IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT JACKSON

LINDA GRANTHAM and WILBURN GRANTHAM,	)	Madison County Circuit Court No. C-94-46
Plaintiffs/Appellees,	)	
VS.	)	C. A. NO. 02A01-9506-CV-00142
JACKSON-MADISON COUNTY GENERAL HOSPITAL DISTRICT,	)	
Defendant/Appellant.	)	

From the Circuit Court of Madison County at Jackson.
Honorable Whit Lafon, Judge

Jerry D. Kizer, Jr.,
Dale Conder, Jr.
RAINEY, KIZER, BUTLER, REVIERE & BELL, P.L.C., Jackson, Tennessee
Attorney for Defendant/Appellant.

James T. Sanderson,
William G. Hatton,
JAMES T. "JIM" SANDERSON & ASSOCIATES, P.C., Bolivar, Tennessee
Attorneys for Plaintiffs/Appellees.

OPINION FILED:

REVERSED AND REMANDED

FARMER, J.

CRAWFORD, P.J., W.S. : (Concurs)
HIGHERS, J. : (Concurs)

In this case, Defendant-Appellant, Jackson-Madison County General Hospital District, ("Hospital District" or "Defendant") appeals the trial court's judgment granting the Motion to Amend Complaint filed by Plaintiffs-Appellees, Linda and Wilburn Grantham ("Granthams" or "Plaintiffs").

On February 20, 1993, Linda Grantham allegedly fell in a parking lot owned by the Hospital District. On February 18, 1994, the Granthams initiated this action for Mrs. Grantham's personal injuries and Mr. Grantham's loss of consortium, naming Jackson-Madison County General Hospital as the sole defendant. On February 23, 1994, a copy of the Complaint and Summons were served on Jim Moss, the President and Chief Administrative Officer of the Hospital District.

The Hospital District filed a Motion to Dismiss and/or for Summary Judgment, asserting that "Jackson-Madison County General Hospital" was not a legal entity and was not capable of being sued. Plaintiffs, in turn, filed a Motion to Amend Complaint to name "Jackson-Madison County General Hospital District" as defendant. The Hospital District opposed Plaintiffs' Motion to Amend Complaint, arguing that Rule 15.03 T.R.C.P. would not allow an amendment to add a new party-defendant to relate back to the date of the original complaint when the added party receives notice of the original complaint after the statute of limitations has run.

The trial court granted Plaintiffs' Motion to Amend and denied Defendant's Motion to Dismiss and/or for Summary Judgment. On July 17, 1996, this Court granted the Hospital District's application for a interlocutory appeal pursuant to Rule 9 T.R.A.P.

The sole issue for review as we perceive it is whether the trial court erred in allowing the Granthams to amend their complaint, after the statute of limitations has expired, to include the proper name of the Hospital District in the style of the case.

At the time the Plaintiffs' suit was filed the version of Rule 15.03 of the Tennessee Rules of Civil Procedure that was in effect[1] provided:

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[1]Rule 15.03 was amended, effective July 1, 1995. The amended version evidences a legislative intent to avoid the harsh result suffered by plaintiffs in this and prior cases. Tennessee Rule of Civil Procedure 15.03 now provides:

> **15.03. Relation Back of Amendments**. -- Whenever the claim or defense asserted in the amended pleadings 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 the claim is asserted relates back if the foregoing provision is satisfied and if, 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 misnomer or other similar mistake concerning the identity of the proper party, the action would have been brought against him. Except as above specified, nothing in this rule shall be construed to extend any period of limitations governing the time in which any action may be brought.

Moreover, the Advisory Commission Comments on Rule 15.03 stated:

> Under prior law, an amendment which added a new party plaintiff or substituted a party plaintiff, related back to the institution of the original suit, and thus could be made even though an applicable statute of limitations would have barred a new suit by the new or substituted party [***Whitson v. Tennessee Cent. R.R.***, 163 Tenn. 35, 40 S.W.2d 396 (1930); ***Mosier v. Lucas***, 30 Tenn. App. 498, 207 S.W.2d 1021 (1947); ***Gogan v. Jones***, 197 Tenn. 436, 273 S.W.2d 700 (1954)]. But where the amendment sought relief against a new party defendant after the statute of limitations has barred a new suit, such defendant could successfully plead the bar [***Mellon v. American Flour & Grain Co.***, 9 Tenn. App. 383 (1929)] .
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> Under Rule 15.03, an amendment changing the party against whom a claim is asserted will relate back to the date of the original pleading and thus avoid the bar of any statute of limitations if, and only if, the party brought in by amendment receives notice, before the statute has run, that the suit has been brought and that he knows or should have known that but for misnomer or similar mistake the suit would have been brought against him. The rule does not, therefore, raise any possibility that a person who has had no reason to know that he is expected to respond to a claim will be brought into a suit after the applicable statute of limitations has run.

15.03. Relation Back of Amendments. -- Whenever the claim or defense asserted in amended pleadings 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 or the naming of the party by or against whom a claim is asserted relates back if the foregoing provision is satisfied and if, within the period provided by law for commencing an action or within 120 days after commencement of the action, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a 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 the party.

Under the version of Rule 15.03, in effect at all times pertinent to this case, it is clear that a new party defendant sought to be added by amendment must receive notice of the lawsuit before the limitation period expires, in order for the amendment to relate back to the filing of the complaint. ***Schiavone v. Fortune,*** 477 U.S. 21, 30, 106 S. Ct. 2379, 2385, 91 L. Ed. 2d 18, 28 (1986); ***Duke v. Replogle Enterprises***, 891 S.W.2d 205, 206 (Tenn. 1994); ***Allen v. River Edge Motor Lodge***, 861 S.W.2d 364, 365 (Tenn. App. 1993); ***Smith v. Southeastern Properties, Ltd.***, 776 S.W.2d 106, 109 (Tenn. App. 1989). "Notice" means notice that a lawsuit has been filed. ***Smith***, 776 S.W.2d at 109.

While Plaintiffs' original Complaint was timely filed, it is undisputed that the statute of limitations had run when the Hospital District received notice of the original Complaint on February 23, 1995. Therefore, under Rule 15.03, Plaintiffs' claim is time barred. Consequently, we hold that the trial court erred in allowing the Plaintiffs to amend their Complaint to name "Jackson-Madison County Hospital District" as defendant.

The judgment of the trial court is reversed and this cause remanded. Costs on appeal are taxed to the Appellees, for which execution may issue if necessary.

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FARMER, J.

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CRAWFORD, P.J., W.S. (Concurs)

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HIGHERS, J. (Concurs)