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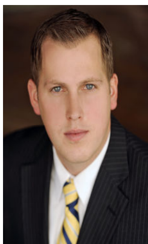
Ohio Supreme Court Issues Important Decision on the Use of Fictitious Names as "Placeholders" in Suits



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The use of fictitious names in civil complaints has been a well-established practice by plaintiffs in Ohio. Rule 15(D) of the Ohio rules of Civil Procedure provides that authority, permitting a plaintiff to amend a complaint where the "name of a party" was unknown at the time the complaint was filed. The amended complaint then relates back to the original filing date. Operating in conjunction with this Rule, is Civil Rule 3(A), which establishes that a civil action will be considered "commenced" at the time of filing, as long as service is obtained within one year from the date the complaint is filed.

Often, plaintiff lawyers use these provisions to include so-called "John Doe" defendants as placeholders in civil suits brought against individual or corporate defendants, in an effort to allow a later addition of parties where it is learned during the course of discovery that the new party may have some liability or role to play in the litigation. In those instances, plaintiffs have successfully circumvented the statute of limitations, by adding additional parties (via substitution for a "John Doe") to the case after the statute of limitation period ran.

This practice will come to an abrupt halt based on the recent Ohio Supreme Court decision of *Erwin v. Bryan*, 2010-Ohio-2202. At issue in *Erwin* was a civil suit claiming medical negligence against a physician-defendant and a hospital where the patient sought emergency care at the hospital after waking up febrile, disoriented and convulsing. While in the hospital, he was seen and treated by both an attending physician as well as a consultant. He was eventually diagnosed and treated for alcohol withdrawal syndrome and released. One week later, the patient died from conditions that the plaintiff alleged were missed by the defendants. At the time suit was filed, the decedent's wife specifically named the attending physician and the hospital as defendants. In addition to those specifically named parties, the plaintiff included several "John Doe" individual and corporate defendants. Of importance, the complaint did not provide sufficient detail to identify the exact individuals or corporations designated with the "John Doe" label, nor was a summons containing the words "name unknown" issued to those parties. There was no dispute that the plaintiff was aware at the time she filed suit that her husband had been evaluated by the consultant and, in fact, the consultant's actual name and identity was known by her at that time. It was only after the attending physician was deposed, however, that she claimed to have understood the role that the consultant played in her husband's care and based on that testimony, she amended her complaint to have the consultant substituted for one of the John Doe defendants. By that time, the one-year statute of limitations for medical malpractice had expired, as had the two-year statute of limitations for wrongful death, although the one-year window in which she could obtain service under Civil Rule 3(A) to allow the complaint to "relate back" to the date of filing was still open. The consultant moved for summary judgment alleging that the case was untimely filed against him and the trial court agreed. The Court of Appeals reversed, however, and the Ohio Supreme Court agreed to consider the issue.

In reaching its decision, the Supreme Court carefully examined the wording of Civil Rule 15(D) and concluded that its intent is unambiguous, applying only when a plaintiff has *identified* but is unable to determine the actual name of the defendant at the time the complaint is filed. With that, the Court has made it clear that the use of Rule 15(D) will no longer permit a "John Doe" defendant to serve as a placeholder for some unknown or potential defendant. Rather, the Rule must be read literally, with the plaintiff identifying and describing the fictitiously named defendant sufficient to allow personal service to be made on that individual upon the filing of the Complaint. Amendment of the Complaint is then permitted to allow substitution of the proper name of the party once discovered.

Of significance, the Ohio Supreme Court specifically rejected the notion that "discovery" of alleged medical negligence occurs at the time a patient "had reason to believe that [the physician's] conduct was potentially negligent." Rather, the Court reaffirmed its earlier principle that a patient/plaintiff has a duty to identify all negligent parties once an <u>injury</u> has been discovered," and to "investigate, and discover [all tortfeasors], once she has reason to believe that she is the victim of medical malpractice." *Erwin* at ¶26, citing *Flowers v. Walker* (1992), 63 Ohio St. 3d 546 (emphasis added).

In short, Civil Rule 15(D) can no longer be used to enlarge the statute of limitations against unidentified or unknown defendants. Rather, it can only be used to preserve a cause of action against a defendant whose identity and whereabouts are known, but whose name is not. According to the analysis by the Court, this decision should not encourage plaintiff lawyers to include any and all treating medical practitioners in the medical suits they bring. To the contrary, the Court explained that the Affidavit of Merit requirement contained within Civil Rule 10(D)(2) serves to prevent medical claims that are not supported by expert opinions and would adequately deter the filing of actions against all medical providers who cared for the patient. Whether or not the practical result of *Erwin* proves otherwise remains to be seen. Due to the impact of the decision on the Plaintiff's bar, a Motion for reconsideration has been filed with the Supreme Court.

Should you desire a full text of the opinion, or if you have any questions regarding medical malpractice claims, please contact one of our Medical Malpractice Group members.

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