COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-2182-FT **Cir. Ct. No. 03CV000105**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ATLANTA CASUALTY COMPANIES,

PLAINTIFF-RESPONDENT,

V.

KA VUE N/K/A KA PAO VUE,

DEFENDANT,

LINDA BRANDT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: DENNIS G. MONTABON, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Linda Brandt appeals an order that denied her motion to amend a pleading and granted the motion of Atlanta Casualty

Companies (ACC) to dismiss this action. ACC commenced this proceeding as a declaratory judgment action and later moved to dismiss because no justiciable controversy remained pending. Brandt sought to amend her answer to ACC's complaint in order to pursue a personal injury action against ACC. We conclude that the trial court properly ruled on both matters, and, therefore, we affirm.

¶2 Bee Vue struck and injured Brandt on July 4, 2000, while driving a vehicle owned by Chia Vang. State Farm Insurance Company insured Vang. ACC insured Ka Vue, Bee Vue's father.

¶3 ACC commenced this declaratory judgment action in February 2003, seeking a declaration that it had no duty under Ka Vue's policy to defend or pay damages on any personal injury claim Brandt might assert with regard to the July 4, 2000 accident. It named Ka Vue, Bee Vue, State Farm, Vang and Brandt as defendants. Because Bee Vue, Vang and State Farm had already settled with Brandt for State Farm's policy limits, the trial court dismissed them in May 2003. Meanwhile, Brandt answered the declaratory judgment complaint with a pleading entitled "answer to complaint for declaratory judgment." Its seven paragraphs addressed the allegations in ACC's complaint and either admitted, denied or denied knowledge of each of them. The pleading closed with a demand for (1) a judgment declaring that ACC must extend coverage in connection with the July 4, 2000 accident, and (2) a judgment awarding Brandt her "costs, disbursements and expenses herein."

¶4 No further proceedings besides discovery occurred between May 2003 and January 2004, when ACC moved to dismiss on the ground that the statute of limitations on Brandt's personal injury claim had expired on July 4, 2003, and therefore, no justiciable controversy remained. In response, Brandt

moved to recaption her pleading "answer and counterclaim," and argued in an accompanying brief that the answer she filed in April 2003, liberally construed, included a personal injury counterclaim against ACC.

¶5 The trial court rejected Brandt's argument and held that the answer did not present a counterclaim for personal injury damages. Moreover, the trial court denied the motion to amend because the statute of limitations had expired, barring any claim against ACC.

¶6 Pleadings that set forth a claim for relief, including a counterclaim, must contain "[a] short and plain statement of the claim, identifying the transaction or occurrence or series of transactions or occurrences out of which the claim arises and showing that the pleader is entitled to relief." WIS. STAT. § 802.02(1)(a) (2001-02).[1] The pleading must also contain "[a] demand for judgment for the relief the pleader seeks." Section 802.02(1)(b). If a pleading contains a counterclaim, the caption must state its existence. WIS. STAT. § 802.04(1). Whether a pleading meets these standards is a question of law. *See* ***Sheboygan County v. D.T.***, 167 Wis. 2d 276, 282-83, 481 N.W.2d 493 (Ct. App. 1992).

¶7 Brandt's answer failed to adequately present a personal injury counterclaim against ACC. It gave no notice of her personal injury claim in either the caption or body of the pleading. It did not contain any statement of the claim, or affirmative allegations supporting it. The demand for judgment requested

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

money damages not for personal injury, but for costs, disbursements and expenses in this action.

¶8 As Brandt notes, we must construe pleadings to do substantial justice. WIS. STAT. § 802.02(6). In other words, we should liberally construe pleadings and deem them sufficient if they give reasonable notice of the claim to the opposing party. *See* ***Farrell v. John Deere Co.***, 151 Wis. 2d 45, 56, 443 N.W.2d 50 (Ct. App. 1989). However, even when we take into account Wisconsin's liberal notice pleading jurisprudence, we do not believe that a well informed party reading Brandt's answer would perceive or understand it to be a counterclaim for personal injury damage.

¶9 The trial court properly denied Brandt's motion to amend the pleading. That decision was discretionary. *See* ***Finley v. Culligan***, 201 Wis. 2d 611, 626, 548 N.W.2d 854 (Ct. App. 1996). It was a reasonable exercise of that discretion because, as the trial court held and we have affirmed, Brandt did not succeed in bringing her claim before the statute of limitations expired. Consequently, allowing the amendment served no purpose. It would not have revived an expired claim. *See* ***Gamma Tau Educ. Found. v. Ohio Cas. Ins. Co.***, 41 Wis. 2d 675, 683-84, 165 N.W.2d 135 (1969) (Once run, a statute of limitations renders a claim extinct and bars it forever.).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.