

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY ANN TRANT, as Administratrix : CIVIL ACTION
of the Estate of John Trant, individually :
and in her own right, et al. :
 :
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v. :
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 :
TOWAMENCIN TOWNSHIP, et al. : NO. 99-134

MEMORANDUM

Giles, C.J.

May ____, 1999

Plaintiffs bring this action for civil rights violations and state law tort damages against Towamencin Township, Police Chief Joseph Kirschner (“Kirschner”), and Towamencin police officers Sergeant James Mark Baldovsky, Patrolman Jeffrey Scott Kratz, Patrolman Michael Anthony Paul, and Patrolman Joseph Bacino (collectively the “officer defendants”) for their alleged conduct surrounding the suicide of John Trant (“Trant”), the husband of plaintiff Mary Ann Trant and father of plaintiffs John Paul Trant, Daniel Trant, and Nicholas Trant, all minors. Now before this court is the petition of all defendants for reconsideration of this court’s order granting the plaintiffs leave to file an amended complaint. For the reasons that follow, the motion is denied.

Factual Background

According to the Complaint and Amended Complaint, on January 15, 1997, at approximately 9:30 p.m., John Trant called “911” from a hotel in Kulpsville, Pa., threatening to commit suicide. Sometime after placing the phone call, he slashed his wrists. Several police officers and ambulance personnel arrived at the hotel room after this suicide attempt. Trant informed these officers of his suicide attempt and of his desire to attempt suicide again in the

future. Paramedics bandaged Trant's wrists with gauze and determined that his injuries were not life-threatening. Trant then was taken to the Towamencin Police Department, where he was placed in a holding cell and left unwatched and unattended. At approximately 11 p.m., Trant was found hanging in his cell, having used the gauze from around his wrists to form a ligature. This action followed, brought by Mary Ann Trant as administratrix of his estate and in her own right as his widow, and by his three children through Mary Ann Trant as their mother and guardian, seeking recovery of monetary damages for violations of Trant's civil and constitutional rights and state common law tort claims. The complaints allege 1) that the officers failed properly to protect Trant and to prevent him from attempting and committing suicide while in police custody and under police protection and 2) that Kirschner and the township failed to train and supervise the officers and maintained policies, practices, and customs through which the officers could fail to protect citizens such as Trant from harming themselves while in police custody.

Procedural Background

Plaintiffs brought the instant action in this court on January 11, 1999, against the township, Kirschner, and Police Officers John Doe #1-6, the officers, whose identities were not known at the time of filing, who responded to Trant's "911" call at the hotel and who were involved in his transport to and detention at the police station. The action was commenced four days prior to the expiration of the two-year limitations period governing civil rights actions. See Wilson v. Garcia, 471 U.S. 261, 280 (1985) (holding that civil rights claims under 42 U.S.C. § 1983 are best characterized as personal injury actions and should be governed by the state statute of limitations for personal injuries); Nelson v. County of Allegheny, 60 F.3d 1010, 1012 (3d Cir. 1995) (Pennsylvania two-year statute of limitations applied to § 1983 claims), cert. denied, 516

U.S. 1173 (1986). The original complaint asserted claims under 42 U.S.C. § 1981, 1983, 1985, 1986 and state common law claims for wrongful death, survival action, intentional infliction of emotional distress, and “pendent state claims.”

On March 12, 1999, defendants moved to dismiss the complaint for failure to state a claim upon which relief could be granted, pursuant to Fed. R. Civ. P. 12(b)(6), challenging the legal sufficiency of the complaint in several respects. On April 15, 1999, some 90 days after the expiration of the limitations period, the plaintiffs moved for leave to amend the complaint. The proposed amended complaint repaired the defects in the original complaint and replaced the six John Doe defendants with the proper names of the four police officers.¹ The amended complaint asserts claims under 42 U.S.C. § 1983, alleging violations of Trant’s Fourteenth Amendment substantive due process rights, and for wrongful death, survival, intentional infliction of emotional distress, and false arrest and false imprisonment. On April 19, this court granted the plaintiffs’ motion to amend and denied as moot the defendants’ motion to dismiss. The amended complaint was filed on April 21, but has not yet been served on the defendants. On April 29, the defendants, including the officer defendants, filed the instant petition, moving this court to reconsider its granting of leave to amend to the extent that the amended complaint added the names of the four named officers as defendants, arguing that those claims were barred by the two-year statute of limitations.

¹ Plaintiffs assert that they did not learn the true identities of these officers until the production of the defendant township’s self-executing discovery, pursuant to Fed. R. Civ. P. 26(a)(1)(A). In their response to this motion, plaintiffs point to a letter from their counsel to defendants’ counsel, requesting the production of defendants’ self-executing disclosure as soon as possible to enable plaintiffs to amend the complaint to properly identify the John Doe defendants.

Discussion

Procedural Issues

A motion for reconsideration is brought pursuant to Fed. R. Civ. P. 59(e) and E.D. Pa. Local R. 7.1 and must be brought within 10 days of an order of the court. The purpose of a motion to reconsider is “to correct manifest errors of law or fact or to present newly discovered evidence.” Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). The basis of the instant motion appears to be the “need to correct a clear error of law or to prevent manifest injustice.” Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994) (Joyner, J.). The court must have committed a clear error of law; a simple disagreement between the court and the party is not sufficient grounds for reconsideration. Id. at 97. Defendants brought this motion within 10 days of this court’s order, as required by Rules 59(e) and 7.1.

This case stands in an unusual procedural posture. Plaintiffs did not actually require leave of this court to file their amended complaint. A party may amend a complaint once as a matter of right at any time prior to service of a responsive pleading, Fed. R. Civ. P. 15(a), and the defendants’ motion to dismiss did not constitute a responsive pleading for Rule 15(a) purposes. Centifanti v. Nix, 865 F.2d 1422, 1431 & n.9 (3d Cir. 1989). Plaintiffs thus could have filed the amended complaint as of right and it would have become the controlling pleading. The officer defendants then would have had to bring a motion to dismiss under Fed. R. Civ. P. 12(b)(6) directly challenging the sufficiency of the amended complaint on statute of limitations grounds. Because plaintiffs moved for leave, however, the court treated this as a case in which such leave was required, see Centifanti, 865 F.2d at 1431, and granted the amended pleading

only after concluding that the amended complaint sufficiently repaired the defects identified in the defendants' initial motion to dismiss. However, the court did not hear or address the issue of the statute of limitations with regard to the newly named defendants. Thus, although the court generally will not entertain new legal arguments on a motion for reconsideration that should have been made previously, see Smith, 155 F.R.D. at 97, the court will exercise its discretion to do so in the instant case because the defendants did not have the full opportunity to litigate the issue prior to the granting of leave to file the amended complaint.²

Relation Back

The defendants challenge the filing of the amended complaint only to the extent it adds the four officers as named defendants. They argue that because the amended complaint was not filed until after the expiration of the two-year statute of limitations on January 15, 1999, see Nelson, 60 F.3d at 1012, the claims against the officer defendants are time-barred. Plaintiffs can avoid the limitations bar only if the amended complaint "relates back" to the date of the filing of the original complaint, pursuant to Fed. R. Civ. P. 15(c). "Statutes of limitations ensure that defendants are protected against the prejudice of having to defend against stale claims, as well as the notion that, at some point, claims should be laid to rest." Nelson, 60 F.3d at 1014 (internal quotation marks and citations omitted). The relation-back rule is intended to ameliorate some of the harsh effects of such statutes, id. at 1015 (citing 6A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1497), although it does not permit plaintiffs to perform an end-run around the statute of limitations. Nelson, 60 F.3d at 1015.

² Plaintiffs do not argue that the defendants are making improper new arguments on this motion.

Rule 15(c) provides, in relevant part:

An amendment of a pleading relates back to the date of the original pleading when . . .

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) 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 (B) 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.

The reference to Rule 4(m) means that the relevant period for relation-back purposes is 120 days.

See Fed. R. Civ. P. 4(m) (entitled “Time Limit for Service” and requiring that service of the summons and complaint be made within 120 days after the filing of the complaint).³

The issue before this court is the naming of the four officer defendants in the amended complaint, in place of their original designation as Officers John Doe #1-6. The Third Circuit has held that replacing a “John Doe” defendant in a caption with the defendant’s real name amounts to a change of a party or the naming of a party within the meaning of Rule 15(c)(3) and thus will relate back only if all three conditions of the rule have been satisfied. Varlack v. SWC

³ Rule 15(c)(3) was amended in 1991 to provide the current 120-day period. The prior rule permitted an amended pleading to relate back only if the notice requirements of the rule were satisfied prior to the expiration of the applicable limitations period. Schiavone v. Fortune, 477 U.S. 21, 29-30 (1986) (affirming the denial of relation back where plaintiffs sought to correct the naming of the incorrect corporate entity in an amended complaint filed after the limitations period had expired but only 70 days after filing the original complaint). The 1991 amendment was intended specifically to change the result in Schiavone. See Fed. R. Civ. P. 15 advisory committee’s notes to 1991 Amendments. There is no question that the amended version of the rule applies in the instant case.

Caribbean, Inc., 550 F.2d 171, 174 (3d Cir. 1977). The parties focus their arguments only on the third prong of Rule 15(c)(3); there simply can be no dispute that the first two elements have been satisfied.

As to the first prong, there is no question that the claims asserted against the four officer defendants arose from the same conduct, transaction, or occurrence that was the subject of the original complaint--John Trant's attempted suicide in the hotel room, his detention at the Towamencin police station, and his actual suicide while in the holding cell, all on January 15, 1997. The amended complaint alleges with more specificity the conduct and role of each individual officer in the events of January 15, but the substance of the allegations and the conduct at issue by the township, the police department, and the officers remain largely unchanged.

As to the second prong, the emphasis here is on notice and the avoidance of prejudice to the defendants in the preparation of a defense on the merits. See Nelson, 60 F.3d at 1014-15. Notice need not be formal or actual, so long as it removes the prejudice to the defendants to be added in the amended complaint. Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc., 801 F. Supp. 1450, 1456 (E.D. Pa. 1992) (Pollak, J.); see also Heinly v. Queen, 146 F.R.D. 102, 106 (E.D. Pa. 1993) (Van Antwerpen, J.). In the instant case, it appears clear that the officer defendants had actual knowledge of their addition as defendants in this action within the 120-day period provided in the rules. The plaintiffs moved for leave to file the amended complaint on April 15, 94 days after the original complaint was filed, which leave was granted four days later; the officer defendants joined in the filing of the instant motion on April 29. The filing of the instant motion with this court plainly indicates that the officer defendants knew that the amended complaint included them as named defendants. Thus, they had actual knowledge of their

inclusion in the case, at the very latest, 108 days after this case began, if not sooner, but in either case well within the relevant procedural period. It also is likely that, upon commencement of this action, their superiors would have questioned the officers about Trant's suicide and any improper conduct undertaken while on duty on January 15, 1997 in order to begin preparing the township's defense to the complaint. This certainly would have given the officers additional notice that there was a lawsuit concerning their alleged conduct for which they might be sued. There also has been no suggestion from the officer defendants that they somehow would be prejudiced by being added as defendants at this time.

Moreover, this court agrees that, particularly in § 1983 actions, "knowledge may be imputed to a government official when the original complaint names other government officers as defendants, the official to be added as a defendant is represented by the same government counsel as the original defendants, and counsel knew or should have known within the relevant time period that joinder of the additional defendant was a distinct possibility. Heinly, 146 F.R.D. at 106; see Hargrove v. City of Philadelphia, No. 93-5760, 1994 WL 410567, *3 (E.D. Pa. 1994) (Hutton, J.) (same). In the instant case, the original complaint named as defendants one government officer, Kirschner, and the government entity itself, as well as the six John Doe officers. The township, the chief, and the officer defendants named in the amended complaint all are represented by the same counsel.⁴ The plain language of the original complaint reveals that

⁴ Cases under § 1983 generally have involved counsel who themselves were public officials, such as deputy attorneys general, see Heinly, 146 F.R.D. at 107, or assistant city solicitors. See Hargrove, 1994 WL 410567, at *4. In the instant case, the township, police chief, and officer defendants all are represented by a private, law-firm attorney. However this court does not believe that difference is meaningful for Rule 15(c)(3) purposes. The fact that Towamencin hires private outside counsel to conduct its defense in § 1983 cases, rather than maintaining a full office of government attorneys as does a large city such as Philadelphia, does

the conduct and actions of some officers on January 15, 1997 allegedly violated Trant's constitutional rights and that the plaintiffs sought to hold some officers liable as defendants for damages resulting from those violations. Thus, counsel already representing the township and Kirschner had notice that joinder of those officers was a distinct possibility as soon as the plaintiffs discovered their names. The John Doe designation clearly described those officers in the Towamencin Police Department who had contact with Trant on January 15, 1997, either in responding to the "911" call in the hotel room or in being responsible for Trant's detention at the police station during which Trant committed suicide and clearly stated that those officers were liable for damages.

The attorney for all the defendants also had actual notice within the relevant time frame that the plaintiffs intended to add the officer defendants, because the request for leave to amend the complaint naming the officer defendants, and the amended complaint, all were filed within the 120-day period provided in the rules. Moreover, plaintiffs point to a letter from their counsel to defendants' counsel, dated January 28, 1999, less than two weeks after the filing of the original complaint, requesting the production of defendants' self-executing disclosure as soon as possible precisely so that plaintiffs could amend the complaint to identify properly the John Doe defendants by name. Clearly, the requirements all have been met to impute knowledge of their status to the officer defendants.

The parties focus their arguments on the third element of Rule 15(c)(3), the requirement that within 120 days, the defendants knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought with the original

not change this court's analysis or conclusion.

claims. Nelson, 60 F.3d at 1014; Fed. R. Civ. P. 15(c)(3)(B). Defendants essentially argue that not knowing the defendants' names, as opposed to knowing the defendants but incorrectly naming them, per se cannot constitute a mistake under the rule. Defendants rely on cases from other courts in this district holding that lack of knowledge of a defendant's proper name is not a "mistake concerning the identity" within the meaning of Rule 15(c)(3)(B) and therefore an amendment naming the proper defendant cannot relate back to the date of filing of the original complaint identifying the defendant only as "John Doe" or by some other fictitious name. See Subacz v. Sellars, No. 96-6411, 1998 WL 720822, *7-8 (E.D. Pa. 1998) (Van Antwerpen, J.); Gallas v. Supreme Court of Pennsylvania, NO. 96-6450, 1998 WL 599249, *4 (E.D. Pa. 1998) (Yohn, J.); Frazier v. City of Philadelphia, 927 F. Supp. 881, 885 (E.D. Pa. 1993) (Ditter, J.). These courts in turn have relied on cases from other circuits. See, e.g., Jacobsen v. Osborne, 133 F.3d 315, 320-21 (5th Cir. 1998); see also Gallas, 1998 WL 599249, at *4 (citing cases from the First, Second, Fourth, Fifth, Sixth, Seventh, Tenth, and Eleventh Circuits). Although it goes against the direction of some recent authority, this court declines to follow these courts in denying relation back. See also Trautman v. Lagalski, 28 F. Supp. 2d 327, 329-30 (W.D. Pa. 1998) (holding that relation back is proper where amended complaint replaces "John Doe" defendants with actual names). Rather, this court holds that the third element of Rule 15(c)(3) has been satisfied and that relation-back of the amended complaint in this case is proper. There are several reasons for this conclusion.

First and foremost, this court remains bound by the one Third Circuit decision on point, Varlack v. SWC Caribbean, Inc., supra. In Varlack, the court permitted relation back where the original complaint named as a defendant "an 'Unknown' Employee of Orange Julius Restaurant"

and the amended complaint, filed well after the relevant period had expired, properly identified him by name. Varlack, 550 F.2d at 174-75.⁵ Underlying that result is a basic rejection of the position of the other circuits that mistake per se excludes lack of knowledge of the defendant's true identity. The Varlack court plainly believed that replacing a "John Doe" or unknown defendant with his actual name, once that name became known, could be a "mistake" for purposes of Rule 15(c)(3)(B) and could form the basis for relation back, provided that the defendant had proper notice within the relevant period.⁶ Cf. Trautman, 28 F. Supp. 2d at 330 ("[T]he [Varlack] court has implicitly found that listing 'John Doe' as a defendant, and subsequently amending the complaint to include Doe's actual name, is tantamount to a 'mistake concerning the identity of the proper party.'"). Further it would be absurd to hold that relation back is proper where the original complaint named as a defendant "an unknown employee," as in Varlack, but not where the original complaint used a fictitious name, such as "John Doe," as in the instant case.

The Third Circuit never has questioned or called into doubt the result or reasoning in Varlack; indeed, the court cited Varlack with apparent approval in its most recent decision on Rule 15(c). See Nelson, 60 F.3d at 1014 n.6. In Nelson, the third circuit affirmed the district court's denial of relation back and rejected an argument based on Varlack, but that appears to

⁵ Varlack was decided under the prior version of Fed. R. Civ. P. 15(c), see supra note 3. However, the conclusion in Varlack with regard to the relevant issue of whether not knowing the defendant's name can be grounds for relation back remains unchanged by the amendment to the rule.

⁶ There clearly was such knowledge in Varlack, where the defendant testified that he knew of the lawsuit in question, that he knew the phrase "unknown employee" referred to him, and that he knew that he would have been one of the persons sued had his name been captioned. Varlack, 550 F.2d at 175.

have been based on factual distinctions between the cases and not on any disagreement with Varlack's underlying principle regarding unknown defendants. See Nelson, 60 F.3d at 1011, 1014-15 (rejecting relation back where two new plaintiffs were attempting to join the case against already-named defendants in a Fourth Amended Complaint, filed more than three years after the original complaint and the expiration of the statute of limitations). Thus, Varlack commands this court to conclude that the mistake element is satisfied by lack of knowledge of the defendants' identity and to focus its attention on the notice and timing requirements.

Second, it has been recognized that the "mistake condition" in Rule 15(c)(3)(B) is not limited to cases of misnamed or misdescribed parties, but includes the addition of new parties never originally named or described. Heinly, 146 F.R.D. at 107; Advanced Power, 801 F. Supp. at 1457;id. (citing 3 Moore's Federal Practice ¶ 15.15[4.-2], at 15-167 n.15 (1988)). It also includes changing a party originally described but not actually named. See Varlack, 550 F.2d at 173, 175. It follows from this broad understanding that the mistake condition should include situations in which the proper identity is unknown at the time of the original complaint. The mistake condition is intended to insure that the new defendant knew or should have known within the relevant time that failure to join was not simply a legal strategy, Heinly, 146 F.R.D. at 107; Advanced Power, 801 F. Supp. at 1457, but that his joinder was a "distinct possibility." Heinly, 146 F.R.D. at 107. Thus, the third prong of Rule 15(c)(3) analysis, like the second, is concerned with the "central element" of notice. See Advanced Power, 801 F. Supp. at 1457; see also Schiavone, 477 U.S. at 31 ("The linchpin is notice."). In this case, that means notice that the plaintiffs likely wanted or intended to join these defendants and would have done so but for

cause, such as not knowing their true names.⁷

As discussed, supra, the officer defendants had both actual and imputed knowledge within 120 days of the commencement of this action that their inclusion as defendants in this case was a “distinct possibility” and that their not being specifically named in the original complaint was not a legal strategy. The plaintiffs sought leave to file, and filed, an amended complaint identifying the four officers by name as defendants, and the officer defendants themselves have challenged that joinder, all within the 120-day period in the rule. Moreover, the counsel for the officer defendants knew or should have known, again within the 120 days, based on the original complaint and the letter from plaintiff’s counsel, that the plaintiffs sought to bring their claims against specific officers. It was clear that the John Doe designation referred to some officers of the Towamencin Police Department who had responded to John Trant’s “911” call and who had been on duty at the police station when Trant hanged himself and that if the plaintiffs knew the officers’ true identities the action would have been brought against them from the outset. Thus, the defendants’ attorney knew within the 120-day period that joinder of these defendants was a distinct possibility and that knowledge may be imputed to the officer defendants. Cf. Heinly, 146 F.R.D. at 107; see discussion supra. There also is no suggestion that the failure to name the officer defendants in the original complaint was some sort of calculated legal strategy or that the plaintiffs are using Rule 15(c)(3) as an end-run around the statute of

⁷ Attempts by other courts to distinguish Varlack in a “John Doe” case ultimately have rested on the matter of notice, not on the rule’s definition of what constitutes a mistake. See Jacobsen, 133 F.3d at 321 (fifth circuit distinguishing Varlack because the employee knew of the suit and knew that “unknown employee” referred to him, which was not true in Jacobsen). The fifth circuit could not and did not explain its departure from the principle that “mistake” could include lack of knowledge.

limitations.

Interpreting “mistake” to include lack of knowledge of the identity of a potential defendant is most consistent with the liberal pleading practices secured by the Federal Rules of Civil Procedure. Cf. Schiavone, 477 U.S. at 27 (“[T]he principal function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the court.”) (citations and internal quotation marks omitted)); Conley v. Gibson, 355 U.S. 41, 47-48 (1957) (noting the “liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense.”). The rules recognize that much information will be in the possession of the defendant and that the plaintiff will be unable or less able to obtain that information until after the initiation of the lawsuit and the taking of discovery. The rules thus permit, in many circumstances, the filing of a complaint without that information, subject to liberal later amendment once a plaintiff has obtained that information through the discovery process. The name and identity of specific defendant police officers is one such piece of information, particularly where those officers allegedly are responsible for a violation of a plaintiff’s civil and constitutional rights and their true identity is in the hands of their supervisors and employing agencies who also are named as defendants in the case.

Plaintiffs should not lose their claims against particular defendants based upon statute of limitations grounds in a situation such as this. The purpose of the relation-back rule is to ameliorate the often-harsh effects of statutes of limitations. Nelson, 60 F.3d at 1015. Permitting the use of “John Doe” pleading where true names are not known at the time of filing a complaint, and allowing an amended pleading to relate back once true names are learned during discovery,

so long as the notice and timing requirements of Rule 15(c)(3) are satisfied, is consistent with such amelioration.

Because this court finds that the officer defendants had both actual and constructive notice that they would be sued once their identities became known, and that such notice came within the 120-day period provided in the rule, the third element of Rule 15(c)(3) has been satisfied and it is proper that the amended complaint naming the officer defendants should relate back to the date of the original complaint. Thus, the defendants' petition for reconsideration is denied.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY ANN TRANT, as : CIVIL ACTION
Administratrix of the Estate :
of John Trant, individually :
and in her own right, et al. :
:
v. :
:
TOWAMENCIN TOWNSHIP, et al. : NO. 99-134

ORDER

AND NOW, this ___ day of May 1999, upon consideration of the Petition for Reconsideration of Defendants, and the arguments of the parties, for the reasons stated in the attached Memorandum, it hereby is ORDERED that the motion is DENIED.

BY THE COURT

JAMES T. GILES C.J.

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to

