NUMBER 13-19-00331-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

LA JOYA INDEPENDENT SCHOOL DISTRICT, **Appellant,**

v.

MIGUEL VASQUEZ, INDIVIDUALLY AND MAYRA VASQUEZ, **Appellees.**

On appeal from the 430th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Contreras

Appellant La Joya Independent School District (La Joya ISD) appeals a jury verdict in favor of appellees Miguel Vazquez, individually and Mayra Vazquez.[1] By one issue, La Joya ISD argues the trial court erred when it allowed appellees to amend their pleading less than seven days before trial. We affirm.

I. BACKGROUND

On June 30, 2016, "Miguel Vasquez [sic] as next friend of Mayra Vasquez [sic]," brought suit against La Joya ISD for injuries Mayra suffered when the school bus she was in collided with another vehicle. The accident occurred on February 12, 2016. Miguel, Mayra's father, asserted a claim for negligence against the school bus driver and for respondeat superior against La Joya ISD. Miguel's petition sought recovery of, among other damages, "past, present, and future medical bills." On December 9, 2016, Mayra turned eighteen years old.

After some resets, a trial on the merits was scheduled for February 11, 2019. On February 8, 2019, Miguel and Mayra filed a list of exhibits, including medical bills incurred when Mayra was a minor. La Joya ISD objected to the bills arguing that those expenses could only be recovered by Mayra's parents. Miguel then filed a motion for leave to amend the petition to state that he was also bringing suit individually and to correct a spelling error in their last name; La Joya ISD opposed. The trial court held a hearing on the motion for leave and granted the motion.

The jury awarded Miguel $40,000 for Mayra's medical expenses as a minor and $30,000 to Mayra for past and future damages. This appeal followed.

[1] We will refer to individuals by their first name. The notice of appeal, the judgment, and the briefs on appeal spell the last name of appellees as "Vasquez"; however, the record makes it clear that the correct spelling is "Vazquez."

II. DISCUSSION

By its sole issue, La Joya ISD argues the trial court erred when it allowed the pleading amendment.

A. Standard of Review & Applicable Law

We review a trial court's decision to allow amendments of pleadings under an abuse of discretion standard. *Greenhalgh v. Serv. Lloyds Ins.*, 787 S.W.2d 938, 939 (Tex. 1990); *Gunn v. Fuqua*, 397 S.W.3d 358, 377 (Tex. App.—Dallas 2013, pet. denied); *Garner v. Corpus Christi Nat'l Bank*, 944 S.W.2d 469, 479 (Tex. App.—Corpus Christi–Edinburg 1997, pet denied). Generally, parties may freely amend their pleadings at least seven days before trial. TEX. R. CIV. P. 63; *Sosa v. Cent. Power & Light*, 909 S.W.2d 893, 895 (Tex. 1995) (per curiam). After the time for filing amended pleadings has passed, the trial court abuses its discretion in denying leave to file an amended pleading unless (1) the party opposing the amendment presents evidence of surprise or prejudice, or (2) the amendment asserts a new cause of action or defense, and thus is prejudicial on its face, and the opposing party objects to the amendment. *Tony's Barbeque & Steakhouse, Inc. v. Three Point Invs., Ltd.*, 527 S.W.3d 686, 692–93 (Tex. App.—Houston [1st Dist.] 2017, no pet.); *see Greenhalgh*, 787 S.W.2d at 939. "The burden of showing prejudice or surprise rests on the party resisting the amendment." *Greenhalgh*, 787 S.W.2d at 939.

C. Analysis

La Joya argues that the error in the pleading was not a misnomer because Miguel was not a "party" to the lawsuit; rather, the party was Mayra. *See In re Bridgestone Ams. Tire Operations, LLC,* 459 S.W.3d 565, 573 (Tex. 2015) (orig. proceeding) ("In a suit by a 'next friend,' the real party plaintiff is the child and not the next friend."); *see also Gulf,*

C. & S.F. Ry. Co. v. Styron, 1 S.W. 161, 163 (Tex. 1886) ("When it appears with certainty . . . that the action [by next friend] is based on the right of the minor; that the relief sought is such as the minor alone would be entitled to on the facts pleaded; and that this is sought for the use and benefit of the minor, then we are of the opinion that the minor is the real plaintiff, whatsoever may be the formula used.").

There is a distinction between a misnomer regarding a party's identity in a pleading and misidentification of a party in a pleading. *See Enserch Corp. v. Parker*, 794 S.W.2d 2, 4 (Tex. 1990). A misnomer occurs when the plaintiff misnames either himself or the correct defendant, but the correct parties are actually involved. *In re Greater Hous. Orthopedics Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2012) (orig. proceeding) (per curiam); *Diamond v. Eighth Ave. 92, L.C.*, 105 S.W.3d 691, 695 (Tex. App.—Fort Worth 2003, no pet.); *see Enserch Corp.*, 794 S.W.2d at 4–5; *Maher v. Herrman*, 69 S.W.3d 332, 338 (Tex. App.—Fort Worth 2002, pet. denied). Misidentification occurs when two separate legal entities exist and the wrong legal entity is listed in the petition. *See Chilkewitz v. Hyson*, 22 S.W.3d 825, 828 (Tex. 1999) (op. on reh'g); *Enserch Corp.*, 794 S.W.2d at 4–5. A misnomer tolls the statute of limitations and misidentification, generally, does not. *See Enserch Corp.*, 794 S.W.2d at 4–5; *Brinker Tex., L.P. v. Looney*, 135 S.W.3d 280, 285 (Tex. App.—Fort Worth 2004, no pet.) ("In misidentification cases, the amended petition may still relate back to the original suit if the proper defendant had 'notice of the suit and was not misled or disadvantaged by the mistake.'" (quoting *Chilkewitz*, 22 S.W.3d at 830)); *Diamond*, 105 S.W.3d at 691 (noting that misnomer relates back to the original petition if the correct parties are served "primarily because the party intended to be sued has been served and put on notice that it is the intended

defendant"); *see also Am. Bank, N.A. as Tr. Of Lisa Marie Buckley Tr. V. Moorehead Oil & Gas, Inc.*, No. 13-17-00641-CV, 2018 WL 6219635, at *4 (Tex. App.—Corpus Christi–Edinburg, Nov. 29, 2018, no pet.) (mem. op.) (concluding misidentification of the plaintiff barred applications of statute of limitations in appeal from summary judgment).

According to La Joya ISD, the statute of limitations barred Miguel's claim for Mayra's medical expenses incurred as a minor because the error was not a misnomer. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (providing two-year statute of limitations for personal injury claims); *Sax v. Votteler*, 648 S.W.2d 661, 663 (Tex. 1983) ("Historically, in Texas, the right to recover for medical costs incurred on behalf of the minor is a cause of action belonging to the parents, unless such costs are a liability as to the minor's estate."); *see also Alexander v. Turtur & Assoc., Inc.,* 146 S.W.3d 113, 121 (Tex. 2004) ("Ordinarily, an amended pleading adding a new party does not relate back to the original pleading."). We disagree.

"The primary purpose of a statute of limitations is to compel the exercise of a right within a reasonable time so that the opposite party has a fair opportunity to defend while witnesses are available and the evidence is fresh in their minds." *Cont'l S. Lines, Inc. v. Hilland*, 528 S.W.2d 828, 829 (Tex. 1975). "[I]t would be a misapplication of the statute of limitations to hold that the plaintiff's action was barred" if the plaintiff could show that the proper defendant "was cognizant of the facts, was not misled, or placed at a disadvantage in obtaining relevant evidence to defend the suit" despite the plaintiff's initial misidentification or misnomer. *See id.* at 831; *Diamond*, 105 S.W.3d at 691.

Here, it is undisputed that La Joya ISD was duly notified of the suit within the applicable limitations period, that the suit was brought by Mayra's father on her behalf,

and that the suit sought recovery of past medical expenses. Thus, the pleading amendment did not raise any new substantive issues, and the usual policy concern supporting enforcement of limitations—i.e., preventing prejudice to the defending party—is simply not present. *See Hilland*, 528 S.W.2d at 829; *cf. In re Greater Houston Orthopedic Specialists*, 295 S.W.3d at 326 ("In a case like this, in which the plaintiff misnames itself, the rationale for flexibility in the typical misnomer case . . . applies with even greater force."); *Ealey v. Ins. Co. of N. Am.*, 660 S.W.2d 50, 52–53 (Tex. 1983) (concluding, in workers' compensation case, that bringing suit in the name of the parent company instead of its subsidiary tolled the statute of limitations because the defendant was not misled or disadvantaged by the error and petition gave fair notice); *Brinker Tex.*, 135 S.W.3d at 286 ("Filing an amended petition after the expiration of the period of limitations, changing the allegations as to the capacity in which a defendant was sued, does not commence a new suit for the purposes of applying a statute of limitations and thus relates back to the commencement of the suit."); *see also Am. Bank, N.A. as Tr. Of Lisa Marie Buckley Tr.*, 2018 WL 6219635 at *4 (concluding summary judgment on limitations was improper because plaintiff misidentified itself and defendant was "cognizant of the facts" and "not misled, or placed at a disadvantage in obtaining relevant evidence to defend the suit").

Therefore, because La Joya ISD had notice from the beginning of Miguel's intent to recover past medical expenses for Mayra, La Joya ISD failed to show any surprise or prejudice, and the amended pleading related back to the original petition for the purpose

of limitations.[2] *See Greenhalgh*, 787 S.W.2d at 939; *Brinker Tex.*, 135 S.W.3d at 286. We conclude the trial court did not abuse its discretion when it allowed for the pleading amendment. *See Greenhalgh*, 787 S.W.2d at 939; *Tony's Barbeque and Steakhouse*, 527 S.W.3d at 692; *Chen*, 227 S.W.3d at 420–21.

We overrule La Joya ISD's sole issue.

III. CONCLUSION

The trial court's judgment is affirmed.

DORI CONTRERAS
Chief Justice

Delivered and filed the
27th day of August, 2020.

[2] At the hearing on Miguel's motion for leave, La Joya ISD argued that it was prejudiced because it did not know that it would have to defend Miguel's claim for medical expenses. La Joya ISD does not make this argument on appeal. Nevertheless, as noted, the petition—which was filed before Mayra turned eighteen—stated that Miguel, as next friend of Mayra, sought to recover "past, present, and future medical bills." Thus, La Joya was aware from the inception of the lawsuit that the medical expenses in dispute were being sought.