

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAULO LOPEZ-MEDEROS,
Appellant,
vs.
CURTIS RAMPTON AND TAMARA
RAMPTON, ON BEHALF OF THEIR
MINOR CHILD,
Respondents.

No. 51088

FILED

APR 08 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondents' NRCP 12(b)(5) motion to dismiss and denying appellant's motion for leave to amend. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

BACKGROUND

This case involves a negligence action based on a motor vehicle accident that occurred on August 25, 2005. Appellant Paulo Lopez-Mederos was travelling on Interstate 80 in Reno, Nevada, when the motor vehicle he was driving was struck by a vehicle operated by respondents Curtis and Tamara Rampton's minor child. The minor was 15 years old at the time of the accident. As a result of the accident, Lopez-Mederos suffered back and shoulder injuries.

On August 16, 2007, just before the statute of limitations expired on his personal injury action, Lopez-Mederos filed a complaint alleging negligence and named Curtis and Tamara Rampton, on behalf of their minor child, and Does 1 through 10 as defendants. In the complaint, Lopez-Mederos stated that the name and identity of the minor were known to him, but that he was not disclosing the minor's name and identity in the interest of confidentiality. The facts of the complaint provide notice (1) of the motor vehicle accident, (2) that the driver of the

vehicle that struck Lopez-Mederos was respondents' minor child, (3) that the respondents' minor child was cited by a Nevada Highway Patrol Officer for an unsafe lane change, and (4) that the minor's negligent operation of the vehicle caused serious injury to Lopez-Mederos. On November 19, 2007, the Ramptons filed a motion to dismiss the complaint under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. Lopez-Mederos opposed the motion to dismiss and filed a motion for leave to amend his complaint. The Ramptons filed a reply in support of their motion to dismiss and an opposition to Lopez-Mederos's motion for leave to amend his complaint. The district court ultimately granted the Ramptons' motion to dismiss for failure to state a claim and denied Lopez-Mederos's motion for leave to amend his complaint. This appeal followed.

On appeal, Lopez-Mederos argues that the district court erred in granting the Ramptons' motion to dismiss and abused its discretion in denying his motion for leave to amend his complaint. Lopez-Mederos also alleges that the district court abused its discretion in not appointing a guardian ad litem for the minor child under NRCP 17(c). The Ramptons argue that the district court properly dismissed Lopez-Mederos's complaint and properly denied Lopez-Mederos's motion for leave to amend his complaint. The Ramptons also contend that Lopez-Mederos waived any argument regarding the district court's appointment of a guardian for the minor and any proposed claims against the Ramptons in their individual capacity, as those arguments were not raised in the district court below.

Having reviewed the parties' arguments, we conclude that while the complaint was insufficient, the district court abused its discretion in denying Lopez-Mederos's motion for leave to amend his

complaint. In light of our decision, we do not reach Lopez-Mederos's other arguments.

DISCUSSION

Motion to dismiss under NRCP 12(b)(5)

We rigorously review a district court order dismissing a complaint under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). For this purpose, a complaint's factual allegations are liberally construed, with every fair inference drawn in favor of the nonmoving party. Id. Unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed. Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 22, 62 P.3d 720, 734 (2003).

The factual allegations in Lopez-Mederos's complaint, as listed above, clearly provide a sufficient basis for claims of negligence against the minor child. However, the complaint does not name the minor as a defendant. The omission of the minor as a named defendant, while clearly well-intentioned, renders the complaint insufficient as to the negligence claim. Construing the facts liberally and with every fair inference in favor of Lopez-Mederos, the complaint's factual allegations also provide a basis for claims of vicarious liability against the Ramptons. But there are no vicarious liability causes of action asserted in the complaint. Additionally, the Ramptons are named as defendants "on behalf of their minor child," and not individually, which also, independently, renders the complaint insufficient as to the possible vicarious liability causes of action against the Ramptons. Accordingly, the district court was correct in finding that the complaint failed to state a claim upon which relief can be granted.

Although we conclude that the complaint was insufficient, we

must still consider whether the dismissal was proper in light of Lopez-Mederos's motion for leave to amend his complaint.

Motion for leave to amend complaint

While the denial of a request to amend a complaint is reviewed for an abuse of discretion, Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993), such leave should be granted freely. NRCPC 15(a). A request to amend a complaint should be denied only if allowing the amendment would be futile, Allum, 109 Nev. at 287, 849 P.2d at 302, or if there is undue delay, bad faith, or a dilatory motive by the party requesting leave to amend. Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973). When a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred remedy. Cohen, 119 Nev. at 22, 62 P.3d at 734.

Lopez-Mederos argues that had he been allowed to amend his complaint as proposed in his motion for leave to amend, his amended complaint would state at least one, if not more, proper claims on which relief could be granted. The Ramptons argue that Lopez-Mederos cannot amend his complaint to add new parties or proposed claims as the statute of limitations on Lopez-Mederos's personal injury claims ran in August of 2007.

Addition of new parties

Generally, an amendment may be made to correct a mistake in the name of a party, but a new party may not be brought into an action once the statute of limitations has run. Servatius v. United Resort Hotels, 85 Nev. 371, 372-73, 455 P.2d 621, 622 (1969). Nevertheless, there is an exception to this rule, "crafted to supply a basis for achieving equity and justice where the true defendant, although unnamed, had actual

knowledge of the institution of the action, knew it was the proper defendant, and was not in any way misled to its prejudice.” Nurenberger Hercules-Werke v. Virostek, 107 Nev. 873, 878, 822 P.2d 1100, 1104 (1991) (describing the purpose of the rule set forth in Servatius). The three factors governing the determination of when a proper defendant may be brought into an action by amendment after the statute of limitations has run are whether the proper defendant: (1) had actual notice of the institution of the action, (2) knew that it was the proper defendant in the action, and (3) was not misled to its prejudice. Servatius, 85 Nev. at 373, 455 P.2d at 622-23. Having reviewed the record, we conclude that the three factors required by Servatius to bring a proper defendant into an action once the statute of limitations has run are met in this case.

The Ramptons had been properly served with Lopez-Mederos’s original complaint and had actual knowledge that the action had been instituted. The factual allegations in the complaint state that the Ramptons’ minor child was driving the vehicle that struck Lopez-Mederos’s vehicle. The Ramptons, as the parents of the minor child, knew that they and their minor child were the proper defendants. To argue otherwise would be disingenuous. The record contains no evidence that the Ramptons or their minor child were misled to their prejudice. Accordingly, the Servatius exception applies and Lopez-Mederos should have been allowed to correctly identify the party defendants already before the district court.

Addition of proposed claims

Nevada is a notice pleading state, which allows litigants to fully try their issues before the court, even when those issues are not expressly raised by the pleadings. NRCP 15 indicates the great liberality with which pleadings may be amended and issues raised before, during, or

after trial. Morris v. Morris, 83 Nev. 412, 414, 432 P.2d 1022, 1023 (1967). Lopez-Mederos's proposed claims of imputed negligence and vicarious liability against the Ramptons arose out of the motor vehicle accident described in the original complaint. "If the original pleadings give fair notice of the fact situation from which the new claim for liability arises, the amendment should relate back for limitations purposes." Scott v. Dep't of Commerce, 104 Nev. 580, 586, 763 P.2d 341, 345 (1988) (quoting Nelson v. City of Las Vegas, 99 Nev. 548, 556, 665 P.2d 1141, 1146 (1983)); NRCP 15(c). Accordingly, Lopez-Mederos's proposed claims would relate back to the date of the original complaint and would therefore not be barred by the statute of limitations.

For the above reasons, we conclude that the district court erred in granting the Ramptons' motion to dismiss under NRCP 12(b)(5) and abused its discretion in denying Lopez-Mederos's motion for leave to amend his complaint. Accordingly, we

REVERSE the district court's order granting the motion to dismiss and denying the motion for leave to amend and REMAND this matter for further proceedings consistent with this order.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Lansford W. Levitt, Settlement Judge
Francis Jay Short
Georgeson Angaran, Chtd.
Washoe District Court Clerk