

SUPREME COURT OF MISSISSIPPI

Willie Mae Veal v. J. P. Morgan Trust Company, N.A.

Veal · No. No. 2005-IA-00607-SCT · Decided March 3, 2005

SUMMARY

The Supreme Court of Mississippi affirmed orders striking a second amended complaint and dismissing newly named defendants without prejudice. The court held that Mississippi Rule of Civil Procedure 9(h) permits substitution of a true name for a genuinely fictitious party without leave of court, but does not permit adding new defendants accompanied by new factual allegations and theories. Because the plaintiff added new defendants, Rule 21 required court approval.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Per Curiam; Smith, C.J.; Waller, P.J.; Easley, J.; Randolph, J.; Diaz, P.J.; Graves, J.; Carlson, J.
JURISDICTION	Mississippi
DECIDED	March 3, 2005
DOCKET	No. 2005-IA-00607-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Mississippi Supreme Court granted an interlocutory appeal from orders striking Veal's Second Amended Complaint and dismissing newly named defendants without prejudice.
STANDARD OF REVIEW	De novo review applies to questions of law concerning the application of the Mississippi Rules of Civil Procedure.
PRECEDENTIAL VALUE	Published opinion; precedential value not otherwise specified in the source.
PARTIES	Willie Mae Veal, individually and as administratrix of the Estate of Willie Mae Smith, for the use and benefit of the estate and wrongful death beneficiaries of Willie Mae Smith v. J. P. Morgan Trust Company, N.A., f/k/a Chase Manhattan Trust Company, National Association, Eaton Vance Corp., Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II

TOPICS

motion to amend

pleadings

civil procedure

interlocutory appeal

appellate procedure

PRACTICE AREAS

Civil procedure

Appellate procedure

Personal injury

QUESTIONS PRESENTED

1. Whether Mississippi Rule of Civil Procedure 9(h) permits a plaintiff to substitute identified parties for fictitious defendants without obtaining leave of court.
2. Whether the identified J.P. Morgan and Eaton Vance defendants were legitimate substitutions for fictitious parties or were new parties added to the action.
3. Whether Mississippi Rule of Civil Procedure 21 requires court approval when an amended complaint adds new defendants, notwithstanding the existing defendants' written consent under Rule 15(a).

HOLDINGS

1. Rule 9(h) does not require leave of court when the amendment merely substitutes the true name of a genuinely fictitious defendant and does not alter the content or substance of the complaint.
2. The J.P. Morgan, Eaton Vance, and related trustee defendants were new parties, not legitimate substitutions under Rule 9(h), because the original pleadings did not identify their existence or specific wrongful conduct and the Second Amended Complaint added new allegations and factual theories against them.
3. When an amendment adds new defendants, Mississippi Rule of Civil Procedure 21 requires an order of the court even if the existing adverse parties consent in writing under Rule 15(a). Failure to obtain that approval rendered the Second Amended Complaint improper.

KEY QUOTATIONS

“Rule 9(h) is not intended to serve as an insurance policy to plaintiffs who wish to protect themselves in case they discover new defendants in the course of litigation.” (¶ 9)

“In cases where it is unnecessary to amend the content or the substance of a plaintiff’s complaint, and the only change is to substitute the defendant’s true name for the fictitious name Rule 9(h) applies, and leave of court is not required.” (¶ 12)

“However, even where a plaintiff has obtained consent from the adverse party to amend the complaint, leave of court may still be required by a different rule.” (¶ 17)

FACTUAL BACKGROUND

Veal brought claims arising from the care and treatment of Willie Mae Smith at Autumn Leaves Nursing Home, including negligence, medical malpractice, fraud, statutory survival, and wrongful death claims. Her original and first amended complaints named John Does and Unidentified Entities but alleged only generally that they may have been involved in the care, staffing, supervision, administration, or direction of Smith's care. The Second Amended Complaint identified J.P. Morgan, Eaton Vance entities, and related trustees, and added allegations and

an eight-page factual summary concerning their alleged control of the nursing home, including theories of bondholders' control and lender liability.

PROCEDURAL HISTORY

Veal initially sued corporations allegedly controlling Autumn Leaves Nursing Home, the nursing home's administrator and licensee, and fictitious defendants. After discovery, she filed a Second Amended Complaint with the written consent of the existing defendants, purporting to substitute identified entities and individuals for John Doe and Unidentified Entity defendants and adding new factual allegations. The Washington County Circuit Court struck the Second Amended Complaint and dismissed J.P. Morgan and Eaton Vance because Veal had not obtained court leave under Mississippi Rule of Civil Procedure 21. The Supreme Court granted interlocutory review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Gant v. Maness, 786 So. 2d 401, 403 (Miss. 2001)
- Poindexter v. Southern United Fire Ins. Co., 838 So. 2d 964, 971 (Miss. 2003)
- Van Meter v. Alford, 774 So. 2d 430, 432 (Miss. 2000)
- Ralph Walker, Inc. v. Gallagher, 926 So. 2d 890, 896-97 (Miss. 2006)
- Hartford Cas. Ins. Co. v. Halliburton Co., 826 So. 2d 1206, 1215 (Miss. 2001)
- Moore v. Indiana, 999 F.2d 1125, 1128 (7th Cir. 1993)
- Age of Majority Educ. Corp. v. Preller, 512 F.2d 1241, 1246 (4th Cir. 1975)