

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

DONALD AND MELISSA RUSSELL, )

Plaintiffs/Appellees, )

VS. )

ROBERT SCOTT GILES, )

Defendant/Appellant. )

) Shelby Circuit No. 62929 T.D.

) Appeal No. 02A01-9504-CV-00095

**FILED**

September 12, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY  
AT MEMPHIS, TENNESSEE  
THE HONORABLE D'ARMY BAILEY, JUDGE

**J. HAROLD NICHOLS**  
**SPICER, FLYNN & RUDSTROM**  
Memphis, Tennessee  
Attorney for Appellant

**RUSSELL J. JOHNSON**  
Memphis, Tennessee  
Attorney for Appellees

**REVERSED AND RENDERED**

**ALAN E. HIGHERS, J.**

**CONCUR:**

**W. FRANK CRAWFORD, P.J., W.S.**

**DAVID R. FARMER, J.**

This interlocutory appeal involves a suit to recover damages for personal injury and

property damage arising out of an automobile accident. Defendant, Robert Scott Giles, appeals from the trial court's denial of his motion for summary judgment.

The automobile accident in question occurred on July 8, 1993, when defendant, Robert Scott Giles, allegedly rear-ended plaintiffs' vehicle. Plaintiffs filed their complaint on July 8, 1994, naming Robert's father, Kenneth R. Giles, as the only defendant. Kenneth was not involved in the accident, and did not own or exercise control over the vehicle. After Kenneth was served on July 15, 1994, he called Robert to inform him that suit had been filed.

Conversely, plaintiffs subsequently moved to amend their complaint in order to substitute Robert as defendant, which was granted by the trial court. Robert filed a motion for summary judgment on statute of limitations grounds, arguing that he had no knowledge of the institution of the suit until more than a year from the date of the accident. The trial court denied said motion, and this appeal followed.

Robert argues on appeal that the one-year statute of limitations bars plaintiffs' claims because he was not named as a defendant when the suit was filed and because he had no notice that suit had been filed until after the statute of limitations had run. Plaintiffs argue that Robert's insurance company, Allstate, had notice of the suit, which was sufficient to impute notice to Robert because Allstate was Robert's agent. Plaintiffs further argue that Allstate misrepresented certain facts to plaintiffs; therefore, Robert should be estopped to assert the statute of limitations as a defense. Finally, plaintiffs argue that the timely filing of the complaint tolled the statute of limitations.

Tenn. R. Civ. P. 15.03, as it existed prior to July 1, 1995, which governs relation back of amendments, provides:

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.

Tenn. R. Civ. P. 15.03.

The advisory commission comments to Rule 15.03 explain:

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.

Accordingly, in order for the relation back provision to apply, it is critical that the defendant sought to be charged must have notice of the filing of the lawsuit within the prescribed statutory period. In the present case, plaintiffs filed their suit one year to the day following their accident. However, plaintiffs failed to sue the proper defendant. It is uncontroverted that Robert did not have notice of the filing of the lawsuit until his father was served with process one week after the one-year statutory period had expired.

Plaintiffs argue that Allstate was Robert's authorized agent, with authority to negotiate the claim on Robert's behalf. According to plaintiffs, the fact that Allstate negotiated with plaintiffs regarding their claim and the fact that Allstate knew that a lawsuit would be filed operated to impute the same knowledge to Robert because an agent's knowledge is generally imputed to his or her principal.

Defendant responds that under Tennessee law, neither an insurance company nor its employees are agents of the insured. Smith v. Southeastern Properties, Ltd., 776 S.W.2d 106 (Tenn. App. 1989); Rickman v. Hillard, No. 02A01-9103-CV-00019, 1992 WL

12126 (Tenn. App. Jan. 29, 1992).

In Smith, this court expressly rejected the plaintiff's contention that the insurance company's knowledge of the institution of the suit operated to impute such knowledge to the defendant. Id. at 110. The court stated, "[N]either an insurance company nor persons employed by it are agents of the insured." Id. Pursuant to Rule 15.03, "the notice must be received during the statutory period by the party sought to be charged." Id. at 109.

Similarly, in Rickman, No. 02A01-9103-CV-00019, 1992 WL 12126, at \*2, the court rejected plaintiff's assertion that the insurance agent's knowledge of the suit was sufficient to satisfy the notice requirement of Tenn. R. Civ. P. 15.03.

\_\_\_\_\_ In accordance with the foregoing authorities, we hold that the insurance agent's notice of the institution of the suit was not imputed to the defendant.

Plaintiffs next contend that Robert should be equitably estopped from asserting the statute of limitations as a defense because Allstate allegedly misled plaintiffs into believing that the claim would be settled and allegedly provided the incorrect name of the proper defendant. In support of their position, plaintiffs rely upon the case of Ingram v. Elledge, No. 01-A-019101-CV-00009, 1991 WL 83349 (Tenn. App. May 22, 1991).

We find that Ingram is distinguishable from the present case because in Ingram, there was evidence in the record that the insurance agent and the plaintiff agreed to forebear filing suit until they were able to fully discuss settlement. Id. at \*1. We have no evidence before us suggesting that Allstate or its agents lulled the plaintiffs into inaction through misrepresentation or supplying false information. Even if such evidence were present in this case, however, it is our opinion that the actions or inactions of the insurance company should not be imputed to the defendant, as the insurance company is not the defendant's agent.

This is simply not a case where plaintiffs were misled into believing that they did not have a responsibility to file suit within a year. In fact, plaintiffs filed their complaint in a timely manner, but made an unfortunate error with respect to the proper party defendant.

Furthermore, as this court recently stated in Grashot v. Lawson, No. 02A01-9409-CV-00222, 1995 WL 746632 (Tenn. App. Dec. 14, 1995), “One of the essential elements of equitable estoppel as related to the party claiming estoppel is the lack of knowledge or means of knowledge of the truth of the facts in question.” Id. At \*2. The plaintiffs could have determined the proper party defendant had they exercised reasonable diligence. We therefore decline to apply the principles of equitable estoppel to the case at bar.

Plaintiffs’ final contention is that the timely filing of their complaint tolled the statute of limitations. We find that plaintiffs’ reliance upon the case of Hine v. Commercial Carriers, Inc., 802 S.W.2d 218 (Tenn. 1990), is misplaced. In Hine, the plaintiff timely filed his complaint, but did not cause summons to be issued until three months after the complaint was filed. Id. at 218. Thus, the issue with which the Court was presented was “whether a cause of action is barred when the complaint is filed within the time prescribed by the applicable statute of limitations, but the summons is not issued until after the statute of limitations has expired.” Id. The Court ultimately held that the statute is tolled by the timely filing of the complaint, and that summons must simply be issued within a reasonable time thereafter. Id. at 220.

Hine is inapposite to the present case because in Hine, the complaint was filed in a timely manner naming the correct parties as defendants. In contrast, plaintiffs filed suit against the incorrect defendant. Accordingly, we hold that the filing of the original complaint did not operate to toll the statute of limitations.

The judgment of the trial court denying defendant's motion for summary judgment is hereby reversed. Summary judgment is rendered for defendant. Costs on appeal are taxed to plaintiffs.

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HIGHERS, J.

CONCUR:

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CRAWFORD, P.J., W.S.

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FARMER, J.