

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DANIEL DRUMHELLER

Appellant

v.

SMJ ENTERPRISES, INC., T/A NONNA
ROSA, A FICTITIOUS NAME AND T/A
AS NONNA ROSA PIZZERIA, AND
MICHA P. CARR

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 2983 EDA 2025

Appeal from the Order Entered November 7, 2025
In the Court of Common Pleas of Montgomery County Civil Division at
No(s): 2023-05933

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY DUBOW, J.:

FILED OCTOBER 2, 2026

Appellant, Daniel Drumheller, appeals from the November 7, 2025 Order entered in the Montgomery County Court of Common Pleas granting the motion for summary judgment filed by Appellee, SMJ Enterprises, Inc. ("SMJ"). Appellant asserts that the trial court erred in denying his motion to amend his complaint to correct the name of a party, and in then relying on the same factual findings to grant SMJ's motion for summary judgment. After careful review, we affirm.

Appellant's complaint alleges as follows: On or about December 17, 2021, Appellant, who is a mechanic, dropped off a car belonging to Melvin Cordero at Nonna Rosa, a pizzeria located at 236 Egypt Road in Norristown

* Retired Senior Judge assigned to the Superior Court.

(“Nonna Rosa Pizzeria”). Cordero arranged for a delivery driver, Micha P. Carr (“Carr”), to drive Appellant back to his repair shop. During that drive, Carr physically assaulted Appellant.

On April 5, 2023, Appellant filed a complaint asserting intentional tort claims against Carr, and a claim of “negligent hiring, supervision, direction, or control of agent, servant and employee” against “SMJ Enterprises, Inc. t/a Nonna Rosa (Defendant Restaurant).” Trial Ct. Op., 3/9/26, at 2.¹ Importantly, Appellant incorrectly alleged that (1) SMJ “is the registered owner of a Fictitious Business named Nonna Rosa which is a restaurant . . . located at 236 Egypt Road[;]” (2) SMJ had, at the time the complaint was filed, a “registered business location at 320 Garden Avenue, Horsham, PA 19044[;]” and (3) SMJ previously was registered at 2111 Ridge Pike, West Norriton, PA 19403. *Id.* at 3 (quoting ¶¶ 2-3).

On August 31, 2023, several months before the statute of limitations had elapsed on Appellant’s claims, SMJ filed an answer and new matter. SMJ admitted that it has a registered office at 320 Garden Avenue, Horsham, Pennsylvania. SMJ stated that it “has a registered fictitious name of Nonna Rosa with a principal place of business located at 2111 Ridge Pike, West Norriton, Pennsylvania.” *Id.* (quoting Answer ¶ 3). Of most importance to our analysis, however, SMJ repeatedly asserted that SMJ did not hire or

¹ Appellant also asserted claims of assault, battery, and intentional infliction of emotional distress against Carr. Intentional tort claims and negligence claims have a two-year statute of limitations. **See** 42 Pa.C.S. § 5524.

employ Carr. SMJ also denied that it owns or operates a business on Egypt Road or operates a business under the name Nonna Rosa Pizzeria.

On August 29, 2024, Melvin Cordero testified in a deposition that the entity Nonna Rosa III owned and operated the Nonna Rosa Pizzeria and as such, it is Nonna Rosa III that employed Carr.²

On March 31, 2025, SMJ filed a pretrial memorandum outlining its defense that it was not SMJ that operated Nonna Rosa Pizzeria or employed Carr. The trial court, however, set a pretrial conference for May 28, 2025, and it subsequently set a jury trial for August 27, 2025.

On August 19, 2025—just eight days before trial—Appellant filed a motion to amend his complaint.³ In a revised motion to amend his complaint, he requested leave to substitute references to “SMJ Enterprises, Inc. t/a Nonna Rosa” with “Nonna Rosa III, LLC also trading as Nonna Rosa Pizzeria.” Pl.’s Revised Mot. to Amend, 9/2/25, at 3. The trial court denied Appellant’s motion to amend because it concluded that SMJ and Nonna Rosa III were distinct entities, and Appellant could not effectively add Nonna Rosa III as a

² SMJ is a corporation and Melvin Cordero was one of SMJ’s shareholders. Nonna Rosa III, LLC is a limited liability company and Mr. Cordero was one of its members. In November 2022, Cordero became the sole member of Nonna Rosa III, LLC.

³ Appellant’s motion was styled as a motion to amend the caption of his complaint. However, Appellant was requesting to do more than amend the caption. Appellant was requesting to institute suit against another party and amend several paragraphs in the complaint.

new party because the statute of limitations expired two years earlier, in December, 2023.

SMJ subsequently filed a motion for summary judgment, arguing that it was not Carr's employer on the date of the incident, and therefore could not have been negligent in employing and supervising him. On November 7, 2025, the trial court granted the motion for summary judgment, citing its prior conclusion that Appellant failed to assert a claim against Carr's employer.

Appellant filed a notice of appeal. The trial court subsequently entered an order certifying, pursuant to Pa.R.A.P. 341(c), that an immediate appeal from its order granting SMJ's motion for summary judgment "would facilitate resolution of the entire case and that the Order of November 6, 2025, is therefore determined to be final." Order, 12/1/25.

Appellant presents the following issues for our review:

1. Whether the trial court erred in denying Appellant's Motion to Amend the Caption to substitute Nonna Rosa III, LLC for SMJ Enterprises, Inc., where the amendment corrects a misnomer rather than substitutes a new party, given that both entities are owned by the same individual, operated seamlessly from one to the other, used the identical trade name in all public-facing materials, and the assets subject to liability remain unchanged.
2. Whether the trial court properly applied the standard established in *Girardi v. Laquin Lumber Co.*, 81 A. 63 ([Pa.] 1911)[,] and *Hoare v. Bell Tel. Co.*, [500 A.2d 1112 (Pa. 1985),] for distinguishing between misnomer corrections and party substitutions, or whether the trial court's reliance was misplaced given the factual distinctions between that case and the present matter.
3. Whether Appellee suffered prejudice from the amendment, where Appellee received actual notice of the action through service at its operating location, participated fully in discovery and

depositions, and the amendment does not expand the scope of liability or introduce new claims.

4. Whether the newly amended [Pa.R.Civ.P.] 1033(b), effective January 1, 2025, provides an independent basis for relation back of the amendment to correct the name of the party.

5. Whether the trial court's grant of summary judgment is controlled by and derivative of the alleged error in denying leave to amend, such that reversal of the amendment error requires reversal of the summary judgment ruling.

6. Whether, alternatively, any dispute concerning continuity and identity between SMJ Enterprises, Inc. and Nonna Rosa III, LLC presents a genuine issue of material fact for the jury regarding whether the two entities are functionally the same for liability purposes, precluding summary judgment.

Appellant's Br. at 6-7.

Appellant's first four issues challenge the trial court's denial of his motion to amend his complaint. We review the decision of the trial court to deny a motion to amend a complaint for an abuse of discretion. ***Ferraro v. McCarthy-Pascuzzo***, 777 A.2d 1128, 1132 (Pa. Super. 2001). We will not disturb the trial court's determination absent an abuse of that discretion. ***Id.***

Pa.R.Civ.P. 1033 provides, in relevant part, that a party may "correct the name of a party" at any time, if the party obtains either the adverse party's consent or the court's leave. Pa.R.Civ.P. 1033(a). However, a plaintiff generally cannot "add a new and distinct party once the statute of limitations has expired." ***Kincy v. Petro***, 2 A.3d 490, 497 (Pa. 2010). If a plaintiff seeks to amend a pleading to correct the name of a party after the statute of limitations has run, the trial court must consider "whether the right party was sued but under a wrong designation—in which event the amendment [is]

permissible—or whether a wrong party was sued and the amendment [is] designed to substitute another and distinct party.” ***Tork-Hiis v. Commonwealth***, 735 A.2d 1256, 1258 (Pa. 1999) (citation omitted); **see also *Hoare***, 500 A.2d at 1113.

Here, the trial court correctly determined that Appellant filed his motion to amend after the statute of limitations had elapsed. A two-year statute of limitations applies to tort claims of assault, battery, intentional infliction of emotional distress, and negligent training, and supervision. **See** 42 Pa.C.S. § 5524 (1), (7). Appellant’s claims stem from an altercation on December 17, 2021. Thus, the statute of limitations for Appellant’s claims expired on December 18, 2023. Trial Ct. Op. at 5 & n.4 (accounting for a Sunday). Appellant filed his motion to amend 20 months after the statute of limitations had expired.

Because the statute of limitations had run, the trial court assessed whether Nonna Rosa III was a new and distinct party or merely a correction to SMJ’s designation as a party. The trial court determined that SMJ and Nonna Rosa III were distinct entities because each entity had a separate corporate existence and operated different businesses at different locations. In particular, the trial court found:

Each had its own separate existence with different ownership, operating different businesses at different times and at different locations. In the face of these established facts, [Appellant’s] reliance on the similarity of the two entities’ line of business and trade names is plainly insufficient to

overcome the separate existence of the two entities. They are simply not the same entity identified by different names.

Trial Ct. Op. at 7 (emphasis added).

Our review of record supports the trial court's finding that SMJ and Nonna Rosa III are separate and distinct corporate entities, operating separate businesses. Appellant's request to amend the caption was not merely a request to correct the name of the defendant, but rather it was instituting suit against a new party after the statute of limitations had elapsed. We, thus, discern no error in the trial court's decision.

Appellant maintains that he should have been able to add Nonna Rosa III as a defendant because SMJ "actively misled" him to believe that SMJ was properly named as a defendant. Appellant's Br. at 42-43. In particular, Appellant asserts that "[h]ad [SMJ] promptly and clearly identified the correct operating entity in its preliminary objections or answer, Appellant could have amended the complaint within the limitations period." Appellant's Br. at 45. We disagree.

Generally, a new defendant may be added after the statute of limitations runs if a defendant has "actively conceal[ed] the identity of the party against whom [the] plaintiff intend[ed] to bring a cause of action." **Lafferty v. Alan Wexler Agency, Inc.**, 574 A.2d 671, 672 (Pa. Super. 1990). A defendant actively conceals another party's identity if it "commit[s] some affirmative independent act of concealment upon which the plaintiff[] justifiably relied." **Kingston Coal Co. v. Felton Mining Co., Inc.**, 690 A.2d 284, 291 (Pa.

Super. 1997). The plaintiff must provide clear and convincing evidence of active concealment. **Montanya v. McGonegal**, 757 A.2d 947, 951 (Pa. Super. 2000).

The trial court rejected this argument because SMJ's denials in its answer "were more than sufficient to put [Appellant] on notice that he might have sued the wrong Defendant." Trial Ct. Op. at 9.⁴ SMJ's filing of its answer more than three months before the statute of limitations lapsed allowed "ample time" for Appellant "to determine the identity of the proper party, either informally or through formal discovery," but, "[f]or whatever reason, [Appellant] failed to do so." **Id.**

We agree. The record is devoid of any indication that SMJ actively misled the plaintiff in the nearly two years between SMJ's filing of its answer and Appellant's filing of his motion to amend. In fact, the opposite is true. SMJ pled in its answer that it did not operate a restaurant on Egypt Road and more importantly, it did not employ Carr. Additionally, SMJ provided this information before the statute of limitations had elapsed. Thus, there is no legal or factual basis to conclude that SMJ misled Appellant.

Appellant argues that SMJ misled him because SMJ failed to raise this issue in its Preliminary Objections. Once again, we reject this argument.

⁴ The trial court aptly distinguished cases in which defendants or their agents made vague or misleading statements before the statute of limitations ran, and then revealed wrong-identity defenses only after the statute of limitations ran. **See** Trial Ct. Op. at 9-10.

Appellant provides no legal support and we have found none that holds that a defendant has misled a plaintiff about the correct party to sue if the defendant fails to inform the plaintiff at the earliest possible opportunity. Rather, the opposite is true. A plaintiff has a duty “to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to institute suit within the prescribed period.”

Fredericks v. Sophocles, 831 A.2d 147, 151 (Pa. Super. 2003).

In sum, we conclude that the trial court did not abuse its discretion in denying Appellant’s motion to amend. Accordingly, Appellant is not entitled to relief on his first four issues.⁵

Appellant’s fifth and sixth issues challenge the trial court’s entry of summary judgment in favor of SMJ. “[S]ummary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” ***Summers v. Certainteed Corp.***, 997 A.2d 1152, 1159 (Pa. 2010) (citation omitted). Appellate courts review a trial court’s grant of summary judgment for “an error of law or an abuse of discretion.” ***Id.*** (citation omitted). A trial court’s determination of “whether

⁵ We further note that Appellant’s fourth issue, which asserts that Rule 1033(b) provides an independent basis for relation back of his proposed amendment, is waived because he failed to raise it in his Pa.R.A.P. 1925(b) statement. Pa.R.A.P. 1925(b)(4)(viii) (“Issues not included in the Statement . . . are waived.”).

there are no genuine issues as to any material fact presents a question of law[.]” **Id.** (citation omitted). Therefore, “our standard of review is *de novo*[.]” and our scope of review is plenary. **Id.** (citation omitted). Like the trial court, we view the facts of record and any reasonable inferences in a light most favorable to the non-moving party. **Id.** In responding to a summary judgment motion, the non-moving party “may not rest upon the mere allegations or denials of the pleadings,” but must, *inter alia*, identify “one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion[.]” Pa.R.Civ.P. 1035.3(a)(1).

The trial court granted SMJ’s motion for summary judgment for the same reason that it denied Appellant’s motion to amend: SMJ and Nonna Rosa IIII were distinct and separate entities, so SMJ could not be liable for the conduct of an employee of Nonna Rosa III. Trial Ct. Op. at 11.

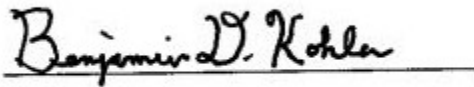
We agree. Since it is undisputed that SMJ did not employ Carr, the trial court properly concluded that as a matter of law, Appellant could not establish that SMJ negligently hired, supervised or directed Carr.

Appellant argues that the trial court erred because SMJ “merely converted” into Nonna Rosa III and continued to operate as the same restaurant. Appellant fails to provide any legal or factual support for its supposition that SMJ “converted” into Nonna Rosa III. Rather, the record supports the trial court’s finding that Nonna Rosa and SMJ were separate and

distinct corporate entities, and SMJ did not employ Carr, so SMJ was entitled to a judgment as a matter of law.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/2/2026