

Rel: March 18, 2022

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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Ex parte Joseph T. Ryerson and Son, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Terry Harris

v.

Gamble Parts Dart, Inc., et al.)

(Jefferson Circuit Court: CV-19-900956)

PER CURIAM.

PETITION DENIED. NO OPINION.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Bolin and Sellers, JJ., concur specially.

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SELLERS, Justice (concurring specially).

Terry Harris, the respondent to the petition for a writ of mandamus filed by Joseph T. Ryerson & Son, Inc. ("Ryerson"), alleges that, on March 3, 2017, he was injured on the job while working to unload steel beams from a truck. Harris filed his initial complaint in the Jefferson Circuit Court on March 1, 2019, naming Gamble Parts Dart, Inc. ("Gamble"), as a defendant. Harris claimed that Gamble owned or leased the truck in question. Harris also sued a number of fictitiously named defendants.

According to Harris's initial complaint, the truck in question "struck and injured" Harris, which he asserted was the proximate cause of his injuries. None of the fictitiously named defendants was described as the person or entity responsible for loading the steel beams onto the truck. In fact, there was no mention in the complaint of steel beams and no allegation that the failure to secure steel beams caused the injuries complained of.

On February 17, 2020, Harris filed an amended complaint, alleging that the steel beams had not been properly secured when they were loaded onto the truck, causing them to shift when Harris stepped onto them and

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resulting in his injuries. In his amended complaint, Harris alleged that Gamble and a number of fictitiously named defendants had negligently loaded the steel beams.

On March 24, 2021, Harris filed a second amended complaint, in which he substituted Ryerson for one of the fictitiously named defendants. Harris alleged that Ryerson had provided Gamble with the load of steel beams and that Ryerson's agents had failed to properly secure those beams. The second amended complaint asserted for the first time that Ryerson's negligent handling of the steel beams was the proximate cause of Harris' injuries.

Ryerson filed a motion to dismiss, alleging that Harris's claim against it was barred by the applicable statute of limitations. According to the motion to dismiss, Harris's amended complaint substituting Ryerson for a fictitiously named defendant did not relate back to the initial complaint, which was filed before the limitations period expired, under Rules 9(h) and 15(c)(4), Ala. R. Civ. P., because Harris had not exercised due diligence in discovering Ryerson's role in the accident and in amending his complaint to substitute Ryerson as a defendant. The

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motion to dismiss did not allege that Harris's initial complaint had failed to adequately identify a fictitiously named defendant as the person or entity that had loaded and secured the steel beams or had failed to adequately state a cause of action against that fictitiously named defendant. See generally Ex parte Noland Hosp. Montgomery, LLC, 127 So. 3d 1160, 1167 (Ala. 2012). The trial court denied Ryerson's motion, and Ryerson filed a petition for a writ of mandamus.

Based on the specific arguments and authority presented to the trial court in Ryerson's motion to dismiss and the arguments and authority cited in Ryerson's petition for a writ of mandamus, I concur in the Court's decision to deny that petition. I write specially simply to note that this Court's denial of Ryerson's mandamus petition does not operate as a decision on the merits regarding whether the statute of limitations bars Harris's claim against Ryerson and does not prohibit the trial court from again considering that issue at a later time. See, e.g., R.E. Grills, Inc. v. Davison, 641 So. 2d 225, 229 (Ala. 1994) ("[T]he denial [of a petition for a writ of mandamus] does not operate as a binding decision on the merits."); Cutler v. Orkin Exterminating Co., 770 So. 2d 67, 69 (Ala. 2000)

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("[B]ecause of the extraordinary nature of a writ of mandamus, the denial of relief by mandamus does not have res judicata effect."); Shell v. Butcher, [Ms 1200097, May 14, 2021] ___ So. 3d ___, ___ (Ala. 2021) (holding that the denial of a petition for a writ of mandamus did not operate to create law of the case).

Bolin, J., concurs.