

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DENISE CRUMPLER and	§	
EDWARD CRUMPLER,	§	
	§	
Plaintiffs Below,	§	No. 331, 1999
Appellants,	§	
	§	
v.	§	Court Below: Superior Court of
	§	the State of Delaware in and for
MICHAEL PHIPPS,	§	New Castle County, in C.A. No.
	§	97C-04-313.
Defendant Below,	§	
Appellee.	§	

Submitted: November 30, 1999
Decided: February 7, 2000

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 7th day of February, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1) Denise Crumpler was injured in an automobile accident and filed suit shortly before the expiration of the applicable statute of limitations. The named defendant, however, was the father of the person who was involved in the accident. Shortly after the statute of limitations expired, when the Crumplers learned that they had sued the wrong person, they filed an amended complaint naming Michael Phipps

as the defendant. The Superior Court dismissed the action, holding that the amended complaint did not relate back to the date of the original filing under Superior Court Rule 15(c)(3).

2) Alvia Crumpler was driving, and her mother, Denise Crumpler, was a passenger, when the Crumplers' car was "rear-ended" by another vehicle on May 9, 1995. Michael Phipps was driving the other car, but Alvia copied information from the Phipps's Liberty Mutual insurance card, which had only the name Patrick Phipps on it. Patrick Phipps, Michael's father, is the co-owner of the vehicle involved in the accident.

3) Both Alvia and Denise engaged in negotiations with the insurance company, and all documents from both sides named Patrick Phipps as the insured. At no time did Liberty Mutual inform the Crumplers that Michael was the driver. Alvia reached a settlement, and signed a release in favor of Patrick Phipps. Denise did not settle. She filed suit against Patrick Phipps on April 30, 1997, and the complaint was served on Patrick on May 7, 1997 – two days before expiration of the statute of limitations.

4) In June 1997, Patrick responded to the complaint by filing a motion to dismiss. The Crumplers learned, from that motion, that Michael was the driver of the car. They then amended their complaint to name Michael as a defendant.

Michael moved to dismiss the amended complaint as untimely, and the Crumplers took discovery on the issue of Michael's notice of the action. In their depositions, Michael and Patrick both claimed that they never discussed the accident or the pending lawsuit until June 1997, after the statute of limitations had run. Michael also swore that he did not discuss the accident with Liberty Mutual, although the company's records establish that Michael not only spoke to claims representatives, he gave a taped statement to Liberty Mutual. That statement was erased without being transcribed "in the normal course of business."

5) The Superior Court granted Michael's motion to dismiss, finding that the Crumplers did not satisfy their burden of establishing that Michael had notice of the lawsuit before the statute of limitations expired. The trial court found that all of the other requirements of Superior Court Rule 15(c)(3) were satisfied. We review that decision *de novo*.¹

6) The trial court misread Rule 15(c)(3). It allows an amendment to relate back to the date of the original pleading, under the following circumstances:

(3) ...[the "same transaction" requirement of subsection (2) is satisfied] and, *within the period provided by statute or these Rules for the service of the summons and complaint*, the party to be brought in by amendment (A) has received such notice of the

¹*Parker v. Breckin*, Del.Supr., 620 A.2d 229, 230 (1993).

institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. (Emphasis added.)

7) The record establishes that Michael received notice of the institution of the original action no later than June 1997, when he and his father went to discuss the lawsuit with their lawyer. Since the original complaint was filed on April 30, 1997, any date in June would be within the 120 days provided by Rule 4(j) for the service of a summons and complaint. Accordingly, even if Michael did not know of the complaint before the statute of limitations expired, he received timely notice under subsection (A).

8) The trial court found that subsection (B) was satisfied and we agree. Upon learning of the lawsuit, Michael must have realized that there had been a “mistake concerning the identity of the proper party,” as it was Michael, not his father, who had been in the car accident.

9) Since the requirements of Rule 15(c)(3) were satisfied, Michael’s motion to dismiss the amended complaint should have been denied.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, REVERSED and REMANDED to the Superior Court for proceedings consistent with this decision. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice