

TENTH APPELLATE DISTRICT

Kathleen C. McGrath et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 11AP-423
	:	(C.P.C. No. 10CVC-10-14397)
Team Columbus Soccer, LLC,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 3, 2012

McGrath & Foley, LLP, and Thomas R. McGrath, for appellants.

Reminger Co., L.P.A., and Matthew L. Schrader, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiffs-appellants, Kathleen C. McGrath and Thomas R. McGrath, appeal from a decision and entry of the Franklin County Court of Common Pleas granting summary judgment for defendant-appellee Team Columbus Soccer, LLC.

{¶ 2} Appellants brought this premises liability case seeking recovery for personal injuries suffered by Kathleen while attending a soccer game held at Columbus Crew Stadium on October 4, 2008. Appellants filed their complaint on October 1, 2010, shortly before the expiration of the applicable two-year statute of limitations under R.C. 2305.10. The complaint names appellee Team Columbus Soccer, LLC as the sole party-defendant, and avers that appellee "is the owner and operator of Columbus Crew Stadium located at One Black & Gold Blvd, Columbus, Franklin County, Ohio." (R. 3.)

{¶ 3} Appellee moved for summary judgment on the grounds that Team Columbus Soccer, LLC is not the owner and operator of Crew Stadium, but only the owner of the stadium's principal tenant, the Major League Soccer team known as the Columbus Crew. Appellee asserts that a different entity, Crew Soccer Stadium, LLC, owns and operates Crew Stadium. Appellee's answer to the complaint specifically denied the averment in the complaint that appellee was the owner and operator of Crew Stadium.

{¶ 4} The trial court eventually denied appellants' motion to amend the complaint to substitute the correct defendant, noting that the statute of limitations had passed with respect to any proposed new party-defendant and that appellants had not included any mention in their complaint of any unidentified (or "John Doe") defendants. The trial court then granted appellee's motion for summary judgment on the grounds that appellee could not have breached any duty of care toward appellants because it did not own or operate the premises where the injury occurred.

{¶ 5} Appellants have timely appealed and bring the following two assignments of error:

I. THE LOWER COURT ERRED BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT.

II. THE LOWER COURT ABUSED ITS DISCRETION BY DENYING APPELLANTS' MOTION TO AMEND THEIR PLEADINGS.

{¶ 6} We will first address appellants' second assignment of error, which asserts that the trial court erred in denying their motion to amend the complaint and substitute the correct defendant. Appellants assert that they essentially chose their defendant based upon information provided by appellee. An affidavit submitted with their motion for leave to amend states that appellants sent their notice letter to an individual serving as executive vice president of Crew Soccer Stadium, LLC (the putative correct defendant as the case now stands), who transmitted it to an insurer for appellee, which thereafter proceeded as if it represented the correct defendant. Appellants also assert that the matter involves a mere misnomer, and that in practice the affiliation between the two

business entities meant that the correct defendant was fully apprised of the action and, thus, not prejudiced by any delay in being named explicitly as a defendant.

{¶ 7} Appellants rely on Civ.R. 15(C) for the proposition that the proposed amendment naming the correct defendant would relate back to the filing of the original complaint and circumvent the running of the statute of limitations, even though the statute of limitations had expired as far as any defendants not named in the initial complaint were concerned. Civ.R. 15(C) provides as follows:

Relation back of amendments

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

{¶ 8} The Staff Notes to Civ.R. 15(C) indicate that "an amendment concerning parties to an action is not affected by an intervening statute of limitation provided that the conditions * * * [of Civ.R.] 15(C) are met." *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 2d Dist. No. 9872, 1987 WL 11810, *14, 1987 Ohio App. LEXIS 7199, *40 (May 28, 1987).

{¶ 9} Civ.R. 15(A) provides that, after the time has run for a corresponding responsive pleading, a party may amend its pleading only by leave of court or written consent of the adverse party. Such leave of court, however, shall be freely given when justice requires. A trial court's decision to grant or deny an amended pleading is reviewed under an abuse of discretion standard on appeal. *Farmers Prod. Credit Assn. of Ashland v. Johnson*, 24 Ohio St.3d 69, 73 (1986). The term "abuse of discretion"

connotes more than an error of judgment; it implies a decision that is arbitrary, capricious or without reasonable basis. *Pembaur v. Leis*, 1 Ohio St.3d 89 (1982).

{¶ 10} The trial court in the present case found that appellants did not seek leave to amend their complaint until the statute of limitations had expired as to the new proposed defendant, and only after the named defendant had moved for summary judgment precisely on the grounds that it was not the proper defendant in the matter. By implication, the trial court in this case found that appellants had not met the dual requirements of Civ.R. 15(C) to demonstrate, first, that the proper party had received notice of the institution of the action and would not be prejudiced in maintaining a defense on the merits, and, second, knew or should have known, but for a mistake concerning the identity of the proper party, the action would have been brought against it.

{¶ 11} On the present facts, it was within the trial court's discretion, based upon the conduct of litigation and the timing of the motion to amend, to either grant or deny the motion. The trial court exercised its discretion in finding that substitution of a new defendant, and relation back of the amendment to the initial complaint filing, was unwarranted and unduly prejudicial to the conduct of the defense by the new defendant. We find no abuse of discretion on the part of the trial court in this respect. Appellants' second assignment of error is accordingly overruled.

{¶ 12} We further note, however, that we do not rely on appellee's argument that application of Civ.R. 15(C) here would be limited by application of Civ.R. 15(D), which governs the treatment of unknown defendants referred to in a complaint by fictitious designation. The two subsections of Civ.R. 15 address different procedural possibilities and operate independently. Appellee incorrectly argues that the Supreme Court of Ohio case of *Amerine v. Houghton Elevator Co.*, 42 Ohio St.3d 57 (1989), stands for the proposition that the relation-back provisions of Civ.R. 15(C) may only be invoked when the requirements of Civ.R. 15(D) are met. *Amerine* in fact stands for the converse (and here inapplicable) proposition that a plaintiff relying on Civ.R. 15(D) may not circumvent the statute of limitations unless the requirements of Civ.R. 15(C) for relation

back are also met. Appellants did not designate and serve a fictitious defendant ("John Doe") at the Crew Stadium address, but rather, proceeded in error against a clearly identified but incorrect entity. Civ.R. 15(D) is not invoked.

{¶ 13} We now turn to appellants' first assignment of error, which asserts that the trial court erred in granting summary judgment for the original named defendant, appellee here. Without amendment of the complaint to name the appropriate defendant, summary judgment was appropriate in that appellants do not assert on appeal that there remains any genuine issue of material fact as to liability on the part of appellee. Appellants' first assignment of error is accordingly overruled as well.

{¶ 14} In summary, appellants' first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas granting summary judgment for Team Columbus Soccer, LLC is affirmed.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
