

LYNDA KASKO, *Plaintiff* v. DENNIS ANGLE, ESTATE OF DENNIS ANGLE,  
DEBORAH WRIGHT and THOMAS BAKER, *Defendants*

2016-SU-002201-69

Estate – Party – Statute of Limitations

1. The Court granted Defendant’s Motion for Reconsideration of its prior Order that granted Plaintiff’s petition for leave to amend the caption of the complaint to include Lucy Angle, Administratrix of the Estate of Dennis Angle, as a Defendant in this action.
2. The statute of limitations on the action had tolled and amending the petition to include Lucy Angle, Administratrix of the Estate of Dennis Angle, as a Defendant was improper because this action would add a new party, which is not permitted after the statute of limitations has passed.
3. The Court denied Plaintiff’s Preliminary Objections as to the Motion for Reconsideration as it found no active concealment of the death of Defendant Dennis Angle.

**IN THE COURT OF COMMON PLEAS YORK COUNTY PENNSYLVANIA**

LYNDA KASKO	:	2016-SU-002201-69
<i>Plaintiff</i>	:	
	:	
v.	:	CIVIL ACTION
	:	
DENNIS ANGLE	:	
ESTATE OF DENNIS ANGLE	:	
DEBORAH WRIGHT	:	
THOMAS BAKER	:	
<i>Defendants</i>	:	

APPEARANCES:

WILLIAM P. MIKITA, JR., Esq.  
Attorney for the Plaintiff

JOSEPH F. MURPHY, Esq.  
MICHAEL B. SCHEIB, Esq.  
Attorneys for Defendant Angle

---

**ORDER GRANTING DEFENDANTS' MOTION FOR RECONSIDERATION  
AND SUSTAINING DEFENDANTS' PRELIMINARY OBJECTIONS**

**AND NOW**, this 22<sup>nd</sup> day of September, 2017, the Court has before it Defendant's motion for reconsideration of this Court's Order dated February 28, 2017 that granted Plaintiff's petition for leave to amend the caption of the complaint to include Lucy Angle, Administratrix of the Estate of Dennis Angle, as a Defendant in this action. The Court also has before it Defendants Angle and Estate's preliminary objections to Plaintiff's amended complaint and Plaintiff's response. After further review, the Court GRANTS Defendant Angle's and Estate's Motion for Reconsideration for the reasons stated below. In addition, Defendants' preliminary objections are SUSTAINED and Plaintiff's cause of action as to Defendants Dennis Angle and the "Estate of Dennis Angle" are also hereby dismissed with prejudice.

*Factual and Procedural History*

On January 17, 2015, Plaintiff Lynda Kasko was a passenger in an automobile driven by Defendant Deborah Wright and owned by Defendant Thomas Baker traveling on Route 30, George Street in Manchester Township, Pennsylvania. Plaintiff alleges that Defendant Dennis Angle, who was also traveling on Route 30 George Street, lost control of his vehicle and collided with Plaintiff's vehicle. Plaintiff sustained injuries as a result of this collision.

On December 24, 2015, Defendant Dennis Angle passed away. On April 19, 2016, the York County Register of Wills entered a decree granting Letters of Administration to Defendant Angle's widow, Lucy Angle, upon the filing of a Petition for Grant of Letters. Lucy Angle became Administratrix of Defendant Angle's estate.

On August 22, 2016, Plaintiff filed her complaint in civil action against Defendants Dennis Angle, Wright, and Baker, alleging a tort action in negligence. Plaintiff attempted to serve Defendant Angle, unaware that he passed away in December 2015. On October 10, 2016, Plaintiff attempted to serve Defendant Angle at his home on Beaver Street in York, Pennsylvania. A woman claiming to be Defendant's ex-wife, Ruby, informed the process server that Defendant Angle had passed away. On November 12, 2016, Plaintiff conducted a skip search that failed to reveal any additional details on Defendant Angle or his estate. On December 21, 2016, Plaintiff filed an amended complaint that named "Dennis Angle" and the "Estate of Dennis Angle" as Defendants, along with Defendants Wright and Baker.

On January 17, 2017, the two year statute of limitations for bringing an action in negligence expired for Plaintiff's case. On January 24, 2017, Attorneys Michael B. Scheib, Esq. and Joseph F. Murphy, Esq. entered their appearances for Defendant Estate of Dennis Angle. The prothonotary registered this praecipe on January 30, 2017. On February 10, 2017, Attorneys Scheib and Murphy filed preliminary objections to Plaintiff's complaint alleging: (1) improper service and (2) failing to name a proper legal entity as a party Defendant. On February 15, 2017, Plaintiff filed a praecipe to reinstate

the complaint. On February 22, 2017, Plaintiff filed a response to Defendant's preliminary objections. On February 28, 2017, Plaintiff filed a petition to amend the complaint to include Lucy Angle, Administratrix of the Estate of Dennis Angle, as a Defendant in the caption of the complaint, which this Court granted on the same date. On March 22, 2017, Defendant Estate of Dennis Angle filed a Motion for Reconsideration of this Court's Order allowing an amendment to the complaint.

*Issues:*

Defendant raises two issues in their Motion for Reconsideration and raised two preliminary objections to Plaintiff's amended complaint. The Court will only address one of these issues, as the rest will be rendered moot as a result of the Court's decision on the following issue:

I. Whether Reconsideration of the Court's order granting Plaintiff's petition to amend the caption of the action to add a new party as a defendant after expiration of the statute of limitations is appropriate where Pennsylvania Law is clear that an action commenced against a dead man and/or a decedent's estate is a nullity; therefore, there is nothing on the docket to amend, and the action is now time-barred?

*Discussion*

"[A] trial court has broad discretion to modify or rescind an order, and this power may be exercised *sua sponte* or invoked pursuant to a party's motion for reconsideration."

*Haines v. Jones*, 830 A.2d 579, 584 (Pa. Super. 2003); citing *Verholek v. Verholek*, 741 A.2d 792, 798 (Pa. Super. 1999). “The trial court may consider a motion for reconsideration only if the motion for reconsideration is filed within thirty days of the entry of the disputed order.” *Id.*

Defendants argue that reconsideration of the court’s decision to grant Plaintiff’s petition to amend the complaint is appropriate because Plaintiff named two parties, “Dennis Angle” and “Estate of Dennis Angle” which are both void parties under the law. Defendant further argues that the statute of limitations passed on January 17, 2017, and amending the petition to include Lucy Angle as a Defendant would be improper because this action would add a new party, which is not permitted after the statute of limitations has passed.

Plaintiff argues that they should be permitted to amend the complaint past the statute of limitations because Defendants and Defendants’ agents actively concealed both the death of Dennis Angle and Lucy Angle’s appointment as Administratrix.

#### *Suing a Deceased Individual is a Null and Void Action*

“It is well settled [law] that ‘[a] dead man cannot be a party to an action, and any such attempted proceeding is completely void and of no personal effect.’” *Montanya v. McGonegal*, 757 A.2d 947, 950 (Pa. Super. 2000); quoting *Valentin v. Cartegena*, 544 A.2d 1028, 1029 (Pa. Super. 1988). An action brought by or against a deceased person’s estate lacking a personal representative is also void: subsequent attempts to amend the

caption to include the representative is viewed as adding a new party, which is not permitted after the statute of limitations has expired. *Prevish v. Northwest Medical Center Oil City Campus*, 692 A.2d 192, 201 (Pa. Super. 1997); citing *Marzella v. King*, 389 A.2d 659, 661 (Pa. Super. 1978). The defect cannot be cured by an amendment to the complaint because there is nothing to amend. *Prevish*, 692 A.2d at 201; quoting *Thompson v. Peck*, 181 A. 597, 598 (Pa. 1935).

“Where the statute of limitations has run, amendments will not be allowed which introduce a new cause of action or bring in a new party or change the capacity in which he is sued. If the effect of the amendment is to correct the name under which the right party is sued, it will be allowed; if it is to bring in a new party, it will be refused.” *Lafferty v. Alan Wexler Agency, Inc.*, 574 A.2d 671, 673 (Pa. Super. 1990); quoting *Girardi v. Laquin Lumber Co.*, 81 A. 63 (Pa. 1911).

“Moreover, because a dead person cannot be a party to an action commenced after his death, substitution of a personal representative of the dead person’s estate is improper.” *Montanya*, 757 A.2d at 950. “If a plaintiff commences an action against a person who has previously deceased, the only recourse is to file a new action naming the decedent’s personal representative as the defendant [before the statute of limitations expires].” *Montanya*, 757 A.2d at 950.

In the present case, Plaintiff filed the original complaint in negligence on August 22, 2016 and included Dennis Angle as a Defendant. Dennis Angle was deceased prior to the filing of the complaint, which means the complaint as it pertains to Dennis Angle was

void. Plaintiff received information that Dennis Angle was deceased in October 2016 and confirmed this information in November 2016. Plaintiff filed an amended complaint on December 21, 2016, before the statute of limitations expired, but named Dennis Angle and the “Estate of Dennis Angle” as Defendants. The statute of limitations expired on January 17, 2017. Plaintiff filed a petition to amend the complaint to include the personal representative of Dennis Angle’s estate, Lucy Angle, as a Defendant in this cause of action.

The case law states that Plaintiff is not permitted to amend the complaint because doing so would add a new party to the complaint after the statute of limitations. In addition, Plaintiff cannot substitute Lucy Angle in place of Dennis Angle or the Estate of Dennis Angle through an amendment to the complaint. The law states that Plaintiff’s only recourse, upon discovering Dennis Angle was deceased, was to file a new action against the personal representative of the estate before the statute of limitations expired. Plaintiff failed to do this, and as a result, the complaint as it pertains to Dennis Angle and “Estate of Dennis Angle” is void. The cause of action against Dennis Angle and the Estate of Dennis Angle must be dismissed as void under the law.

#### *Active Concealment Exception*

In their response to Defendants’ preliminary objections, Plaintiff argued that the statute of limitations should be tolled because Defendants actively misled and concealed the death of Dennis Angle and the appointment of Lucy Angle as Dennis Angle’s

personal representative. Plaintiff states that the Defendants “have used gamesmanship” to conceal the death of Dennis Angle and the appointment of Lucy Angle as Administratrix of the Estate. We disagree.

“It is the duty of the party asserting a cause of action to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to institute suit within the prescribed period.” *Ferraro v. McCarthy-Pascuzzo*, 777 A.2d 1128, 1134 (Pa. Super. 2001); citing *Hayward v. Medical Center*, 608 A.2d 1040, 1042 (1992). “In Pennsylvania, a cause of action for negligence is controlled by the two-year statute of limitations set forth in 42 Pa.C.S.A. § 5524(2).” *Montanya*, 757 A.2d at 950; citing *Hubert v. Greenwald*, 743 A.2d 977, 981 (Pa. Super. 1999). “The statute of limitations begins to run as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake, or misunderstanding [does] not toll the running of the statute of limitations.” *Id.*

However, if a Defendant or their agent “actively misleads the plaintiff as to the identity of the proper defendants until after the statute of limitations has expired, the proper remedy is to toll the statute of limitations.” *Id.* “The plaintiff has the burden of proving active concealment through clear and convincing evidence.” *Montanya*, 757 A.2d at 951; citing *Hubert*, 743 A.2d at 981. Defendant’s conduct need not be intentional, with a specific intent to deceive; “unintentional fraud or concealment is sufficient.” *Id.*; citing *Molineux v. Reed*, 532 A.2d 792, 794 (1987). “In order for fraudulent concealment to toll the statute of limitations, the defendant must have committed some affirmative

independent act of concealment upon which the plaintiffs justifiably relied.” *Id.*; citing *Kingston Coal Co. v. Felton Mining Co., Inc.*, 690 A.2d 284, 291 (1997).

Plaintiff has alleged three instances where Defendants or Defendants’ agents actively misled Plaintiff. We will discuss these instances separately.

*A. Attempted Service at Dennis Angle’s Residence*

Plaintiff states in the response to Defendants’ preliminary objections that the attempted service at Dennis Angle’s residence was one of the instances where Defendant misled Plaintiff and actively concealed Dennis Angle’s death and the appointment of Lucy Angle as Administratrix. Plaintiff does not state a specific reason for how Defendant misled Plaintiff in this instance. However, after reviewing the facts presented about the attempted service at Dennis Angle’s home, the Court does not find Defendants actively misled Plaintiff on this occasion.

In *Montanya*, Plaintiff argued on appeal that the widow of a defendant, who died before the filing of the complaint, actively concealed the death of her husband when she accepted service of the complaint and did not indicate to the sheriff that her husband had passed away. 757 A.2d at 951. Plaintiff also argued that the widow had an affirmative duty to call Plaintiff’s attorney and inform Plaintiff that Defendant was deceased upon receiving the complaint. *Id.* The Superior Court disagreed, finding that the widow had no affirmative duty to contact Plaintiff, and the widow’s mere silence about her husband’s

status when she accepted service was not an affirmative act that misled Plaintiff and, as such, was insufficient to toll the statute of limitations. *Id.*

The standard in *Montanya* is applicable to the attempted service in the present case. The facts show that Plaintiff attempted to serve defendant at his residence on Beaver Street in York, Pennsylvania on October 10, 2016. Defendant's ex-wife, Ruby, answered the door and informed the server that Defendant died back in December 2015. It is clear based on these facts that Ruby did not actively mislead Plaintiff on Defendant Dennis Angle's death because she told them the truth. The Court also does not find that Ruby misled Plaintiff on the appointment of Lucy Angle as Administratrix on this occasion. Ruby never stated affirmatively or in the negative that an estate had been created for her ex-husband or that an Administratrix had been appointed. The Court does not find any of the actions by Ruby would actively mislead the Plaintiff and Plaintiff is not entitled to the tolling of the statute of limitations on this claim.

#### *B. Plaintiff's Contacts with Insurance Company*

Plaintiff also argues that the statute of limitations should be tolled based on several communications between Defendant's insurance company, its agents, and Plaintiff. Plaintiff points out that all of the communications occurred after Defendant's death. Plaintiff argues that agents Kimberly Iliuano and Ashley Rockhill make no mention of Defendant's death in any of the letters they sent to Plaintiff. In addition, Plaintiff alleges that they served a copy of the complaint to Defendant's insurance

company and on a letter dated January 24, 2017 Ashley Rockhill made no mention of Defendant's death or that Lucy Angle was appointed as Administratrix of Dennis Angle's estate. Plaintiff states that the insurance company actively concealed the death of Defendant and the appointment of Lucy Angle as Administratrix and the statute of limitations should be tolled as a remedy. We disagree.

In *Montanya*, Plaintiff argued that the deceased Defendant's insurance carrier sent letters to the attorney from which it could be inferred that Defendant was alive. 757 A.2d at 951. Plaintiff noted that the headings in the letters stated, "Our Insured: Robert McGonegal" which led Plaintiff to believe that Defendant was still alive. *Id.* Plaintiff argued that the insurance carrier should have indicated in the letters that the insured was Defendant's estate and also argued that the insurance company had a duty to inform Plaintiff that Defendant had died when they discovered his death. *Id.* The Superior Court disagreed, finding that Plaintiff's reliance on the letter headings was misplaced and unreasonable. *Id.* The Court also held that Plaintiff did not show that the insurance company committed an act of concealment, noting that the letters never explicitly stated Defendant was alive or deceased, but were silent on the issue. *Id.* at 952. The Court also held that it was the Plaintiff's duty to find out whether Defendant was alive or deceased and "the insurance carrier was under no duty to inform [Plaintiff] of the status of their insured." *Id.*

The present case can be compared to *Montanya*. The insurance company had no duty to inform Plaintiff of Defendant's death. None of the letters sent by the insurance

company contains any statement that would actively mislead Plaintiff to believe that Defendant was still alive. The letters are silent to the issue. Silence or nondisclosure is not enough to find that the insurance company actively concealed or misled Plaintiff into believing that Defendant was still alive or that an estate had been created. When Plaintiff discovered that Defendant Angle passed away, it was their duty to use whatever resources available to discover Defendant's status and whether an estate had been created. The Court does not find any of the insurance company's actions would actively mislead the Plaintiff and Plaintiff is not entitled to the tolling of the statute of limitations on this claim.

*C. Concealment of Lucy Angle's Appointment as Administratrix of Estate*

Finally, Plaintiff argues that the statute of limitations should be tolled because the Defendant concealed the appointment of Lucy Angle as Administratrix of Dennis Angle's Estate. We disagree.

Plaintiff claims that they learned Lucy Angle became Administratrix for the first time when Defendant's attorneys filed the preliminary objections on February 13, 2017. It is also worth noting that Defendant's counsel did not enter their appearance in this matter until January 24, 2017, which is after the statute of limitations. It was Plaintiff's duty to ascertain the status of Defendant Dennis Angle and to determine whether an Administratrix had been appointed for his estate. Plaintiff failed to perform that duty and

discover this relevant information. Nothing was filed by Defendant's attorneys until after the statute ran, so we fail to see how Plaintiff was misled by them.

Plaintiff has not set forth any facts that demonstrate Defendants, Defendants' attorneys, or any of Defendants' agents actively concealed the appointment of Lucy Angle as Administratrix. As discussed above, Defendants' insurance agents had no duty to inform Plaintiff of Defendant's death, nor did they make any statement that would lead Plaintiff to believe he was alive or that an estate had been created. Plaintiff has not proven by clear and convincing evidence that any person performed any action that would mislead the Plaintiff on Lucy Angle's appointment as Administratrix. Therefore, Plaintiff is not entitled to relief on this claim.

*Conclusion*

Based on Plaintiff's failure to attach the proper parties before the statute of limitations expired, and based on Plaintiff's failure to show by clear and convincing evidence that Defendant's actively misled Plaintiff's, Defendants' Motion for Reconsideration is hereby GRANTED. Plaintiff's cause of action in regards to Dennis Angle and the Estate of Dennis Angle is hereby dismissed, with prejudice.

**BY THE COURT:**

---

Richard K. Renn, Judge