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Hardin v. Traini, et al

FAYE L. HARDIN, Plaintiff, v. PATRICK TRAINI, L. VICTOR TRAINI, L.F. TRAINI and JEFF L. TRAINI, Defendants,
and DONALD MYERS, Additional Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
No. 144 of 2002-C, Civil Action — Law, Jury Trial Demanded

Joinder of a Third Party; Pennsylvania Civil Procedure; Rule 2253; Rule 126

1. Except as provided by Rule 104.1 [dealing with asbestos litigation] neither praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint, shall be filed by the original defendant or an additional defendant later than sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown. Pa.R.C.P. 2253.
2. The defendants have the burden under Rule 2253 of demonstrating sufficient cause to allow the late joinder of the third party as an additional defendant.
3. In order to read the joinder rules as the Pennsylvania Supreme Court intended them to be read, to allow the joinder rules to simplify and expedite the disposition of matters involving numerous parties, the rules must be read in conjunction with Rule 126.
4. The rules [Pennsylvania Rules of Civil Procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at any stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties. Pa.R.C.P. 126.
5. If defendants cannot show cause why a third party should be joined as an additional defendant after the sixty days have expired under Rule 2253, defendants may assert under Rule 126 that the late joinder was a defect of procedure and does not affect the substantial rights of the parties.
6. Whether or not substantial rights of the parties are affected is an issue for the court to decide.

Appearances:

Philip S. Cosentino, Esq., *Counsel for Plaintiff*

Karl Hildabrand, Esq., *Counsel for Defendant Trainis*

Donald H. Smith, Esq., *Counsel for Defendant Myers*

OPINION

Procedural History

1. On June 10, 2002, Faye Hardin, Plaintiff, commenced this action by filing a Praecipe for Writ of Summons against Defendants Patrick Traini and L. Victor Traini, L.F. Traini and Jeff L. Traini.
2. On November 25, 2002, Defendants filed a Praecipe asking that a Rule to File a Complaint be issued on Plaintiff.
3. On December 23, 2002, Plaintiff filed her Complaint.
4. On January 13, 2003, Defendants filed an Answer and New Matter to which the Plaintiff replied on January 16, 2003.
5. On February 24, 2003, Defendants filed a Praecipe for Writ of Summons to join Donald Myers as an Additional Defendant.
6. On March 17, 2003, Defendants filed their Additional Defendant Complaint against Donald Myers.
7. On July 18, 2003, Donald Myers filed Preliminary Objections to Defendants' Complaint. On this date, Donald Myers also filed a Praecipe requesting that the Court list the Preliminary Objections for Argument on October 7, 2003.
8. On August 11, 2003, Defendants filed a Response to the Preliminary Objections.
9. On August 14, 2003, Donald Myers filed his Brief in Support of Preliminary Objections.
10. On October 7, 2003, Oral Arguments were heard.

Discussion

This matter is before the Court due to the filing of preliminary objections by Donald Myers (hereinafter "Myers") to the Writ of Summons filed by Defendants, Patrick Traini, and L. Victor Traini, L.F. Traini, and Jeff L. Traini (hereinafter "Trainis") to join Myers as an additional defendant. Myers filed his preliminary objections pursuant to Pa.R.C.P. 1028(a)(2), which permits the preliminary objections to be filed for "failure of a pleading to conform to law or rule of court." Myers is asserting that the Trainis violated Pa.R.C.P. 2253 which provides as follows:

Except as provided by Rule 104.1 [dealing with asbestos litigation] neither praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint, shall be filed by the original defendant or an additional defendant later than sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown.

In the case at hand, Plaintiff's complaint was served on the original Defendants, the Trainis, on December 20, 2002. Therefore, the original Defendants, the Trainis, had until February 18, 2003, to file a complaint or a praecipe for writ to join an additional defendant. The Trainis filed a Praecipe for Writ of Summons to join Myers as an additional defendant on February 24, 2003, which is six (6) days past the sixty (60) days allotted by Rule 2253. The fact that the Praecipe was untimely filed without leave of court is not in dispute.

The issue before this Court is whether Rule 2253 or any other Rule of Civil Procedure allows for the joinder of the additional defendant, Myers, even though the Praecipe for Writ of Summons was untimely filed.

The Trainis have the burden under Rule 2253 of demonstrating sufficient cause to allow the late joinder of Myers as an additional defendant. *Kovalesky v. Esther Williams Swimming Pools*, 345 Pa.Super. 95, 105, 497 A.2d 661, 665-66 (1985) (citations omitted). Rule 2253 neither specifies what constitutes sufficient cause nor does it set forth any factors to for the court to consider. However, Pennsylvania case law holds that the defendants' ability to show the absence of prejudice is not enough to establish good cause. *NPW Medical Center of N.E. Penna. Inc. v. LS Design Group P.C.*, 353 Pa.Super. 341, 347, 509 A.2d 1306, 1310 (1986).

This Court determines that the cause shown standard in Rule 2253 has not been satisfied. The only reason given by the Trainis for filing the Praecipe for Writ of Summons late is that they miscalculated the sixty (60) day time period and inadvertently filed late. Furthermore, while the Trainis assert that there would be no prejudice to Myers if he were joined, this Court has already acknowledged that lack of prejudice is not enough to satisfy the cause shown standard.

While this Court believes that "both the parties and the court should strive for steadfast compliance with the rules, dictatorial adherence to the letter of the rules may oftentimes have the effect of undermining

and frustrating their intent.” *Carlos R. Leffler Inc. v. Hutter*, 696 A.2d 157, 166 (Pa. Super. 1997). If the Court strictly interpreted Rule 2253, the Court would not allow the joinder that the defendant proposes take place in this case as the statutory standard of cause shown is not satisfied; however, the intent of the rule is to advance the disposition of multi-party litigation, not to make for multiple lawsuits. The Pennsylvania Supreme Court says that the joinder rules “are an attempt to provide a means to simplify and expedite the disposition of matters involving numerous parties ... without subjecting the original plaintiff to unreasonable delay in the prosecution of his portion of the litigation.” *Zakian v. Liljestrand*, 438 Pa. 249, 256, 264 A.2d 638, 641 (1970) (citation omitted).

Therefore, the Court is required to look beyond the words of Rule 2253 and look also at the purpose of the Rule. In order to read the joinder rules as the Pennsylvania Supreme Court intended them to be read, to allow the joinder rules to “simplify and expedite the disposition of matters involving numerous parties, the rules must be read in conjunction with Rule 126.” *Hileman v. Morelli*, 413 Pa. Super. 316, 325-26, 605 A.2d 377, 382 (1992). Because the rigid application of the rules can result in harsh or unjust consequences, Rule 126 was promulgated to allow the trial court to “overlook any procedural defect which did not prejudice the rights of a party.” *Kurtas v. Kurtas*, 521 Pa. 105, 555 A.2d 804 (1989). Rule 126 gives the Court discretion to decide what should happen when a party does not strictly comply with a Rule.

Rule 126 provides the following:

The rules [Pennsylvania Rules of Civil Procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Rule 126 “is particularly pertinent where multiple parties are involved since in such cases the primary intent of the rules is to avoid multiplicity of suits by providing for the adjudication of all the rights and liabilities of those present and concerned in a single suit.” *Ragan v. Steen*, 229 Pa. Super. 515, 525-26, 331 A.2d 724, 729-30 (1974).

Judge Wettick of the Court of Common Pleas of Pennsylvania, Allegheny County, well-respected for his decisions on procedural issues, discusses the interaction of Rule 126 and Rule 2253 in *Shelly Foundation Inc. v. Able-Hess Associates Inc.*, 53 Pa.D.&C. 4th 438 (2001).

The facts in *Shelly* are similar to the facts in this case in that both cases involve defendants who did not join an additional defendant within the sixty (60) day time period imposed by Rule 2253. In *Shelly*, the defendant was twenty-seven (27) days late in filing its complaint to join the additional defendant. *Id.* at 440. The court determined that the defendant did not establish good cause for filing a complaint to join an additional defendant twenty-seven (27) days late. *Id.* at 441. However, the court determined that even when the cause shown standard of 2253 was not met, Rule 126 gave the court discretion to allow the late joinder. *Id.* at 441-42.

The *Shelly* court felt it was within its discretion to allow the late joinder because the defendants’ error in filing a complaint to join an additional defendant twenty-seven (27) days late did not “affect the substantial rights of the parties.” Rule 126. The court determined that the substantial rights of the parties were not affected because the following were true: The pleadings were not closed, there had been no discovery, joinder would not delay trial and the case did not involve a substantial noncompliance with the rules. *Id.* at 446.

In the case at issue, this Court finds that the Trainis’ error of untimely filing a Praeceptum for a Writ of Summons to join Myers as an additional defendant did not “affect the substantial rights of the parties.” Rule 126. This Court has taken into consideration the same factors the *Shelly* court did in determining that the late joinder of an additional defendant would not “affect the substantial rights of the parties.” First, the pleadings are not closed, as preliminary objections are in front of this court presently. Second, while there has been discovery, the only discovery discussed in the record involves the proposed additional defendant, Myers. This is evidence of the fact that Myers is already involved in this case. Third, joinder would not delay trial, as there is no trial date set as of this date and the parties are admittedly early in the discovery stage. Lastly, the parties’ rights are not substantially affected and this case does not involve substantial noncompliance as the Praeceptum for Writ of Summons to join Myers as an additional defendant was filed only six (6) days late.

Conclusion

This Court determines that Myers may not be joined as an additional defendant pursuant to Rule 2253 as the cause shown standard set forth in the rule is not satisfied by the defendants, the Trainis. The Trainis gave no reason as to why they failed to join the additional defendant within the sixty (60) day time limit as

set forth in Rule 2253, except to say that they miscalculated the time.

However, this Court determines that Rule 2253 cannot be read alone, but rather it should be read in conjunction with Rule 126. Rule 126 says, "The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." Based on the circumstances in this case, allowing the additional defendant to be joined when the documents necessary to effectuate such a joinder were filed six (6) days after the time limit for joining had expired does not "affect the substantial rights of the parties."

Furthermore, the purpose behind both Rule 126 and Rule 2253 is to expedite and simplify proceedings in which third parties are involved. If this Court were not to exercise its discretion under Rule 126 and allow the joinder, the defendants would have to wait until the end of the current case to then have the chance to seek contribution from the additional defendant and this draws out the judicial process unnecessarily.

Myers is joined as an additional in the above-captioned case pursuant to Rule 126.

ORDER OF COURT

And now, this 14th day of October 2003, in consideration of the Preliminary Objections of Additional Defendant, Donald Myers, to the Additional Defendant Complaint of Patrick Traini and L. Victor Traini, the Brief in support of the Preliminary Objections, the Response of Patrick Traini and L. Victor Traini to Additional Defendants Preliminary Objections, the Brief in Opposition to Additional Defendant's Preliminary Objections, and Oral Arguments, it is hereby ORDERED AND DECREED that the objections are DENIED. Donald Myers is joined as an Additional Defendant to the above-captioned action pursuant to Pa.R.C.P. 126.