Circuit Court for Prince George's County
Case No. CAL16-26494

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 174

September Term, 2017

VERONICA WILLIAMS *et al.*

v.

JOAN WILCOX

Eyler, Deborah S.,
Leahy,
Wilner, Alan, M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 8, 2018

On October 10, 2013, Mrs. Veronica Williams and her father, Mr. Ronald Maxwell, (collectively "Appellants") sustained injuries when their car was rear-ended by a vehicle driven by Mr. Walter Wilcox ("Walter"). The police report of the accident named "Walter Clifford Wilcox" as the driver of the vehicle and erroneously named "Joan Walter Wilcox" as the owner of the vehicle. Ms. Joan Wilcox ("Appellee" or "Joan"), in fact, was a co-lessee of the vehicle along with her son, Walter, who was the primary driver of the vehicle.

Roughly two years and eight months later, Appellants each filed separate, almost identical, negligence actions against Joan in the Circuit Court for Prince George's County. Joan filed answers generally denying the complaints for failure to state a claim and failure to join a necessary party to the suit. On October 24, 2016, after the expiration of the statute of limitations, Appellants filed motions for leave to amend the complaints to add "Walter Clifford Wilcox" as the driver of the vehicle, contending that the addition related back to the original complaints. Joan opposed these amendments, and filed motions for summary judgment. After consolidating the actions and following a hearing, the circuit court denied Appellants' request to amend the complaint, and granted Joan's motion for summary judgment.

Appellants present five questions for our consideration,[1] which we have condensed

[1] Appellants' brief sets out the following issues:

1. "Whether the Circuit Court erred in dismissing the case and not allowing an amendment to correct a misnomer that occurred due to a clerical error in a government document."

2. "Did the Circuit Court err in denying leave to amend [Appellants']

and rephrased as one:

> Did the circuit court abuse its discretion by denying Appellants' motion for leave to amend the complaint?

We affirm the circuit court's decisions and hold that the court's factual findings that Walter did not have notice of his status as the intended defendant were not clearly erroneous. Accordingly, the court did not abuse its discretion in denying Appellants' motion to amend their complaint to add a new defendant after the applicable statute of limitations had run because the amendment did not relate back to the original complaint.

BACKGROUND

A. The Car Accident and Inception of Litigation

On October 10, 2013, Appellants were traveling westbound on Martin Luther King Jr. Highway in Seabrook, Maryland, when they were rear-ended by a car driven by Walter, sending their car careening into two other vehicles. Appellants sustained injuries because

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> motion to amend complaint on the ground that there was no mistake or misnomer where the Plaintiffs had imputed knowledge of the correct identity of the intended defendant prior to the expiration of the statute of limitations."

3. "Whether Walter Wilcox, the intended defendant, had timely notice of its [sic] intended status as defendant."

4. "Whether Walter Wilcox, the intended defendant, was required to make a showing of prejudice or was he entitled to a presumption of prejudice."

5. "Whether Walter Wilcox, the intended defendant, have [sic] reason to know that he was an intended defendant, but for the clerical error in the police report concerning his proper identity."

of the crash, and were transported to a local hospital in an ambulance. The accident report listed "Walter Clifford Wilcox" as the driver of the vehicle that caused the collision, but listed "Joan Walter Wilcox" as the owner of the vehicle.

On June 20, 2016, Appellants filed virtually identical complaints against Joan alleging that on the day of the accident, she was "operating her vehicle in a negligent manner" and had "violently" struck their vehicle, causing injury. Appellants each sought $300,000 in damages and requested a jury trial. A day later, Appellants sent Joan a set of interrogatories as well as requests for production of documents relating to the matter.

Joan answered the complaints on July 22, 2016, asserting general denials of liability and stating that Appellants had "fail[ed] to state a cause of action on which relief c[ould] be granted[.]" Joan's answers each listed six affirmative defenses, including, that Appellants "ha[d] failed to join a necessary party to the instant action." Additionally, in her answers to interrogatories,[2] Joan represented that although she was admittedly a "putative owner" of the vehicle, she was not present at the time of the accident. She stated

[2] On September 23, 2016, Appellee's counsel filed a certificate of service indicating that he had sent the answers to interrogatories and document requests to Appellants' counsel by mail. For reasons unknown, only some of the requested documents arrived via mail. On October 19, claiming to have not received the answers to interrogatories, Appellants' counsel emailed Appellee's counsel. Appellee's counsel responded, saying that he "personally supervised and confirmed that [the answers] were placed in the mail[,]" and indicated that he would "scan and email them to you." The next day, Appellee's counsel faxed the requested documents to Appellants' counsel's office. Appellants' counsel later claimed, in a reply to Joan's motion in opposition to Appellants' motion to amend their complaint, that she did not receive the interrogatories until October 25, 2016, because of Appellee's decision to fax the documents rather than scan and send them via email "as requested and per the agreement[.]"

that her son, Walter, was the driver of the vehicle, and that a police report had been prepared detailing the accident.

B. Appellants' Motion to Amend the Complaint

On October 24, 2016, roughly three years and two weeks after the car accident, Appellants filed identical motions requesting leave to amend their complaints pursuant to Maryland Rule 2-341(b) to add "Walter Clifford Wilcox to the present cause of action as the driver of the car."[3] Appellants' counsel contended that she "recently realized the error when responding to [Joan]'s interrogatories," and had "intended to bring the lawsuit against Walter Clifford Wilcox – the actual driver of the vehicle according to the police." Appellants claimed the addition of Walter "related back to the original complaint" and was thus proper. They also argued that Walter "had plenty of notice" of the impending suit "despite the error" because he "lived in the same place of residence and that the add[ed] party would be represented by the same counsel under the auto insurance policy[.]" Appellants urged that Walter would not be prejudiced by the amendment to the claim

[3] Pursuant to Rule 2-341(a), "[a] party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date." If a party fails to abide by Rule 2-341(a) when amending its complaint, "[a] party may file an amendment to a pleading . . . only with leave of court." Md. Rule 2-341(b).

In this case, the circuit court entered a scheduling order on August 4, 2016, set a pretrial conference for November 30, 2016, and set trial for October 13, 2017. The order required the parties to file any amended pleadings on or before Monday, October 3, 2016, 60 days prior to the pretrial conference. Appellants did not file their amended complaint until October 24, 2016, running afoul of the mandates in the scheduling order. Thus, the amendment was not one of right under Rule 2-341(a), but rather, required leave of court.

because "[t]he facts remain the same."

Joan countered that Appellants were not seeking to simply correct a spelling mistake or "misnomer," but sought to add a different party after the statute of limitations had already run. She stated that the police report "clearly identifie[d] Walter Clifford Wilcox as the operator of the involved vehicle." Because Appellants were in possession of the police report since 2013, the failure to file suit against Walter as the driver was Appellants' fault. Although the police report erroneously "blended the names of the co-lessees in the 'Owner' box, setting forth Joan Walter Wilcox – which probably should have been written 'Joan/Walter Wilcox' or 'Joan and Walter Wilcox[,]'" the operator of the vehicle was clearly identified. Joan maintained that the proposed addition of Walter to the complaint could not relate back to the original complaint because Walter was not an "original party to this action." If Appellants had "misnamed 'Jean[,]'" Joan argued, "an amendment might relate back."

Joan filed a contemporaneous motion for summary judgment, reiterating that it was her son, Walter, who was operating the vehicle on the day of the accident. She attached several affidavits in support of her motion, including her own as well as one by Walter and another by a GEICO claims examiner. In Walter's affidavit, he attested to the following:

> 2. That a Police Report was prepared in connection with the subject accident which correctly identifies me as the operator of a 2012 Honda Accord. . . . The Police report incorrectly lists "Joan Walter Wilcox" as the owner of the vehicle. That entry is incorrect. The vehicle was leased, and I believe it should read "Joan **and** Walter Wilcox", if the intent was to identify the lessees of the vehicle, as my mother's name is Joan Bryan Wilcox.

> 3. That the 2012 Honda Accord I was operating in the accident was leased from Ourisman Honda in Bethesda, Maryland. My mother's only connection to the vehicle is that she co-signed on the lease, and it was added to our family automobile insurance policy with GEICO. I had exclusive possession and control of the vehicle, and operated it on a daily basis. My mother never drove the car.

(Emphasis in original).

Appellants responded, contending that Walter and GEICO had been "on notice of the claim, lawsuit, and at all times aware of the matters at issue." Appellants further argued that Walter and GEICO were on notice of the incorrect nomenclature in the police report, but "failed to make any attempts to correct the mistake on the police report in which they knew that [Appellants] would reasonably rely[,]" which, according to Appellants "wreak[ed of] bad faith." Appellants additionally requested that if the court was inclined to grant summary judgment to Joan, that Appellants should be permitted to "amend the Complaint adding or correcting the name, from Joan 'Walter' Wilcox to Walter 'Clifford' Wilcox" as the proper party.

Pursuant to a motion filed by Joan on October 14, 2016, the circuit court consolidated the cases on December 1.

C. The Hearing on the Motion to Amend the Complaint

On January 18, 2017, the parties appeared with counsel for a hearing on Appellants' motion for leave to amend, as well as Joan's motion for summary judgment. Appellants' counsel contended that due to the confusing nature of the police report, it was impossible to discern whether Joan and Walter were the same person, and that it was not Appellants'

intent to add a party, but merely to correct a mistake. She insisted that Walter "knew about it when the suit was filed June 20th so it can relate back." She also argued that Appellants did not know that Joan was not the driver of the car within the limitations period, and that they did not receive answers to the interrogatories until after the limitations period had expired.

Counsel for Joan responded that regardless of the timing of the answers to interrogatories, Appellants had the police report "from the beginning" and that Walter was identified "front and center . . . as the driver and [the police] issued a citation against him and it's in the first box." Counsel for Appellants agreed that the police report showed Walter as the driver, but insisted that the police report also contained a clerical error, showing "Joan Walter Wilcox right underneath."

The court ultimately found that it was clear from the answers and interrogatories that were filed that

> Joan Wilcox was not the operator of the vehicle. I see that by the one, the answer which was given [that] said they didn't notify the right party. The interrogatories which were sent back in September clearly show that she was not the driver and shows that Walter Clifford Wilcox was the driver.

The court gave significant weight to the accident report:

> [M]ost importantly as [Appellants] ha[ve] conceded completely and when the Court reads the motor vehicle accident report that Walter Clifford Wilcox was the driver of the vehicle. That is clear, that was given, [they] had it a long time ago from that end.

Relying on this Court's decision in *Williams v. Hoffman Balancing Techniques, Ltd.*, 139 Md. App. 339 (2001), the court opined as follows:

> On several occasions the general rule with respect to relation back of an amended party has been stated to be that if it corrects the name of an original party it relates back. If a new party is added, it does not relate back. . . .
>
> While simply stated the application of the rules is often difficult. Timely notice to an intended party of the parties [sic] intended status is critically important. Whether an amendment of a misnomer should be permitted depends upon whether the correct person, however misnamed was put on notice of the pending suit. . . . The critical factors are who was the appropriate defendant and whether the party had timely notice of its intended status as a defendant.

The court concluded that "[t]his is a new party, and as such, the Court cannot allow the amendment to be made. The motion for leave to amend the complaint[] . . . is denied[.]" The court reasoned that, "other than the fact that there is a[police] report, I have no other notice that [Walter] knew about this matter prior to that matter. I don't have that in before the Court."

After denying the motion to amend the complaint, the court considered Joan's motion for summary judgment. The court agreed with Joan that there was no basis for a negligent entrustment case and summary judgment was appropriate because the court found that Joan was not driving the car at the time.

Appellants filed a motion to reconsider on January 30, 2017, which the court denied on March 20, 2017. On March 30, 2017, Appellants noted a timely appeal to this Court on the denial of their motion for leave to amend their complaint.

DISCUSSION[4]

I.

Relation Back

Before this Court, Appellants argue that their amended complaint merely attempted to correct a misnomer resulting from a clerical error contained in the police report that caused them to believe that Joan and Walter were the same person. Appellants contend

[4] Joan asks us to strike certain portions of Appellants' record extract (and references thereto contained in the briefing) that were not included in the physical record before the trial court as violative of Maryland Rule 8-501. Appellants admit that their "brief focuses on distinct issues not addressed by the Circuit Court and facts not developed in the record by Walter Wilcox[,] (i.e. prejudice and lack of timely notice)."

On October 14, 2013—four days after the accident—Appellants' counsel "contacted the parties and requested insurance information" in the form of two separate letters addressed to "Joan Walter Wilcox" and "Walter Wilcox." Subsequently, on October 18, 2013, Appellants sent two letters to a GEICO claims agent indicating that Appellants had been injured and that "Joan Wilcox" was "Your Insured[.]" Appellants contend that these four letters (collectively "the Letters") constituted "pre-suit notice" to Walter and GEICO. Our review of the record on appeal shows that while these letters appear in the record extract, they do not appear in the record. Furthermore, nothing in the record, including the transcripts, indicates that the court had the opportunity to consider the Letters.

Under the Maryland Rules, "[t]he record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" 8-501(c). The record extract must be made solely from the record itself, and "shall reproduce verbatim the parts of the record that are included." 8-501(g). "[P]arties are not entitled to supplement the record by inserting into their record extract such foreign matter as they may deem advisable." *Cmty. Realty Co., Inc. v. Siskos*, 31 Md. App. 99, 102 (1976). While Rule 8-501(m) permits dismissal of an appeal for non-compliance, we will exercise our discretion to strike the portions of Appellants' brief that reference materials that appear in the record extract but not in the record. *See Hosain v. Malik*, 108 Md. App. 284, 294 (1996). Accordingly, we will not consider the Letters in deciding this appeal. (Nonetheless, it is not clear how the Letters—to both "Joan Walter Wilcox" *and* "Walter Wilcox"—would support Appellants' case as they appear to demonstrate that at the time of the accident, Appellants were aware that Joan and Walter were two distinct people.)

that Walter's admission that the police report "blended" his name with his mother's name proves that their filing error was not only reasonable but "inconsequential" and "beyond their control."

Appellants further assert that Walter had notice of the impending suit because the same attorneys who represented his mother, Joan, opposed the proposed motion to add Walter to the complaint. Moreover, Appellants contend that Walter's "participation in the pre-litigation and litigation proceedings" by way of his affidavit necessarily informed him of his status as the intended defendant. This participation, Appellants aver, combined with the "closely related" "identity and interest[s] of the parties" permits an inference that "the institution of action against one served to provide notice of the litigation to the other."

Appellants also argue that they did not seek to add Walter to the complaint, but merely sought to substitute him for Joan. Appellants contend that Walter made no showing that he would be prejudiced by substituting him into the complaint, and allowing him to skirt liability on this theory would deny them "justice and fairness."[5] Finally, Appellants assert that their knowledge of the intended defendant is irrelevant and we need only inquire as to whether Walter had knowledge that he was the intended defendant.

Joan counters that Appellants should not be permitted to circumvent the statute of

[5] Appellants contend that the circuit court failed to allow them to be fully heard and to develop a record. A review of the transcript reveals that the trial court, on numerous occasions, asked Appellants' counsel whether there was "anything else" she wanted the court to hear or any other cases she wanted the court to consider. We believe Appellants' argument on this issue to be meritless, as Appellants were given sufficient time to present their case and note any objections. *See Madaio v. Madaio*, 256 Md. 80, 83-84 (1969).

limitations to add Walter to the complaint because Appellants admitted that they had the police report identifying Walter "as the driver[] . . . 'from the beginning.'" Joan contends that Appellants' proposed amendment sought to add a new defendant to the complaint, not merely to correct a misnomer or "misnaming mistake." She points out that Appellants did not sue using what they continually describe as the 'blended name' of Joan Walter Wilcox." Instead, Joan asserts, Appellants ignored the fact that Walter was identified in the police report as the driver and sued Joan.

Joan also maintains that Walter was not placed on notice that he was the intended defendant because there was no attorney-client relationship between him and Joan's attorney at the time of the suit. Joan avers that it was mere speculation that Walter would have known about the suit due to his familial relationship with her. Finally, Joan argues that Walter was not required to demonstrate a lack of prejudice, as the absence of prejudice is not a "discrete and separate requirement in misnomer cases" and is "addressed only in the context of whether the intended party of the amended complaint received notice of the lawsuit within the limitations period[.]"

We review the trial court's factual findings for clear error, *Smith v. Gehring*, 64 Md. App. 359, 369 (1985), and review its ultimate decision whether to allow a party leave to amend its complaint for abuse of discretion.[6] *Schmerling v. Injured Workers' Ins. Fund*,

[6] As we explained in footnote 4, *supra*, Appellants failed to file their motion for leave to amend their complaint by the date specified in the scheduling order. Therefore, their proposed amendment to add Walter to the complaint was subject to the circuit court granting them leave to amend under Rule 2-341(b)—not an amendment of right under Rule

368 Md. 434, 443-44 (2002) (citations omitted); *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217 (1996). A court abuses its discretion when it renders a decision that is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

Under Maryland law, a civil action "shall be filed within three years from the date it accrues[.]" Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings ("CJP"), § 5-101. Failure to file a timely lawsuit—absent an exception authorized by statute or case law—bars the suit from proceeding on the merits. *Id.*; *Reed v. Sweeney*, 62

2-341(a).

Appellants contend that we should review the amendment issue *de novo*. Appellants misstate the posture of this case, asserting that the court's denial of their motion for leave to amend was "tantamount to that of a motion for summary judgment[.]" A review of the record before us, however, shows that the trial court denied Appellants' motion for leave to amend prior to consideration of Appellee's motion for summary judgment. Further, Appellants' sweeping statement that we should treat a denial of a motion for leave to amend as a pure question of law is also against the weight of Maryland authority specifying that the decision to allow or forbid a party to amend its complaint—after the time to amend a complaint pursuant to Rule 2-341(a) has expired—is within the trial judge's sound discretion. *See Pines Point Marina v. Rehak*, 406 Md. 613, 641 n.10 (2008) ("The determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge." (quoting *Schmerling*, 368 Md. at 443-44)); *Robertson v. Davis*, 271 Md. 708, 710 (1974) (discussing Rule 320, the predecessor of Rule 2-341, and stating the decision to grant leave to amend is "within the sound discretion of the trial judge"). *But see Williams*, 139 Md. App. at 358 (noting that a motion to strike an amendment of right on limitation grounds was decided by the trial court not on "the ground that it was exercising its discretion to permit or not permit an amendment[,]" but "that the amendment was, as a matter of law, barred by limitations. . . . The amendment was accomplished; the question is the consequence of the amendment. As a result, the standard of review is tantamount to that of a motion for summary judgment[,]" which is reviewed *de novo*.).

Md. App. 231, 236 (1985).

A moving party may amend a timely filed complaint "without leave of court by the date set forth in a scheduling order." Md. Rule 2-341(a). Once the operative date in a scheduling order has passed, a party seeking to file an amendment may do so only with leave of court. Md. Rule 2-341(b). When amending a complaint, a party may seek

> to . . . (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change.

Md. Rule 2-341(c). "Amendments shall be freely allowed when justice so permits." *Id.* Once the statute of limitations has run, however, a party is generally barred from adding a new defendant to the complaint. *See Nam v. Montgomery Cty.*, 127 Md. App. 172, 186 (1999).

The doctrine of "relation back" may apply to permit an amendment after the expiration of the applicable statute of limitations where "the factual situation remains essentially the same after the amendment as it was before it[.]" *Id; Gehring*, 64 Md. App. at 364 (citing *Crowe v. Houseworth*, 272 Md. 481, 458 (1974)). "In other words, if an amendment merely corrects the name of an original party, as opposed to adding a new party, the doctrine is applicable. Conversely, if a new defendant is added, the doctrine of relation back does not apply." *Nam,* 127 Md. App. at 186. The principle behind the relation back doctrine is inapplicable to a new defendant "because *any* cause of action as to that party is, of course, a new cause of action. Thus, under Maryland law, absent misnomer, relation back is not permitted when an amendment is sought to add a new defendant."

Grand-Pierre v. Montgomery County, 97 Md. App. 170, 176 (1993) (citation omitted) (emphasis in original). As Judge Adkins observed in *Gehring*, "The problem of new defendant versus mere misnomer resolves itself into a question of who was intended to be sued, and whether that party had timely knowledge of the action." 64 Md. App. at 364.

The Court of Appeals has explained that a defendant's notice is a vital component of the relation back doctrine because, when a defendant has notice, "the reasons for the statute of limitations do not exist, and we are of the opinion that a liberal rule should be applied." *Crowe*, 272 Md. at 489 (quoting *N.Y. Cent. & H.R.R. Co. v. Kinney*, 260 U.S. 340, 346 (1922)). Thus, "[t]imely notice to an intended party of that party's intended status is critically important[]" to determining whether an amended complaint adding a defendant after the expiration of the limitations period should relate back to a prior filing. *Williams*, 139 Md. App. at 365. Without timely notice to an intended defendant within the limitations period, an amended complaint *cannot* relate back to the original complaint. *See Warfel v. Brady*, 95 Md. App. 1, 11 (1993) (noting that the decision as to whether an amended complaint should relate back "depends upon whether the correct person, however, misnamed, was put on notice of the pending suit"). Notice to an intended defendant may be accomplished without service of process, however. *Williams*, 139 Md. App. at 365 (citing *Nam*, 127 Md. App. at 186). As the Court of Appeals has explained, a party's notice may be actual—either express or implied—or constructive, presumed by law. *Poffenberger v. Risser*, 290 Md. 631, 363-37 (1981) (citing *Baltimore v. Whittington*, 78 Md. 231, 235-36 (1893)).

The two considerations critical to determining whether an amended complaint relates back are "(1) who was the appropriate defendant, and (2) whether that party had timely notice of its intended status as defendant." *Williams*, 139 Md. App. at 365 (citation omitted). An equally important extension of the inquiry into whether the intended defendant had timely notice is "whether the 'correct' party would be unfairly prejudiced" by the amended complaint. *Id.*; *see also Greentree v. Feritta*, 338 Md. 621, 625 n.5 (1995) ("The effect of an amended complaint ordinarily depends upon whether the 'correct' defendant was intended to be sued originally and whether the 'correct' defendant would be unfairly prejudiced by allowing the amendment to relate back to the time of the filing of the original complaint." (Citations omitted)). The question, therefore, in this case is whether Walter "had sufficient notice of the pending action before the running of limitations to satisfy the purpose of limitations—the protection of defendants from stale claims." *Gehring*, 64 Md. App. at 368.[7]

In *Western Union Telegraph Co. of Baltimore City v. State Use of Nelson*, the Court of Appeals held that because the facts surrounding the lawsuit demonstrated that the "added" defendant should have known of his status as the intended defendant, the amended complaint related back to the original complaint. 82 Md. 293, 33 A. 763, 764 (1896).

[7] Appellants point us to several cases decided by federal courts applying the relation back doctrine expressly contained in the Federal Rules of Civil Procedure 15(c). As this Court has previously recognized, however, these federal cases have "limited value because Federal Rule 15(c) contains an express relation back provision, while the Maryland rules do not." *Williams*, 139 Md. App. at 371. Maryland's treatment of the relation back principle is narrower than its federal counterpart. *Id.* at 374.

There, the plaintiff brought suit against "The Western Union Telegraph Company," a corporation based in New York. *Id.* at 763. After the relevant statute of limitations had run, however, the plaintiff established that "The Western Union Telegraph Company of Baltimore City" was the intended defendant. *Id.* at 763-64. Summons was served on Richard Bloxham, the manager of both corporations. *Id.* at 763. Western Union Telegraph Company of Baltimore City moved to dismiss the case on statute of limitation grounds, contending that "by the amendment a new party was made, which was, in fact, so far as it was concerned, the equivalent of bringing a new suit," and was not an attempt to correct a misnomer. *Id.* at 764. The trial court disagreed, and allowed the amendment "not for the purpose of adding a new party, but to correct the name of a party actually summoned[.]" *Id.*

The Court of Appeals agreed with the trial court, holding that the Maryland corporation was the intended defendant to be sued and that because Bloxham was the manager of both companies, Western Union Telegraph Company of Baltimore City was on notice of the suit. *Id.* The Court also noted that Western Union was not prejudiced by the amendment because Bloxham

> knew, or ought to have known, that the telegraph poles and wires in that locality were owned or controlled by the Maryland company, and that the New York company had none in that vicinity. He therefore must have known that it was the Maryland company that was intended to be sued, and it did not require much mental acuteness to enable him to understand that the misnomer occurred by reason of the very slight difference in the two names.

Id.

We considered a similar set of facts in *Smith v. Gehring*, where an amended complaint related back to the original complaint because of the close relationship between the party sued and the "correct" defendant. 64 Md. App. at 359. There, a woman was sued in conjunction with a land dispute, naming her, "E. June Smith, guardian and next friend of Jamie, heir-at-law and terre-tenant" as one of the defendants. *Id.* at 362. After E. June Smith responded, stating that she had no interest in the property, the plaintiff amended the complaint to add "Jamie[,]" the minor daughter of E. June Smith. *Id.* at 363. Although the statute of limitations had passed before this amendment, the trial court rejected Jamie's statute-of-limitations defense. *Id.* Jamie noted her timely appeal to this Court, asserting that the amended complaint did not relate back to the original filing because she was not named as a defendant in the original complaint. *Id.* at 363-64.

On appeal, this Court reasoned that, because Jamie "was specifically named in [the original pleading] documents, . . . [i]t is obvious that she was intended as a defendant, even though [the plaintiff] sued her through her guardian and next friend rather than individually." *Id.* at 367. Regarding notice to Jamie, we explained that "[u]nder certain circumstances notice to a fiduciary such as a guardian is sufficient notice to the ward, at least where there is no conflict between their respective positions. In the instant case the writs were served on [Jamie]'s court-appointed guardian." *Id.* at 368. (Internal citation omitted). We also noted that the trial judge, in making his decision that Jamie was on notice of the pending suit,

> might have concluded that the posting was sufficient to provide the requisite

> notice to [Jamie]. He might also have concluded that [Jamie], who was seventeen years old when the proceedings were commenced, and who lived with her mother, was made fully aware of the matter by her mother, but the record is silent as to that.

Id. Given the facts in the record, we concluded that the trial judge's factual findings were not clearly erroneous, and affirmed its "determination as to misnomer, and hence, his conclusion that [the plaintiff]'s claim was not barred by limitations[.]" *Id.* at 369.

More recently, in *Williams v. Hofmann Balancing*, this Court held that an amended complaint related back to the original complaint because of the intimate nature of the corporate entities sued and because, given the comity of representation, service of process to the attorneys of one corporate entity served as notice of the claim to the other. 139 Md. App. at 339. In that case, Williams was injured while using a tire-mounting system and sued Lakeshore Exxon, the owner of the machine, in the Circuit Court for Anne Arundel County. *Id.* at 343. Lakeshore Exxon filed a third-party complaint against "Perfect Equipment Corporation, t/a Hoffman U.S.A.," alleging that Perfect Equipment was the manufacturer and therefore liable for the injury. *Id.* One day before the statute of limitations ran, Williams filed a second complaint, this time in the Circuit Court for Baltimore City against Hofmann Balancing Techniques, Automotive Service Equipment ("ASE"), and Perfect Hofmann U.S.A., alleging that Perfect Hofmann was the manufacturer of the machine. *Id.* at 343. ASE filed a third-party complaint against Perfect Equipment in the Baltimore City case. *Id.* Soon thereafter, the court granted ASE's unopposed motion to dismiss, which eliminated Perfect Equipment as a party in the lawsuit.

Id. at 344. Subsequently, the case filed in Anne Arundel County against Lakeshore Exxon and Perfect Equipment was transferred to Baltimore City where the circuit court consolidated it with the later filed action before Williams eventually settled the original claim and dismissed it voluntarily with prejudice. *Id.* at 344. The case again proceeded without Perfect Equipment.

During discovery, Williams deposed Perfect Hofmann U.S.A.'s corporate designee, who testified that Perfect Hofmann U.S.A. did not exist at the time of the sale in 1990, and that a corporate division of Perfect Equipment, then known as "Perfect Hofmann," had sold the machine. *Id.* at 344-345. On other occasions throughout the litigation, however, counsel for the various companies communicated that it was Hofmann Balancing and Perfect Hoffman U.S.A. that had sold the machine. *Id.* at 345-46. During discovery, though, a series of letters between counsel established that Perfect Equipment and Hofmann Balancing were partners in a partnership known as "Perfect Hofmann, U.S.A.," which sold the machine. *Id.* at 347. Relying on this information, Williams filed a motion to amend the complaint—roughly five years after the cause of action arose—naming Hofmann Balancing and "Perfect Equipment Corporation d/b/a Perfect Hofmann U.S.A." as defendants. *Id.* at 348. Perfect Equipment filed a motion to strike the amended complaint, arguing that the amendment did not seek to correct a misnomer, but sought to add a new party and thus did not relate back. *Id.* at 348. Likewise, Hofmann Balancing and Perfect Hofmann U.S.A. filed motions to strike the amendment, as well as motions to dismiss. *Id.* at 349. They also asserted that Perfect Equipment had sold the machine in

question. *Id.* Ultimately, the trial court granted the motions to strike and found that the amended complaint did not relate back to the original complaint. *Id.* at 352.

On appeal, this Court reversed, observing that "[i]t is clear that [the plaintiff] intended to sue the seller of the machine in the Baltimore City action when it named Hofmann Balancing Techniques and Perfect Hofmann U.S.A. as defendants." *Id.* at 362. We reasoned that Perfect Equipment "received imputed, if not actual, notice of [Williams'] intent" because Williams had served Perfect Hofmann U.S.A.'s agents, who were also "acting as counsel for Perfect Equipment Corporation and within the scope of that representation." *Id.* at 363. After analyzing several cases, including *Western Union Telegraph Co.*, *supra*, and *Smith v. Gehring*, *supra*, we concluded "that service of the complaint" on Perfect Equipment's attorneys "constituted notice to Perfect Equipment Corporation of [Williams'] intention to sue it as seller of the machine." *Id.* at 370 (citations omitted). Moreover, this Court concluded that, because of the intimate corporate relationship between the parties, "there was no showing of unfair prejudice by Perfect Equipment Corporation." *Id.* at 371.

In contrast to the foregoing cases, we held in *Nam v. Montgomery County* that an amended complaint did not relate back to the original complaint that the Nams had filed in a wrongful death suit against certain healthcare providers. 127 Md. App. at 186-87. Mrs. Nam visited a health clinic during the later stages of her pregnancy on December 23, 1991, with complaints of a fever, nausea, and poor appetite. *Id.* at 176. Ms. James, a nurse clinician, diagnosed Mrs. Nam with the flu. *Id.* Sometime that night, Mrs. Nam's husband

assisted her to the bathroom and "noticed blood spots on her underwear." *Id.* The Nams rushed to the hospital where their child was born on December 24, 1991, but was in cardiac arrest and not breathing. *Id.* The child remained in a vegetative state until her death in September 1992. On August 12, 1994, the Nams brought suit against the county, the hospital, and a medical associates group. *Id.* at 177. One week before the statute of limitations expired, the Nams amended their complaint, alleging that "John Doe, M.D.," a county employee, negligently treated Mrs. Nam at the health clinic the day before she gave birth. *Id.* In June 1995, the county identified Lizzie James, R.N., as an employee who had contact with Mrs. Nam in the emergency room and diagnosed her. *Id.* Roughly eight months later, the Nams amended their complaint to substitute Ms. James for John Doe. *Id.* at 179, 187. The panel chairman the Health Claims Arbitration Office ("HCAO") found that the amended complaint did not relate back, as the Nams had attempted to substitute "an entirely new defendant as the sole remaining defendant in this case." *Id.* at 179.

On appeal, the Nams contended that the substitution of Ms. James for "John Doe, M.D." merely sought to correct "the true name" of the health provider and related back to the original filing. *Id.* at 181. This Court, applying the two-part "relation back" test held that the second amended complaint did not relate back to the first. *Id.* at 186. The Court first noted that "[a]lthough the Nams clearly initially intended to sue the health care provider who treated Mrs. Nam," they "waited almost eight months between learning of John Doe's identity and amending their pleadings." *Id.* 187. Regarding Ms. James's alleged notice of the pending claim, the Court rejected the Nams' argument that Ms. James

had notice of their intent to sue because "Ms. James was never served with notice of process until nearly four and one-half years after the incident precipitating the lawsuit. No attorney entered an appearance on her behalf. There is no evidence that anyone was negotiating with the Nams on her behalf." *Id.* at 187. The Court noted that although her employer, the county, was on notice, that alone did "not suffice to eliminate the need for Ms. James to be sued within the period of limitations and for there to be service of process upon her." *Id.* at 188. Moreover, and of heightened relevance to the instant case, the Court noted:

> [T]heir contention is like saying that notice to an automobile liability carrier of a claim against its assured would make unnecessary the filing of a suit against that assured within the period of limitations. Such is not the law. We hold that it was necessary for Ms. James to be sued within the period of limitations. She was not. The John Doe filing does not suffice. This was no misnomer, or correction of a previously identified party, as the HCAO panel chairman correctly held.

Id. at 188.

Recently, in *Hansberger v. Smith*, 229 Md. App. 1 (2016), this Court considered whether a teen, injured at an unauthorized party where drinking occurred, could amend his claim after the expiration of the statute of limitations to add the host's mother as well as a commercial holding company that owned the property where the party occurred. On July 12, 2008, an underage male—Travis Riley—hosted a "field party" at his parent's property in Frederick County. *Id.* at 9. Riley ejected the partygoers after a fight broke out, and Bradley Smith, who was present at the party, offered to some partygoers to accompany him to continue the party at the Smith farm—which was actually owned by Jefferson Valley, LLC—roughly three miles from the Riley residence. *Id.* at 10. Two young men, Michael

Hansberger and Ronald Lewis, went to the Smith party, where they both consumed alcohol. *Id.* at 11. At some point, a fight broke out, and some partygoers began throwing rocks, bricks, and other projectiles at one another. *Id.* During the affray, Hansberger was struck in the head with a piece of concrete that Lewis threw and sustained injuries. *Id.* Neither the Smiths, nor the owners of the farm, had knowledge or approved of the party. *Id.*

On July 12, 2011, three years from the date of the incident, Hansberger filed suit against Ronald Lewis, Bradley Smith and his father, the Rileys, and Jefferson Valley, LLC. *Id.* at 11-12. On September 3, 2013, Hansberger filed a motion to amend his complaint to add Bradley Smith's mother, Catherine Smith, as well as a holding company that also owned the Smith farm. *Id.* at 12. Catherine Smith and the holding company filed motions to dismiss on limitation grounds, which the court granted, and Hansberger appealed. *Id.* at 13. This Court affirmed the dismissal of the later-added parties, holding that Catherine Smith and the holding company were new defendants, and therefore could not be added to the action "'after the limitations period has expired except to correct the name of a defendant.'" *Id.* at 23 (quoting *Talbott v. Gegenheimer*, 237 Md. 62, 63 (1964)) (additional citation omitted). This Court further explained that "Hansberger was not correcting a misnomer of a defendant who already had notice of the suit. Instead, he sought to add several new defendants—*parties that, with due diligence, he could have included in his original complaint.*" *Id.* at 23-24 (emphasis added).

In *Talbott*, 237 Md. at 62, the Court of Appeals considered an almost identical fact pattern as the present case. There, Talbott, a passenger in a vehicle driven by Higgins,

collided with another car driven by Mary Gegenheimer. *Id.* at 63. Talbott sued both Higgins and Harold Gegenheimer—the husband of Mary Gegenheimer—in circuit court. *Id.* After the passage of three years from the date of the accident, Talbott discovered that Mary Gegenheimer was the driver of the vehicle, and amended the complaint to substitute Mary Gegenheimer for Harold Gegenheimer. *Id.* Mary filed a motion for summary judgment, which the court granted. *Id.* On appeal, the Court of Appeals held that "[t]his was not the case of a mere misnomer, as in *Western Union*[, 82 Md. at 293], nor was it a mere change in the theory of liability against the same party." *Id.* (additional citation omitted). The Court reasoned that Mary was "an entirely new party, who was not charged with liability on any theory" in the original complaint. *Id.* at 63-64. Therefore, the Court held, the grant of the motion for summary judgment on account of the lapse of the statute of limitations was proper. *Id.* at 64.

Back in the present case, we hold that Appellants' motion to amend their complaint was tantamount to an attempt to add a new defendant to the proceedings, and not merely an attempt to correct a misnomer. As to the first consideration—who was the appropriate party—Appellants had knowledge immediately after the date of the accident that Walter, not Joan, was the driver of the vehicle in question. Despite their names being "blended" in the vehicle owner box of the accident report, the report clearly named Walter as the driver of the vehicle. Appellants' counsel admitted during the hearing that they had this report "from the beginning." Therefore Appellants could have, through the exercise of due

diligence, included Walter in the original complaint.[8] *See Hansberger*, 229 Md. App. at 23-24. Like the plaintiffs in *Nam*, Appellants possessed documentation identifying the correct defendant long before attempting to amend their complaint to add him as a defendant. *See* 127 Md. App. at 186-87. Appellants behavior here "clearly evinces an intent not to sue" Walter as the driver of the vehicle. *See id.* at 186.

As for Walter's notice of the suit, Appellants rely mainly on the fact that Walter lived with his mother at the time of the accident and the familial relationship between the two, suggesting that notice to Joan suffices as notice to Walter. The relationship between Walter and Joan is distinguishable from the parent-child relationship in *Gehring*, in which the mother was the daughter's guardian and next friend. 64 Md. App. at 359. The record does not demonstrate that Walter and Joan share a special legal relationship—such as guardian and ward—to render notice to one party as notice to the other. *Id.* at 368-69. Moreover, as the Court of Appeals held in *Talbott*, notice to the owner of the vehicle is not sufficient to confer notice on the driver, even if the owner and driver are husband and wife. 237 Md. at 63. This case is also distinguishable from *Western Union Telegraph Co.* in which the plaintiffs served process on the manager of two similarly named corporations.

[8] We also note that Appellants filed a motion to "substitute and correct" the original complaint, but in the motion, Appellants requested that they be granted leave "to file an amended complaint *adding* Walter Clifford Wilcox to the present cause of action[.]" (Emphasis added). Joan's counsel opposed this motion, and filed a separate motion for summary judgment, in which Walter provided a written affidavit stating that he was the driver of the vehicle. Appellants then filed a motion in opposition to the motion for summary judgment, attempting to keep Joan in the suit as the defendant, *after* receiving unambiguous notice that Joan was *not* the correct defendant.

W. Union. Tel. Co., 82 Md. 293, 33 A. at 764. We conclude that, while the hearing court in this case admittedly *could* have decided that Walter living with Joan put Walter on notice, we do not discern clear error in the court's finding that he was not on notice. *See Gehring*, 64 Md. App. at 369.

Finally, Appellants' argument that notification of a claim against Joan functions as notification to Walter because of their shared GEICO policy is misplaced. As we stated in *Nam*, for purposes of a misnomer/misjoinder inquiry, providing "notice to an automobile liability carrier of a claim against its assured" does not "make unnecessary the filing of a suit against that assured within the period of limitations." 127 Md. App. at 188. *See also Ferguson v. Loder*, 186 Md. App. 707, 727-28 (2009) (holding that amended complaint replacing a state employee in an automobile negligence action with "the State of Maryland" after the statute of limitations had expired did not relate back).

For the forgoing reasons, we hold that the circuit court's factual finding that Walter did not have notice of his status as the intended defendant was not clearly erroneous. We further hold that the court did not abuse its discretion by denying Appellants' motion to amend their complaint to add a new defendant after the applicable statute of limitations had run because the amendment did not relate back to the original complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.