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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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RAYMOND ARANA, individually; and LORENA AVALOS, as guardian  
and next best friend of Cesar Avalos, her minor son, *Plaintiffs/Appellants*,

*v.*

AMY BOWERS, *Defendant/Appellee*.

No. 1 CA-CV 14-0698  
FILED 9-29-2016

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Appeal from the Superior Court in Maricopa County  
No. CV2012-017733  
The Honorable Dean M. Fink, Judge  
The Honorable Christopher T. Whitten, Judge

**REVERSED AND REMANDED**

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COUNSEL

The Brill Law Firm PLLC, Scottsdale  
By Daniel S. Brill  
*Counsel for Plaintiffs/Appellants*

The Cavanagh Law Firm, P.A., Phoenix  
By Brett T. Donaldson, William F. Begley (deceased)  
*Counsel for Defendant/Appellee*

**MEMORANDUM DECISION**

Judge Maurice Portley delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Patricia K. Norris joined.

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**P O R T L E Y**, Judge:

¶1 Raymundo Arana and Lorena Avalos, on behalf of her minor son Cesar Avalos, (collectively, “Plaintiffs”) appeal the order dismissing their claims against Amy Bowers (“Amy”). Because Plaintiffs’ amended complaint related back to the original complaint under Arizona Rule of Civil Procedure (“Rule”) 15(c), and therefore was not time-barred by the expiration of the statute of limitations, we reverse.

**FACTS AND PROCEDURAL HISTORY**

¶2 Arana and his grandson, Cesar, were in a car stopped at a red light on January 25, 2011, when Amy allegedly crashed her car into their car. According to a signed declaration she provided to the court, “[a]t the scene of the accident . . . [she] filled out a card – as required by the police officer – and [she] wrote [her] name, Amy Bowers.”

¶3 A few days later, Plaintiffs’ lawyers sent a letter, incorrectly addressed to “Harry Bowers,” to the address Amy provided informing her of their intention to file a claim for damages with her automobile insurance carrier. One week later, a claims representative from State Farm Mutual Automobile Insurance Company (“State Farm”) sent Plaintiffs’ lawyers a letter advising them that she would be “tak[ing] over the handling of [the] claim” and requesting that they “forward all future correspondence and inquiries to [her] attention.” The letter listed “Amy Bowers” as the “insured driver,” and did not mention “Harry Bowers.”

¶4 Before the second anniversary of the accident, Plaintiffs filed a complaint against “Harry Bowers and Jane Doe Bowers” in December 2012. They attempted to serve “Harry,” and were allowed to serve him by publication, and provided a copy of the original summons and complaint to State Farm on May 20, 2013. They then discovered their mistake and filed an amended complaint naming Amy Bowers and John Doe Bowers as defendants on November 4, 2013, and were allowed to serve her by publication.

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¶5 Amy moved to dismiss the amended complaint (or, alternatively, for summary judgment) arguing the statute of limitations had expired on January 25, 2013, two years after the accident. In response, Plaintiffs argued that the claim was not barred because the amended complaint related back to the original complaint under Rule 15(c). After briefing and argument, the superior court agreed with Amy and dismissed the action.

**DISCUSSION**

¶6 Plaintiffs argue the court erred by dismissing the claim because their amended complaint related back to the original complaint under Rule 15(c). Amy, however, argues that relation back does not apply because Plaintiffs failed to meet two of the three requirements of Rule 15(c). Specifically, she claims that Plaintiffs did not give timely notice of the institution of the action and “cannot show that the failure to name Amy Bowers [in the original complaint] was a ‘mistake,’ as that term is used in the Rule 15(c) context.”

¶7 We independently review the grant of a Rule 12(b)(6) motion to dismiss. *US Airways, Inc. v. Qwest Corp.*, 238 Ariz. 413, 416, ¶ 9, 361 P.3d 942, 945 (App. 2015). However, when the superior court considers evidence outside of the pleadings, as it did here when it considered a letter in addition to the pleadings, we review the ruling as if it was a summary judgment. *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 9, 284 P.3d 863, 867 (2012). Specifically, and if the material facts are not in dispute, we review de novo whether the superior court correctly applied the law to those facts. *Ariz. Joint Venture v. Ariz. Dep't of Rev.*, 205 Ariz. 50, 53, ¶ 14, 66 P.3d 771, 774 (App. 2002). And we independently review statutes of limitations as questions of law. *Larue v. Brown*, 235 Ariz. 440, 443, ¶14, 333 P.3d 767, 770 (App. 2014). While we interpret the rules of civil procedure using the same principles applicable to the interpretation of statutes, our primary goal of interpreting a rule is to give effect to the intent of the drafters, but we look to the plain language of the rule as the best indicator of that intent. *See Fragoso v. Fell*, 210 Ariz. 427, 430, ¶ 7, 111 P.3d 1027, 1030 (App. 2005).

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¶8 Rule 15(c) is designed to ameliorate the effect of the statute of limitations. *Tyman v. Hintz Concrete, Inc.*, 214 Ariz. 73, 74, ¶ 9, 148 P.3d 1146, 1147 (2006). In *Tyman* our supreme court stated that in order for the rule to apply, the following three conditions must be met:

(1) the claim in the amended pleading must arise “out of the conduct, transaction, or occurrence” alleged in the original complaint . . . (2) “within the period provided by law for commencing the action against the party to be brought in by amendment, plus the period provided by Rule 4(i) for service of the summons and complaint,” the new defendant must have “received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits,” . . . and (3) during the same period, the new defendant either “knew or should have known that, but for a mistake concerning the identity of the proper party,” the new defendant would have been named in the original complaint.

214 Ariz. at 74-75, ¶ 9, 1147-48 (internal citations omitted).<sup>1</sup> Only the second and third conditions are at issue here.

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<sup>1</sup> Rule 15(c) states:

An amendment changing the party against whom a claim is asserted relates back if [the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading] and, within the period provided by law for commencing the action against the party to be brought in by amendment, plus the period provided by Rule 4(i) for service of the summons and complaint, the party to be brought in by amendment, (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should

**A. Timely Notice of the Institution of the Action**

¶9 Amy argues relation back does not apply because she did not receive timely notice of the institution of the action. She claims that the notice period expired on April 4, 2013 – 120 days after Plaintiffs filed the original complaint. We disagree.

¶10 The second condition of *Tyman* states that Rule 15(c) will only apply if the defendant received notice of the institution of the action “within the period provided by law for commencing the action against the party to be brought in by amendment, plus the period provided by Rule 4(i) for service of the summons and complaint.” 214 Ariz. at 74-75, ¶ 9, 148 P.3d at 1147-48. And this court recently said that for claims with a two-year statute of limitations, the notice requirement is satisfied when the defendant “receive[s] notice of the institution of the action within the two-year statute of limitations plus 120 days.” *Flynn v. Campbell*, 1 CA-CV 15-0278, 2016 WL 3944557, at \*2, ¶ 8 (Ariz. App. July 19, 2016).

¶11 Here, the facts are undisputed: the accident occurred on January 25, 2011; the statute of limitations expired on January 25, 2013; and notice was given to State Farm on May 20, 2013, which is imputed to Amy. *See Id.* at ¶ 8 (noting that notice of the institution of the action to a defendant’s insurance company is “imputed to its insured”) (citing *Pargman v. Vickers*, 208 Ariz. 573, 579-81, ¶¶ 30-40, 96 P.3d 571, 577-79). Therefore, Plaintiffs had to give notice of the institution of the action before May 28, 2013, which was “120 days” after the statute of limitations expired. Because Plaintiffs gave State Farm notice of the claim on May 20, 2013, they timely met the notice requirement of Rule 15(c).

**B. Mistake**

¶12 Relying on federal district court cases, Amy argues that Plaintiffs cannot show that the failure to name her was a “mistake, as that term is used in the Rule 15(c) context.” She also argues that Plaintiffs had actual knowledge that she was the driver because she provided her name and address in the card she provided to Arana at the accident scene, and State Farm provided her identity, as the insured driver, in its letter in February 2011. As a result, Amy argues, Plaintiffs’ failure to properly name her as the proper defendant “was not the sort of mistake that entitles them

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have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

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to Rule 15(c) relief [because the rule] was never intended to be a relief valve for plaintiffs who are not diligent.”

¶13 The third condition of *Tyman* is met when “the new defendant, either ‘knew or should have known that, but for a *mistake* concerning the identity of the proper party,’” he or she would have been named in the original complaint. 214 Ariz. at 75, ¶ 9, 148 P.3d at 1148 (emphasis added). But “not every omission of a defendant from an original pleading,” is a cognizable mistake under the rule. *Id.* at 76, ¶ 21, 148 P.3d at 1149. Because the rule “requires a mistake concerning the *identity* of the proper party,” the rule does not protect the “deliberate decision not to sue a party whose identity plaintiff knew from the outset” or “a mistake of law by counsel regarding whom to name in a lawsuit.” *Id.* (citations omitted). Moreover, the rule does not apply where “defendants [are] added because of a new legal theory” or where plaintiffs seek “to replace fictitious defendants.” *Id.* Instead, to determine whether a Rule 15(c) mistake has occurred, a court must determine “whether, in a counterfactual error-free world, the action would have been brought against the proper party.” *Id.* at ¶ 19. And because, in deciding whether a plaintiff has made a mistake, “we start from the assumption that, ‘by definition, every mistake involves an element of negligence, carelessness, or fault . . . Rule 15(c) ‘encompasses both mistakes that were easily avoidable and those that were serendipitous.’” *Id.* at 76, ¶ 20, 148 P.3d at 1149 (citations omitted); *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 548 (2010) (stating the only question is whether the party knew or should have known that, absent some mistake, the action would have been brought against her).

¶14 Here, Plaintiffs’ mistake naming “Harry Bowers,” rather than “Amy Bowers,” was “easily avoidable.” The mistake was a factual mistake regarding the “identity” of Amy: her first name. The letter from State Farm to Plaintiffs’ attorneys demonstrates that they could have avoided the mistake, with nominal inquiry or investigation, which did not occur, before the original complaint was filed. Moreover, because State Farm received a copy of the original summons and complaint within the Rule 15(c) time period, State Farm knew, or should have known, that Plaintiffs intended to name “Amy Bowers,” its insured, in the original complaint, and State Farm’s knowledge is imputed to Amy. See *Flynn*, 1 CA-CV 15-0278, 2016 WL 3944557, at \* 2, ¶ 8. Therefore, the third condition of *Tyman* was met and Plaintiffs’ amended complaint related back to the original complaint. As a result, because the conditions for relation back were met, Plaintiffs’ claims were not barred by the expiration of the statute of limitations.

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**CONCLUSION**

¶15 For the foregoing reasons, we reverse the order dismissing Plaintiff's complaint and remand for further proceedings.



AMY M. WOOD • Clerk of the Court  
FILED: AA