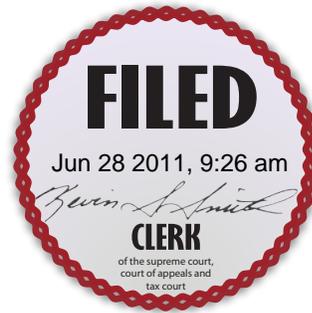


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARK WHEATLEY,)
)
Appellant-Plaintiff,)
)
vs.)
)
UTILITY TRAILERS OF INDIANAPOLIS,)
INC., d/b/a UTILITY PETERBILT OF)
INDIANAPOLIS,)
)
Appellee-Defendant.)

No. 49A05-1012-CT-788

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Louis F. Rosenberg, Judge
The Honorable Mark A. Jones, Commissioner
Cause No. 49C01-0708-CT-32149

June 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-plaintiff Mark Wheatley appeals the trial court's order denying his second motion for leave to amend his complaint against Utility Trailers of Indianapolis (Utility Trailers). Specifically, Wheatley argues that there is no showing of undue delay on his part or that he was acting in bad faith when he sought to add a breach of contract claim against Utility Trailers in his negligence action. Thus, Wheatley argues that the trial court's denial of the second motion to amend his complaint was an abuse of discretion. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 23, 2005, Wheatley's tractor-trailer was involved in an accident, and his insurer gave permission to have it towed to Utility Trailers's facility in Indianapolis for repairs. After reviewing an estimate, the insurance company purportedly authorized Utility Trailers to fix the tractor-trailer. Sometime thereafter, Utility Trailers completed its work on the vehicle.

On August 2, 2007, Wheatley filed his original complaint for damages against Utility Trailers, alleging that it was negligent in the repair work and it had failed to perform the repairs in a workmanlike manner. Wheatley claimed that he suffered both the loss of use of the tractor-trailer and loss of income "as a direct and proximate result of [Utility Trailers's] negligence." Appellant's App. p. 12-13. Utility Trailers denied the allegations, and Wheatley filed his first amended complaint on August 6, 2008. The trial court granted the motion and Wheatley added language in the complaint that further described Utility Trailers's alleged negligence.

On July 13, 2010, Utility Trailers filed a motion for summary judgment, alleging that the economic loss doctrine barred Wheatley's recovery under a tort theory. Before the trial court ruled on that motion, Wheatley filed his second motion for leave to amend his complaint on August 20, 2010, wherein he sought to add a count for breach of contract and claims for negligent and intentional infliction of emotional distress. Utility Trailers objected to the motion to amend, claiming that three years of substantial discovery has already occurred and undue prejudice would result if it was forced to defend against the new theories of recovery that could have been asserted in the original complaint. Utility Trailers also alleged that it would be prevented from bringing in additional parties based on the new claims that Wheatley was asserting, and claimed that Wheatley's "motion will result in undue delay, he failed to cure the deficiency by a previously allowed amendment, [and that] Plaintiff's amendment would be futile." Appellant's App. p. 59-65.

On October 5, 2010, the trial court held a hearing on Wheatley's second motion for leave to amend the complaint. Wheatley argued that the trial court should grant the motion because the arguments, issues, and facts in the case had not changed. The trial court denied the motion and determined that "[t]o allow Wheatley to continually move the target at which Utility aims and now require Utility to defend itself under additional theories would cause undue prejudice to Utility." Appellant's App. p. 16, 68-69.

Thereafter, the trial court set a hearing for Utility Trailers's motion for summary judgment. Wheatley also filed a motion to reconsider the denial of his second motion to

amend the complaint. On December 21, 2010, the trial court granted Utility Trailers's motion for summary judgment and denied Wheatley's motion to reconsider.

The trial court determined that Wheatley's negligence claim against Utility Trailers is subject to Indiana's economic loss doctrine. And it was apparent that Wheatley's complaint sought recovery for economic loss without alleging personal injury or property damage to other property. Finally, the trial court found that Wheatley's motion to reconsider failed to address the finding that Utility Trailers would be unduly prejudiced to permit Wheatley to amend the complaint a second time. As a result, the trial court denied the motion to reconsider. Wheatley now appeals.¹

DISCUSSION AND DECISION

In addressing Wheatley's contention that the trial court erred in denying his request to amend the complaint a second time, the amendment of pleadings is governed by Indiana Trial Rule 15. More particularly, a party may amend a 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 be granted, the trial court examines various factors including "undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility

¹ At the outset, Utility Trailers asserts in its appellate brief that Wheatley has failed to appeal the trial court's order denying the second motion for leave to amend the complaint in a timely manner. Utility Trailers filed a motion to dismiss the appeal on March 28, 2011, claiming that the "interlocutory order" that Wheatley is now appealing was not certified by the trial court. We denied the motion to dismiss on May 16, 2011.

of the amendment.” Hilliard v. Jacobs, 927 N.E.2d 393, 398 (Ind. Ct. App. 2010), trans. denied. When, as here, the trial court articulates specific reasons “for exercising its discretion,” we will only look to the specific reasons articulated by the trial court to affirm the trial court’s decision. Palacios v. Kline, 566 N.E.2d 573, 575 (Ind. Ct. App. 1991).

Although amendments to pleadings should be liberally allowed, the trial court has broad discretion when granting or denying such amendments. Hilliard, 927 N.E.2d at 398. We will reverse a trial court’s decision on a motion to amend only upon a showing of an abuse of discretion. Id. An abuse of discretion may occur if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. Id.

Instructive here are our holdings in Crawford v. City of Muncie, 655 N.E.2d 614, 623 (Ind. Ct. App. 1995), and Hilliard. In Crawford, the plaintiff sought to amend his complaint six years after the original complaint had been filed. More particularly, Crawford sought to add a claim against a police officer individually. It was determined that to compel the police officer, after six years, to defend a lawsuit in his individual capacity under new and additional legal theories would unduly prejudice the officer. Therefore, we concluded that the trial court did not abuse its discretion in denying Crawford’s second motion for leave to amend his complaint.

And in Hilliard, the plaintiff filed her motion for leave to amend a complaint three years after the initial complaint was filed “to add new legal theories that were available to

her at the outset of the case.” 927 N.E.2d at 400. It was shown that the plaintiff in Hilliard filed for leave to amend her complaint “only after it was apparent that her initial claims would fail.” Id. The plaintiff failed to offer any convincing reasons as to why the additional legal claims sought to be added by the proposed amended complaint had not been included in the original complaint that was filed three years earlier. More particularly, it was determined that allowing the plaintiff to amend her complaint and add additional theories of recovery after the original theories had been proven unsound would cause the Defendant to “defend against piecemeal litigation” while giving the Plaintiff “potentially endless ‘bites at the apple.’” Id. Thus, such an undue burden amounted to prejudice. Id.

In this case, Wheatley’s second motion for leave to amend the complaint was filed nearly five years after the events underlying the complaint occurred, more than three years since Wheatley filed his initial complaint, and more than two years since Wheatley had filed his first motion for leave to amend. Appellant’s App. p. 1-10, 11-15, 20-32, 37-38, 39-45, 46-47, 66-69. The proposed second amended complaint sought to add new theories of recovery against Utility Trailers.

At two separate hearings, Wheatley’s counsel admitted that new theories of recovery in the proposed second amended complaint involved the same facts, issues, and arguments that have been at issue throughout the case. Tr. p. 5-16, 18. Wheatley failed to offer any justification for his failure to assert breach of contract, negligent infliction of emotional distress, or intentional infliction of emotional distress in the original complaint

that had been filed more than three years before his second motion for leave to amend the complaint. Moreover, Wheatley filed his second motion for leave to amend the complaint in response to Utility Trailers's motion for summary judgment after it was apparent that his original claims would fail. In light of these circumstances, we cannot say that the trial court abused its discretion in denying Wheatley's second motion to amend his complaint.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.