IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

GERALD L. MARTIN and wife JUDY A. MARTIN	)	ANDERSON COUNTY
	)	03A01-9608-CV-00274
Plaintiffs-Appellees	)	
	)	HON. JAMES B. SCOTT, JR., JUDGE
v.	)	
PAUL M. TRICE	)	
Defendant-Appellant	)	AFFIRMED AND REMANDED

JERRY SHATTUCK OF CLINTON FOR APPELLANT

ROGER L. RIDENOUR OF CLINTON FOR APPELLEES

OPINION

Goddard, P.J.

We granted an interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure to determine if the Trial Court was correct in allowing the Plaintiffs, Gerald L. Martin and his wife, Judy A. Martin, to amend their complaint to seek damages for Mrs. Martin's personal injuries in addition to a loss of consortium claim she sought in the original complaint.

The complaint was filed in this cause on January 19, 1993, seeking damages for personal injuries to Gerald L. Martin and, as already noted, loss of consortium as to his wife, Judy A. Martin, resulting from a vehicular accident occurring on April 30, 1992.

Thereafter, on December 20, 1993, the Martins moved to amend their complaint to allege personal injuries to Mrs. Martin and, on January 20, 1994, filed a proposed amended complaint with the Court.

In response, the Defendant, Paul M. Trice, filed a motion to dismiss, alleging Mrs. Martin's amended claim was barred by T.C.A. 28-3-104, the one-year statute of limitations applicable to personal injuries.

By order entered on November 3, 1994, the Trial Court allowed the amendment and denied Mr. Trice's motion to dismiss.

Thereafter Mr. Trice moved that he be allowed an interlocutory appeal, which was granted by the Trial Court and also by this Court.

Turning to the merits of this appeal, we first observe that the motion seeking the amendment, which was filed on December 20, 1993, alleges that Mrs. Martin had, "recently been diagnosed as sustaining extensive and serious injuries as a

result of the accident." There is no other proof or pleading in the record touching on this subject. In Tennessee, the discovery rule obtains and a statute of limitations does not begin to run until parties know or should have known that they have a cause of action. Beaman v. Schwartz, 738 S.W.2d 632 (Tenn.App.1986). In view of the present status of the record, we believe the Trial Court properly allowed the amendment proffered.

We also believe in the interest of judicial economy that we should address the more difficult question which may arise, depending on the proof, as to the knowledge Mrs. Martin had or should have had regarding her injuries. That question is whether, under the provisions of Rule 15.03 of the Tennessee Rules of Civil Procedure, a personal injury claim of Mrs. Martin should relate back to the filing of her claim for loss of consortium even though she knew or should have known of her injury more than one year before the filing of the motion to amend.

The cases we have reviewed are in agreement that a new cause of action may not relate back to save a claim otherwise barred by a statute of limitations. In the recent case of Rainey Bros. v. Memphis and Shelby County, 821 S.W.2d 938 (Tenn. App.1991), Judge Highers addresses the question in a case where the original complaint attacked the action of Memphis and Shelby County Board of Adjustment on the theory that they had acted illegally, arbitrarily and capriciously, and sought an injunction

as well as monetary damages. The amended complaint, however, pressed a claim for inverse condemnation and violation of 42 U.S.C. § 1983.

In affirming the Trial Court's denying the amendment because time-barred, Judge Highers made the following observation (at page 941):

> As provided in Rule 15, only those claims which relate back to the original pleadings are saved from the effects of the applicable statute of limitations. Tenn.R.Civ.P. 15.03. However, where the amendment in substance raises a new cause of action, the courts have repeatedly held that the amendment does not relate back to the original pleadings and the statute of limitations continues to run until the amendment is filed. Energy Sav. Prods. Inc. v. Carney, 737 S.W.2d 783 (Tenn.App.1987). Thus, the real question is whether the amendments raise a new cause of action.
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> There are several methods of determining whether an amendment raises a new cause of action or merely relates back to the original pleading. See Gamble v. Hospital Corp. of America, 676 S.W.2d 340 (Tenn. App.1984). Tennessee courts have generally followed the statutory standard that the amendment must arise from the same conduct, transaction or occurrence as set forth in the original pleadings. Karash v. Pigott, 530 S.W.2d 775 (Tenn.1975). Notice to the defendant is not expressly required by the statutory standard for relation back but the Tennessee Supreme Court has determined that notice is the critical element involved in determining whether amendments to pleadings relate back. Floyd v. Rentrop, 675 S.W.2d 165, 168 (Tenn.1984).

We do note, however, that an earlier case cited by Judge Highers, Energy Saving Products, Inc. v. Carney, 737 S.W.2d 783 (Tenn.App.1987), reversed the trial court in not allowing an amendment. In that case the original suit sought to recover a

debt owed upon an open account. The amendment included an allegation that the defendant's fraudulent misconduct had induced the plaintiff to provide the goods and services. This Court held that the amended complaint raised a cause of action which related back in that it grew out of the same "conduct transaction or occurrence which is the basis of the original suit."

Our reading of the two cases persuade us the present case is controlled by the holding in Rainey Bros. We reach this conclusion because--although the injury received by Mrs. Martin grew out of the same accident in which she sought loss of consortium--it is in fact a new cause of action in that the original complaint sought damages she sustained by reason of her husband's injuries, and the amended complaint by reason of her own injuries.

Moreover, as will be noted from the material quoted from Rainey Bros., it is necessary to show that the Defendant had notice of her claim within the statutory period. There is no such showing in the record.

In conclusion, we point out that our resolution of this appeal preserves for Mrs. Martin one full year to assert her claim after she knew or should have known she had a cause of action. To hold otherwise would give preferential treatment to those filing separate and distinct causes of action, a result

which we do not believe was intended by our Supreme Court, which proposed the Rule, or the Legislature, which adopted it.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for proceedings not inconsistent with this opinion. Costs of appeal are adjudged against Mr. Trice and his surety.

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Houston M. Goddard, P.J.

CONCUR:

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Don T. McMurray, J.

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Charles D. Susano, Jr., J.