STATE OF MICHIGAN

COURT OF APPEALS

NEW START, INC., HEALING PLACE, LTD., ANOTHER STEP FORWARD, HEALING PLACE OF NORTH OAKLAND MEDICAL CENTER, and HEALING PLACE OF DETROIT, INC.,

Plaintiffs-Appellants,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 28, 2008

No. 279473
Wayne Circuit Court
LC No. 06-604758-NF

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting defendant's motion for summary disposition. We affirm.

I. FACTS

This case arises out of a breach of contract claim in accordance with the Michigan No-Fault Act, MCL 500.3101 *et seq*., involving defendant's insured, Theresa Cooper. Cooper was injured in a motor vehicle collision on September 19, 1990. She sustained severe bodily injury. As a result of the injuries, Cooper was admitted to the Healing Place of Detroit, Inc. (HPD), located inside The Samaritan Center facilities, where she received medical treatment and rehabilitation for accident-related injuries. Plaintiffs billed defendant for services provided to defendant's insured; defendant refused full reimbursement.

Plaintiffs filed suit on February 16, 2006, alleging breach of contract. Defendant moved for change of venue on March 21, 2006. Defendant sent written correspondence to plaintiffs on March 31, 2006, stating that defendant would withdraw its motion for change of venue and would stipulate to allow plaintiffs to amend their complaint to add "The Samaritan Center" as a plaintiff in the matter. Plaintiffs filed a motion to amend caption under MCR 2.118 and MCR 2.119(A)(4) on January 12, 2007.

In plaintiffs' motion to amend, plaintiffs stated that defendant's insured only received treatment at HPD. Plaintiffs stated that HPD is the only interested plaintiff entity and should be the only plaintiff reflected in the case caption. Plaintiffs also stated that the other plaintiff

entities named on plaintiffs' complaint had no relevant interest in the cause of action and should be removed in the interest of judicial economy and clarification.

Defendant filed a response to plaintiffs' motion to amend on January 30, 2007, denying that plaintiff entities named in the complaint had no relevant interest in the cause of action because plaintiffs were named on patient records, summaries, and progress notes as well as doctor's order forms. Defendant argued that plaintiffs wished to change the entire caption by removing all named plaintiffs and adding a completely different party. Defendant ultimately alleged that plaintiffs' motion to amend was not an amendment, but a new lawsuit. The trial court granted plaintiffs' motion to amend on April 20, 2007, ordering plaintiffs' amended complaint to relate back to the date of the filing of the original complaint for all parties, including HPD.

Defendant moved for summary disposition May 25, 2007, claiming that plaintiff HPD did not assert a valid claim because, under MCL 500.3145,[1] HPD was not entitled to recover any benefits. Defendant stated that HPD was added to the lawsuit April 20, 2007, and under MCL 500.3145, HPD was not entitled to recover benefits that were incurred before April 20, 2006. Defendant stated that all of the insured's bills from HPD were incurred before April 1, 2006, and, therefore, HPD was not entitled to recovery of any benefits.

Plaintiffs responded to defendant's motion for summary disposition on June 12, 2007, claiming that it was within the trial court's discretion to allow amendment of a party that defendant had already stipulated to add and whom defendant knew had rendered care to the insured since the initiation of any litigation. Plaintiffs also argued that the trial court's order stating that all claims relate back to the original date of filing was within the court's discretion and ability to adjudicate matters. The trial court granted defendant's motion for summary disposition July 2, 2007. Plaintiffs now appeal.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 188 (2002). Whether a statute of limitations bars a cause of action is a question of law, which is also reviewed de novo. *Colbert v Conybeare Law Office*, 239 Mich App 608, 613-614; 609 NW2d 208 (2000). Statutory interpretation also presents a question of law, which is reviewed de novo. *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10-11; 743 NW2d 902 (2008).

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[1] MCL 500.3145(1) provides as follows:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury … the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the allegations of the pleadings alone. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. This Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id*. at 278.

III. ANALYSIS

Plaintiffs argue that the trial court erred in dismissing their claim when defendant stipulated to the addition of HPD and the trial court ordered plaintiffs' motion to amend "to relate back to the date of the filing of the original complaint for all parties."[2] We disagree.

Addressing plaintiffs' first argument concerning party stipulation, when parties stipulate to a set of facts, the stipulated facts are binding on the court; however, stipulations of law are not binding on the court. *People v Metamora Water Service, Inc.*, 276 Mich App 376, 385; 741 NW2d 61 (2007). Therefore, even if defendant stipulated to the addition of HPD, the trial court is not bound by stipulations of law.

Turning now to plaintiffs' second argument concerning the relation back doctrine, we conclude that the trial court did not err in granting defendant summary disposition despite previously granting plaintiffs' motion to amend with relation back to the original filing date.[3]

Under MCR 2.118(D), "[a]n amendment that adds a claim or 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." However, in this case, plaintiffs did not add a claim or defense; plaintiffs added a new party, HPD. The relation back doctrine only applies to new claims and defenses added to a complaint; thus, it does not apply to plaintiffs' motion to amend.

In *Miller v Chapman Contracting*, 477 Mich 102, 104; 730 NW2d 462 (2007), the plaintiff filed for bankruptcy after involvement in a vehicle accident. The plaintiff assigned his interest in the accident to the bankruptcy trustee; later, the trustee filed a claim to recover damages relating to the accident, authorizing commencement of the suit in the plaintiff's name. *Id*. After the statute of limitation had expired, the defendant moved for summary disposition, claiming the real party in interest, the bankruptcy trustee, was not a listed party. *Id*. The plaintiff filed a motion to amend the complaint and switch the parties; however, the trial court granted

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[2] Plaintiffs argue that HPD is added under a commonly held name and corporation. However, as determined by the trial court at oral argument for summary disposition, despite all plaintiff corporations having a common owner, HPD is a separate entity with separate incorporation.

[3] We suspect that the trial court granted the motion to amend with relation back on an inaccurate factual belief that HPD was an entity of existing plaintiff corporation; when, in fact, HPD is a separate entity and separation corporation from listed plaintiffs.

summary disposition and dismissed the case. *Id.* The plaintiff appealed, this Court affirmed the trial court, and the plaintiff appealed again. The Michigan Supreme Court held that "'"a misnomer of a plaintiff or defendant is amendable unless the amendment is such as to effect an entire change of parties."'" *Id*. at 106 (citations omitted). The Court affirmed this Court's holding that because the plaintiff in *Miller* desired to amend the complaint to substitute a wholly new and different party, the amendment would not merely be corrective and could not relate back to the original pleadings and, therefore, would be barred by the statute of limitations. *Id*. at 107-108; see also *Yudashkin v Holden*, 247 Mich App 642; 637 NW2d 257 (2001) (noting that an amended pleading relates back to the date of the original pleading but not to the addition of new parties).

Plaintiff HPD is not an entity of any corporations listed as plaintiffs in this suit. By statutory interpretation of MCR 2.118, as well as application of *Miller*, the addition of HPD to the claim would be adding a new party to the suit; thus, plaintiff's claim against HPD would not relate back to the original pleadings.

Plaintiffs rely on *Wells v Detroit News, Inc*, 360 Mich 634; 104 NW2d 767 (1960) to support their argument to add plaintiff HPD by amendment. However, their reliance is misplaced. In *Wells*, the Court permitted the plaintiff to add a defendant to the complaint by reason of party misnomer. *Id*. at 641. The Court explained that the misnomer doctrine applies to correct inconsequential deficiencies or technicalities in the naming of parties, i.e., "'[w]here the right corporation has been sued by the wrong name . . . .'" *Id*. (citation omitted). The Court never addressed amendment of a complaint to add a plaintiff party. Further, the misnomer doctrine does not apply when a plaintiff seeks to add a wholly new party. *Miller*, *supra* at 107. Therefore, *Wells* is not specifically on point and does not support plaintiffs' argument.

Plaintiffs also rely on *Hayes-Albion Corp v Whiting Corp*, 184 Mich App 410; 459 NW2d 47 (1990). In *Hayes*, this Court found that plaintiff Hayes-Albion was permitted to add plaintiff American by an amendment to the complaint with relation back to the original filing because the original party bringing the claim, Hayes-Albion, had an interest in the suit. *Id*. at 418. This Court held that the addition of a new plaintiff is typically permitted so long as the original plaintiff had, in any capacity, an interest in the subject matter of the controversy. *Id*. Therefore, plaintiffs' use of *Hayes* is also not supportive of their argument for addition of HPD because plaintiffs stated in their motion to amend that the original plaintiffs had no interest in the claim.

Due to plaintiffs' untimely filing of the amended complaint, the statute of limitations has run on plaintiffs' claim against HPD, and judgment in defendant's favor was appropriate.

Plaintiffs also argue that under to MCR 2.111(F)(2),[4] defendant failed to raise the defense that a claim must be prosecuted by the real party in interest in its original answer or in its answer

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[4] MCR 2.111(F)(2) provides as follows:

> A defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over the

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to plaintiff's amended complaint; and, therefore, defendant has effectively waived their argument. Additionally, plaintiffs argue that the trial court failed to give proper weight and consideration to the actions of the parties under MCR 2.118(C)(1)[5]; in that both parties expressly and impliedly consented to the litigation of all claims, and thus, defendant's intent should be considered as accepting litigation by HPD. However, these claims are not properly before this Court.

An issue that is not raised in the pleadings nor argued before the trial court need not be addressed on appeal. *Higgins Lake Property Owners Ass'n v Gerrish Township*, 255 Mich App 83, 117; 662 NW2d 387 (2003). Issues not properly raised before the trial court cannot be raised on appeal, absent compelling or extraordinary circumstances, such as a constitutional issue affecting substantial rights. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Here, plaintiffs failed to raise these arguments before the trial court; therefore, they are not properly before this Court and we decline to address them on appeal.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

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subject matter of the action, and failure to state a claim upon which relief can be granted.

[5] MCR 2.118(C)(1) provides as follows:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as if they had been raised by the pleadings. In that case, amendment of the pleadings to conform to the evidence and to raise those issues may be made on motion of a party at any time, even after judgment.