

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1390

September Term, 2015

BALTIMORE COUNTY DEPARTMENT OF
PUBLIC WORKS, ET AL.

v.

STATE OF MARYLAND
COMMISSION ON CIVIL RIGHTS

Berger,
Nazarian,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 16, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This case involves a petition for enforcement of administrative subpoena, filed in the Circuit Court for Baltimore City by the State of Maryland Commission on Civil Rights, appellee (“the Commission”), seeking production of the personnel files of certain employees of Baltimore County, Maryland, deployed to the County’s Department of Public Works. The petition filed by the Commission named the Baltimore County Department of Public Works (“the DPW”) as the sole respondent. Following the filing of the Commission’s petition, the DPW moved to dismiss the petition, arguing, *inter alia*, that the circuit court lacked jurisdiction over the DPW because the DPW is not an entity subject to suit. The Commission moved to amend its petition to substitute Baltimore County, Maryland (“the County”) in place of the DPW. Following a hearing, the circuit court denied the DPW’s motion to dismiss, and proceeded to grant the Commission’s motion to amend and enter judgment in favor of the Commission on the merits of its presumably amended petition.

On appeal, the DPW and the County present a single question for our review:

Whether the Circuit Court erroneously granted [the Commission’s] Petition for Enforcement and erroneously ordered DPW to submit “a copy of the complete personnel file of Bobbie Rodriguez and a copy of the complete person[nel] files of all employees supervised by Bobbie Rodriguez from January, 2013 through May, 2014” without affording DPW or the County the opportunity to answer the Petitions, to conduct discovery, to move for summary judgment, or to have a hearing on the merits after receiving proper notice.

As explained herein, we shall hold that the circuit court erred by denying the DPW's motion to dismiss. As such, we will not reach the merits of the other issues raised by the DPW or the County.

FACTS AND PROCEEDINGS

The Commission initiated the investigation which ultimately gave rise to the instant appeal after receiving a complaint on August 28, 2013 from Donna Alston, an employee of the County, working in its DPW. Alston alleged that the DPW engaged in unlawful racial discrimination and retaliation against her.

During its investigation, the Commission sought to obtain certain documents from the DPW. Specifically, the Commission sought the personnel files of Bobbie Rodriguez, Alston's supervisor, as well as the personnel files of all other employees supervised by Bobbie Rodriguez from January 2013 through May 2014. The Commission issued its initial subpoena to Edward C. Adams, Jr., Director of the DPW, on January 20, 2015. The DPW filed an objection on behalf of Mr. Adams, noting that the personnel files were maintained by the Baltimore County Office of Human Resources, not by the DPW. The objection further asserted that the personnel files were private and confidential and that none of the employees had consented to the release of the files. The objection additionally raised arguments relating to the relevance of the files as well as the Commission's need for the files. Following the DPW's objection, the Commission issued a subsequent subpoena to

George E. Gay, Director of the Baltimore County Office of Human Resources. The County filed a second objection which raised several of the same issues as had been raised in the initial objection.

On May 13, 2015, the Commission filed a petition for enforcement of the administrative subpoena (“the Petition”) in the Circuit Court for Baltimore City. In the Petition, the Commission named the DPW as the sole respondent and custodian of the personnel files. The DPW was served on May 29, 2015.

The DPW filed a combined motion to dismiss, motion to transfer venue, request for hearing, and supporting memorandum on June 18, 2015. The motion asserted that the DPW was not an entity subject to suit or subpoena.¹ On June 25, 2015, the circuit court sent a civil motion hearing notice indicating that a hearing was scheduled for July 31, 2015.

On July 2, 2015, the Commission filed a motion to amend the Petition as well as a response in opposition to the DPW’s motion to dismiss. The Commission sought to substitute the name Baltimore County in place of the DPW. On July 20, 2015, the DPW filed a response to the Commission’s motion to amend the Petition. On July 27, 2015, the Commission filed an amended petition (“the Amended Petition”). In the Amended Petition,

¹ The motion asserted that the DPW was not a legally cognizable entity, subject to suit or subpoena in its own name, and that rather, Section 103 of the Baltimore County Charter states that “[t]he corporate name shall be ‘Baltimore County, Maryland,’ and it shall be thus designated in all actions and proceedings touching its rights, boundaries, liabilities, and duties.” The DPW further asserted that Baltimore City was not the proper venue for the action and that Baltimore City was not a convenient forum.

the DPW was crossed off as the respondent and Baltimore County was listed as the respondent.

Counsel for the DPW and the County, as well as counsel for the Commission, appeared for a hearing in the Circuit Court for Baltimore City on July 31, 2015. Following the hearing, the circuit court issued an order on August 4, 2015 which addressed the merits of the Petition as well as the motions filed by the DPW. The court denied the DPW's motion to dismiss as well as the DPW's motion to transfer venue. The court's memorandum opinion and order listed "Baltimore City Department of Public Works" as the sole respondent in the case caption. The circuit court granted the Commission's motion to amend the Petition, commenting that "[i]t is well-established in Maryland that leave to amend complaints should be granted freely to serve the ends of justice and that it is the rare situation in which a court should not grant leave to amend." The court noted that the amendment did "not introduce new facts or change the case." The circuit court ordered that the Petition was granted and ordered "that Respondent submit . . . a copy of the complete personnel file of Bobbie Rodriguez and a copy of the complete person[nel] files of all employees supervised by Bobbie Rodriguez from January 2013 through May 2014."²

² The circuit court further explained its reasoning with respect to the DPW's motion to transfer venue as well as with respect to the merits of the Petition. In light of our determination that the circuit court erred by permitting the amendment of the Petition and by denying the DPW's motion to dismiss, the circuit court's reasoning with respect to the other issues is irrelevant to our disposition of this appeal.

The DPW and the County noted a timely appeal on August 28, 2015.

DISCUSSION

Maryland Rule 2-341 governs the amendment of pleadings in the circuit courts of Maryland and provides as follows:

(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. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

(b) A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

(c) An amendment may seek to (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (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. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

(d) If a new party is added by amendment, the amending party shall cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon the new party.

(e) Unless the court orders otherwise, a party filing an amended pleading also shall file at the same time a comparison copy of the amended pleading showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material.

The portion of the rule which is critical to our analysis in the present case is found in subsection (c)(5), which provides that an amendment may seek to “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.**” (Emphasis supplied.) In *Washington Homes, Inc. v. Interstate Gen. Dev., Inc.*, 29 Md. App. 244, 252 (1975), we addressed the predecessor to Md. Rule 2-341(c)(5), explaining that “[o]ur interpretation of this part of the rule is that an amendment to correct nonjoinder or misjoinder may not be made unless at least one of the original plaintiffs and at least one of the original defendants would, after the amendment is made, remain in the case as proper parties to the action.”³ *See also Hunt v.*

³ The predecessor to Md. Rule 2-341 was Rule 320 b 1, which provided in pertinent part:

(continued...)

Tague, 205 Md. 369, 378 (1954) (“It is thus the general rule that where a suit has been instituted against a person who is not a proper party defendant, the declaration cannot be amended so as to substitute another sole defendant.”). In this case, the Commission sought to amend the Petition to substitute the County for the DPW. The DPW was the sole original defendant, and the amendment of the Petition would have resulted in none of the original defendants remaining as parties to the action.

The Commission cites various cases for the general principle that parties are permitted to amend a pleading to serve the interests of justice, and that the purpose of Maryland Rule 2-341 is not to avoid reaching the merits of a case due to technicalities. *See RRC Ne., LLC v. BAA*, 413 Md. 638, 673-74 (2010) (“[L]eave to amend complaints should be granted freely to serve the ends of justice and . . . it is the rare situation in which a court should not grant leave to amend.”); *Hartford Accident & Indem. Co. v. Scarlett Harbor Ass’n Ltd. P’ship*, 109 Md. App. 217 (1996) (“Amendments are allowed so that cases will be tried on their merits rather than upon the niceties of pleading and to prevent the substantial injustice of a cause . . . being defeated by formal slips or slight variances.”)

³ (...continued)

When an amendment is made to correct nonjoinder or misjoinder, some one of the original plaintiffs and some one of the original defendants must remain as parties to the action.

(internal quotations and citations omitted).⁴ Indeed, the Commission properly sets forth the principles of Maryland law that, generally speaking, parties should be permitted to amend pleadings to serve the interests of justice.

Critically, however, Maryland Rule 2-341(c)(5) directly addresses the issue in the present case and specifically permits an amendment seeking to correct misjoinder or nonjoinder of a party **only if** at least one original plaintiff and at least one original defendant remain as parties to the action. Here, the Commission’s amendment would have substituted a new defendant, leaving no original defendant as a party to the action. As such, the amendment was not permitted. The general principles espoused by the Commission cannot trump a specific rule that directly addresses the critical issue in this case.

The Commission further emphasizes that the circuit court found that “the amendment does not introduce new facts or change the case” and that the “[r]espondent was aware that . . . Baltimore County, not The Department of Public Works is the appropriate party to the action.” The findings, however, do not address the specific requirements of Md. Rule

⁴ At oral argument, counsel for the Commission asserted that the argument based upon Md. Rule 2-341 was waived because it was not raised below. Our review of the record indicates that the issue was properly raised before the circuit court. In its reply to the Commission’s motion to amend its petition, the DPW argued that the amendment of the petition would violate Md. Rule 2-341(c)(5). Furthermore, at the July 31, 2015 motions hearing, counsel explained that with respect to “the naming argument,” the DPW would “submit on the pleadings.” Accordingly, the issue is properly before us on appeal.

2-341(c)(5), nor do they change the fact that the Amended Petition would have left no original defendant as a party to the action.

Because the Amended Petition was not permitted pursuant to Md. Rule 2-341(c)(5), the circuit court erred by granting the Commission's motion to amend the petition. As such, the sole proper petition filed was the Petition which named the DPW as the sole respondent. The Commission concedes that Baltimore County, and not the DPW, is the appropriate party to this action. Accordingly, because the DPW is not a legally cognizable entity subject to suit or subpoena in its own name, the circuit court erred by denying DPW's motion to dismiss the Petition.⁵

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY REVERSED. CASE
REMANDED FOR ENTRY OF AN ORDER
GRANTING THE MOTION TO DISMISS THE
PETITION. COSTS TO BE PAID BY APPELLEE.**

⁵ Even if Rule 2-341(c)(5) could be read alone or in context as allowing a court to grant amendment of an initial pleading to substitute the sole defendant for a new defendant, Rule 2-341(d) would preclude the court from ruling on the merits of the Commission's petition at the July 31 hearing, until the directives of (d) were met. Hopefully, the real parties in interest here will not allow henceforth the requirements of pleading to impede further what has become a long and drawn-out investigation and resolution of the underlying complaint.