

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JEANNINE MUTO,

Plaintiff-Appellee,

v

KOSMA ENTERPRISES, INC.,

Defendant-Appellee,

and

BILL KARL'S LANDSCAPING  
CONTRACTORS, INC., and BILL KARL,

Defendants-Appellants.

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UNPUBLISHED

November 27, 2001

No. 222040

Oakland Circuit Court

LC No. 98-006253-NO

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendants<sup>1</sup> appeal by leave granted from the trial court's order denying their motion for summary disposition. We reverse.

On May 19, 1998, plaintiff filed a complaint alleging negligence against Kosma Enterprises, Inc. Specifically, plaintiff alleged that she slipped and fell on a hazardous accumulation of ice. The complaint alleged that Kosma Enterprises, Inc. breached its duty "to take reasonable steps within a reasonable time to eliminate the hazardous accumulation of ice." In its answer to the complaint filed on July 30, 1998, Kosma stated that, within ninety-one days, it would identify any nonparty who was at fault. On November 9, 1998, Kosma filed its witness list identifying defendants or its agents or employees with knowledge of the snow removal contract as potential witnesses. Also on November 9, 1998, Kosma filed its exhibit list that included defendants' records regarding snow and ice removal. On November 13, 1998, plaintiff filed her witness and exhibit lists that also included defendants and any relevant documents within their possession. Despite the apparent notice of defendants involvement in snow and ice

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<sup>1</sup> For purposes of clarity, we refer to defendants as Bill Karl's Landscaping Contractors, Inc., and Bill Karl. Kosma Enterprises, Inc. will be identified as Kosma.

removal, action to add defendants did not occur within ninety-one days of Kosma's answer to the complaint. On January 21, 1999, Kosma filed a notice of potential fault of defendants. In lieu of filing a motion explaining why, with reasonable diligence, the notice could not have been filed previously, plaintiff and Kosma stipulated to file an amended complaint adding defendants to the litigation. Due to the addition of defendants, the stipulation provided that the case would be mediated a second time, and the trial date was adjourned. Defendants filed a motion for summary disposition based on the statute of limitations, and the parties lack of compliance with MCR 2.112(K). The trial court denied the motion.

Defendants argue that the trial court erred in denying their motion for summary disposition. We agree. Our review of this issue is de novo. *The Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). The parties to litigation may not stipulate to add a potential nonparty, but must comply with the notice provisions of MCR 2.112(K), that include establishing reasonable diligence for failing to timely name the nonparty. *Staff v Johnson*, 242 Mich App 521, 527-529; 619 NW2d 57 (2000). The amended complaint adding defendants was filed outside the statute of limitations period for a negligence action and does not relate back to the filing of the original complaint. *Hurt v Michael's Food Center, Inc*, 220 Mich App 169, 179; 559 NW2d 660 (1996). Accordingly, we reverse the trial court's order denying defendants' motion for summary disposition.

Irrespective of any procedural deficiency in failing to file a formal motion, plaintiff and Kosma argue that the trial court properly found that due diligence in naming defendants occurred. There is no indication in the record that the trial court reached a conclusion regarding due diligence. Rather, when presented with the parties' stipulation, the trial court indicated that it granted the request. An analysis of due diligence is not contained in the record. Plaintiff and Kosma's allegation that defendants' involvement was not discovered until a deposition was taken is without merit. The complaint clearly delineated negligence based on the accumulation of ice and breach of the failure to maintain the premises in light of weather conditions. The allegation that "failure to salt" was not included within the complaint is an exercise in semantics that will not preclude defendants from summary disposition in their favor. *Camden v Kaufman*, 240 Mich App 389, 397; 613 NW2d 335 (2000).

Reversed and remanded for entry of an order granting defendants' motion for summary disposition. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Harold Hood  
/s/ William B. Murphy