

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

 Judith A. Brown, as Personal)
 Representative for the Estate of)
 of Mildred C. Knight, and Norman R.)
 "Bobby" Knight, III,)
)
 Plaintiffs,)
)
 vs.)
)
 Chloe Knight Tonney,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-10-03042

ORDER
 DENYING MOTION TO
 AMEND COMPLAINT

This case came before me for Hearing on August 26, 2020, on Plaintiffs’ Motion to Amend their complaint to add causes of action for loss of consortium and conspiracy. J. Seth Whipper of the Charleston Bar appeared for Plaintiff/Movants, and Charles S. Altman appeared on behalf of the Defendant. At the close of arguments, the undersigned requested that Defendant brief the question of prejudice as that concept applies under Rule 15 of the South Carolina Rules of Civil Procedure (“SCRCP”). Defendant’s Memorandum was received September 8, 2020 and Plaintiff’s Reply was received September 15, 2020.

For the reasons hereafter discussed I am compelled to conclude that Plaintiffs’ motion to amend the complaint must be denied.

PROCEDURAL FACTS

The Summons and Complaint in this case were filed June 7, 2019. The allegations of the Complaint relate principally to the status of title to the real Property at 3831 Rivers Avenue in Charleston County (the “Property”), which is presently titled in the name of the Defendant, Chloe Knight Tonney. Plaintiffs allege that title to the Property should vest in them by adverse possession.

Alternatively, they allege that the court should impose a constructive or resulting trust on the Property for the benefit of Plaintiff Brown's Decedent, Mildred C. Knight, and the Decedent's late husband Norman R. Knight, Jr. (the latter of whom is not a party to the action.). Plaintiffs further and alternatively allege that the conveyance was made to the Defendant Tonney by mutual mistake. Plaintiffs allege a single wrongful act by the Defendant, that is her wrongful demolition of the house on the property, for which they seek an award of damages.

The memoranda filed by the parties show that the underlying claims for adverse possession and for the imposition of a trust were originally filed in 2005, when Plaintiffs' Decedent and the late Norman Knight, Jr. were alive. The original summons and complaint filed in 2005 was struck from the court roster and was thereafter restored, perhaps on multiple occasions, so that it presently carries a 2019 docket number. However, the same claim has been pending for fifteen years.

On March 4, 2008, the late Mildred C. Knight and the Plaintiff Norman R. Knight, III filed their motion, *pro se*, to amend the then-pending complaint to allege the loss of consortium between the late Mildred Knight and her husband, the late Norman Knight, Jr., allegedly arising from the initiation by the South Carolina Department of Social Services of litigation in 2004 to address the care and welfare of the late Norman Knight, Jr. A transcript from hearing held in this case's predecessor filing on April 14, 2018 before the Honorable Markley Dennis shows that the late Mildred Knight, who had filed a motion to amend her then-pending complaint to allege the tort of loss of consortium, withdrew the motion in open court, and on the record.

I find and conclude as a procedural fact, therefore, that this action to effect the title to the Property by adverse possession or by the imposition of a trust was first filed in 2005, fifteen years ago. I further find and conclude from the procedural record that Plaintiff Brown's Decedent had actual knowledge of the facts or evidence she believed would support a cause of action for loss of

consortium at least as of March 4, 2008 when she filed her motion to amend the then pending complaint to allege loss of consortium.

CONCLUSIONS OF LAW

Rule 15(a) of the SCRCP provides that a complaint may be amended within thirty days after it has been served, as a matter of course. Following that thirty-day time, a complaint may be amended “only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party”. I take notice that courts regularly practice by the rule, freely granting motions to amend complaints filed in civil actions.

The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleadings or a timely motion to amend. The prejudice that would warrant a denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it. *Patton v. Miller*, 420 S.C. 471, 491-492, 804 S.E.2d 262, (S.Ct. 2017) (Internal citations omitted.).

In the *Patton* decision above quoted, Supreme Court Justice Few also wrote: “Under Rule 15(a), the circuit court should have considered whether the Defendants were prejudiced by the amendment or whether there was some other substantial reason to deny it.” 420 SC at 490.

Even if an amendment is allowed, the Court must then address Rule 15(c) and the question whether the amendment relates back to the time of initial filing. *Patton, supra*, 420 SC at 493.

Rule 15(c) provides: “Whenever 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 pleadings, the amendment relates back to the date of the original pleading.”

An amendment of a complaint will not be allowed if a wholly new cause of action is thereby introduced, where the new cause of action is so old as to have been barred by the statute of limitations. In other words, an amendment which substitutes a new and different cause of action, and debars the defendant of the privilege of pleading the statute of limitations, will not be allowed. *Coral Gables, Inc. v. Palmetto Brick Co.*, 183 SC 478, 191 S.E. 337 (1937). The Supreme Court has held that a defective complaint cannot be amended to state a new or different cause of action after the statute of limitations has run. *Scott v. McCain*, 272 SC 198, 250 S.E.2d 118 (S.Ct. 1978). On the other hand, if the amendment merely expands or amplifies what was alleged in support of the initially filed cause of action, it relates back to the commencement of the action and is not affected by the intervening lapse of time. *Scott v. McCain*, supra, 272 SC 202-203.

A court’s decision to deny a motion to amend should not be based on the court’s perception of the merits of an amended complaint. In rare cases, however, a trial court may deny a motion to amend if the amendment would be “clearly futile”. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 SC 175, 826 S.E.2d 585 (Sup.Ct.2019); *Jennings v. Jennings*, 389 SC 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (*Rev’d on other grounds*, 401 SC 1, 736 S.E.2d 242 (S.Ct.2012)).

DISCUSSION

The genesis of this case was the filing by Plaintiff Brown’s Decedent of a summons and complaint in 2005 seeking an order that she and her late husband had acquired title to the Property by adverse possession, and alternatively seeking the imposition of a trust for their benefit. Until

the filing of the motion now before me, the only allegation of active conduct against the Defendant related to her demolition of the home on the Property.

After a timespan of fifteen years, Plaintiffs now seek to amend their complaint to allege active, tortious conduct by Defendant; that is, her participating in the filing of DSS protective proceedings relating to the Defendant's late father, Norman Knight, Jr., allegedly occurring in 2004. The allegation in the proposed amended complaint is that the Defendant's role in prosecuting the DSS proceeding proximately caused the loss of consortium between the late Norman Knight, Jr. and his wife, Plaintiff Brown's Decedent Mildred Knight. The alleged tort occurred in 2004, sixteen years ago.

The investigation, discovery and presentation in evidence of events transpiring sixteen years before the filing of an action may well be an almost impossible task. But even if it could be accomplished, it would present significant challenges and difficulties to all parties, and would thereby be prejudicial; and not only to the Defendant but to the Plaintiffs as well. Indeed, it should be emphasized, the burden of proof of the tort will be borne by the Plaintiffs.

Whereas the cases hold that mere delay in seeking to amend pleadings should not be a basis to deny an amendment, I must conclude that a sixteen-year delay is an undue delay, that transcends the general rule. The decision of the United States Supreme Court in the case of *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227 (1962) is often cited with respect to issues such as that presented here:

“It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. (internal citation omitted.) The rules themselves provide that they are to be construed to secure the just, speedy, and inexpensive determination of every action.”

“In the absence of any apparent or undeclared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be ‘freely given’. Of course, the grant or denial of an opportunity to amend is within the discretion of the district court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.”

I find that the delay here is undue. Because of it, the Defendants, and also the Plaintiffs for that matter, would be challenged to investigate, discover and present evidence, not relating to adverse possession, or constructive trust, or demolition of a house, but rather relating to DSS proceedings sixteen years ago. The time and expense involved in that process is likely to be considerable. I must conclude, therefore, that because of the prejudice to Defendant by the undue delay, Plaintiffs’ motion to amend their Complaint must be denied.

Further analysis is also necessary. Even if I were to conclude that the amendment should be allowed, under the rubric of Justice Few’s opinion in the *Patton* case, I must also address whether the amendment “relates back” to the date of the original filing. As previously observed, Rule 15(c) SCRCF provides that a claim “relates back” to the date of the original pleading if the amended claim “arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings”.

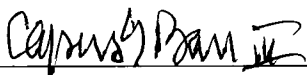
As before observed, the amended complaint alleges tortious wrongdoing by the Defendant by her alleged complicity in the 2004 DSS proceedings relating to her father, the late Norman Knight, Jr. that caused the loss of consortium between her parents. The only wrongful conduct of Defendant alleged in the original complaint is that she demolished the house on the property. There is no nexus whatsoever between the original complaint’s allegations of adverse possession and Defendant’s demolition of the house, on the one hand, and the allegations of the proposed amended complaint that the Defendant tortiously caused a DSS intervention with her father, on the

the other. I must conclude there is no “logical relation” between the matters sought to be pled in the amended pleading, and those originally pled. “The new claim must be ‘logically related’ to the *matters originally pleaded* so that the Defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.” *Whitfield Construction Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525, S.E.2d 888 (Ct. App. 1999). Because the allegations of the proposed amended complaint do not relate back to the date of original filing, they must be considered as of the date of filing of the Plaintiff’s motion to amend in this case. Simply put, the proposed amended complaint seeks to state a new cause of action.

South Carolina Code Section 15-3-530 provides for a three year limitations period for the commencement of an action for any injury to the person or to the rights of another, not arising on contract and not enumerated by law. Because more than three years has elapsed since the 2004 DSS proceedings that form the basis for Plaintiff’s proposed amended complaint, and because the amended complaint does not “relate back” to the original filing, the amended complaint would be barred by the statute of limitations. Moreover, the proposed amended complaint would also be barred by the doctrine of futility. *Skydive Myrtle Beach, Inc. v. Horry County*, *supra*.

I acknowledge this ruling is not consistent with the spirit of Rule 15 to freely permit the amendment of pleadings. However, extraordinary facts require extraordinary rulings. Such is the case here. Plaintiffs’ motion to amend their complaint is denied.

AND IT IS SO ORDERED.



Capers G. Barr, III,
Special Referee

Charleston, South Carolina

October 16, 2020

**BARR, UNGER
& MCINTOSH**
ATTORNEYS AT LAW

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October 16, 2020

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

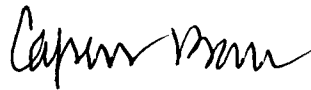
Re: *Estate of Mildren C. Knight and Norman R. "Bobby" Knight, III v. Chloe Knight
Tonney*
Case No.: 2019-CP-10-03042
Our File: 2020-1232

Dear Madam Clerk:

I am appointed as Special Referee in the referenced case. Enclosed is my original signed Order denying the Plaintiffs' Motion to Amend their Complaint. Will you please file this Order?

Please advise me if you require anything further. With kind regards,

Sincerely yours,



Capers G. Barr, III

CGBIII/shg

Enclosures (as stated).

cc: J. Seth Whipper, Esq. (via e-mail w/encl.)
Charles S. Altman, Esq. (via email w/encl.)

ELECTRONICALLY FILED - 2020 Oct 28 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042