**[Cite as *Campana v. Alexander*, 2009-Ohio-3351.]**

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

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| CHARLENE A. CAMPANA<br><br>PLAINTIFF-APPELLANT | ) | CASE NO. 07 MA 208 |
| VS. | ) | OPINION |
| STACEY M. ALEXANDER, et al.<br><br>DEFENDANTS-APPELLEES | ) | |

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| CHARACTER OF PROCEEDINGS: | Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio<br>Case No. 07 CV 342 |
| JUDGMENT: | Affirmed. |
| APPEARANCES:<br>For Plaintiff-Appellant,<br>Charlene A. Campana: | Atty. Ilan Wexler<br>Anzellotti, Sperling, Pazol & Small<br>21 N. Wickliffe Circle<br>Youngstown, Ohio 44515 |
| For Defendant-Appellee,<br>Stacey M. Alexander: | Atty. Constant A. Prassinos<br>Building B., Suite 201<br>6715 Tippecanoe Road<br>Canfield, Ohio 44406 |
| For Defendant-Appellee,<br>Grange Mutual Casualty Co. | Atty. Shaun E. Young<br>Keis\|George LLP<br>55 Public Square, Suite 800<br>Cleveland, Ohio 44113 |
| For Defendant-Appellee,<br>Medical Mutual of Ohio: | Atty. Robert S. Bouffard<br>721 Boardman-Poland Road, Suite 201<br>Youngstown, Ohio 44512 |
| JUDGES:<br>Hon. Cheryl L. Waite<br>Hon. Gene Donofrio<br>Hon. Joseph J. Vukovich | |

Dated: June 30, 2009

**[Cite as *Campana v. Alexander*, 2009-Ohio-3351.]**
WAITE, J.

**{¶1}** Appellant Charlene A. Campana appeals the judgment of the Mahoning County Court of Common Pleas granting summary judgment to her insurer, Grange Mutual Casualty Company ("Grange"). Appellant was involved in an automobile accident with Stacey M. Alexander, and Grange provided coverage to Appellant for certain injuries sustained in the accident. The tortfeasor, Ms. Alexander, was insured by Nationwide Insurance Company. Appellant filed a personal injury complaint against Ms. Alexander, and named Grange as a defendant in the lawsuit so that Grange could assert subrogation claims related to the medical payments it had made.

**{¶2}** Grange requested that Appellant dismiss it from the lawsuit because it was already pursuing its subrogation claim through arbitration with Nationwide Insurance Company, based on an intercompany arbitration agreement between the two insurers. As Appellant refused to dismiss Grange as a defendant, Grange filed a motion for summary judgment on the matter, arguing that it was not a necessary party for just adjudication of Appellant's claim. The trial court granted summary judgment to Grange. Appellant argues on appeal that she will be prejudiced if Grange is not a party to her lawsuit, but Appellant has not clearly indicated how she could be prejudiced. Grange has clearly waived any possibility of collecting on its subrogation claim through the instant litigation. Thus, Appellant will not be liable for the subrogation claim. Grange has no interest in this lawsuit, and the trial court was within its discretion to dismiss Grange as a party. The judgment of the trial court is affirmed.

History of the Case

**{¶3}** Appellant and Stacey Alexander were involved in a car accident on January 28, 2005. Appellant was covered by an automobile insurance policy issued by Grange. Grange paid Appellant $2,094.35 in medical payments under the policy. Appellant filed a personal injury complaint on January 26, 2007. Appellant named Grange as a defendant in the case based on the presumed subrogation claim for the $2,094.35. Grange filed an answer on March 16, 2007. In the answer, Grange averred that its subrogation interest was being pursued through arbitration and that it was not a necessary party to the litigation. Grange sought dismissal from the case in its answer. Medical Mutual of Ohio, through its agent ACS Recovery, is also a defendant in this case, pursuing a separate subrogation claim.

**{¶4}** On May 29, 2007, Grange filed a motion for summary judgment, asking to be dismissed from the case as an unnecessary party. Grange argued that it was subject to an intercompany agreement with the tortfeasor's insurance company (Nationwide Insurance Company), and was required to enter into arbitration with Nationwide concerning any possible subrogation claims against Nationwide's client, tortfeasor Stacey Alexander. Grange argued that Appellant refused to voluntarily dismiss it from the case, that it had no possible interest in the case because of the mandatory arbitration proceedings, and that it would be subject to numerous expenses and inconveniences if it were forced to remain as a defendant in the case. Grange attached two affidavits to the motion, one from Chad Hoenie, an arbitration

specialist working for Grange, and one from Attorney Warren S. George who was defending Grange in the instant lawsuit.

**{¶5}** Appellant filed a response to the motion for summary judgment on July 6, 2007, but did not attach any evidence to support her arguments. Appellant merely argued that she could possibly be prejudiced if Grange was not part of the lawsuit because Nationwide might seek to offset 100% of the medical bills paid by Grange even if the jury does not award 100% of those medical bills in its verdict. We should make it clear at this point that Nationwide is not and has not been a party in this case.

**{¶6}** Grange filed a further response, stating that, "[i]t is not seeking recovery from any of the parties to this lawsuit and therefore its presence is not needed for just adjudication." (7/17/07 Reply Brief, p. 2.)

**{¶7}** On October 11, 2007, the trial court granted Grange's motion for summary judgment. Appellant filed this timely appeal on November 9, 2007.

ASSIGNMENT OF ERROR

**{¶8}** "THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE GRANGE MUTUAL CASUALTY COMPANY'S MOTION FOR SUMMARY JUDGMENT."

**{¶9}** This appeal involves a question of whether a party was improperly joined as a defendant in the personal injury lawsuit. Civ.R. 19(A) governs permissive joinder of a party if feasible:

**{¶10}** "(A) **Persons to be joined if feasible**. A person who is subject to service of process shall be joined as a party in the action if (1) in his absence

complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee. If he has not been so joined, the court shall order that he be made a party upon timely assertion of the defense of failure to join a party as provided in Rule 12(B)(7). If the defense is not timely asserted, waiver is applicable as provided in Rule 12(G) and (H). If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. In the event that such joinder causes the relief sought to exceed the jurisdiction of the court, the court shall certify the proceedings in the action to the court of common pleas."

**{¶11}** Civ.R. 21 states:

**{¶12}** "* * * Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

**{¶13}** A trial court's decision regarding a question of permissive joinder is reviewed for abuse of discretion. *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 184, 465 N.E.2d 1298. Similarly, a trial court's ruling on whether a party should be added or removed from litigation under Civ.R. 21 is also reviewed for

abuse of discretion. *Darby v. A-Best Prod. Co.*, 102 Ohio St.3d 410, 2004-Ohio-3720, 811 N.E.2d 1117, paragraph one of the syllabus. Abuse of discretion refers to a decision that is unreasonable, arbitrary, or unconscionable. Id. at ¶13. An abuse of discretion demonstrates, "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748. Although Grange ultimately pursued its relief through filing a motion for summary judgment, the relief that Grange sought was a dismissal from the case on the grounds that it was not a necessary party to the litigation, and Grange raised this issue in its answer to Appellant's complaint. Thus, the proper standard of review is abuse of discretion on a question of whether joinder was or was not appropriate in this case.

**{¶14}** Generally, an insurance company should be joined as a party to litigation when that insurance company has a subrogation claim arising from the dispute. *Holibaugh v. Cox* (1958), 167 Ohio St. 340, 345, 148 N.E.2d 677. On the other hand, an insurance company may waive or forfeit its subrogation rights against one or more persons. *Sweeney v. Grange Mut. Cas. Co.* (2001), 146 Ohio App.3d 380, 387, 766 N.E.2d 212. Grange has clearly waived any subrogation interests against the parties in this case (and it is worth repeating that Nationwide is not a party in this case), and thus, does not have any obvious reasons for continuing as a defendant in this case.

**{¶15}** Civ.R. 21 allows parties to be dropped from a case based on any terms that are just. In Civ.R. 21 cases, the meaning of "just" includes such elements as the

timeliness of the motion and whether there is any prejudice to the parties by granting the motion. *Darby*, supra, 102 Ohio St.3d 410, at ¶16. The Ohio Supreme Court has held that, under Civ.R. 21, "there is no reason why a party should not be removed when he or she no longer has any legal interest." *In re H.W.*, 114 Ohio St.3d 65, 2007-Ohio-2879, 868 N.E.2d 261, at ¶11.

**{¶16}** Appellant is apparently concerned about Grange interfering with the potential insurance proceeds from the tortfeasor's insurance company, if Grange were to enter into some type of agreement with Nationwide to collect what would be equivalent to a subrogation claim. Appellant argues that possible prejudice might arise if Grange is removed from the lawsuit because there might be a discrepancy between what the jury approves as legitimate medical bills and what Nationwide offsets based on its arbitration settlement with Grange. It is not at all clear how this scenario would tend to prejudice Appellant. If Grange is not part of the lawsuit, then Grange has no subrogation claim to be deducted from Appellant's jury award. If the jury approved $1 or $1,000 or all $2,094 of the medical expenses paid by Grange, Appellant would keep that money, whereas if Grange stayed in the case as a defendant, Grange could presumably attempt to recoup that money in subrogation. The fact that Grange is not a defendant will not prevent Appellant from proving what her medical costs were. How the arbitration agreement between Grange and Nationwide may affect any ultimate recovery in this case is purely speculative, particularly since Nationwide is not a party, since the terms of the Nationwide policy are not part of the record, and since the tortfeasor would still be liable for any

judgment regardless of whether her Nationwide insurance policy was more or less than the total judgment awarded. By removing itself from the case, Grange is removing any possible recovery of its subrogation claim through this lawsuit, and Grange is forgoing any claim on the ultimate jury award.

**{¶17}** The judgment of the trial court is not arbitrary, unreasonable or capricious, and Appellant has not indicated any reasonable harm or prejudice if Grange is no longer a defendant in this case. Appellant is free to establish any or all of her medical costs related to the automobile accident whether or not Grange is a defendant, and Grange will not be entitled to any of the jury award, assuming there is one. Because there is no abuse of discretion, the judgment of trial court is affirmed.

Donofrio, J., concurs.

Vukovich, P.J., concurs.