Civil Rights Update

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The Naming of "John Doe" Defendants Is Not a "Mistake" Triggering the Relation-Back Doctrine

The United States Court of Appeals for the Seventh Circuit recently addressed whether the suing of nominal placeholder John Doe defendants constitutes a "mistake" under Federal Rule of Civil Procedure 15(c)(1)(C), thereby allowing otherwise untimely claims to "relate back" to a timely-filed original complaint. Consistent with several of its sister circuits, the Seventh Circuit in *Herrera v. Cleveland*, No. 20-2076, 2021 U.S. App. LEXIS 23405 (7th Cir. Aug. 6, 2021), found that John Doe claims are not filed by "mistake," and that the plaintiff's claims were untimely.

Lower Court Action

The plaintiff, Herrera, filed a *pro se* 42 U.S.C. § 1983 action alleging that three corrections officers failed to protect him from an assault by other detainees in Cook County Jail. *Herrera*, 2021 U.S. App. LEXIS 23405, at *1. Herrera's original complaint was filed within two years of the alleged harm, thus satisfying the applicable statute of limitations drawn from Illinois' rule for personal injury suits, 735 ILCS 5/13-202. *Id.* at *3. However, Herrera identified each of the three defendants as "John Doe" while he endeavored to discover their names. Through letters to the Cook County Sheriff and written discovery requests, Herrera was eventually able to identify each of the corrections officers. He named them through two successive amendments to his complaint, but only after expiration of the two-year limitations period. *Id.* at *3-4.

The corrections officers moved to dismiss the second amended complaint, arguing that Herrera's claims were time-barred and did not "relate back" to the timely original filing. They asserted that the naming of John Doe defendants did not constitute a "mistake" pursuant to Federal Rule 15(c)(1)(C)(ii) and that, separately, equitable tolling was inappropriate because Herrera did not exercise reasonable diligence in bringing his claims. *Id.* at *4-5. The district court disagreed, and explicitly ruled that the naming of a John Doe placeholder is a "mistake" under the rule. *Id.* at *5. In so doing, the court acknowledged *Hall v. Norfolk Southern Railway Co.*, 469 F.3d 590, 596 (7th Cir. 2006), which held that John Doe placeholders are not a mistake for purposes of the relation-back doctrine. The district court nevertheless reasoned that the Supreme Court's decision in *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 555-57 (2010), overruled *Hall*. *Herrera*, 2021 U.S. App. LEXIS 23405, at *5-6. In *Krupski*, the Court found that suing a similarly named—but incorrect—corporate entity was a "mistake" under Rule 15(c). *Id.* at *5. In denying the officers' motion to dismiss, the district court did not address the equitable tolling argument. *Id.* at *6.

The Rule and Analysis by the Court of Appeals

On interlocutory appeal, the Seventh Circuit addressed the applicable rule, *Krupski*, and the history of John Doe placeholder defendants. Rule 15(c)(1)(C) states the following:

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(c) Relation Back of Amendments.

(1) ***When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when:

. . .

(c) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

In *Hall*, the plaintiff timely filed suit against the wrong corporation and, upon recognizing his mistake, sought leave to amend the complaint. Because the amendment would be untimely, the plaintiff argued that his failure to name the correct corporation was a mistake as to the defendant's identity under Rule 15(c)(1)(C)(ii). *Herrera*, 2021 U.S. App. LEXIS 23405, at *7 (citing *Hall*, 469 F.3d at 593). On appeal, the Seventh Circuit rejected this argument. It found that the plaintiff's conundrum amounted to "ignorance or misunderstanding about who is liable for injury," a circumstance not aided by the relation-back doctrine. This, the *Hall* court reasoned, was akin to John Doe cases, because in each instance the plaintiff "does not know who harmed him." In either instance, according to *Hall*, there was no "mistake" under the rule, and thus no way for the claims to relate back. *Herrera*, 2021 U.S. App. LEXIS 23405, at *7-8 (citing *Hall*, 469 F.3d at 596).

Herrera reiterated his argument that *Krupski* changed this long-established principle. This view—that inadequate knowledge of a defendant's identity, thus warranting a John Doe designation, can constitute a "mistake"—was shared by a number of district courts. *Herrera*, 2021 U.S. App. LEXIS 23405, at *8; *see also Miller v. Panther II Transp., Inc.*, No. 17-cv-04149, 2018 WL 3328135, at *6-20 (S.D. Ind. July 6, 2018); *Haroon v. Talbott*, No. 16-cv-04720, 2017 WL 4280980, at *7 (N.D. Ill. Sept. 27, 2017); *White v. City of Chicago*, No. 14-cv-3720, 2016 WL 4270152, at *15-17 (N.D. Ill. Aug. 15, 2016); *Brown v. Deleon*, No. 11 C 6292, 2013 WL 3812093, at *6 (N.D. Ill. July 18, 2013). The Seventh Circuit in *Herrera*, however, had a different interpretation of *Krupski*, and explained it in detail.

The court first stressed the facts in *Krupski*. In that case, the Supreme Court addressed a situation in which a plaintiff mistakenly sued a corporate subsidiary, only to realize later that she should have sued the parent corporation. The correct entity knew or should have known that it was the proper defendant. *Herrera*, 2021 U.S. App. LEXIS 23405, at *8-9. The Supreme Court found that a misunderstanding resulting in a deliberate but mistaken choice of defendant should not entirely foreclose an amendment from relating back. *Id.* at *9. In other words, a plaintiff who genuinely thinks he is correct in his choice of defendant, but was actually incorrect, may have made a "mistake." The Court cautioned that this is not the same thing as deliberately suing one party instead of another while fully understanding the factual and legal differences between them; such a choice is "the antithesis of making a mistake concerning the proper party's identity." *Id.* at *10. It also contrasts sharply with a John Doe defendant situation, in which the plaintiff simply does not know the identity of a defendant.

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The court next presented three reasons why the naming of a John Doe defendant, as here, is no "mistake" under the Rule 15(c)(1)(C). First, suing a John Doe defendant is a deliberate choice. It is based on an informed decision to sue "a fictitious individual in lieu of a real person." *Id.* at *10-11. Second, *Krupski* is factually distinguishable from John Doe cases. The plaintiff in *Krupski* "had no idea she lacked knowledge of the proper defendant's identity." Herrera, as with other plaintiffs who name John Does, was "fully aware" that he did not know the defendants' identities. This situation was not addressed by the Supreme Court in *Krupski*. *Id.* at *11. Third, according to the Seventh Circuit, the definition of "mistake" applicable to Rule 15(c)(1)(C) does not apply to John Doe situations. *Id.* The district court, as had other district court opinions, misinterpreted *Krupski* and placed undue importance on the phrase "inadequate knowledge" in defining "mistake." A true "mistake," as defined by *Krupski*, is a "'wrong action' stemming from 'inadequate knowledge.'" *Id.* at *12 (quoting *Krupski*, 560 U.S. at 548-49). In other words, reasoned the court, "[n]aming a John Doe defendant as a nominal placeholder is not a wrong action proceeding from inadequate knowledge; it is a proper action on account of inadequate knowledge." *Herrera*, 2021 U.S. App. LEXIS 23405, at *12. It is not a mistake.

In *Herrera*, the Seventh Circuit thus concluded that *Krupski* had no effect on its treatment of "John Doe" defendant cases, and found that its position is consistent with other circuits. *Id.* at *12-13 (collecting cases from the 2d, 5th, and 8th Circuits). In the absence of a "mistake" pursuant to Rule 15(c)(1)(C), Herrera's untimely second amended complaint did not relate-back. *Id.* at *13. The court reversed the trial court's order and remanded the case for consideration of Herrera's equitable tolling argument. *Id.* at *14.

About the Author

John P. Heil, Jr. is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.*, where he chairs the firm's drone law practice group and is vice-chair of the business and commercial litigation practice group. He also regularly defends complex civil rights cases, *qui tam* actions and catastrophic tort suits in state and federal court. Prior to joining *Heyl Royster* in 2007, Mr. Heil was an Assistant State's Attorney in Cook County for eleven years. He received his undergraduate degree from Bradley University in 1993 and his law degree from Chicago-Kent College of Law, with honors, in 1996. He is a member of the Illinois Defense Counsel, the Federal Bar Association, the Illinois State Bar Association, the Peoria County Bar Association, and the Abraham Lincoln American Inn of Court.

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