

EXAMINERS' ANALYSIS OF QUESTION NO. 12

I. Real Party in Interest:

The circuit court properly granted Donovan's motion for summary disposition.

Donovan's motion for summary disposition was properly filed pursuant to MCR 2.116(C)(5), which permits dismissal of a claim when "[t]he party asserting the claim lacks the legal capacity to sue." *Flanders Indus, Inc v State of Mich*, 203 Mich App 15, 34 (1993) (dismissing a claim pursuant to MCR 2.116(C)(5) when the plaintiff lacked standing to assert the claim). Donovan's motion was also timely filed. MCR 2.116(D)(2) states that the grounds listed in subrule (C)(5) "must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading." Here, in compliance with the court rule, Donovan asserted Parker's lack of capacity to sue as a defense by motion filed before filing his answer, see MCR 2.116(D)(2).

On the substantive issue before the circuit court, MCR 2.201 provides that, generally, "Lain action must be prosecuted in the name of the real party in interest." *Miller v Chapman Contracting*, 477 Mich 102, 105-106 (2007). "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Miller*, 477 Mich at 106, citing *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 311 (1997). "'This .standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy.'" *Id.*, quoting *City of Kalamazoo v Richland Twp*, 221 Mich App 531, 534 (1997). Accord *Porter v Hill*, 301 Mich App 295, 305 (2013), rev'd on other grounds by 495 Mich 987 (2014) ("A prospective plaintiff lacks standing if he or she is not a real party in interest, because the 'standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy.'"), quoting *City of Kalamazoo*, supra at 534.

Here, the real party in interest is Workout, the bankruptcy trustee. As stated in the facts, once Parker filed for Chapter 7

bankruptcy, all of the debtor's assets become property of the bankruptcy estate, see 11 [USC] §541, subject to the debtor's right to reclaim certain property as "exempt," §522(1)." *Schwab v Reilly*, 560 US 770, 774; 130 S Ct 2652; 177 L Ed 2d 234 (2010). As the owner of a potential cause of action that accrued prior to the debtor's bankruptcy petition, the bankruptcy trustee, not the debtor, is the real party in interest and the only party who has standing to pursue the litigation. *Miller*, 477 Mich at 106; *Young v Independent Bank*, 294 Mich App 141, 144-145 (2011). As such, Donovan correctly argued that Parker herself lacked standing to file the complaint.

II. Statute of Limitations and the Relation-Back Doctrine

A. Statute of Limitations

Donovan also has good grounds to oppose Parker's motion to amend the complaint, as the statute of limitations has expired and Workout is a different and distinct party whose addition would not relate back to the original and timely complaint.

Actions seeking damages for personal injury must be filed within 3 years of the date of the injury. MCL 600.5805(10); *Rusha v Dep't of Corrections*, 307 Mich App 300, 311 n 8 (2014). Here, Parker sustained her injuries in March 2010, and although she filed her complaint in February 2013, which was within the 3-year statute of limitations, she had no standing to file the action. Because Parker's complaint was dismissed in April 2013, after the statute of limitations had expired, Parker can maintain this action only if Workout, the bankruptcy trustee, can properly be substituted as the plaintiff named in the complaint filed in February 2013.

B. Relation-back Doctrine

"MCR 2.118(A)(2) provides that leave to amend a pleading 'shall be freely given when justice so requires.'" *Miller*, 477 Mich at 106-105. A motion to amend should be "denied only for particularized reasons," such as when an amendment would be futile. *Ben P Fyke & Sons, Inc v Gunter Co*, 390 Mich 649, 656 (1973); see also *Miller*, 477 Mich at 106. The proposed amendment of the complaint to substitute Workout as plaintiff would be futile because Workout being named as plaintiff cannot

relate back to the filing of the original complaint. Likewise, the naming of Parker as plaintiff cannot be found to be a scrivener's error that can be corrected by substituting Workout as the plaintiff. Rather, the naming of Workout as plaintiff must be considered to be an untimely addition of a new party after the statute of limitations has expired.

MCR 2.118(D) provides:

An amendment that adds a claim or defense relates back to the date of the original pleading if 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.

However, "[a]lthough an amendment generally relates back to the date of the original filing if the new claim asserted arises out of the conduct, transaction, or occurrence set forth in the original pleading, MCR 2.118(D), the relation-back doctrine does not extend to the addition of new parties." *Employers Mut Cas Co v Petroleum Equip, Inc*, 190 Mich App 57, 63 (1991). The question here is whether the naming of Parker as plaintiff, constitutes a scrivener's error or misnomer which can be corrected by naming Workout as the new party to the complaint, or if the naming of Workout as plaintiff, constitutes the addition of a new party.

"As a general rule, . . . a misnomer of a plaintiff or defendant is amendable unless the amendment is such as to effect an entire change of parties." *Miller*, 477 Mich at 106, quoting *Parke, Davis & Co v Grand Trunk Ry System*, 207 Mich 388, 391 (1919).

"The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties". *Id.* at 106-107. However, where "the plaintiff seeks to . . . add a wholly new and different party to the proceedings, the misnomer doctrine is inapplicable." *Id.* at 107.

Workout is a new party because she possesses only a beneficial interest in the cause of action against Donovan. As the real party in interest, who possesses a vested right to bring a legal cause of action, Workout is a different and distinct party.

See, e.g., *Barclae v Zarb*, 300 Mich App 455, 483-484 (2013); *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 354-357 (2013); *MOSES Inc v SEMCOG*, 270 Mich App 401, 411-416 (2006).

C. Conclusion

Under the facts presented here, Donovan has a legitimate reason to oppose Parker's motion for leave to file an amended complaint, and Parker's claim should be dismissed, because an amendment that substitutes Workout as the plaintiff would not relate back to the date of the original filing, and the three-year statute of limitations had expired.