initial complaint, and the amendment should relate back. Therefore, amendment to add an intentional infliction of emotional distress claim would not be futile.

There have been no allegations that amendment to add an intentional infliction of emotional distress claim would cause undue delay or that plaintiff acted in bad faith or with a dilatory motive in seeking amendment. See *Casey, supra* at 401. No previous amendments have been allowed, and although amendment may prejudice defendant, it would not be undue prejudice. See *id.* Accordingly, there are no particularized reasons for denying plaintiff’s motion to amend his complaint to add an intentional infliction of emotional distress claim, and

the trial court abused its discretion in denying this motion. We therefore reverse the trial court's order denying plaintiff's motion to amend his complaint as it pertains to the proposed intentional infliction of emotional distress claim.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly