

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Shirley Yates et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 11AP-588
Michael A. Hassell,	:	(C.P.C. No. 10CVC-06-8396)
Defendant-Appellee.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on January 31, 2012

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*James E. L. Watson*, for appellants.

*Curry, Roby & Mulvey Co., LLC*, and *Bruce A. Curry*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Plaintiffs-appellants, Shirley Yates et al., appeal the decision of the Franklin County Court of Common Pleas denying their motion for leave to file an amended complaint and granting defendant-appellee Michael Hassell's motion for summary judgment. For the following reasons, we affirm the trial court's decision.

{¶2} Appellants assert the following assignment of error:

THE TRIAL COURT ERRED IN [sic] WHEN IT DENIED THE APPELLANT'S MOTION TO AMEND THE PLEADING TO NAME THE PROPER DEFENDANT.

{¶3} On June 5, 2008, Jessica Hassell was involved in an automobile accident allegedly with appellants, Shirley Yates and Shelia Seals. The automobile was owned and insured by Jessica's father, Michael Hassell. Michael was not in the vehicle at the time of the accident and Jessica was not performing any errand, act, or otherwise acting as Michael's agent such that respondeat superior principles would apply.

{¶4} Appellants filed their complaint on June 4, 2010, claiming negligence and naming only Michael as defendant, one day before the statute of limitations would have run. R.C. 2305.10(A). Appellants did not include any unknown John or Jane Doe defendants in their complaint. Appellee timely answered and, on September 16, 2010, filed his motion for summary judgment.

{¶5} On September 27, 2010, appellants responded to the motion for summary judgment and filed for leave to amend their complaint to add Jessica as a party and assert a negligence claim against her. The amended complaint still included Michael as a defendant. Appellee filed a memorandum contra the motion for summary judgment.

{¶6} The trial court issued its decision on June 7, 2011, granting appellee's motion for summary judgment and denying appellants' motion for leave to file an amended complaint. Appellants timely appealed.

{¶7} Appellants' assignment of error asserts that the trial court erred in denying appellants' motion to amend the pleading to name the proper defendant. What appellants' amended complaint sought to do was to add Jessica as a defendant, not merely to substitute her for Michael.

{¶8} It is within the sound discretion of the trial court whether to grant or deny leave to amend a pleading. *Farmers Prod. Credit Assn. of Ashland v. Johnson* (1986), 24

Ohio St.3d 69, 73. If a plaintiff fails to make a prima facie showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading. *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illum. Co.* (1991), 60 Ohio St.3d 120, 123.

{¶9} An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis* (1982), 1 Ohio St.3d 89; *Wise v. Ohio Motor Vehicle Dealers Bd.* (1995), 106 Ohio App.3d 562, 565; and *In re Ghali* (1992), 83 Ohio App.3d 460, 466.

{¶10} The trial court found that appellants did not timely seek leave to amend the complaint as the statute of limitations had expired and their request for leave came after appellee moved for summary judgment. The trial court further found that granting appellants leave to add Jessica under the circumstances would be extremely prejudicial as she would be forced to defend herself from legally barred claims.

{¶11} The trial court also found that whether leave is sought under Civ.R. 15 or Civ.R. 21, the statute of limitations cannot be circumvented and Jessica cannot be added as a party. The general rule is that a person may not be brought into a civil action as a new party defendant when the cause of action as to him is barred by the statute of limitations. *Picciuto v. Lucas Cty. Bd. of Commrs.* (1990), 69 Ohio App.3d 789, 797. See also *Kilko v. Haverfield*, 8th Dist. No. 94920, 2010-Ohio-6364, ¶19 (leave to add party and assert claims which should have been asserted in the original complaint were properly denied where the claims were barred by the applicable statute of limitations).

{¶12} While it is unclear whether appellants made this claim, the trial court found that a proposed negligent entrustment claim against Michael would be both untimely and

prejudicial as it was filed after appellee moved for summary judgment and without any reason for delay. *Nationwide Mut. Ins. Co. v. Am. [E]lec. Power*, 10th Dist. No. 08AP-339, 2008-Ohio-5618. *Kilko* at ¶¶12-14 (an attempt to amend a complaint following the filing of a motion for summary judgment raises the spectre of prejudice).

{¶13} In the penultimate paragraph, the trial court found that appellants failed to make a prima facie showing that they can marshal support for the new matter sought to be pleaded. Thus, it was within the trial court's discretion to deny the motion to amend the pleading. *Charles v. Conrad*, 10th Dist. No. 05AP-410, 2005-Ohio-6106, ¶17. Appellants noted only that Michael Hassell is the owner of the vehicle and the named insured on the policy covering the same. The trial court found that these facts were irrelevant as to whether or not Michael negligently entrusted the vehicle to his daughter. Appellants alleged no other operative facts which support this claim.

{¶14} We find that the trial court had multiple reasonable bases for denying appellants' motion for leave to file an amended complaint, none of which were arbitrary or capricious. The trial court did not abuse its discretion.

{¶15} Appellants' assignment of error is overruled.

{¶16} Having overruled appellants' assignment of error, we affirm the decision of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT and FRENCH, JJ., concur.

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