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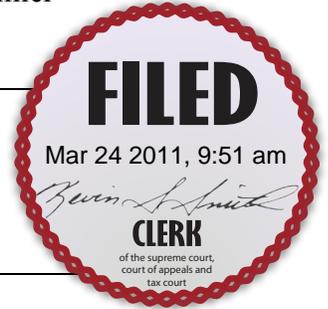
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**IN THE
COURT OF APPEALS OF INDIANA**



ANTHONY GUZMAN,

Appellant,

vs.

C.K. GRAY,
HANCOCK COUNTY SHERIFF,

Appellee.

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No. 30A01-1009-CT-445

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Terry K. Snow, Judge
Cause No. 30D01-1001-CT-15

March 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Anthony Guzman (“Guzman”) appeals the Hancock County Court’s denial of his motion for leave to amend his complaint. We affirm.

Facts and Procedural History

On December 28, 2007, Guzman was arrested by the Hancock County Sheriff’s Office for operating a vehicle while intoxicated. Guzman was taken to the Hancock County Jail for an automatic fifteen-day hold. Guzman claims that while incarcerated he was bullied by other inmates who made him perform “Tyson squats.”¹ Guzman claims he performed approximately five hundred Tyson squats before a guard stopped him. On January 10, 2008, Guzman noticed he was urinating blood. He was released on bond that day and his mother took him to the hospital where he was diagnosed with rhabdomyolysis, a condition where skeletal muscle fiber rapidly breaks down following muscle injury. The debris flows into the bloodstream and clogs the kidneys, which can lead to acute renal failure or death. Guzman remained in the hospital from January 10, 2008 until January 17, 2008.

On January 5, 2010, Guzman served a tort claim notice on the Hancock County Sheriff, C.K. Gray (“Gray”). On the same day, Guzman filed a complaint against Gray in Hancock County Superior Court alleging negligence in relation to the injuries Guzman sustained while at the Hancock County Jail.

On January 13, 2010, Gray filed a motion for enlargement of time to respond to Guzman’s complaint. Additionally, Gray sent a letter to Guzman’s counsel alerting him

¹ Tyson squats involve rapidly squatting to pick up playing cards scattered on the floor. See Diane Kruse, “Tyson Squats” as a Cause of Rhabdomyolysis, 24(2) J. EMERGENCY NURSING 116 (1998).

to the deficiency in his action against Gray due to Guzman's failure to timely file a tort claim notice within 180 days of his injury. Gray's motion for enlargement of time was granted and Gray filed his answer on February 18, 2010. On that same day, Gray sent Guzman's counsel a second letter alerting him to the deficiency in his action, and warning Guzman's counsel that continued litigation may subject Guzman to liability for Gray's attorney fees.

Gray moved for summary judgment on March 10, 2010, on the basis that Guzman did not timely serve his tort claim notice. A hearing on the motion for summary judgment was set for April 28, 2010. After being granted an enlargement of time to respond to Gray's motion for summary judgment, Guzman filed his response and a motion to amend his complaint on April 19, 2010. Guzman's proposed amended complaint changed the theory of recovery from a state tort claim to a theory of recovery under 42 U.S.C. § 1983 for an alleged violation of Guzman's constitutional rights.

On April 23, 2010, Gray filed an objection to Guzman's motion to amend on the basis that Guzman had caused undue delay and failed to meet his burden in showing that an amendment was justified. The trial court vacated the summary judgment hearing and instead set a hearing on Guzman's motion for leave to amend his complaint. On July 12, 2010, the trial court held a hearing on Guzman's motion for leave to amend his complaint, which it subsequently denied. On August 19, 2010, the trial court held a hearing on Gray's motion for summary judgment. Gray's motion was subsequently granted and the trial court awarded Gray fees and costs. Guzman now appeals.

Discussion and Decision

Guzman argues that the trial court abused its discretion by denying Guzman leave to amend his complaint to allege a new theory of recovery. A trial court has broad discretion in deciding whether to permit or deny amendments to pleadings because of its strategic advantage in balancing various trial considerations. Strodtman v. Integrity Builders, Inc., 668 N.E.2d 279, 284 (Ind. Ct. App. 1996), trans. denied. Absent an abuse of discretion, we generally affirm the trial court’s decision regarding a discretionary motion if there is any rational basis for the decision. Id. An abuse of discretion occurs when “there is a conclusion or judgment that is clearly against logic and the natural inferences to be drawn therefrom, or a decision that contravenes reasonable, probable, and actual deductions.” Id.

Indiana Trial Rule 15(A) allows a party to amend his pleadings once as a matter of course at any time before a responsive pleading is served. “Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires.” T.R. 15(A). In determining whether justice requires leave to amend a pleading, a court may consider “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of the amendment.” Palacios v. Kline, 566 N.E.2d 573, 575 (Ind. Ct. App. 1991). Guzman’s contention that all factors are required in order for the court to deny a motion for leave to amend a complaint is misguided. The list of factors “is not exhaustive nor are the individual factors evaluated in isolation from one another.” Mullen v. Cogdell, 643 N.E.2d 390, 399 (Ind. Ct. App. 1994), trans. denied. Thus, so long as there is a rational

basis for the trial court's decision to deny Guzman's motion, there is no abuse of discretion and we will affirm.

Here, Guzman's counsel conceded at the hearing on the motion to amend his complaint that he knew "fairly early on" that the original complaint lacked merit as filed because Guzman did not serve a tort claim notice on Gray within 180 days from the date of his injury as required by statute. Appellant's App. p. 9. However, Guzman's counsel attempted to rationalize his failure to withdraw the complaint because it was necessary to preserve other potential causes of action before the statutes of limitation expired.

Guzman's counsel was also notified by Gray's opposing counsel that the tort claim would fail. At the time of that notification, no responsive pleading had been filed, so Guzman could have amended his complaint to change the theory of recovery as a matter of course. See T.R. 15(A). Nevertheless, Guzman chose not to amend and Gray was thereby forced to answer an admittedly meritless complaint. Guzman's only explanation for not filing before Gray responded was that "a little more time got by me than I would have liked." Appellant's App. p. 14.

Gray again notified Guzman's counsel that Guzman's tort claim would fail and further informed Guzman's counsel that Guzman could be assessed attorney fees and costs if the complaint was not dismissed. Again, Guzman did nothing. Only after Gray filed a motion for summary judgment did Guzman respond with a motion for leave to amend his complaint.

Gray objected to Guzman's motion to amend, claiming that Guzman's failure to amend the complaint early on caused undue delay and forced Gray to incur unnecessary

costs in responding to a frivolous complaint. Gray further claims granting the amended complaint would cause prejudice since it opens up Gray to potentially endless litigation where new theories of recovery are added on the eve of a case being dismissed.

Guzman argues that Gray was put on notice as to the facts alleged by Guzman and that it was an abuse of discretion for the trial court to deny Guzman the opportunity to amend his complaint to change the legal theory of recovery. Guzman claims he sought to amend his complaint because the two-year statute of limitations had not yet run on a constitutional rights violation brought under § 1983 and leave to amend would have related that claim back to the date the original complaint was filed. See T.R. 15(C). Indeed, had Guzman initially filed a claim against Gray for a violation of his constitutional rights instead of a tort action, he would have been within the applicable statute of limitations. Instead, Guzman decided to file a tort claim as a placeholder, a claim he knew to be fatally flawed by the lack of a prior tort claim notice. Moreover, Guzman failed to amend his complaint early on, which forced Gray to incur increased costs in defending against the complaint.

Under these facts and circumstances, we cannot say that the trial court abused its discretion by denying Guzman's motion for leave to amend his complaint.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.