STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH J. PELISH, JR., Conservator of the ESTATE OF JENNIFER JO PELISH,

Plaintiff-Appellee,

v

DENISE KAY PELISH,

Defendant,

and

RICHARD DANIEL SHAFER and MUSKEGON DEVELOPMENT COMPANY

Defendants-Appellants.

UNPUBLISHED
May 24, 2002

No. 226899
Clare Circuit Court
LC No. 95-900087-NI

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

In this personal injury action, defendants Richard Daniel Shafer and Muskegon Development Company (defendants) appeal the trial court's denial of their motion for partial summary disposition. Although this Court previously denied defendants' application for leave to appeal, our Supreme Court, by order dated May 2, 2000 (Docket No. 115291), in lieu of granting leave to appeal, remanded this case to this Court as on leave granted.

On appeal, the sole issue is whether the trial court erred in denying defendants' motion for partial summary disposition concerning the issue of joint and several liability. Defendants claim that the trial court should have granted partial summary disposition in their favor pursuant to MCR 2.116(C)(8) because they were added as parties to a previously filed complaint after the effective date of a statute, MCL 600.2956, that abolished joint and several liability in favor of several liability only, and thus they were subject to several liability only. We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The essential facts are undisputed. Plaintiff filed the original complaint against defendant on March 16, 1995. On April 6, 1998, plaintiff filed an amended complaint that added defendants as parties. The parties agree that between those dates, on March 28, 1996, MCL

600.2956 became effective. This statute abolishes joint liability in all actions "based on tort or another legal theory seeking damages for personal injury…." MCL 600.2956.[1] Both parties note that this statute applies to "cases filed on or after the effective date of" the act. However, the parties disagree with regard to whether the statute applies here. Defendant argues that because the amended complaint was filed more than two years after the effective date of the statute abolishing joint liability, the newly added defendants are not jointly liable for a judgment that plaintiff may obtain; rather, "[t]heir liability is several only." In essence, defendants assert that the addition of new parties to a case in which a complaint already has been filed equals the filing of a new case for purposes of determining the applicability of a statute. We disagree.

We are not persuaded by defendants' argument that a lawsuit is not commenced against a particular defendant until that defendant is specifically named in the lawsuit. Rather, MCR 2.101(B) provides that "[a] civil action is commenced by filing a complaint with a court." Analyzing the language of this rule, Dean and Longhofer have indicated that MCR 2.101(B) determines whether an action has been commenced for determining the applicability of a statute:

> Apart from determining whether an action has been timely commenced under the statute of limitations–an issue discussed below–there are other purposes for determining when an action has been commenced; for example, for purposes of determining which of two actions was first commenced so that a second action covering the same subject matter may be abated. Other possible reasons include

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[1] The statute at issue, MCL 600.2956, provides:

> Except as provided in section 6304 [section 600.6304], in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each defendant for damages is several only and is not joint. However, this section does not abolish an employer's vicarious liability for an act or omission of the employer's employee.

The accompanying "Historical and Statutory Notes" provides a reference indicating that "[f]or application and effective date provisions of P.A. 1995, No. 161, see the Historical and Statutory Notes following § 600.2925d." In relevant part, the latter notes provide:

> P.A. 1995, No. 161, §§ 3 and 4, provide:
>
> Section 3. Section[] . . . 2956 . . . being section[] 600.2956 . . . of the Michigan Compiled Laws, as added by this amendatory act, appl[ies] to cases filed on or after the effective date of this amendatory act.
>
> Section 4. This amendatory act shall take effect September 1, 1995.
>
> P.A. 1995, No. 161, was not ordered to take immediate effect, and was approved and filed September 29, 1995.
>
> The general effective date for 1995 legislation is March 28, 1996.

> determination of the applicability of statutes that apply only to actions "commenced" after a certain date . . . . [Dean & Longhofer, Michigan Court Rules Practice, § 2101.3, p 73.]

Similarly, Honigman and Hawkins, while interpreting the precursor to MCR 2.101(B), which contained almost identical language, have stated that

> the rule may be pertinent to determine which of two actions covering the same claim was "commenced" first, for purposes of abating the second one, to determine whether an action is affected by changes in statutory law which do not apply to pending actions or which apply only to actions "commenced" after a certain date . . . . [Honigman & Hawkins, Michigan Court Rules Annotated, Rule 101, p 36.]

In the present circumstances, where 1995 PA 161 expressly states that it applies "to cases filed on or after the effective date of this amendatory act," we conclude that the addition of new parties does not equal the commencement of a new action.[2] Had our Legislature intended to make MCL 600.2956 party-specific, rather than case-specific, it could have indicated that in 1995 PA 161.[3] Absent direction from the Legislature on this specific issue, and where the Michigan Court Rules define when a case is commenced, MCR 2.101(B); see also MCR 2.102(E)(1), 2.206(A)(2)(a), we decline to interpret the law in a manner contrary to its clear and ambiguous language.[4] Thus, we agree with the trial court that this section "was to apply only to cases filed after the effective date and not to individual parties that might be added during the course of the case proceeding." The trial court properly denied defendants' motion for partial summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Joel P. Hoekstra

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[2] We find defendants' reliance on cases concerning the application of the statute of limitations misplaced.

[3] See *Stokes v Millen Roofing Co*, 245 Mich App 44, 60; 627 NW2d 16 (2001) (the Legislature is presumed to be aware of the consequences of its use or omission of statutory language).

[4] "The rules governing the interpretation of statutes apply with equal force to the interpretation of court rules." *Yudashkin v Holden*, 247 Mich App 642, 649; 637 NW2d 257 (2001). If the plain and ordinary meaning of the language of a statute is clear, then judicial construction is neither necessary nor permitted, and unless explicitly defined in a statute, every word or phrase should be accorded its plain and ordinary meaning, considering the context in which the words are used. *Id.* at 649-650.