

STATE OF MICHIGAN  
COURT OF APPEALS

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KEWEENAW BAY INDIAN COMMUNITY and  
KEWEENAW BAY INDIAN TRIBAL  
COUNCIL,

Plaintiffs,

and

WAYNE SWARTZ, WILLIAM EMERY, ANN  
DURANT, TERRI DENOMIE, AMY SAINT  
ARNOLD, ROSEMARY HAATAJA, MICHAEL  
LAFERNIER, ISADORE MISEGAN, RICHARD  
SHALIFOE and PAULINE KNAPP-SPRUCE,

Plaintiffs-Appellants,

v

ALAN W. CLARKE,

Defendant-Appellee.

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Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

SMOLENSKI, J. (dissenting).

I respectfully dissent. I disagree with the majority's conclusion that this Court's opinions in *Hurt v Michael's Food Center, Inc.*, 220 Mich App 169, 179; 559 NW2d 660 (1996) and *Employers Mutual Casualty Co v Petroleum Equipment, Inc.*, 190 Mich App 57, 63; 475 NW2d 418 (1991) apply to the facts of this case. The amended complaints in *Hurt* and *Employers Mutual* added new parties. Here, the individual appellants were not added as new parties, but substituted for the original institutional plaintiffs.

[A]mendment of pleadings may be allowed to change the identity of a party plaintiff where the plaintiff originally brought an action in the wrong capacity and the new plaintiff may be allowed to take advantage of the former action if the original plaintiff had, in any

capacity, either before or after the commencement of the action, an interest in the subject matter of the controversy. [*Stamp v Mill Street Inn*, 152 Mich App 290, 298; 393 NW2d 614 (1986).]

Because the majority determined that appellants' claim was barred by the applicable statute of limitations, they found it unnecessary to address appellants' claim that the trial court improperly dismissed their amended complaint pursuant to MCR 2.116(C)(8). I agree with the trial court's dismissal; however, I would remand the case and allow appellants the opportunity to amend their complaint to include more specific allegations of defamation. See MCR 2.118(A)(2) (leave to amend a complaint "shall be freely given when justice so requires").

/s/ Michael R. Smolenski