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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Tracy NEAL, and All Others Similarly Situated, Plaintiff-Appellees,
v.
DEPARTMENT OF CORRECTIONS, Director William Overton, Kenneth McGinnis, Sally Langley, Joan Yukins, Clarice Stovall, Carol Howes, Robert Salis, Cornell Howard, Nancy Zang, John Andrews, Jan Baldwin, Wes Bonney, David Cruikshank, Joseph Durigon, William Ellison, Christopher Gallagher, David Habitz, Edward Hook, Jack Hutchins, Dennis Iford, Derle Jones, Art Lancaster, Thomas Portman, Erin Richardson, Roderick Robey, Anthony Simmons, Martin Tate, Charles Williams, and Lynn Williams, Defendant-Appellants,
and
Fred WELCH, Defendant.
Nicole ANDERSON, and All Others Similarly Situated, Plaintiff-Appellees,
v.
DEPARTMENT OF CORRECTIONS, Department of Corrections Director Patricia Caruso, William Overton, and Kenneth McGinnis, Defendant-Appellants.

No. 253543, 256506. | Feb. 23, 2006.

Before: JANSEN, P.J., and MURRAY and DONOFRIO, JJ.

Opinion

[UNPUBLISHED]

PER CURIAM.

***1** This consolidated case is a class action involving the treatment of female prisoners in the prison system and returns to this Court on remand from our Supreme Court. The remand order requires us to consider whether the Prison Litigation Reform Act (PLRA), MCL 600.5501 *et seq.,* bars prisoner claims that accrued after the effective date of the act. Because the PLRA is applicable to those plaintiffs whose claims accrued after the effective date of the act, we reverse that portion of the trial court's decision that denied summary disposition to defendants on the ground that the PLRA was inapplicable to this proceeding, and hold that plaintiffs whose claims accrued after the effective date of the act, must have complied with the PLRA prior to maintaining those claims, and remand for further proceedings.

These cases have a long and complex history in the trial court and in the appellate courts. A detailed statement of the underlying facts and proceedings is set out in detail in the previous opinion of this Court at *Neal v Dep't of Corrections and Anderson v Dep't of Corrections,* unpublished opinion per curiam of the Court of Appeals, issued February 10, 2005 (Docket Nos. 253543, 256506). In that opinion, among several other holdings, we held that defendants failed to cite authority to support the assertion that the PLRA barred claims that accrued after the effective date of the Act, and thus abandoned the issue, *id.,* slip op at 10. Defendants moved for reconsideration, arguing that they had properly presented and supported their assertion that the PLRA barred certain claims. This Court denied the motion.[1] Defendants sought leave to appeal to our Supreme Court, and in lieu of granting leave to appeal our Supreme Court remanded the matter to us for consideration of "defendants' argument regarding the applicability of the [PLRA] to prisoners whose claims accrued after the effective date of the act."[2]

Thus, on remand, we are charged with determining whether the PLRA applies to bar claims made by class members if those claims accrued after the effective date of the act, November 1, 1999. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v. Marlette Homes, Inc,* 456 Mich. 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd,* 240 Mich.App 153, 166; 610 NW2d 613 (2000).

A claim accrues when all the elements of the claim can be alleged. An action is commenced by the filing of a complaint in a court. MCR 2.101(B). In this case, plaintiffs filed the original complaint 1996. Thus, the action was already pending when the Legislature enacted the PLRA on November 1, 1999. As a general rule, a new statute applies prospectively unless the Legislature has indicated, expressly or impliedly, its intention to give the statute retroactive effect. *Brooks v. Mammo,* 254 Mich.App 486, 493; 657 NW2d 793 (2002). A statute cannot be applied retroactively if to do so would impair or abrogate a vested right. A cause of action becomes a vested right when it accrues. *Grew v. Knox,* 265 Mich.App 333, 339; 694 NW2d 772 (2005). Because retroactive application of the PLRA to a cause of action

pending as of November 1, 1999 would impair that cause of action, the PLRA must be deemed to operate prospectively only and to be inapplicable to claims asserted in the original complaint. *Id.,* also see *Wright v. Morris,* 111 F3d 414, 418 (CA 6, 1997).[3]

***2** However, because this case involves a class action proceeding, our analysis does not end with the conclusion that the PLRA operates prospectively only. The complaint in this case was amended in 2003, and added new parties and claims. In some cases, claims asserted by the new parties accrued after November 1, 1999. As a general rule, the amendment of a pleading relates back to the original pleading if the new claim arose out of the transaction set forth in the original pleading. *Cowles v. Bank West,* 263 Mich.App 213, 221; 687 NW2d 603 (2004). However, the relation-back doctrine does not apply to the addition of new parties. Therefore, in a class action, additional plaintiffs who were not members of the original class may not relate their claims back to the original complaint. *Id.* at 229. Here, the claims asserted by the parties added as a result of the amendment of the complaint in 2003 do not relate back to the original complaint. *Id.*

A prisoner whose claim accrued prior to November 1, 1999, need not comply with the requirements of the PLRA. A prisoner whose claim accrued after November 1, 1999 must comply with the PLRA and is therefore precluded from filing a civil action unless she has complied with the requirements of the PLRA and exhausted applicable administrative remedies before pursuing her claim in civil court. MCL 600.5503(1). And, plaintiffs who assert multiple claims that accrued both before and after November 1, 1999 need only comply with the requirements of the PLRA for those claims that accrued after November 1, 1999.

The PLRA requires a prisoner to exhaust "all available administrative remedies" prior to filing an action in court. MCL 600.5503(1). The record in this case is unclear regarding what, if any, administrative remedies were available within the Department of Corrections (DOC) to address plaintiffs' claims. In their application to our Supreme Court, defendants stressed that plaintiffs who were subject to the PLRA failed to submit documentation to establish that they had exhausted all available administrative remedies prior to filing their claims. In response, plaintiffs contended that defendants had advised them that complaints regarding custodial sexual abuse were not grievable within the DOC. On the record before us, it is not possible to determine whether administrative remedies were available for those claims that accrued after November 1, 1999 and thus were subject to PLRA requirements. If administrative remedies were available, plaintiffs asserting claims that accrued after November 1, 1999 were required to have exhausted those administrative remedies before proceeding in the trial court. If those plaintiffs failed to pursue and exhaust available administrative remedies, the trial court must dismiss those claims.

We reverse that portion of the trial court's decision that denied summary disposition to defendants on the ground that the PLRA was inapplicable to this proceeding.

***3** We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

Footnotes

1 On the order, Judge Murray indicated in a concurring statement that defendants' argument regarding the applicability of the PLRA, although properly supported, was irrelevant because this Court had held that claims that accrued after March 10, 2000 must be dismissed.

2 Our Supreme Court also denied plaintiffs' application for leave to appeal as cross-appellants, and plaintiffs' motion to lift the stay of proceedings in the trial court.

3 When a state statute closely resembles a federal statute, interpretations of the federal statute can be persuasive authority in construing the state statute. *Dana v. American Youth Foundation,* 257 Mich.App 208, 215; 668 NW2d 174 (2003).