

SUPREME COURT OF ALABAMA

Ex parte VEL, LLC

225 So. 3d 591 (Ala. 2016) · Decided December 30, 2016

SUMMARY

The Alabama Supreme Court reviews a petition for a writ of mandamus challenging the denial of summary-judgment motions in a pharmacy medication-error lawsuit. The court addresses whether claims against the pharmacy owner and individual employees related back under Alabama Rules of Civil Procedure 9(h) and 15(c), and considers the plaintiffs' arguments concerning due diligence, equitable tolling, and equitable estoppel. The opinion concludes that the plaintiffs were not ignorant of the pharmacy owner's identity when the original complaint was filed, based on communications identifying Montgomery Drug Company, Inc.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Parker, Justice; Bolin; Bryan; Main; Murdock; Parker; Shaw; Stuart
JURISDICTION	Alabama
DECIDED	December 30, 2016
DISPOSITION	other
PROCEDURAL POSTURE	The petitioners sought a writ of mandamus directing the Montgomery Circuit Court to vacate its order denying their motions for summary judgment and to enter summary judgment in their favor. The Supreme Court of Alabama reviewed the statute-of-limitations and fictitious-party relation-back issues under an exception permitting mandamus review of certain denials of summary judgment.
STANDARD OF REVIEW	Mandamus requires a clear legal right to the requested order, an imperative duty accompanied by refusal to perform, lack of another adequate remedy, and properly invoked jurisdiction. Although denial of summary judgment ordinarily is not reviewable by mandamus, Alabama recognizes a narrow exception for cases involving fictitious parties, relation back, and a statute-of-limitations defense. The Court reviewed the legal issues because the operative facts were undisputed.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; binding precedent in Alabama subject to later treatment.

PARTIES

VEL, LLC, Montgomery Drug Co., Inc., Robert Stafford, Erica Greene v. Patricia Kilgore Kyser, as administrator ad litem of William Henry Kilgore's estate

TOPICS

summary judgment

statute of limitations

appellate procedure

civil procedure

standard of review

PRACTICE AREAS

civil procedure

statute of limitations

appellate procedure

torts

QUESTIONS PRESENTED

1. Whether the amendment substituting Montgomery Drug Co., Inc. for a fictitiously named defendant related back to the original complaint under Alabama Rules of Civil Procedure 9(h) and 15(c)(4).
2. Whether the amendments substituting Robert Stafford and Erica Greene for fictitiously named defendants failed to relate back because the plaintiffs lacked due diligence or failed to amend promptly.
3. Whether equitable tolling or equitable estoppel prevented Montgomery Drug Co., Inc. from asserting the statute of limitations.
4. Whether the Supreme Court could review by mandamus the denial of VEL's summary-judgment motion based on its assertion that it had no connection to the lawsuit.

HOLDINGS

1. The amendment adding MDCI did not relate back under Rule 15(c)(4) because the plaintiffs were not ignorant of MDCI's identity when they filed the original complaint. The undisputed communications identifying MDCI as the insured showed that the plaintiffs knew, should have known, or were on notice that MDCI was the proper party.
2. The petitioners did not establish a clear legal right to mandamus relief concerning Stafford and Greene. The asserted one-month delay in substituting them was insufficient, on the authority presented, to establish a lack of prompt amendment, and the petitioners did not adequately show that the plaintiffs failed to exercise due diligence.
3. Equitable tolling and equitable estoppel did not prevent MDCI from asserting the statute of limitations. The record showed no extraordinary circumstance, false representation, or concealment that prevented the plaintiffs from discovering MDCI's identity.
4. The Court declined to review the petitioners' argument that VEL was entitled to summary judgment because VEL had no connection to the lawsuit. That issue did not fall within the narrow exception permitting mandamus review of a denial of summary judgment.

KEY QUOTATIONS

“This Court will issue a writ of mandamus when the petitioner shows: “(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the

lack of another adequate remedy; and (4) the-properly invoked jurisdiction of the court.” ’” (599)

“This rule permits a party who is ‘ignorant of the name of an opposing party’ to identify that party by a fictitious name.” (600-601)

“‘[A] litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ as to the filing of his action.” (604)

FACTUAL BACKGROUND

A pharmacy at 35 Mitchell Drive in Montgomery filled William Henry Kilgore's prescription for ropinirole with risperidone, causing him to experience adverse health consequences after taking the wrong medication for several days. Montgomery Drug Co., Inc. owned and operated that pharmacy, while VEL, LLC had common ownership but did not own or operate the location. Before and on the date the original complaint was filed, communications from the insurer and counsel identified MDCI as the insured and referenced Montgomery Drug Inc., but the plaintiffs initially sued VEL and later added MDCI, Stafford, and Greene after the two-year limitations period had expired.

PROCEDURAL HISTORY

The plaintiffs sued VEL, LLC, and fictitiously named defendants for injuries allegedly caused by a pharmacy dispensing risperidone instead of prescribed ropinirole. After the limitations period expired, they amended the complaint to substitute Montgomery Drug Co., Inc., Robert Stafford, and Erica Greene for fictitious defendants. The circuit court held that the amendments related back, that equitable tolling and estoppel applied to MDCI, and denied the petitioners' summary-judgment motions. The Supreme Court granted mandamus relief as to MDCI but denied relief as to VEL, Stafford, and Greene.

DISPOSITION

other

REMAND INSTRUCTIONS

The writ was issued insofar as necessary to direct the Montgomery Circuit Court to vacate its order denying MDCI's summary-judgment motion and enter an order granting that motion. The petition was denied as to VEL, Stafford, and Greene.

CASES CITED

- Ex parte General Motors of Canada Ltd., 144 So. 3d 236, 238 (Ala. 2013)
- Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)
- Ex parte Snow, 764 So. 2d 531, 537 (Ala. 2000)
- Ex parte Stover, 663 So. 2d 948 (Ala. 1995)
- Ex parte FMC Corp., 599 So. 2d 592 (Ala. 1992)

- Ex parte Klemawesch, 549 So. 2d 62, 65 (Ala. 1989)
- Ex parte Mobile Infirmary Ass'n, 74 So. 3d 424, 427-29 (Ala. 2011)
- Ex parte Jackson, 780 So. 2d 681, 684 (Ala. 2000)
- Dorsey v. Bowers, 709 So. 2d 51, 56 (Ala. Civ. App. 1998)
- Ex parte Noland Hosp. Montgomery, LLC, 127 So. 3d 1160, 1169 (Ala. 2012)
- Mitchell v. Thomley, 98 So. 3d 556, 561 (Ala. Civ. App. 2012)
- Ex parte General Motors of Canada Ltd., 144 So. 3d 236, 239 (Ala. 2013)
- Harmon v. Blackwood, 623 So. 2d 726, 727 (Ala. 1993)
- Marsh v. Wenzel, 732 So. 2d 985 (Ala. 1998)
- Davis v. Mims, 510 So. 2d 227, 229 (Ala. 1987)
- Crawford v. Sundback, 678 So. 2d 1057, 1060 (Ala. 1996)
- Crowl v. Kayo Oil Co., 848 So. 2d 930, 940 (Ala. 2002)
- Ex parte Ismail, 78 So. 3d 399 (Ala. 2011)
- Patterson v. Consolidated Aluminum Corp., 101 So. 3d 743, 747 (Ala. 2012)
- Weaver v. Firestone, 155 So. 3d 952, 957-58 (Ala. 2013)
- Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)
- Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007)
- Fahy v. Horn, 240 F.3d 239, 245 (3d Cir. 2001)
- Miller v. New Jersey Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998)
- Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990)
- United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000)
- Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003)
- Drew v. Department of Corr., 297 F.3d 1278, 1286 (11th Cir. 2002)
- McCormack v. AmSouth Bank, N.A., 759 So. 2d 538, 543 (Ala. 1999)
- City of Birmingham v. Cochrane Roofing & Metal Co., 547 So. 2d 1159, 1167 (Ala. 1989)
- Mason v. Mobile County, 410 So. 2d 19 (Ala. 1982)
- Arkel Land Co. v. Cagle, 445 So. 2d 858 (Ala. 1983)