IN THE COURT OF APPEALS OF IOWA

No. 2-018 / 11-0512
Filed March 28, 2012

PHILLIP PATTON,
Plaintiff-Appellant,

vs.

CENTRAL IOWA HOSPITAL CORPORATION,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge.

Plaintiff appeals the district court's summary dismissal of his petition for failing to comply with Iowa Rule of Civil Procedure 1.402(5). **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, and Shane C. Michael, Des Moines, for appellant.

Erik P. Bergeland of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Heard by Danilson, P.J., Bower, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

The district court granted the summary judgment motion of Central Iowa Hospital Corporation (CIHC) and dismissed the petition of Phillip Patton due to Patton failing to accomplish service within the statute of limitations period as required by Iowa Rule of Civil Procedure 1.402(5). Patton appeals arguing his amendment replacing original defendant Iowa Health Systems (IHS) with defendant CIHC "relates back because it changed only the name of the [d]efendant, not the entire entity, and an analysis under" rule 1.402(5) is unnecessary. We affirm.

I. Background Facts and Proceedings.

On March 1, 2010, Patton filed a petition against IHS alleging negligence. Patton alleged he fell on March 8, 2008, at the entrance of the "Stoddard Building" at 1200 Pleasant Street, Des Moines, Iowa and IHS "was the owner of the property located at 1200 Pleasant Street." On March 31, 2010, Patton served an attorney in the IHS law department.

On April 15, 2010, IHS filed a motion to dismiss asserting it did not own, operate, or maintain the Iowa Methodist Medical Center at 1200 Pleasant Street. The accompanying April 15 affidavit of Richard Steffen, "Senior Attorney with the Iowa Health System Law Department," provided:

> 2. Iowa Health System is an Iowa non-profit corporation and is the sole corporate member of Central Iowa Health System, an Iowa non-profit corporation.
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> 3. Central Iowa Health System is the sole corporate member of Central Iowa Hospital Corporation, an Iowa non-profit corporation.
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> 4. Iowa Health System, Central Iowa Health System and Central Iowa Hospital Corporation are distinctly separate non-profit corporate entities.

> 5. Central Iowa Hospital Corporation owns and operates Iowa Methodist Medical Center. Central Iowa Hospital Corporation does business under the assumed name of Iowa Methodist Medical Center . . . . Iowa Health System Hospital Corporation amended its Articles of Incorporation in 1995 to change its name to Central Iowa Hospital Corporation. . . .
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> . . . .
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> 8. Corporate records of Iowa Health System and Central Iowa Hospital Corporation setting forth the above facts are available online on the Iowa Secretary of State website . . . .

On July 19, 2010, Patton resisted the motion to dismiss and sought leave to amend his petition. After hearing, the court ruled Patton could file an amended petition. At IHS's request, the court deferred ruling on IHS's motion to dismiss.

On July 27, Patton filed an amended petition naming CIHC as defendant and owner of the property at 1200 Pleasant. Subsequently, CIHC moved for summary judgment arguing Patton's amended petition was barred by the statute of limitations. Patton resisted, attaching Steffen's April 15, 2010 affidavit in support of his resistance. After hearing, in March 2011 the district court granted CIHC's summary judgment motion, ruling:

> [Under rule 1.402(5),] for the July 27, 2010 amendment changing the defendant in this case to relate back to the March 1, 2010 original filing date, the defendant, CIHC, would have needed to have notice on or before March 8, 2010. The attorneys for IHS have the ability to accept service on behalf of CIHC. However, even the service on IHS was not perfected until March 31, 2010, which is after the two year statute of limitations had expired. So, if service on IHS also constituted notice to CIHC, it was still untimely as that notice came after the expiration of the statue of limitations on March 8, 2010. Rule 1.402(5) requires that the notice on the later-named defendant must be within the "period provided by law for commencing the action against the party." The undisputed facts show [Patton] did not provide that notice until March 31, 2010. Therefore, the amendment to name CIHC does not relate back to the March 1, 2010 filing date under the clear reading of Rule 1.402(5).
>
> [Patton] argues that his amendment is merely changing the name of the defendant and not actually changing the entity and is

> attributable to the confusing nature of the interplay between [the corporations]. This court cannot agree. IHS and CIHC are separate corporate entities. It is well-established law in Iowa that courts begin with the presumption that corporations are distinct legal entities. There is no evidence here that IHS and CIHC are the same entity, there is no complete identity, either of ownership or of interest. These two corporations are each viable independent corporations which perform services independent of each [other], although they are related. There is no doubt that IHS does not own or operate the day to day functions of Iowa Methodist Medical Center which is where the alleged fall took place. [Patton] has not overcome the presumption that IHS and CIHC are distinct legal entities. This court cannot conclude that IHS and CIHC should be considered the same entity for purposes of liability in this case.

(Citations omitted.) This appeal followed.

II. Standard of Review.

"We review a district court's order on a motion for summary judgment for correction of errors at law." *Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 877 (Iowa 2009). We view "the factual record in the light most favorable to the resisting party, affording the party all reasonable inferences." *James Enterprises, Inc. v. City of Ames*, 661 N.W.2d 150, 152 (Iowa 2003). "Summary judgment is only proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id*.

III. Merits.

Patton argues IHS and CIHC d/b/a Iowa Health-Des Moines are "very intimately related" and "hold themselves out to be the same corporation" to the public. Patton notes: (1) the corporations use the same agents to accept service at the same address; (2) one press release stated "Iowa Health-Des Moines and its parent organization, Iowa Health System"; (3) the corporations use a similar logo and trademark (uniform blue logo with a crest inside); and (4) the IHS web

page lists "relationships with 25 hospitals," including Iowa Methodist. Patton acknowledges, however, a party injured at Iowa Methodist could determine they were doing business with CIHC by using either the Iowa Secretary of State's official listing or the Polk County Assessor's records. Patton contends rule 1.402(5) analysis is "unnecessary and inappropriate" because his amendment did not seek to change the party defendant (the owner of the property), but merely sought to correct the defendant's name. *See* Iowa R. Civ. P. 1.402(5).

In analyzing whether two corporations should be denied legal separation, Iowa courts begin with the presumption that corporations are distinct, legal entities. *Charles Weitz's Sons v. U.S. Fidelity & Guar. Co*., 206 Iowa 1025, 1031, 219 N.W. 411, 414 (1928). The *Weitz* court explained:

> [T]he separate corporate organization is not shown to have been a fiction, but it was established that it was a separate and distinct entity, carrying on a business separate and distinct and of a different character . . . . It not only was not a fiction, but was a distinct, separate, and different legal entity, and there was no complete identity, either of ownership or of interest.

Id. In 1977, the Iowa Supreme Court discussed amendments naming a separate corporate defendant:

> If the substitution of a corporation as party defendant for another corporation, after the statute of limitations has run, amounts to no more than the rectification of a misnomer, the statute of limitations is not a bar; *where, however, the plaintiff sued the wrong party, the mistake cannot be remedied after the period of limitations has elapsed any more than in the case where a wrong individual has been sued*. Thus, there are many cases in which it has been held that where an action is brought against a corporation, its commencement within the limitation period is *ineffective* to stop the running of the statute of limitations against another corporation substituted for it after the statute has run.

Smith v. Baule, 260 N.W.2d 850, 853 (Iowa 1977) (quoting 51 Am. Jur. 2d, Limitations of Actions, § 294, at 805[1]) (emphasis added).

In the present case, the defendant before the court is CIHC. It is undisputed IHS and CIHC are distinct corporate entities with different registered agents and different officers. CIHC is Iowa corporation number 59292, its registered agent is Eric T. Crowell, and its officers are Kent Henning, Bishop Michal Burk, Brad Brody, and Burton "Toby" Joseph. IHS is Iowa corporation number 181348, its registered agent is William B. Lever, and its officers are Paul Brandt, Bruce Sherman, James Hoffman, and Dr. Paula Arnell. The undisputed facts also show IHS and CIHC carry on separate and distinct businesses. IHS provides centralized services for its affiliated hospitals such as legal services, tax services, information technology services, central purchasing services, and financial services. CIHC provides direct health care services through its hospitals and through physician employees at clinics around the Des Moines area. Records at both the Iowa Secretary of State's office and the Polk County Assessor's office show distinct corporations.

Based on these undisputed facts, we conclude the district court did not err in ruling Patton is attempting to substitute an entirely new party. Patton simply made a mistake in the identity of the corporation he intended to sue. *See First Trust Joint Stock Land Bank v. Galagan*, 220 Iowa 173, 175-76, 261 N.W. 920,

[1] 51 Am. Jur. 2d, Limitations of Actions, § 242, at 687 (2011), provides:

> As a general rule, an amendment to a pleading that adds a new party creates a new cause of action, and does not relate back to the original filing for limitations purposes. An amended complaint naming a new party does not relate back for this purpose, if the new defendant did not receive notice of the suit within the limitations period . . . even if it arises out of the same transaction or occurrence alleged in the original complaint.

921-22 (1935) (refusing to disregard the realty company's corporate entity where every stockholder of the realty company held stock in the bank, the president and secretary of the realty company were also the president and cashier of the bank, the realty company's office was in the bank, and the realty company's sole purpose was to purchase real estate from the bank). Because Patton's original petition named corporate defendant IHS, not CIHC, the issue in this case is wholly distinguishable from a "misnomer" case where "the right party is before the court, although under a wrong name" and an amendment will be allowed to cure the misnomer. *Thune v. Hokah Cheese Co.*, 260 Iowa 347, 350, 149 N.W.2d 176, 178 (1967) (ruling "the amendment did not amount to a substitution of one party for another after the statute of limitations had run, but only corrected a misnomer of a party who was actually before the court at all times under his assumed fictitious name"). Here, allowing Patton's "amendment to relate back to the original complaint would deprive the substituted [defendant, CIHC,] of [its] defense of the statute of limitations." *Baule*, 260 N.W.2d at 853 (rejecting plaintiff's misnomer argument).

Next, we find no error in the district court's rule 1.402(5) analysis as detailed above. It is undisputed Patton did not provide notice to any party until after the statute of limitations had run. *See Estate of Kuhns v. Marco*, 620 N.W.2d 488, 491-92 (Iowa 2000) (holding "when the relation back rule is applied to amendments that add a defendant, we strictly adhere to the clear language of the rule" and the notice requirement may not be extended by the time to accomplish service of process).

Because Patton's amended petition did not relate back to the original and does not qualify as a "misnomer" correction, we conclude the district court did not err in granting CIHC's motion for summary judgment.

AFFIRMED.