

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
January 31, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

E1999-02098-C)A-R3-CV

DONNY AND PAMELA J. OAKS,) C/A NO. 03A01-9906-CV-00192
)
Plaintiffs-Appellants,)
)
)
v.) APPEAL AS OF RIGHT FROM THE
) HAWKINS COUNTY CIRCUIT COURT
)
)
GARY AND LINDA STEWART,)
)
Defendants-Appellees.) HONORABLE JOHN K. WILSON,
) JUDGE

For Appellants

KENNETH R. WORLEY
Werner & Worley, P.C.
Kingsport, Tennessee

For Appellees

JAMES N. POINT
Rogersville, Tennessee

OPINION

VACATED AND REMANDED

Susano, J.

The plaintiffs, Donny and Pamela J. Oaks, filed a complaint seeking only "exemplary damages" and related -- in an unspecified way -- to the sale of a residence by the defendants, Gary and Linda Stewart, to the plaintiffs.¹ The trial court granted the defendants' motion to dismiss or for summary judgment, which motion is based on two grounds: (1) the complaint seeks exemplary damages without any claim for actual damages; and (2) the plaintiffs' claim is barred by the statute of limitations. The plaintiffs appeal the dismissal of their complaint, arguing that their claim for damages is governed by a four-year statute of limitations and therefore was timely filed.²

From the skimpy record before us, it appears that the defendants' motion was heard by the trial court on November 24, 1998. Prior to that hearing, the plaintiffs had filed a motion to amend their complaint, accompanied by a nine-page amended complaint seeking relief based upon multiple theories. The amended complaint seeks actual and punitive damages as well as treble damages under the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.* The record does not indicate that the trial court ever addressed this motion to amend.

The trial court's failure to address the motion to amend is not raised by the plaintiffs on appeal. Although we generally consider only those issues presented by the parties for review, the Rules of Appellate Procedure permit us to consider other issues in order, among other things, "to prevent prejudice to the judicial process." Rule 13(b), T.R.A.P. Moreover, we may

¹The complaint does not seek a jury trial.

²The plaintiffs do not address in their brief the alternative basis of the defendants' motion, *i.e.*, that the plaintiffs cannot seek exemplary damages in the absence of a claim for actual damages.

grant "relief on the law and facts to which the party is entitled or the proceeding otherwise requires...." Rule 36(a), T.R.A.P. Accordingly, we find it appropriate to address the trial court's failure to consider the plaintiffs' motion to amend.

Rule 15.01, Tenn.R.Civ.P., provides, in pertinent part, as follows:

A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within 15 days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and *leave shall be freely given when justice so requires.*

(Emphasis added). Rule 15.01 "needs no construction; it means precisely what it says, that 'leave shall be freely given.'" **Branch v. Warren**, 527 S.W.2d 89, 92 (Tenn. 1975). A "trial court must give the proponent of a motion to amend a full chance to be heard on the motion," and must consider the motion in light of the liberal amendment policy embodied in Rule 15.01. **Henderson v. Bush Bros. & Co.**, 868 S.W.2d 236, 238 (Tenn. 1993).

A trial court abuses its discretion when it dismisses an action on the basis of the original complaint without first considering and ruling upon a plaintiff's pending motion to amend. **Id.** (quoting **Ellison v. Ford Motor Co.**, 847 F.2d 297, 300 (6th Cir. 1988)). We therefore find that the trial court abused its discretion by addressing, and subsequently dismissing, the plaintiffs' complaint without first considering the plaintiffs' pending motion to amend. We express no opinion as to whether the

plaintiffs' complaint, if amended, can withstand a pre-trial motion of the type filed by the defendants in this case.

The order of the trial court dismissing the plaintiffs' complaint is vacated. Costs on appeal are taxed to the appellees. This case is remanded to the trial court so it can consider and rule on the plaintiffs' motion to amend their complaint and for such further proceedings as may be required, consistent with this opinion.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

D. Michael Swiney, J.