

IN THE COURT OF APPEALS OF IOWA

No. 1999-23 (9-133) / 98-1206

Filed March 31, 1999

MAURICE A. MACY,

Plaintiff-Appellee,

vs.

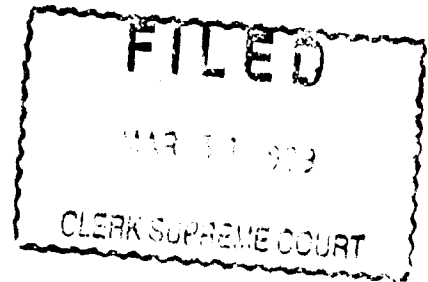
**COUNTY OF CASS d/b/a CASS
COUNTY MEMORIAL HOSPITAL,**

Defendant-Appellant,

and

DR. KENNETH BURKHART,

Defendant.



Appeal from the Iowa District Court for Cass County, James M. Richardson,
Judge.

Defendant Cass County Memorial Hospital appeals the district court's order
denying its motion to dismiss it from this action. **AFFIRMED.**

Thomas P. Peffer of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for
appellant.

W. Edward Anstey of the Anstey Law Firm, P.C., Atlantic, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Defendant Cass County Memorial Hospital was given permission to file this interlocutory appeal¹ challenging the district court's alleged failure to dismiss it from this negligence action claiming medical malpractice filed by plaintiff Maurice Macy. We affirm.

Plaintiff was hospitalized at Cass County Memorial Hospital from November 28, 1995 through December 9, 1995. On December 1, 1997, plaintiff filed a petition in Cass County District Court naming County of Cass d/b/a Cass County Memorial Hospital as a defendant. The petition was filed in two divisions. The first division of the petition, directed to Cass County, alleged, among other things, plaintiff was transported to Cass County Memorial Hospital by ambulance and, despite his complaints, employees at the hospital took no action to immobilize his spinal cord or to rule out a spinal cord injury. Plaintiff further alleged, despite his complaints of back pain, the employees of the hospital required him to walk and undergo physical therapy, and the acts of the hospital's agents or employees constituted a failure to reasonably protect plaintiff from injury, and, as a result, plaintiff was injured and incurred damages. The second division of the petition addressed the claimed negligence of Burkhardt and is not at issue in this interlocutory appeal.

On February 28, 1998, the Cass County auditor was served with a copy of the petition. On March 2, 1998, John C. Molgaard acknowledged service of a copy of the

¹ Defendant Kenneth Burkhardt did not join in the hospital's motion to dismiss and is not a party to this interlocutory appeal.

original notice with a petition at law. Molgaard signed the acknowledgment and under his name appears, "Chairman, Cass County Memorial Hospital Board of Hospital Trustees."

There then was filed on March 5, 1998, a document captioned "Defendant's (Cass County, Iowa) Motion to Dismiss." The motion alleged plaintiff failed to state a claim against Cass County, Iowa. It further alleged Cass County is not a party as Cass County Memorial Hospital is not a part of or an entity governed by Cass County, Iowa. This motion was sustained on April 20, 1998, by the district court with a notation only that, "The motion of County of Cass to dismiss is sustained."

The hospital then filed a motion to dismiss. That motion, filed April 22, 1998, is the subject of this appeal. In that motion, the hospital contended (1) it was not named as a party defendant; (2) the statute of limitations barred plaintiff from amending his petition to assert a claim against the hospital; (3) it was not served; and (4) if served, the service was not timely.

The district court denied the hospital's motion to dismiss plaintiff's claim against it. The district court ruled the prior order only dismissed Cass County. The district court also found the petition placed the hospital on notice that claimed negligence of the hospital was at issue. The district court found the service on Molgaard, who signed the Acknowledgment of Service as "Chairman, Cass County Memorial Hospital Board of Hospital Trustees," sufficient to establish jurisdiction over the hospital. The district court found the service timely under Iowa Rule of Civil Procedure 49(f). As a part of this finding, the district court determined the ninetieth

day after the petition was filed was Sunday, March 1, 1998, allowing service on the following Monday, March 2. On July 30, 1998, after this appeal was filed, plaintiff filed a first amendment to his petition naming Cass County Memorial Hospital as a defendant.

Our review of a ruling on a motion to dismiss is limited to correction of errors at law. *See Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994). Any decision to sustain or overrule a motion to dismiss must rest on legal grounds. *Id.* A motion to dismiss is directed to the pleadings and, therefore, facts outside the pleadings should not be considered. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 310 (Iowa 1982). We review the district court's ruling for correction of errors at law. Iowa R. App. P. 4; *Mokhtarian v. GTE Midwest, Inc.*, 578 N.W.2d 666, 668 (Iowa 1998).

The hospital first claims its motion to dismiss should have been granted because it was not named a party defendant. The hospital contends the failure to specifically name it as a separate entity defeated plaintiff's claim. Plaintiff advances because of Iowa Rule of Civil Procedure 69(e),² its claim against the hospital was not defeated.

Iowa Rule of Civil Procedure 69(e) provides, in relevant part:

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 pleading, the amendment relates back to the

² Former rule 89, amended by Acts 1976; amended and redesignated as rule 69(e) effective January 24, 1998.

date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Iowa R. Civ. P. 69(e).

Plaintiff did not amend his petition until July 30, 1998. The district court ruled on June 8, 1998, denying the hospital's motion to dismiss. Defendant contends this precludes our considering the rule.

The district court basically found the motion dismissing the county amended the pleading to leave the hospital a defendant. This being the case, the preliminary element under rule 69(e) was satisfied because the amendment "arose out of the conduct, transaction or occurrence set forth . . . in the original pleading." The other two listed requirements of rule 69(e) are also satisfied in that (1) the notice of the institution of an action within the statute of limitations period was such the hospital was not prejudiced in maintaining its defense on the merits; and (2) the hospital knew or should have known within the statute of limitations period that, but for a mistake concerning its identity, the action would have been brought against the hospital. See *Alvarez v. Meadow Lane Mall, Ltd. Partnership*, 560 N.W.2d 588, 592 (Iowa 1997).

We note also the rule governing the relating back of amendments does not apply only to amendment changing parties; it also applies to amendments correcting names. *Grant v. Cedar Falls Oil Co.*, 480 N.W.2d 863, 866 (Iowa 1992). When an

individual or corporation does business under a trade name or other assumed name and notice is addressed to that very name, the defendant will not be heard to say on special appearance that such is not his name. *Hickman v. Hygrade Packing Co.*, 185 N.W.2d 801, 802-03 (Iowa 1971). The amendment changing the name can relate back. We agree with the trial court's resolution of this issue.

The hospital contends plaintiff should not have been allowed to amend his petition because the action was barred by the two-year statute of limitations.³

A civil action is commenced by filing a petition with the court. Iowa R. Civ. P. 48. The filing of a petition is deemed the commencement of the action for the purpose of determining whether an action was commenced within the time allowed

³ Iowa Code section 614.1 provides, in pertinent part:

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

....

9. Malpractice

a. Except as provided in paragraph "b," those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

Iowa Code § 614.1(9)(a).

by the applicable statute of limitations. Iowa R. Civ. P. 48.⁴ Because the last date plaintiff would have been injured was December 9, 1995, the two years expired on December 9, 1997.

Plaintiff's petition was filed December 1, 1997. The hospital contends the petition did not toll the statute because the December 1, 1997 petition fails to state a claim upon which any relief can be granted against it. This claim is premised on the hospital's contention the petition fails to assert a claim against the hospital and the hospital was not a named defendant.

Iowa Rule of Civil Procedure 70 concerning claims for relief states in applicable part:

(a) Generally. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or cross-petition, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the type of relief sought.

Iowa R. Civ. P. 70(a); *see Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). A petition filed by a plaintiff provides "fair notice" to defendants in accordance with Rule of Civil Procedure 69(a) if it apprises them of the incident giving rise to the claim, states the basic elements of the claim, and sets forth the general nature of the action. *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 93 (Iowa 1985). We measure the sufficiency of a pleading by whether it provides fair notice of claims asserted so as to allow the adverse party an opportunity to make an adequate response.

⁴ Former rule 55, adopted effective July 1, 1975, amended and redesignated as part of rule 48 effective January 24, 1998.

Northrup v. Farmland Indus., Inc., 372 N.W.2d 193, 197 (Iowa 1985). It is sufficient if the petition apprises a defendant of the incident giving rise to the claim and of the general nature of the action. See *State Savs. Bank v. Onawa State Bank*, 368 N.W.2d 161, 163 (Iowa 1985). We agree with the district court the petition, while not artfully drafted, gave the hospital full notice plaintiff sought damages from the hospital for its negligence in treating plaintiff. The petition sufficiently advised the hospital of the time and the event giving rise to plaintiff's claim. We affirm on this issue.

The hospital next complains it was not served, and if served, the service was not timely. The hospital's challenge is the acknowledgment did not state Molgaard accepted service on behalf of the hospital. He accepted service as chairman of the board of trustees.

Iowa Rule of Civil Procedure 56.1(m) provides:

Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows: . . . (m) Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary

Iowa R. Civ. P. 56.1(m). Molgaard at the time of receipt of the copy was admitted to be the presiding officer of the hospital trustees. He acknowledged the notice was delivered to him. We reject the hospital's contention it was not served. We affirm on this issue.

AFFIRMED.