

**AMERINE ET AL., APPELLANTS, v. HAUGHTON ELEVATOR COMPANY,
DIVISION OF RELIANCE ELECTRIC COMPANY, ET AL.; OTIS ELEVATOR
COMPANY, APPELLEE**

No. 87-2123

Supreme Court of Ohio

42 Ohio St. 3d 57; 537 N.E.2d 208

**January 18, 1989, Submitted
April 19, 1989, Decided**

PRIOR HISTORY: [***1]

APPEAL from the Court of Appeals for Franklin County, No. 87AP-586.

On August 24, 1981, Dorsella Amerine, appellant, was injured when the elevators at her place of employment malfunctioned. On August 22, 1983, two days before the expiration of the applicable statute of limitations, appellant filed her original complaint against Haughton Elevator Company and two unnamed defendants. These unnamed defendants were designated as "John Doe" defendants because appellant could not immediately discover which persons repaired and maintained the elevators.

In early May 1984, appellants discovered that Otis Elevator Company, appellee, was John Doe number two. Appellants amended their complaint on May 14, 1984 to reflect this fact. Appellants served upon appellee by *certified mail* both the original complaint and the amended complaint.

On July 17, 1984, appellee filed its answer and defended on the ground that the statute of limitations had elapsed before the complaint was amended. Appellee moved for summary judgment asserting that the cause of action was time barred by the statute of limitations. This motion was granted by the trial court. The court of appeals affirmed.

The cause [***2] is now before this court pursuant to the allowance of a motion to certify the record.

DISPOSITION:

Judgment affirmed.

HEADNOTES:

Civil procedure -- Amendments where name of party unknown -- Civ. R. 15(D) must be read in conjunction with Civ. R. 15(C) and 3(A) in order to avoid time bar of

applicable statute of limitations.

SYLLABUS:

In determining if a previously unknown, now known, defendant has been properly served so as to avoid the time bar of an applicable statute of limitations, Civ. R. 15(D) must be read in conjunction with Civ. R. 15(C) and 3(A).

COUNSEL:

Randall W. Pees, for appellants.

David L. Day and *Dale D. Cook*, for appellee.

JUDGES:

DOUGLAS, J. MOYER, C.J., SWEENEY, HOLMES, WRIGHT, H. BROWN and RESNICK, JJ., concur.

OPINION BY:

DOUGLAS

OPINION:

[*58] [**209] The issue presented is whether Civ. R. 15(D), read in conjunction with Civ. R. 15(C) and 3(A), allows appellants' amended complaint of May 14, 1984 to relate back to the time of the filing of the original complaint on August 22, 1983.

Civ. R. 15(D) states:

"Amendments where name of party unknown. 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, [***3] 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

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unknown,' and a copy thereof must be served *personally* upon the defendant." (Emphasis added.)

Civ. R. 15(D) specifically requires that the summons *must* be served personally upon the defendant. In this case, service was performed by way of certified mail which is clearly not in accordance with the requirement of Civ. R. 15(D). Civ. R. 15(D) also requires that the summons must contain the words "name unknown." Appellants also failed to meet this specific requirement of the rule.

Accordingly, due to appellants' failure to meet the specific requirements of Civ. R. 15(D), the judgment of the court of appeals is affirmed albeit for different reasons. n1

n1 In reaching its judgment, the court of appeals relied on its decision in *Collins v.. Ohio Dept. of Natural Resources* (Jan. 6, 1983), Franklin App. No. 82AP-370, unreported. In *Collins*, the court of appeals had held that Civ. R. 15(D) could not be used in conjunction with Civ. R. 3(A) to overcome the time bar of a statute of limitations. In our recent case of *Varno v.. Bally Mfg. Co.* (1985), 19 Ohio St. 3d 21, 19 OBR 18, 482 N.E.2d 342, we reached the same conclusion. Subsequently, however, effective July 1986, Civ. R. 3(A) was amended and the amendment to the rule effectively negates our holding in *Varno*.

***4]

Since Civ. R. 3(A) has been amended, n2 it is appropriate for us to interpret and explain the amended rule as it relates to Civ. R. 15(C) and (D). In an appropriate case, if the specific requirements of Civ. R. 15(D) are met, Civ. R. 15(C) then must be considered. Civ. R. 15(C) states:

"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 [*59] (1) has received such notice of the institution of the action that he will not be prejudiced in [**210] 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. * * *" (Emphasis added.)

n2 See fn. 1.

***5]

Under Civ. R. 15(C), an amendment relates back to the date of the original pleading if the parties are not changed. As an example, in the case at bar, the amendment substituted the party's real name for the fictitious John Doe number two. The party was not changed. The party was the same. Thus, the amendment of the pleading relates back to the date of the original pleading.

As amended, Civ. R. 3(A) states:

"Commencement. A civil action is commenced by filing a complaint with the court, *if service is obtained within one year* from such filing upon a named defendant, or upon an incorrectly named defendant whose name is later corrected pursuant to Rule 15(C), or *upon a defendant identified by a fictitious name whose name is later corrected pursuant to Rule 15(D)*." (Emphasis added.)

Civ. R. 3(A) now specifically states that the use of a fictitious name with subsequent correction, by amendment, of the real name of a defendant under Civ. R. 15(D) relates back to the filing of the original complaint and that service must be obtained within one year of the filing of the original complaint. Under Civ. R. 3(A), as amended, service does not have to be made on the formerly fictitious, [***6] now identified, defendant within the statute of limitations as long as the original complaint has been filed before expiration of the statute of limitations. As indicated in fn. 1, *supra*, the amendment of Civ. R. 3(A) supersedes our decision in *Varno v.. Bally Mfg. Co.* (1985), 19 Ohio St. 3d 21, 19 OBR 18, 482 N.E.2d 342.

Accordingly, in determining if a previously unknown, now known, defendant has been properly served so as to avoid the time bar of an applicable statute of limitations, Civ. R. 15(D) must be read in conjunction with Civ. R. 15(C) and 3(A).

For the reasons stated herein, the judgment of the court of appeals is affirmed.

Judgment affirmed.