



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DIANE M. FLYNN, et al. v. SARAH W. CAMPBELL
CV-16-0199-PR**

PARTIES:

Petitioner: Sarah W. Campbell

Respondent: Diane M. and Robert Flynn

Amicus Curiae: Arizona Association of Defense Counsel (AADC)

FACTS:

On October 17, 2012, Diane Flynn was injured in a car accident with Sarah Campbell, who was cited for causing the crash. At the scene, an investigating police officer gave Flynn a “crash report.” The paper identified Campbell's insurance carrier, the policy number, and the insurance carrier's telephone number. Using this information, Flynn contacted Campbell's insurance carrier, State Farm Mutual Automobile Insurance Company and attempted to resolve her claim.

On October 16, 2014, one day before the two-year statute of limitations expired, Flynn, representing herself, sued State Farm. Flynn alleged that, after the collision, State Farm had “assumed full responsibility for its insured's actions.” She also alleged that she had suffered various injuries and “losses” because of its insured's actions.

State Farm moved to dismiss the complaint (“original motion”) with prejudice, citing Arizona Rule of Civil Procedure 12(b)(6). It argued that Flynn did not have a cause of action against the company. State Farm maintained that “in Arizona there is no right of direct action against an insurance carrier for damages claimed as a result of an accident with one of its insureds.”

Before the superior court could rule on the original motion, Flynn retained counsel. On November 24, 2014, counsel filed an amended complaint for her. The amended complaint dropped State Farm as the defendant and named Campbell (plus some fictitious parties) as defendants.

On December 22, 2014, Campbell moved to dismiss the amended complaint under Rule 12(b)(6). She argued the amended complaint did “not ‘relate back’ to the original filing date under Rule 15(c),” so Flynn's negligence claim was time-barred.

The superior court granted the motion to dismiss. It ruled that Flynn “committed a mistake of law [and] not a mistake of fact” because she was at all times “aware of the identity of the driver.” Arizona case law provides that a mistake of law will not support relation back of an amendment replacing parties for statute of limitations purposes. *Tyman v. Hintz Concrete, Inc.*, 214 Ariz. 73, 76 ¶ 19, 148 P.3d 1146, 1149 (2006) (what a plaintiff knew, or thought he knew, at the time of the original pleading general is the relevant datum in considering the question of whether a mistake concerning identity actually took place).

The court of appeals reversed and remanded for further proceedings.

ISSUE:

“Arizona law regarding Rule 15(c) relation back is well settled. An amended complaint does not relate back when the plaintiff knew the identity of the purported tortfeasor, but made a mistake of law in the original complaint regarding

whom to sue. Here, Flynn knew the identity of the other driver, but she made a mistake of law by naming State Farm (the other driver's insurer) as the defendant in her negligence complaint. After the Statute of limitations expired, Flynn filed an amended complaint attempting to add the driver as a new defendant. Did the court of appeals err as a matter of law in ruling that the amended complaint related back to the original because Flynn was unrepresented and 'failed to appreciate State Farm's role,' even though she 'knew Campbell had caused the accident'?"

DEFINITIONS:

Arizona Rule of Civil Procedure 15(c) provides, in part relevant to this case:

- (1) *Amendment Adding Claim or Defense.* An amendment [to a complaint] relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.
- (2) *Amendment Changing Party.* An amendment changing the party against whom a claim is asserted relates back if:
 - (A) Rule 15(c)(1) is satisfied; and
 - (B) within the applicable limitations period--plus the period provided in Rule 4(i) for the service of the summons and complaint--the party to be brought in by amendment:
 - (i) has received such notice of the institution of the action that it will not be prejudiced in maintaining a defense on the merits; and
 - (ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Arizona Rule of Civil Procedure 12(b)(6) provides, "Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: . . . failure to state a claim upon which relief can be granted"

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