

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deneen M. Roberts,	:	
Appellant	:	
	:	
v.	:	No. 1132 C.D. 2012
	:	Argued: April 16, 2013
Housing Authority of the City of	:	
Pittsburgh	:	

**BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge (P)
HONORABLE MARY HANNAH LEAVITT, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: August 2, 2013

Deneen M. Roberts (Roberts) appeals from the May 15, 2012 orders of the Court of Common Pleas of Allegheny County that granted the motions in limine filed by the Housing Authority of the City of Pittsburgh (Authority) and dismissed Roberts' action against the Authority. The court based its decision on prior orders (1) granting the Authority's motion for summary judgment, (2) striking Roberts' amended complaint filed without the Authority's consent or leave of court, and (3) denying her subsequent motion for leave to file an amended complaint, served upon the Authority and presented to the court after the statute of limitations period had run. For the reasons set forth below, we affirm.

Roberts commenced the instant action in February 2011, alleging that she sustained injuries to her right ankle on January 10, 2010 at approximately 1:00 a.m., when she slipped and fell on snow and ice after exiting from a vehicle in

front of her son's apartment in the apartment complex located at 1222 Noland Court in the City of Pittsburgh. Roberts averred that the Authority was "negligent ... in blowing, piling, distributing and creating a dangerous accumulation of ice and snow in the parking lot area adjacent to" the apartment complex owned and maintained by the Authority. Complaint, ¶ 9; Reproduced Record (R.R.) at 5a. In paragraph 10(a) through (q) of the complaint, Roberts set forth 17 specific allegations of the Authority's negligence in handling snow and ice. Roberts further alleged that the Authority was "otherwise generally ... negligent." *Id.*, ¶ 10(r); R.R. at 6a. In March 2011, the catch-all allegation in paragraph 10(r) was stricken pursuant to the parties' stipulation. R.R. at 11a. The Authority thereafter filed an answer and new matter, alleging, *inter alia*, that Roberts' claim was barred by sovereign immunity. After discovery, including Roberts' deposition, the court scheduled a trial for May 11, 2012 at Roberts' request.

Thereafter on January 3, 2012, the Authority filed a motion for summary judgment alleging that Roberts' claim was barred by sovereign immunity because it did not fall within the exception to sovereign immunity for "[a] dangerous condition of Commonwealth agency real estate and sidewalks." Section 8522(b)(4) of the Judicial Code, *as amended*, 42 Pa. C.S. § 8522(b)(4). The two-year statute of limitations period under Section 5524(2) of the Judicial Code, *as amended*, 42 Pa. C.S. § 5524(2), for Roberts' action was about to expire on January 10, 2012. On that day, Roberts filed an amended complaint, adding the new allegations of the Authority's negligence. She alleged:

The Defendant ... was negligent ... in failing to repair and/or replace burned out or shot out light bulbs in light poles in and about the parking lot and walkways in the area of 1222 Nolan[d] Court, thereby causing a darkened and dangerous parking lot area, which inadequate lighting and/or inadequate illumination caused and/or

substantially contributed to the happening of Plaintiff's accident on January 10, 2010.

Amended Complaint, ¶ 9; R.R. at 59a.

On January 27, 2012, the Authority filed preliminary objections, arguing that the amended complaint, which was filed without the Authority's consent or leave of court, was a nullity and should be stricken and that it would be prejudiced by the untimely filed amended complaint. On the same day, Roberts served a motion for leave to file an amended complaint upon the Authority. On February 3, Judge Ronald W. Folino sustained the Authority's preliminary objections and struck the amended complaint. By separate order issued on the same day, Judge Folino also denied Roberts' motion for leave to file an amended complaint, stating that "the proposed amendment would introduce a new cause of action." R.R. at 132a. On February 13, Judge Michael A. Della Vecchia granted the Authority's January 3 motion for summary judgment "as to evidence of snow & ice only" and stated that "the Plaintiff may continue to trial." R.R. at 133a.¹

After the parties selected a jury on May 11, 2012, the Authority presented two motions in limine seeking to exclude evidence of accumulations of snow and ice and inadequate lighting. Judge Paul F. Luty, Jr. granted the motions, finding that Judge Folino's February 3 orders and Judge Della Vecchia's February

¹ In order to recover for injuries caused by a substance or an object on the Commonwealth's real estate, the plaintiff must allege that the dangerous condition derived, originated or had as its source the Commonwealth realty itself. *Jones v. Se. Pa. Transp. Auth.*, 565 Pa. 211, 225, 772 A.2d 435, 443 (2001). In *Kahres v. Henry*, 801 A.2d 650, 654-55 (Pa. Cmwlth. 2002), this Court held that the Department of Transportation was immune from the claim that it was negligent in permitting dangerous accumulations of snow and ice on the highway. The Court noted that snow and ice did not derive, originate or have the highway as its source and that the snow mound created by plowing was a natural incident of the snowfall and could not be separated from the snowfall itself. Roberts does not challenge Judge Della Vecchia's grant of the motion for summary judgment on her claim based on the Authority's improper handling of snow and ice.

13 order constituted the laws of the case and established that Roberts' claim based on the accumulations of snow and ice was barred by sovereign immunity and that her claim based on the inadequate lighting was time-barred. After Roberts' counsel indicated that there remained no other negligence claim, Judge Luty dismissed the action. Roberts' appeal to this Court followed.

Roberts first argues that Judge Folino erred in striking the amended complaint and refusing to grant her leave to file an amended complaint. She maintains that she should have been permitted to amend the complaint to allege inadequate lighting because the new allegation merely amplified the allegations in the original complaint and did not state a new cause of action after the expiration of the statute of limitations period. She also relies on the deposition testimony of the Authority's site manager and the "Customer Accidents/Incidents - Liability Claim Report," prepared by the Authority's paralegal three days after the January 10, 2010 incident. In the report, the paralegal noted, "[l]ighting conditions poor," "light pole bulb blown out," and no "visibly clear and unobstructed alternate pathway the injured could have chosen to avoid the ice/snow." R.R. at 245a. Roberts submits that the Authority was aware of the inadequate lighting condition and, therefore, would not be prejudiced by the proposed amendment to the complaint.

A pleading may be amended as of course only within twenty days after service of a copy of preliminary objections. Rule 1028(c)(1) of the Pennsylvania Rules of Civil Procedure, Pa. R.C.P. No. 1028(c)(1). Here, Roberts did not attempt to amend her complaint until long after an answer had been filed, discovery accomplished and the matter scheduled for trial. She was, therefore, required to comply with Rule 1033, Pa. R.C.P. No. 1033, which provides:

A party, either by filed consent of the adverse

party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

An amended complaint filed without leave of court or consent of the adverse party, as required by Rule 1033, is "a nullity." *Catanese v. Taormina*, 437 Pa. 519, 523, 263 A.2d 372, 374 (1970). *Accord Keck v. Bensalem Twp.*, 862 A.2d 675, 678 (Pa. Cmwlth. 2004). Because Roberts' amended complaint failed to comply with Rule 1033, Judge Folino did not err in striking it as a nullity.

Generally, a statute of limitations period begins to run when a cause of action accrues, i.e., when an injury is inflicted. *Gleason v. Borough of Moosic*, 609 Pa. 353, 361-62, 15 A.3d 479, 484 (2011). The party asserting a cause of action has the duty to use all reasonable diligence to properly inform himself or herself of the facts and circumstances, upon which the right to recovery is based, and to commence an action within the prescribed period. *Id.* at 362, 15 A.3d at 484. The right to amend a pleading should be liberally granted at any stage of the proceedings unless there is an error of law or resulting prejudice to an adverse party. *Schaffer v. Larzelere*, 410 Pa. 402, 407, 189 A.2d 267, 270 (1963). Whether to allow an amendment of the complaint lies within the discretion of the trial court. *Burger v. Borough of Ingram*, 697 A.2d 1037, 1041 (Pa. Cmwlth. 1997).

An amendment introducing a new cause of action, after the statute of limitations period has run, constitutes "resulting prejudice" to the adverse party." *Schaffer*, 410 Pa. at 407, 189 A.2d at 270. A proposed amendment may be permitted after expiration of the statute of limitations period, only if it "does not

change the cause of action but merely amplifies that which has already been averred." *Id.* A "cause of action" is "the negligent act or acts which occasioned the injury." *Saracina v. Cotoia*, 417 Pa. 80, 85, 208 A.2d 764, 767 (1965) [quoting *Shenandoah Borough v. Phila.*, 367 Pa. 180, 192, 79 A.2d 433, 439 (1951)]. An allegation constitutes a new cause of action when it "proposes a different theory or a different kind of negligence than the one previously raised or if the operative facts supporting the claim are changed." *Reynolds v. Thomas Jefferson Univ. Hosp.*, 676 A.2d 1205, 1210 (Pa. Super. 1996) [quoting *Junk v. E. End Fire Dep't*, 396 A.2d 1269, 1277 (Pa. Super. 1978)] (emphasis omitted).

Rule 1019(a), Pa. R.C.P. No. 1019(a), requires the material facts on which a cause of action or defense is based to be stated in a concise and summary form. In the original complaint, Roberts set forth only the claim that the Authority was negligent in improperly handling snow and ice. She argues, however, that she should have been permitted to amend the complaint after the statute of limitations period expired because her new allegation of the Authority's failure to provide adequate lighting merely amplified the allegations in the complaint.

In support, she relies on *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983). In *Connor*, the appellants initially alleged that the hospital was negligent in perforating the sigmoid colon during the barium enema procedure causing extravasation of the barium into the abdominal cavity. The complaint also contained a catch-all allegation that the appellee was negligent "[i]n otherwise failing to use due care and caution under the circumstances." *Id.* at 308, 461 A.2d at 601. After the statute of limitations period expired, the appellants filed a motion to amend the complaint to add a new allegation that the hospital was negligent in delaying the necessary laparotomy and cleansing of the abdominal

cavity after the extravasation of the barium became apparent. The *Connor* Court concluded that the proposed amendment should have been permitted because it merely amplified the general catch-all negligence allegation in the complaint and did not introduce a new cause of action. The Court noted that "[i]f appellee did not know how it 'otherwise fail[ed] to use care and caution under the circumstances,' it could have filed a preliminary objection in the nature of a request for a more specific pleading or it could have moved to strike that portion of appellants' complaint." *Id.* at 311 n.3, 461 A.2d at 603 n.3.

We find *Connor* to be factually distinguishable and inapplicable to this matter. Unlike in *Connor*, the catch-all allegation in paragraph 10(r) of the original complaint was stricken pursuant to the parties' stipulation. Thus, there existed no general catch-all negligence allegation that the new allegation could be construed as amplifying. Rather, Roberts' new allegation constituted a new cause of action involving an entirely different theory of negligence and different operative facts. Judge Folino correctly concluded that she was not permitted to amend the complaint after the expiration of the statute of limitations period to state a new cause of action. The proposed amendment constituted a "resulting prejudice" to the Authority. *Schaffer*, 410 Pa. at 407, 189 A.2d at 270.²

² Roberts is not claiming that she was unaware of the inadequate lighting condition at the time of her January 10, 2012 injury. During her deposition taken in September 2011, she testified:

Q. At the time of your accident it was 1:00 in the morning?

A. Yes.

Q. Okay. Was the parking lot lit?

A. No.

Q. Okay. Were you able to see where you were going?

(Footnote continued on next page...)

Roberts next challenges Judge Luty's orders granting the Authority's motions in limine and dismissing her action. Roberts maintains that Judge Della Vecchia considered the alleged inadequate lighting condition and granted the motion for summary judgment on the improper handling of snow and ice only. She claims that Judge Luty's order granting the motions in limine was in direct conflict with Judge Della Vecchia's order permitting her to proceed to trial.

A motion in limine is a procedure for obtaining a ruling on the admissibility of evidence prior to or during trial. *Commonwealth v. Zugay*, 745

(continued...)

A. I thought I could.

Q. Okay. You could see in front of you?

A. Yes. I could see my sons.

Q. You could see 1222 Nolan[d] Court? You could see his door?

A. Yes.

....

Q. Okay. Were you capable of seeing where you were walking? I mean would you have been able to see your feet if you looked down?

A. Yeah.

Roberts' September 19, 2011 Deposition at 74-75; R.R. at 94a-95a. She argues that she could have filed a new action on January 10, 2012 to allege the additional negligence claim, instead of filing the amended complaint. Rule 1020(d), Pa. R.C.P. No. 1020(d), provides:

If a transaction or occurrence gives rise to more than one cause of action ... against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. Failure to join a cause of action ... shall be deemed a waiver of that cause of action as against all parties to the action.

Because she failed to timely join the new cause of action in a separate count despite her admitted awareness of the inadequate lighting condition, her argument must fail.

A.2d 639, 644 (Pa. Super. 2000). The standard for reviewing an evidentiary ruling equally applies to reviewing a ruling on a motion in limine. *Id.* A trial judge's ruling on the motion in limine lies within his or her sound discretion and will not be reversed absent an abuse of discretion. *Commonwealth v. Rivera*, 603 Pa. 340, 368, 983 A.2d 1211, 1228 (2009).

The law of the case doctrine encompasses the coordinate jurisdiction rule, under which a transferee trial judge in coordinate jurisdiction may not alter resolution of a legal question previously decided by a transferor trial judge. *Zane v. Friends Hosp.*, 575 Pa. 236, 243, 836 A.2d 25, 29 (2003). The coordinate jurisdiction rule protects the expectations of the parties, insures the consistency in proceedings and the uniformity of decisions, effectuates the administration of justice and judicial economy, and fosters the finality of pre-trial applications. *Id.* Departure from the rule is allowed only under exceptional circumstance, such as a change in the controlling law, a substantial change in the facts or evidence, or a clearly erroneous prior order that would result in a manifest injustice. *Id.*

The only issue before Judge Della Vecchia was whether Roberts' claim of the Authority's improper handling of snow and ice in the original complaint was barred by sovereign immunity. Under the coordinate jurisdiction rule, Judge Della Vecchia could not alter Judge Folino's prior orders striking the amended complaint and denying the motion for leave to amend the complaint to state a new cause of action. In stating that the case may proceed to trial, Judge Della Vecchia did not specify the issue to be tried. Subsequent to the orders of Judge Folino and Judge Della Vecchia, no issue remained for trial. Because Judge Luty was bound by the orders of Judge Folino and Judge Della Vecchia, Judge Luty did not abuse his discretion in granting the motions in limine and dismissing

the action.

Accordingly, Judge Luty's May 15, 2012 orders are affirmed.

BONNIE BRIGANCE LEADBETTER,
Judge

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Appellant	:	
	:	
v.	:	No. 1132 C.D. 2012
	:	
Housing Authority of the City of	:	
Pittsburgh	:	

ORDER

AND NOW, this 2nd day of August, 2013, the orders of the Court of Common Pleas of Allegheny County in the above-captioned matter are AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge