[Cite as *Anetomang v. OKI Sys. Ltd.*, 2012-Ohio-822.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

George Anetomang,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-1182 (C.P.C. No. 09CVB-04-5282)
OKI Systems Limited et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on March 1, 2012

Malek & Malek, and *Douglas C. Malek*, for appellant.

Ulmer & Berne LLP, *Jeffrey F. Peck*, and *Stephen M. Gracey*, for appellees.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, George Anetomang ("appellant"), appeals from a judgment entered by the Franklin County Court of Common Pleas granting defendants-appellees, OKI Systems Limited and Crown Equipment Corporation's ("appellees," collectively), motion for judgment on the pleadings. For the reasons that follow, we affirm that judgment.

{¶ 2} On April 8, 2009, appellant filed a complaint against six "John Doe" defendants for injuries he allegedly sustained on August 7, 2007, while in the course and scope of his employment. Appellant's complaint stated that all six defendants were individuals, corporations, partnerships or other business entities whose names and addresses were not currently known to plaintiff and could not be reasonably ascertained.

At the time of the filing of the original complaint, appellant did not have the clerk of courts issue a summons containing the words "name unknown" to be served on any of the "John Doe" defendants.

{¶ 3} On March 9, 2010, appellant filed an amended complaint substituting OKI Systems Limited and Crown Equipment Corporation for John Doe Inc. #1. The amended complaint alleged claims for negligence, negligent hiring/supervision/training, and products liability, as well as punitive damages, based on personal injuries sustained by appellant on August 7, 2007. On March 11, 2010,[1] appellant caused a summons to be issued upon OKI Systems Limited, in care of its statutory agent, and upon Crown Equipment Corporation, in care of its statutory agent. Neither summons contained the words "name unknown" in the body of the summons. The record reflects a process server obtained personal service by serving both parties on March 23, 2010. The record further reflects the "personal service return" form was filed on March 24, 2010, for both summonses.

{¶ 4} On August 2, 2010, appellees filed a motion for judgment on the pleadings, asserting appellant failed to state a claim upon which relief could be granted. Specifically, appellees argued a two-year statute of limitations was applicable to appellant's personal injury claims, thereby requiring appellant to bring his action on or before August 7, 2009. Because appellant did not bring his action against appellees until the filing of the amended complaint on March 9, 2010, and because appellant's amended complaint did not relate back to the original complaint due to appellant's failure to strictly comply with the requirements of Civ.R. 15(D), appellees argued the claims were time-barred.

{¶ 5} On November 5, 2010, appellant filed a memorandum in opposition to appellees' motion for judgment on the pleadings, claiming he properly complied with the requirements of Civ.R. 15(D). Appellant also asserted the doctrine of estoppel, claiming he attempted to acquire the names of the entities involved from a third-party administrator prior to the expiration of the two-year statute of limitations, and that the information was promised but not timely provided.

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[1] The typed date listed on both summons is March 11, 2010. However, the date stamp on the summonses indicates they were filed with the clerk of courts on March 19, 2010.

{¶ 6} On November 15, 2010, appellees filed a reply, citing to *Erwin v. Bryan*, 125 Ohio St.3d 519, 2010-Ohio-2202, and further arguing appellant failed to follow the specific requirements of Civ.R. 15(D).

{¶ 7} The trial court concluded appellant failed to comply with the requirements of Civ.R. 15(D) because appellees were not personally served with a copy of the original summons and complaint containing the words "name unknown" within one year of the filing of the original complaint and, therefore, the amended complaint did not relate back to the original complaint. As a result, the trial court concluded appellees were entitled to judgment on the pleadings because appellant brought his claims against appellees after the expiration of the statute of limitations.

{¶ 8} Appellant has filed a timely appeal and now assigns as error the trial court's decision to grant appellees' motion for judgment on the pleadings. Specifically, appellant argues the trial court misinterpreted the "original" summons language, claiming the summonses that were issued to appellees did in fact constitute "original" summonses. Furthermore, appellant submits the summonses properly contained the words "name unknown," as the words "name/address unknown" are contained in the caption of each summons. Therefore, appellant contends he properly complied with the requirements of Civ.R. 15(D) and the amended pleading relates back to the original complaint.

{¶ 9} An action is commenced if a complaint is filed and a defendant is served with the complaint within one year pursuant to Civ.R. 3(A). *LaNeve v. Atlas Recycling, Inc.*, 119 Ohio St.3d 324, 2008-Ohio-3921, ¶ 8. Under Ohio law, the statutory time limit to commence a personal injury claim is two years from the date the injury was incurred or discovered. *Id.* at ¶ 8, citing R.C. 2305.10(A).

{¶ 10} If a defendant in an action is unknown, a plaintiff can still file a complaint and later amend that complaint when the name of the unknown party is discovered pursuant to Civ.R. 15(D). When a plaintiff files such an amended complaint and the applicable statutory time limit has expired, Civ.R. 15(D) must be read in conjunction with Civ.R. 15(C) and 3(A) to determine whether service has been properly effected on the formerly fictitious, now identified defendant. *LaNeve* at ¶ 9, citing *Amerine v. Haughton Elevator Co., Div. of Reliance Elec. Co.*, 42 Ohio St.3d 57 (1989), syllabus. If the specific

requirements of Civ.R. 15(D) are met, then the relation-back provisions of Civ.R. 15(C) are considered. *LaNeve* at ¶ 11, citing *Amerine* at 58.

{¶ 11} Applying the relation-back concept under those circumstances, where a plaintiff files his complaint and the applicable statute of limitations runs, and then the plaintiff amends his complaint, the amendment relates back to the time of the original filing of the action. Therefore, due to the "relation back," the intervening statute of limitations does not interfere with the amendment. *LaNeve* at ¶ 11, citing *Amerine* at 59. However, when the specific requirements of Civ.R. 15(D) are not met, the amendment does not relate back to the date of the original complaint.

{¶ 12} Pursuant to Civ. R. 12(C), a defendant may file a motion for judgment on the pleadings after the close of the pleadings on the grounds the plaintiff failed to state a claim upon which relief can be granted. *Burnside v. Leimbach*, 71 Ohio App.3d 399, 402 (10th Dist.1991). A motion for judgment on the pleadings presents only questions of law and may only be granted when no material issues of fact exist and the moving party is entitled to judgment as a matter of law. *Moore v. Rickenbacker*, 10th Dist. No. 00AP-1259 (May 3, 2001). Pursuant to Civ.R. 12(C), pleadings and any reasonable inferences to be drawn from the pleadings are to be liberally construed in the light most favorable to the non-moving party. *Id*. Appellate review of motions for judgment on the pleadings is de novo. *Easter v. Complete Gen. Constr. Co*., 10th Dist. No. 06AP-763, 2007-Ohio-1297, ¶ 9.

{¶ 13} Civ.R. 15(D) provides as follows:

> When the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. When the name is discovered, the pleading or proceeding must be amended accordingly. The plaintiff, in such case, must aver in the complaint the fact that he could not discover the name. The summons must contain the words "name unknown," and a copy thereof must be served personally upon the defendant.

{¶ 14} This court has previously held that in order for an amended complaint to relate back to the original complaint regarding a defendant originally identified by a fictitious name, the plaintiff must personally serve the newly identified "John Doe"

defendant with a copy of the *original* summons and complaint within one year of the filing of the original complaint. *Easter* at ¶ 27. We further determined that in order for the amended complaint to relate back to the original complaint, the plaintiff was required to: (1) designate the defendant by a fictitious name in the original complaint; (2) state in the original complaint that the name of the fictitious defendant could not be discovered; (3) include the words "name unknown" in the original summons; (4) personally serve the defendant with a copy of the original summons and the original complaint; and (5) upon discovering the defendant's real name, amend the original complaint to designate the defendant by its correct name, rather than the fictitious name by which the plaintiff had previously designated it. *Id*. at ¶ 45. We determined that where all of these requirements are met, the amended complaint relates back to the original complaint. *Id*.

{¶ 15} In the instant case, it is readily apparent the appellant did the following: (1) filed his original complaint within the two-year statute of limitations period; (2) designated the defendants by a fictitious name in the original complaint; and (3) averred in the original complaint that he could not discover the names of the fictitious defendants, as is required pursuant to our decision in *Easter*. However, a review of the summonses initiated on March 11, 2010, reveals that the words "name unknown" are not contained in the body of the summonses.

{¶ 16} Despite appellant's assertions, we do not interpret the incidental inclusion of the words "name/address unknown" in the *caption* of the summons as fulfilling the requirements of Civ.R. 4(B) and 15(D). The phrase "name unknown" is clearly not in the body of the summonses setting forth the name and address of the party to be served, and the summonses were clearly not served upon a person or entity with a "name unknown." Rather, the summonses were served upon the statutory agent for the two entities specifically named in the summonses—OKI Systems Limited and Crown Equipment Corporation. We further note that the summonses were not issued at the time of the filing of the original complaint, but rather *after* appellant filed his amended complaint on March 9, 2010. These actions are not in strict compliance with the requirements of Civ.R. 15(D) as set forth in *Easter*.

{¶ 17} More recently, the Supreme Court of Ohio addressed the application of Civ.R. 15(D) in *Erwin*, 125 Ohio St.3d 519, 2010-Ohio-2202. Specifically, *Erwin* focused on the use of Civ.R. 15(D) to name a "John Doe" defendant in a complaint and to later amend that complaint, after the statute of limitations had expired, to identify and serve a new party to the action. *Id.* at ¶ 20. The court determined a plaintiff may use Civ.R. 15(D) to file a complaint designating a defendant using any name and designation when the name of that defendant is not known, provided the plaintiff avers in the complaint that: (1) the name could not be discovered; (2) the summons contains the words "name unknown"; and (3) *that* summons is personally served upon the defendant. *Id.* at ¶ 31.

{¶ 18} The Supreme Court of Ohio went on to find Civ.R. 15(D) cannot be construed to extend the statute of limitations beyond the time period set forth by the General Assembly. *Erwin* at ¶ 30. "Civ.R. 15(D) is designed with the limited purpose of accommodating a plaintiff who has identified an allegedly culpable party but does not know the name of that party at the time of filing a complaint." *Id.* "Civ.R. 15(D) does not authorize a claimant to designate defendants using fictitious names as placeholders in a complaint filed within the statute-of-limitations period and then identify, name, and personally serve those defendants after the limitations period has elapsed." *Id.* Thus, in *Erwin*, the court clarified the requirements of Civ.R. 15(D), which we had outlined in *Easter*, and stated that service on the fictitiously named defendant, using the original complaint and a summons containing the words "name unknown," must be completed *prior to the expiration of the applicable statute of limitations*.

{¶ 19} The Supreme Court of Ohio further stated:

> To construe the rule to allow the use of placeholders for unidentified defendants would eliminate the statute of limitations for every cause of action. That is not the purpose of Civ.R. 15(D), and any indication that such a use is sanctioned by the court is disavowed. The Rules of Civil Procedure are promulgated to govern the procedural aspects of litigation. Establishing state policy, including imposing a statute of limitations for a cause of action * * * is the province of the legislative, not the judicial, branch of government. Neither the Rules of Civil Procedure nor our case law ought be interpreted or understood to set policy or change existing statutes of limitation for causes of action.

Erwin at ¶ 4.

{¶ 20} In the instant case, appellant sustained his alleged injuries on August 7, 2007. Thus, in order to comply with the two-year statute of limitations and the other principles governing strict compliance with Civ.R. 15(D) as set forth in *Erwin*, appellant was required to: (1) file a complaint using a fictitious name for appellees, since their names were not known; (2) aver in the complaint that the names could not be discovered; (3) issue a summons at the time of the filing of the original complaint for both fictitious parties containing the words "name unknown";[2] and (4) personally serve that summons and the complaint upon each of them, *on or before August 7, 2009*—the date upon which the statute of limitations would expire. Here, however, appellant did not serve appellees with the original complaint and summons until March 23, 2010.[3] Consequently, such service was well beyond the applicable statute of limitations. And, furthermore, appellant never served appellees with summonses containing the words "name unknown" following the filing of the original complaint. Because appellant did not comply with the strict requirements of Civ.R. 15(D), the relation-back concept does not apply to the amended complaint filed on March 9, 2010 adding the formerly fictitious, now named appellees. As such, appellant's claims against appellees are time-barred.

{¶ 21} Other appellate districts have also followed the rationale in *Erwin*. *See Schura v. Marymount Hosp.*, 8th Dist. No. 94359, 2010-Ohio-5246 (reiterating that Civ.R. 15(D) does not permit a plaintiff to designate defendants using fictitious names in a complaint filed within the statute of limitations and then identify, name, and personally serve those defendants after the statute of limitations has expired). *See also Howard v.*

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[2] It is readily apparent that the summons to be served is the "original" summons that is to be issued at the time of the filing of the original complaint, since "it would be illogical to require that a new summons, issued with an amended complaint, contain the words 'name unknown' when the defendant's name, by that time, would no longer be unknown to the plaintiff." *Easter* at ¶ 24. Appellant has acknowledged that he did not cause a summons to be issued to either appellee at the time the original complaint was filed. *See* appellant's brief, 3-4. *See also* complaint at ¶ 7 ("Plaintiff requests that the Summons contain the words 'name unknown,' and agrees upon discovery of the identity of this individual and/or entity, Plaintiff[s] will amend the complaint accordingly * * * and thereafter shall cause a copy of said Amended Complaint to be PERSONALLY SERVED upon such defendants so discovered.").

[3] Appellees were served with the original complaint and the amended complaint on the same date (March 23, 2010).

Girard, 11th Dist. No. 2010-T-0096, 2011-Ohio-2331; and *Brady v. Bucyrus Police Dept.*, 194 Ohio App.3d 574, 2011-Ohio-2460 (3d Dist.).

{¶ 22} Whether we analyze this case under *Erwin* and its progeny or simply using the principles cited by the trial court that we previously set forth in *Easter*, we find the trial court did not err in granting appellees' motion for judgment on the pleadings, as appellant failed to strictly comply with Civ.R. 15(D) and, therefore, the amended complaint does not relate back to the timely filed original complaint. Consequently, appellant failed to commence his action against appellees before the expiration of the statute of limitations.

{¶ 23} Accordingly, appellant's assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT and SADLER, JJ., concur.

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