STATE OF MICHIGAN

COURT OF APPEALS

SHAWN P. LOUGHRIGE,

Petitioner-Appellant,

v

CIVIL SERVICE COMMISSION,

Respondent-Appellee.

UNPUBLISHED
January 29, 2009

No. 276786
Ingham Circuit Court
LC No. 06-000761-AA

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

Petitioner appeals by leave granted a circuit court order dismissing his petition for judicial review and affirming respondent's final decision. We reverse and remand.

In April 2005, petitioner filed a technical appointment complaint with the Michigan Department of Civil Service (MDOCS). On September 30, 2005, a representative of respondent Michigan Civil Service Commission (MCSC) dismissed petitioner's technical appointment complaint on the ground of untimeliness. Petitioner applied for leave to appeal the dismissal to the MCSC's Employment Relations Board (ERB). The ERB recommended denying leave to appeal, and on April 27, 2006, the MCSC issued a final decision adopting the ERB recommendation. The final decision stated at the bottom, "A petition for review must *name* the Michigan civil service commission as a respondent and must be *served* on the Michigan civil service commission at its main office, located at 400 South Pine Street, Lansing, Michigan 48913." (Emphases in original).

On June 22, 2006, petitioner filed this petition in the Ingham Circuit Court, seeking judicial review of the MCSC's final decision. The petition named as the respondent the MDOCS, rather than the MCSC. On July 11, 2006, petitioner served the petition on the chairperson and general counsel of the MCSC, as well as the state personnel director. On July 13, 2006, an attorney for respondent informed petitioner that he should have sued the MCSC, not the MDOCS. That same day, petitioner filed an amended petition for review naming the MCSC

as the respondent. Petitioner served the amended petition on the same people that he had originally served.[1]

In October 2005, petitioner filed his "Brief on Appeal" to the circuit court, requesting that the court overrule the MCSC decision upholding summary dismissal of his technical appointment complaint. Respondent's brief in opposition contended that because petitioner failed to properly name the MCSC within the time period in MCL 24.304(1), the circuit court lacked subject-matter jurisdiction over the action. At a hearing conducted on February 21, 2007, the circuit court ruled that it would dismiss the petition because it lacked subject-matter jurisdiction, explaining that petitioner failed to name the MCSC as a respondent within 60 days after the MCSC issued its final decision.

Petitioner maintains on appeal that the circuit court improperly dismissed his claim because the amended petition related back under MCR 2.118(D). We review de novo a circuit court's interpretation and application of statutes and court rules. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

Michigan's Legislature has decreed that in the absence of demonstrated prejudice, courts must permit parties to amend their pleadings:

> The court in which any action or proceeding is pending, has power to amend any process, pleading or proceeding in such action or proceeding, either in form or substance, for the furtherance of justice, on such terms as are just, at any time before judgment rendered therein. *The court at every stage of the action or proceeding shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties.* [MCL 600.2301 (emphasis supplied).]

In *Wells v Detroit News, Inc*, 360 Mich 634; 104 NW2d 767 (1960), our Supreme Court considered the predecessor to § 2301 in light of facts similar to those presented here. The plaintiff in *Wells* sued The Detroit News, Inc. *Id*. at 636. The Detroit News, Inc. answered the complaint and denied all pleaded allegations. *Id*. at 637. After the statute of limitations expired, The Detroit News, Inc. disclosed that the proper defendant was actually The Evening News Association, a different corporation. *Id*. The plaintiff sought to amend his complaint, but the circuit court denied the motion. *Id*. at 638.

The Supreme Court observed that because the plaintiff had served the proper corporate representative of The Evening News Association, "the officers of The Evening News Association, Inc., were clearly informed of facts which indicated to them the particular corporate entity which plaintiff desired and intended to sue." *Wells*, *supra* at 639. According to the Supreme Court, prior Michigan case law allowed "amendment for misnomer of a party." *Id*. at 640. The Supreme Court additionally invoked CL 1948, § 616.1, the predecessor of MCL 600.2301, when it reversed the circuit court's denial of the amendment. *Id*. at 638. The Supreme

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[1] On July 25, 2006, petitioner moved for a change of venue to Calhoun County, where he resided. Respondent opposed the motion, and after a hearing, the circuit court denied it.

Court noted the statute in concluding, "On our instant facts we believe that the right party was served by the wrong name, that no one was misled thereby to his detriment and that the Michigan statute of amendments contains authorization for correction of the misnomer by amendment." *Id*. at 641.

In *Bensinger v Reid*, 17 Mich App 219, 224-225; 169 NW2d 361 (1969), this Court applied the misnomer doctrine articulated in *Wells*. The plaintiff in *Bensinger* sued Reid, alleging that Reid owned the truck that allegedly caused the decedent's death. *Id*. at 221. After the statute of limitations expired, the plaintiff determined that Happyland Shows, Inc. owned the truck, not Reid. *Id*. Reid served as Happyland's president and resident agent, and had accepted the complaint and forwarded it to Happyland's insurance carrier. *Id*. at 221-222. The circuit court permitted the plaintiff to add Happyland as a defendant, but later dismissed Happyland on the basis of the expired statute of limitations. *Id*. at 221. This Court reversed, holding that the corporation had received notice of the lawsuit, and further explaining,

> The right party was served by the wrong name or in the wrong capacity; the intended defendant, the true owner, was fully informed; and no one was misled by the misnomer to any detriment since the insurance carrier of Happyland defended the matter. Accordingly, the addition of Happyland was proper, supported by binding authority, and did not prejudice defendants. The lower court should not have granted the motion for accelerated judgment, even though the statute of limitations had run. [*Id*. at 224-225.]

This Court again applied *Wells* in *Arnold v Schecter*, 58 Mich App 680, 683; 228 NW2d 517 (1975), observing that in *Wells* the Supreme Court had taken "special note" of the following three points:

> (1) That service was had upon a person who actually was a proper representative of both corporations, at the legal address of both corporations;
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> (2) That both corporations are in the same general business, have most of the same officers, and are represented by the same law firm; and
>
> (3) That the officers of The Evening News Association, Inc, were clearly informed of facts which indicated to them the particular corporate entity which plaintiff desired and intended to sue. [Internal quotation omitted.]

Because all three factors existed in *Arnold*, this Court held, "In this 'misnomer' case justice is furthered by allowing the plaintiff a hearing on the merits." *Id*.

We again applied the misnomer doctrine in *Miszewski v Knauf Constr Inc*, 183 Mich App 312, 316; 454 NW2d 253 (1990), reasoning,

> [W]here the amendment of pleadings is done merely to correct a prior error in naming the proper party to the lawsuit, and the defendants have not been denied notice of the action due to this misnomer, the amendments do relate back to the date of the original pleading. [*Id*. at 316.]

In *Miller v Chapman Contracting*, 477 Mich 102, 106-107; 730 NW2d 462 (2007), the Supreme Court revisited the misnomer doctrine, explaining that the misnomer of a plaintiff or defendant is generally amendable "unless the amendment is such as to effect an entire change of parties." *Id*. at 106, quoting *Parke, Davis & Co v Grand Trunk Ry* Sys, 207 Mich 388, 391; 174 NW 145 (1919) (internal quotation omitted). "The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties, for example, '(w)here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name . . . .'" *Id*. at 106-107, quoting *Wells*, *supra* at 641 (internal quotation omitted).

Respondent argues that *Wells* lacks applicability here because "the Michigan Civil Service Commission and the Department of Civil Service are not the same." According to respondent, *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002), controls the outcome of this case. In *Davis*, a petitioner incorrectly named the Michigan Department of Corrections (MDOC), rather than the MCSC, as the respondent. *Id*. at 374. The petitioner amended her petition to name the MDOCS, but again failed to name the MCSC. *Id*. This Court considered whether the petitioner's amended petition sufficed to bring the MCSC within the ambit of her claim. The Court rejected the petitioner's relation-back argument on the basis that the petitioner failed to timely file a claim against the MCSC, because the MCSC constituted

> a necessary party to defend the final decision. Petitioner could achieve a resolution only if the court's order was made binding on the Civil Service Commission. Accordingly, failure to file a timely claim against the Civil Service Commission deprived the court of subject-matter jurisdiction and was fatal to petitioner's claim. [*Id.* at 377-378 (citations and footnote omitted).]

Here, unlike in *Davis*, petitioner did file an amended petition against the MCSC. Furthermore, petitioner in this case also timely served the appropriate members of the MCSC with the original petition. The amended petition merely corrected an error in naming the proper party to the action. Because the MCSC received timely notice of the action and cannot demonstrate any substantial prejudice, we conclude that the amendment correcting the misnomer related back to the date of the original petition. MCL 600.2301.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher