

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

LOISANN E. DEBENEDICTIS, as)	
Administrator for the Estate of)	
BESSIE MCKINNEY,)	
)	
Plaintiff,)	
)	C.A. No. N12C-10-037 ALR
v.)	
)	
DELAWARE AUTHORITY FOR)	
REGIONAL TRANSIT,)	
)	
Defendant.)	

Submitted: February 17, 2014
Decided: April 7, 2014

Plaintiff's Motion for Leave of Court to File an Amended Complaint
DENIED

Plaintiff has filed a Motion for Leave to File an Amended Complaint. Defendant filed a response in opposition requesting that Plaintiff's Motion be denied. The Court heard oral argument. Upon consideration of Plaintiff's Motion for Leave of Court to File an Amended Complaint, the Court makes the following findings:

1. Plaintiff Loisann E. Debenedictis is the administrator of the estate of Bessie McKinney ("Decedent"). Defendant is Delaware Authority for Regional Transit ("DART").

2. On October 25, 2011, Decedent was a passenger on a DART bus. Decedent fell while exiting the bus, suffered injuries and was admitted to the hospital.
3. Decedent remained hospitalized until her death on November 13, 2011.
4. Almost one (1) year later, on October 3, 2012, Plaintiff filed a civil complaint on behalf of Decedent's estate. Plaintiff's complaint alleged that Decedent's injuries were the direct and proximate result of DART's carelessness and negligence regarding DART's operation and maintenance of the bus. Plaintiff alleged that, as a direct and proximate result of DART's carelessness and negligence, Plaintiff is entitled to recover medical and other expenses that Plaintiff was required to expend for Decedent's care.
5. On December 11, 2012, the Court issued the first Case Scheduling Order. A deadline for motions to add or amend pleadings was established as January 18, 2013 and a discovery deadline of April 19, 2013 was set. No trial date was established.
6. A Revised Case Scheduling Order was issued on June 10, 2013, at the parties' request. The revised order did not include any change to the deadline to add or amend pleadings, and that deadline had passed. The discovery and expert deadlines were extended. Still, no trial date was set.

7. At the parties' request the expert deadline was again extended by Order dated August 29, 2013. The revised order did not include any change to the deadline to add or amend pleadings.
8. At the parties' request the expert deadline was extended yet again by Order dated October 3, 2013.
9. The Court conducted a scheduling teleconference on November 5, 2013, at which time a trial date of September 15, 2014 was assigned. As requested by the parties, the Court adjusted several other deadlines when scheduling the trial date, including dates for expert reports and the discovery deadline. The parties did not request and the revised order did not include any change to the deadline to add or amend pleadings.
10. Thereafter, the parties once again requested adjustments to the expert and discovery deadlines and the Court entered an Order dated January 24, 2014 making the requested adjustments to the scheduling order. The parties' stipulation specifically provided that "all other event deadlines remain unchanged."
11. Despite the numerous requests and stipulations to amend the controlling scheduling orders, Plaintiff never requested any extension of the deadline to amend the pleadings.

12. By Order dated December 11, 2012, January 18, 2013 was the deadline to add or amend pleadings. Plaintiff's Motion for Leave of Court to File an Amended Complaint was filed more than one (1) year after the deadline to add or amend pleadings.
13. Plaintiff's original claim is a survival action asserted on behalf of the Decedent's estate. Now Plaintiff seeks to assert a wrongful death claim on behalf of Decedent's four children as additional plaintiffs to pursue additional damages under a claim for wrongful death. Before filing the motion to amend, these individuals had never been identified as parties or as witnesses or even as persons who might have knowledge relevant to the issues being litigated.
14. Defendant objects to Plaintiff's proposed amendment for several reasons. First, Plaintiff's new claim seeks to include the interests of four plaintiffs whose existence has not been disclosed during the course of discovery. Second, Plaintiff seeks to pursue a separate and new claim for wrongful death. Third, the statute of limitations for a wrongful death claim expired on November 13, 2013.¹

¹ 10 Del. C. § 8107 (“No action to recover damages for wrongful death . . . shall be brought after the expiration of 2 years from the accruing of the cause of such action.”).

15. The Court may grant a motion for leave to amend or add a complaint after the statute of limitations for the proposed claim has expired, if permitted under the relation-back provision of Rule 15(c).²
16. Rule 15(c)(3) requires the proposed claim relate back to the same conduct, transaction, or occurrence described in the original complaint.³ The effect of the rule is to enlarge the statute of limitations.⁴ Additionally, the party opposing the amendment must have been put on notice of the existence of the potential additional plaintiffs and their claims in order to prevent prejudice to the opposing party's ability to defend against the proposed claims on the merits.⁵
17. Despite the general liberal policy of permitting leave to amend under Rule 15(a), a motion to add additional plaintiffs by amendment after the statute of limitations has run must be denied unless it satisfies the relation-back requirements of Rule 15(c).⁶
18. Thus, DART must have been on notice of Plaintiff's proposed additional plaintiffs and their respective wrongful death claim to ensure DART will not be prejudiced in defending against the additional plaintiffs' claim.

² *Chaplake Holdings, LTD. v. Chrysler*, 766 A.2d 1, 5 (Del. 2001).

³ Super. Ct. Civ. R. 15(c)(2); *Mullen v. Alarmguard, Inc.*, 625 A.2d 258, 263 (Del. 1993).

⁴ *Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396, 398 (Del. 1975).

⁵ Super. Ct. Civ. R. 15(c)(3); *Mullen*, 625 A.2d at 265.

⁶ *Mullen*, 625 A.2d at 263.

19. In *Chaplake Holdings* the Delaware Supreme Court considered the issue of adding additional plaintiffs to a cause of action under Rule 15(c). The Court stated that interpretation of Rule 15(c) requires a balance of encouraging the disposition of cases on their merits against ensuring defendants receive enough notice of proposed claims in order to defend against the action without prejudice.⁷ In *Chaplake*, the Court found the defendant was not prejudiced by permitting additional plaintiffs because the claims of the new plaintiffs were identical to the claims provided in the original complaint. Furthermore, the proposed additional plaintiffs were originally included as parties to the action.⁸ Thus, the defendant was on notice as to the identity of the plaintiffs and their claims and was not prejudiced in defending against the claims on the merits.⁹

20. In the case before the Court, the Plaintiff's proposed amendment does not assert claims identical to the claims in Plaintiff's original pleading. The newly proposed claim for wrongful death is a separate and distinct claim from a survival action. In a survival action, the decedent's claim survives to and is pursued by the decedent's administrator.¹⁰ On the other hand, a wrongful death action is pursued by a statutory beneficiary who has been

⁷ *Chaplake Holdings, LTD.*, 766 A.2d at 7.

⁸ *Id.* at 8.

⁹ *Id.* at 7-8.

¹⁰ 10 Del C. § 3701; *United States v. Cumberbatch*, 647 A.2d 1098, 1103 (Del. 1994).

“injured as a result of the death of another person.”¹¹ In effect, survival actions are vindicating the existing claims of the decedent, while wrongful death actions compensate the surviving statutory beneficiaries for a loss they have suffered as a result of the decedent’s death.

21. Plaintiff claims that Defendant was on notice of the possibility of an amendment to the complaint when, on October 17, 2013, Plaintiff provided DART with a copy of the medical report that opined that Decedent’s death was “correctly attributed . . . to emphysema/chronic obstructive pulmonary disease . . . *and contributed to by a fall* with closed head injury and cervical spine fractures and accompanying epidural hematoma.”¹²

22. Defendant contends that the Plaintiff’s expert report did not provide notice that Plaintiff would seek to add four additional plaintiffs and seek damages for wrongful death, an entirely new claim for relief. Furthermore, Defendant objects because the statute of limitations for a wrongful death action has long since expired.

23. The Court finds that Plaintiff’s October 2013 medical report did not put DART on notice that the accident described in Plaintiff’s original complaint gave rise to a wrongful death claim on behalf of four additional parties even though the October 2013 medical report does partially attribute Decedent’s

¹¹ 10 Del. C. § 3725; *Cumberbatch*, 647 A.2d at 1103.

¹² Pl. Medical Rep. Dr. Ian Hood (emphasis added).

death to injuries sustained from the fall.¹³ Instead, because a wrongful death claim must be asserted by statutory beneficiaries who suffered an injury as a result of another's death,¹⁴ DART must have been on notice of the existence of the four potential additional plaintiffs who could bring the wrongful death claim.¹⁵

24. With regard to DART's notice of the additional plaintiffs, the parties have engaged in extensive factual discovery over the last sixteen (16) months. In the course of discovery, Plaintiff did not identify four additional plaintiffs. Plaintiff's original complaint does not identify specific beneficiaries of Decedent's estate other than Plaintiff, individually, in her capacity as Decedent's administrator. In December 2012, Plaintiff submitted interrogatory answers, supported by an affidavit. Plaintiff's answers offer no indication of the existence of four additional plaintiffs. Indeed, in direct response to a question posed by Defendant for the names of persons who had knowledge of the facts posed in the complaint, Plaintiff answered "N/A."¹⁶

25. Furthermore, Plaintiff did not amend her interrogatory answers despite Plaintiff's obligation to "supplement the response with respect to any question directly addressed to the identity and location of persons having

¹³ *Spady v. Keen*, 2006 WL 2559853, at *2 (Del. Super. Aug. 25, 2006) (citation omitted).

¹⁴ 10 Del. C. §§ 3724, 3725; *Cumberbatch*, 647 A.2d at 1103.

¹⁵ *Id.*

¹⁶ Def's. Res. Opp. Pls.' Mot. for Leave, Ex C. at ¶ 9.

knowledge of discoverable matters”¹⁷ and to amend prior answers if “the party knows that the response was incorrect when made.”¹⁸ Plaintiff failed to disclose the existence of any additional statutory beneficiaries and thus, there has been no opportunity for DART to investigate the proposed plaintiff’s additional claims for damages.

26. DART was not on notice of the existence of these additional plaintiffs, or the potential for this wrongful death claim and thus Plaintiff has not met the requirements of Rule 15(c)(3). Plaintiff’s motion must be denied.

27. Even if the requirements of Rule 15(c) were met, the interests of justice do not require the Court to grant Plaintiff’s Motion.¹⁹

28. Adding four new plaintiffs and an entirely new cause of action would significantly delay trial of this case. Trial is currently set for September 15, 2014.²⁰ Granting this Motion would delay trial at least until 2015.

29. Plaintiff’s Motion is inexcusably untimely. Despite the Court’s flexibility with prior scheduling order amendments and extending deadlines, Plaintiff failed to address the issues now raised in this Motion. Plaintiff offered no

¹⁷ Super. Ct. Civ. R. 26(e)(1)(A).

¹⁸ Super. Ct. Civ. R. 26(e)(2)(A); *In Re Hagan v. Rostien*, 1997 WL 366893, at *1 (Del. Super. April 23, 1997) (citing *Hoey v. Hawkins*, 332 A.2d 403, 406 (Del. 1975)).

¹⁹ Super. Ct. Civ. R. 15(a); *Spady*, 2006 WL 2559853, at *3.

²⁰ *Spady*, 2006 WL 2559853, at *3.

reasonable explanation or justification for the delay in seeking the relief in this Motion.²¹

NOW, THEREFORE, for the reasons stated herein, this 7th day of April, 2014, Plaintiff Loisann E. Debenedictis' Motion for Leave to File an Amended Complaint is hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

²¹ *Id.*