

[Cite as *Jefferson v. Berner*, 2002-Ohio-2063.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STEPHANIE JEFFERSON :

Plaintiff-Appellee : C.A. CASE NO. 19031

vs. : T.C. CASE NO. 99-CV-2255

DAVID J. BERNER, ET AL. :

Defendants-Appellants :

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O P I N I O N

Rendered on the 26<sup>th</sup> day of April, 2002.

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Gary D. Plunkett, Atty. Reg. No. 0046805, David G. Roach, Atty. Reg. No. 0031977, 650 Talbot Tower, Dayton, Ohio 45402  
Attorneys for Plaintiff-Appellee

John E. Briedenbach, Atty. Reg. No. 0008912, 345 W. Second Street, Suite 300, Dayton, Ohio 45402-1445  
Attorney for Defendant-Appellant GuideOne

John J. Danish, Atty. Reg. No. 0046639, 101 West Third Street, P.O. Box 22, Dayton, Ohio 45402-0022  
Attorney for Defendants-Appellees David J. Berner and the City of Dayton, Ohio

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GRADY, J.

{¶1} We are required by this appeal to determine whether amended complaints filed pursuant to Civ.R. 15(A) are "causes of action" for which clerks of courts are authorized by R.C. 2303.20 and R.C. 2303.201 to charge the particular costs for which those sections provide. We conclude that amended complaints do not constitute causes of action for that purpose. Accordingly, we will reverse the judgment which the court of common pleas rendered

on a contrary holding.

{¶2} Plaintiff, Stephanie Jefferson, commenced an action against a number of parties, including Defendant, GuideOne Specialty Mutual Insurance Company ("GuideOne"), for personal injuries resulting from an auto accident. Jefferson subsequently amended her complaint on four separate occasions. On February 10, 2000, the parties filed an "arbitration report and award" with the trial court, which outlined a settlement reached by the parties. The trial court accepted the settlement agreement and ordered GuideOne to pay court costs, per the agreement.

{¶3} On May 30, 2000, counsel for GuideOne obtained a bill of costs from the office of the Clerk of the Montgomery County Court of Common Pleas. The Clerk's office had taxed as costs \$81.80 for the complaint and \$81.80 for each of the four successive amended complaints. GuideOne filed a motion asking the trial court to review the clerk's assessment of costs.

{¶4} The trial court found that Jefferson's fourth amended complaint was filed merely to correct a clerical error, and that therefore the amount the clerk had taxed for that amendment was not warranted. However, the court approved the taxing of costs for the original complaint and the first three amended complaints in the amount of \$81.80 each, finding that the first three amendments each comprised a new "cause of action" pursuant to the costs statutes.

{¶5} GuideOne filed a timely notice of appeal. It presents one assignment of error.

ASSIGNMENT OF ERROR

{¶6} THE TRIAL COURT ERRED TO GUIDEONE'S PREJUDICE BY FAILING TO RETAX COURT COSTS ASSESSED BY THE CLERK WITH RESPECT TO THE FIRST AMENDED COMPLAINT, SECOND AMENDED COMPLAINT, AND THIRD AMENDED COMPLAINT AND SUBTRACT \$245.40 FROM COSTS ORIGINALLY TAXED BY THE CLERK.

{¶7} We begin by noting that "[t]he subject of costs is one entirely of statutory allowance and control." *Centennial Ins. Co. v. Liberty Mut. Ins. Co.* (1982), 69 Ohio St.2d 50, 51 (quoting *State ex rel. Michaels v. Morse* (1956), 165 Ohio St. 599, 607). Therefore, imposition of any charge as a court cost must be founded on a statute that permits or requires costs of the classification involved to be imposed.

{¶8} The Clerk of the Court of Common Pleas submitted a breakdown of the \$81.80 charged for the original complaint and each amended complaint as follows:

{¶9}	"\$25.00	2303.20(A): Clerk Fee
{¶10}	"\$ 3.00	2303.201(A)(1): Legal Research
{¶11}	"\$10.00	2303.201(B)(1): Automation Fee
{¶12}	"\$ 4.00	2303.201(C): Legal Aid <sup>1</sup>
{¶13}	"\$ 4.80	Local Order of Court [2303.201(E)(1)]: Daily Court Reporter Fee
{¶14}	"\$35.00	Local Order of Court [2303.201(E)(1)]: ADR Fee
{¶15}	"-----	
{¶16}	"\$81.80	Total"

{¶17} The trial court found that the complaint and the first three amendments to the complaint each comprised a new "cause of action," citing R.C. 2303.20 and R.C. 2303.201. On that basis, the court approved the clerk's bill for \$81.80 for each amended

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<sup>1</sup>However, although the Clerk's office charged \$4.00 per complaint for financial assistance to legal aid societies R.C. 2303.201(C) states that "[f]rom January 1, 1993, through December 31, 2002, the court of common pleas shall collect the sum of *fifteen dollars*" in each new civil action for the purposes of funding legal aid societies.

complaint.

{¶18} R.C. 2303.20 permits clerks to tax up to "Twenty-five dollars for each cause of action" as costs for the clerk's services. R.C. 2303.201 permits the clerk to tax certain other enumerated fees. For example, R.C. 2303.201(A)(1) permits a common pleas court to direct the clerk to charge an additional fee "on the filing of each cause of action or appeal" for computerization of the court and/or legal research services. Similarly, R.C. 2303.201 (B)(1) allows costs to be taxed for computerization of the clerk's office "on the filing of each cause of action or appeal."

{¶19} On the other hand, R.C. 2303.201(C) requires the clerk to collect, "in each *new civil action or proceeding*," an additional filing fee for funding of legal aid societies. R.C. 2303.201(D) requires the clerk to collect an additional fee for the funding of shelters for victims of domestic violence "in each new action or proceeding for annulment, divorce, or dissolution of marriage." R.C. 2303.201(E)(1) permits the court to direct the clerk to charge a fee, in addition to other court costs, "on the filing of each criminal cause, *civil action or proceeding*, or judgment by confession," for special projects of the court. R.C. 2303.201(E)(2)(b) defines a civil action or proceeding as "any civil litigation that must be determined by judgment entry."

{¶20} It is undisputed that the foregoing sections all authorize imposition of the costs involved upon the filing of a complaint. The issue presented is whether that authorization applies as well to amended complaints filed pursuant to Civ.R.

15(A).

{¶21} The foregoing sections all classify certain costs as charges, but they are predicated on different concepts. Further, those two concepts, "cause of action" on the one hand and "civil action or proceeding" on the other, have different meanings. The trial court reconciled the difference by treating all the provisions the same, as "causes of action." This then led the court to treat amended complaints filed pursuant to Civ.R. 15(A) as new causes of action for which the same costs may be also charged. We believe that the court erred in so doing.

{¶22} In former practice, the term "cause of action" was used to identify both the civil proceeding itself and the rights and remedies on which the proceeding is brought. The term was abandoned upon the adoption of the Rules of Civil Procedure, which instead employ the terms "civil action" and "claim for relief." Per Civ.R. 3(A), a civil action is commenced upon the filing of a complaint. The rights and remedies on which the civil action is commenced are now encompassed in the term claim for relief, as that term appears in Civ.R. 8(A).

{¶23} There is a symmetry between the term "civil action," as it is used in the Rules of Civil Procedure, and R.C. 2303.201(E)(2)(b), which defines a civil action or proceeding to be "any civil litigation to be determined by a judgment entry." Neither employs the term "cause of action." Further, neither suggests that amendment of a complaint per Civ.R. 15(A) either commences a civil action or proceeding or pleads a new cause of action for which additional costs may be imposed. At most, the

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amendment modifies the claims for relief pleaded in the civil action that the original complaint commenced, or adds or deletes parties to that same action.

{¶24} We conclude that the term "cause of action," as it appears in R.C. 2303.20 and R.C. 2303.201, refers to a civil action that's commenced upon the filing of a complaint, per Civ.R. 3(A). Neither that term nor the term civil action or proceeding as it appears otherwise in R.C. 2303.201 includes amendments of the complaint which Civ.R. 15(A) permits, whether as of right or by leave of court. Therefore, the Clerk is authorized to tax the costs which R.C. 2303.20 and R.C. 2303.201 require upon the filing of a complaint, but not upon the filing of an amended complaint. The trial court erred when it held to the contrary.

{¶25} If the General Assembly deems it necessary to tax costs upon the filing of an amended complaint, it may amend the relevant sections of the Revised Code to state as much, specifically. Until then, and upon the statutes it has enacted, we cannot find that the legislature intended that a party be taxed again for costs upon the filing of each amended complaint. That result would be all the more unjust where, as here, a defendant, who presumably was not involved in the drafting of the complaint, is ordered to pay costs for an amended complaint. The alternative of having the clerk determine whether an amended complaint actually pleads a new cause of action, or instead corrects a clerical error, is impractical for clerks to perform.

{¶26} The assignment of error is sustained.

Conclusion

{¶27} The judgment of the trial court is reversed, and the cause remanded for recalculation and taxation of court costs consistent with this opinion.

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WOLFF, P.J., and BROGAN, J., concur.

Copies mailed to:

- Gary D. Plunkett
- David G. Roach
- John E. Briedenbach
- John J. Danish
- Hon. Jeffery E. Froelich