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Federal Rules of Civil Procedure; Statute of Limitations; State Policy; Relation Back; Marshall v. Mulrenin

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CONFLICT OF LAWS

Federal Rules of Civil Procedure • Statute of Limitations • State Policy • Relation Back

Marshall v. Mulrenin, 508 F.2d 39 (1st Cir. 1974)

In September of 1967, Mrs. Marshall fell and injured herself on business premises in Massachusetts known as Craig Village by the Sea. In July of 1969, the Marshalls retained counsel, instituting a diversity action in the Massachusetts Federal District Court. The Marshalls named as defendants Mr. and Mrs. Kirk, the individuals whose names appeared on the certificate on file in the town hall in accordance with Massachusetts law\(^1\) as the “real name of the person conducting the business.”

The premises had in fact been conveyed by the Kirks to Mr. and Mrs. Mulrenin several years before the accident. The Kirks, however, in violation of the Massachusetts statute, had not filed a notice of discontinuance as required in order to update the certificate on file in the town hall. The Mulrenins continued to operate the business under the original name without filing a new certificate. The Marshalls did not discover, until after the Massachusetts statute of limitations for personal injury actions had run, that the named defendants, the Kirks, no longer owned the premises. The Marshalls therefore sought to amend by dismissing against the Kirks and naming the Mulrenins as defendants in the action.

The First Circuit Court of Appeals held that, in spite of federal rule 15(c),\(^2\) the Marshalls had an absolute right under Massachusetts law\(^3\) to bring in the Mulrenins. This ruling reversed the district court which had held that the amendment was impermissible under rule 15(c) and did not relate back.

A contra finding by the First Circuit Court of Appeals as to the permissibility of this amendment under rule 15(c) would have avoided a conflict between state law and the Federal Rules of Civil Procedure. The Marshalls contended that the notice given the Kirks, whom the Mulrenins permitted to appear as owners of record, should have been considered constructive notice to the Mulrenins within the meaning of rule 15(c). The First Circuit Court of Appeals stated that:

This, however, is by no means an obvious conclusion. There was no evidence that the Mulrenins were aware of the statute, or that it had been violated by the prior owners’ leaving their certificate on file. We do not pursue the matter, in the absence of authority, because we believe

\(^1\) MASS. GEN. LAWS ANN. ch. 110, § 5 (1958).
\(^2\) FED. R. CIV. P. 15(c).
\(^3\) MASS. GEN. LAWS ANN. ch. 231, § 51 (1959).
that in spite of Rule 15(c), plaintiff had an absolute right under Massachusetts law to bring in the Mulrenins.\textsuperscript{4}

Some federal courts have followed the rule that amendments to correct misnomer or misdescription of a defendant will relate back where the proper defendant is in court. An amendment which substitutes or adds a new party, however, creates a new cause of action, and under such circumstances, there is normally no relation back to original filing for purposes of limitations.\textsuperscript{5} Since the 1966 amendment of rule 15(c), however, a number of courts have permitted amendments substituting defendants after the statute of limitations has run.\textsuperscript{6}

The critical factor involved in rule 15(c) determinations is notice.\textsuperscript{7} As Professor Moore has stated in his treatise on federal civil procedure: “rule 15(c) is based on the idea that a party who is notified of litigation concerning a given transaction or occurrence is entitled to no more protection from statutes of limitations than one who is informed of the precise legal description of the rights sought to be enforced.”\textsuperscript{8} The party that is sought to be substituted “must receive notice of the action ‘within the period provided by law for commencing the action against him.’”\textsuperscript{9}

In Simmons v. Fenton,\textsuperscript{10} plaintiffs commenced an action for personal injuries on the last day of a two-year limitation period. After expiration of the statute of limitations, service was made on the named defendant, the 12-year-old daughter of the woman who was driving one of three cars involved in a collision. The Seventh Circuit Court of Appeals held that the plaintiffs were not entitled to have an amendment of the pleadings and service of process, substituting the mother as defendant and relating back to the original pleading under rule 15(c). The mother had not received the requisite notice within the limitation period and would have been prejudiced if the amendment had been allowed.

\textit{Mulrenin}, like \textit{Hanna v. Plumer},\textsuperscript{11} presents a case where there is a conflict

\textsuperscript{4} Marshall v. Mulrenin, 508 F.2d 39, 41 (1st Cir.1974).


\textsuperscript{8} 3 J. MOORE, FEDERAL PRACTICE ¶ 15.15[2], at 1021 (2d ed. 1974).

\textsuperscript{9} Simmons v. Fenton, 480 F.2d 133, 137 (7th Cir. 1973).

\textsuperscript{10} Id.

\textsuperscript{11} 380 U.S. 460 (1965).
between the Federal Rules of Civil Procedure and state law. Whether federal
courts should apply the Federal Rules of Civil Procedure or contrary state law
in diversity actions is a decision that continues to be plagued with uncertainty.
**Hanna** held that rule 4(d)(1), which controls service of process in diversity
actions, neither exceeded the congressional mandate embodied in the Rules
Enabling Act, nor transgressed constitutional bounds and, therefore, took
precedence over the conflicting Massachusetts rule.

The holding of *Hanna* is based on the congressional mandate embodied
in the Rules Enabling Act which delegated authority to the Supreme Court to
establish the federal rules of procedure. The Rules Enabling Act states
emphatically that the federal rules are only to regulate procedure and “shall
not abridge, enlarge, or modify any substantive rights.” The definition of
what is substantive and what is procedural was of necessity left to the courts
to determine under the Enabling Act within the bounds of its legislative intent
and the Constitution. The Enabling Act was passed in 1934, approximately
four years before *Erie R.R. Co. v. Tompkins* was decided. There would seem
to be no compulsion to look to *Erie* to resolve this definitional problem, except
as *Erie* happened to address this question and define the constitutional
bounds. The *Hanna* Court specifically pointed out that the *Erie* rule
is not the appropriate test to use in determining the validity, and therefore the
applicability of one of the Federal Rules of Civil Procedure.

**The Hanna** Court indicated that the “outcome-determinative” test which
was set forth in *Guaranty Trust Co. v. York*, a descendant of *Erie*, is likewise

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12 FED. R. CIV. P. 4(d) (1).
14 MASS. GEN. LAWS ANN. ch. 197, § 9 (1958).
15 380 U.S. at 463-64, 470-71.
17 Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).
18 380 U.S. at 469-70.
19 *Erie* held that there is no federal general common law, that Congress has no power to
declare substantive rules of common law applicable in a state, and that federal courts
must apply state substantive law. This was based on the rationale that, when federal
courts applied federal common law, there was an unconstitutional invasion of rights
reserved to the states.
20 The directive of *Erie*, as pointed out by the Hanna Court, is essentially the same as
the Rules Enabling Act, viz., federal courts must apply federal procedural law and state
substantive law. It would seem that only when a state rule is characterized as substantive
instead of procedural should the *Erie* doctrine come into play to achieve the objectives of
elimination of forum shopping and avoidance of inequitable administration of the law.
*Erie* therefore, seemingly should provide no guidance on how to determine or define
what is substantive and what is procedural under the circumstances of *Hanna*, or
*Mulrenin*, except as these objectives are deemed relevant in determining whether or not
the particular state law is substantive in construing the Enabling Act.
21 See Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945) wherein the “outcome
determinative” test was announced: “And so the question is not whether a statute of
inappropriate. The Supreme Court pointed out in *Hanna* that "*every* procedural variation is 'outcome-determinative'"\(^{22}\) in the sense that the outcome of the case depends on the particular ruling of the court at the point an encountered conflict between a state rule and a federal rule of procedure is resolved. Carried to extreme, the *York* test would virtually mandate the use of state rules of civil procedure and thereby frustrate the legislative intent of the Rules Enabling Act, *viz.*, the goal of uniformity in federal practice.\(^{23}\)

While *Hanna* can be interpreted to be an assertion of the supremacy of the federal rules,\(^{24}\) the validity of such an interpretation is uncertain since the Supreme Court distinguished rather than overruled its earlier decision in *Ragan v. Merchants Transfer & Warehouse Co.*\(^{25}\) In *Ragan*, the complaint was filed before the statute of limitations had run; the defendant was not served, however, until after the statutory period. Under Kansas law, considered in *Ragan*, the service must have occurred within the statutory period, while filing alone was sufficient under the federal rule.\(^{26}\) The *Ragan* Court characterized the state rule as substantive within the meaning of the *Erie* doctrine. The courts are divided on the question of whether *Ragan* is still authoritative after *Hanna*.\(^{27}\)

The *Hanna* doctrine has been widely applied in the courts of appeals.\(^{28}\)

\(^{22}\) 380 U.S. at 468-69.


\(^{26}\) *Fed. R. Civ. P. 3.*


\(^{28}\) *Ransom v. Brennan*, 437 F.2d 513 (5th Cir. 1971) (substitution of executor governed by federal rules); *Sylvestri v. Warner & Swasey Co.*, 398 F.2d 598 (2d Cir. 1968); *Crowder v. Gordons Transports, Inc.*, 387 F.2d 413 (8th Cir. 1967) (federal rules govern relation back of amended complaint); *Har-Pen Truck Lines, Inc. v. Mills*, 378 F.2d 705 (5th Cir. 1967); *Szantay v. Beech Aircraft Corp.*, 349 F.2d 60 (4th Cir. 1965).
While the cases are divided, a number of courts have determined, subsequent to Hanna,\(^{29}\) that state law need not be followed in cases involving relation back of amendments as to defendants\(^{30}\) after the statute of limitations has run.\(^{31}\)

In *Swartzwalder v. Hamilton*,\(^{32}\) the plaintiff, injured in an auto accident, brought an action against a party whom he thought was the driver and owner of the vehicle. The named defendant, however, was neither the driver nor the owner. After the statute of limitations had run, plaintiff sought to substitute the driver and her husband as defendants. The District Court for the Middle District of Pennsylvania held that current federal practice under rule 15, not state law, controls the question of whether an amendment substituting a party defendant can be made after expiration of the statute of limitations. The *Swartzwalder* court permitted substitution, even though the statute had run, since the parties sought to be substituted as defendants had notice of the action. The defendants were in the auto at the time of the collision and could not complain that they did not know of the suit within the period of the statute of limitations.

In *Meredith v. United Airlines*,\(^{33}\) the District Court for the Southern District of California held that, in view of Hanna, the doctrine of *Erie* does not require the application of state law rather than federal law as to relation back. The *Meredith* court, citing *Chase Securities Corp. v. Donaldson*,\(^{34}\) further pointed out that no party has any vested or substantive right in the protection of a statute of limitations.

In *Martz v. Miller Brothers Co.*,\(^{35}\) the Federal District Court for the District of Delaware determined that, in spite of a contrary result under Delaware law, the question of whether an amended pleading relates back is


\(^{31}\) A number of courts, applying federal law rather than state law, have allowed amendments as to plaintiffs after the statute of limitations has run. See, e.g., Longbottom v. Swabey, 397 F.2d 45 (5th Cir. 1968); Crowder v. Gordons Transports, Inc., 387 F.2d 413 (8th Cir. 1967); Holmes v. Pennsylvania New York Cent. Transp. Co., 48 F.R.D. 449 (N.D. Ind. 1969); Newman v. Freeman, 262 F. Supp. 106 (E.D. Pa. 1966) (Applied 15[c] rather than state law which would have disallowed the amendment).


\(^{34}\) Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945).

procedural; and, therefore, the federal court is not required to follow state law. The 
Martz court pointed out that the courts which have permitted relation back of amendments adding defendants after the statute of limitations had run, have utilized one or more of three theories:

(1) that neglect of the plaintiff or his attorney in suing the wrong party was excusable, (2) that defendant had misled plaintiff or "lulled" him into the feeling that he had sued the right defendant when he had not, or (3) that the party actually sued and the party whom plaintiff meant to sue had sufficient "identity of interest." 36 (footnotes omitted.)

The court indicated that cases 37 in the second category at times proceeded on an estoppel theory.

In spite of Hanna v. Plumer, some federal courts have applied state law instead of rule 15(c) in diversity actions involving relation back of amendments. 38 In Burns v. Turner Construction Co., 39 an action to recover for injuries sustained in falling off a platform, the plaintiff filed an amended complaint to add several new defendants after the statute of limitations had run. The Federal District Court of Massachusetts held that under the Erie doctrine, a federal court in a diversity action should apply the law of the forum state regarding amendments as to parties. The court indicated, however, that relation back would not have been allowed under rule 15(c) due to lack of notice and probable prejudice to new defendants. In Nave v. Ryan, 40 a diversity action for wrongful death, the plaintiff sought to amend the complaint, which alleged malpractice, to join an anesthesiologist as an additional party defendant. The amendment was filed after the Connecticut one-year statute of limitations had run. Citing York and Ragan, the Federal District Court of Connecticut held that the Connecticut rule controlled and must be applied because the court "may not keep alive a right which has lapsed under state law." 41

Courts that have applied state law instead of the federal rules have chosen to disregard the Hanna Court's view that Enabling Act rationale, rather than that of Erie, should be the test in these cases. 42 The Hanna court, in fact, distinguished the line of cases that have attacked the rules as invading

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36 Id. at 250-51.
41 Id. at 407.
42 380 U.S. at 470. See Johnson Chemical Co. v. Condado Center, Inc., 453 F.2d 1044, 1046 (1st Cir. 1972).
substantive rights and exceeding the grant of power in the Enabling Act from the line of cases which are the progeny of Erie.

In spite of the Hanna Court's view that the Erie rule is not the appropriate test to use in determining the validity and applicability of a federal rule of civil procedure, the Mulrenin court chose to base its decision on Erie rationale. The First Circuit Court of Appeals pointed out that: "Although Rule 15, on its face, conflicts with section 51, to apply the rule would mean that the choice of forum 'would wholly bar recovery.'" The Mulrenin court considered Hanna's holding to be contained in its disclaimer of an intent to effect substantive results. The court said, in Erie-styled prose:

Such a construction does not, of course, render Federal Rules inoperative in their procedural aspects. It merely means that a rule is not to be applied to the extent, if any, that it would defeat rights arising from state substantive law as distinguished from state procedure. This line may not always be easy to draw.

The First Circuit Court of Appeals dedicated a sizeable portion of its opinion in Marshall v. Mulrenin to its views on the Supreme Court's decision in Hanna. The First Circuit concluded that, in Hanna, the Supreme Court misconstrued the Massachusetts statute that it struck down, "but that this misreading is not to be taken as part of the ratio decidendi so far as the treatment of other state statutes in other circumstances is concerned." One may interpret this position to mean that the rationale of the Hanna Court is appropriate as to state statutes where a strong underlying public policy is not present. The Mulrenin court places much emphasis on the "strong public policy" behind the state statute that was in conflict with rule 4(d)(1) in Hanna. The court also implied that a strong state policy is behind the statute involved in Mulrenin. The First Circuit indicated, apparently based in large part on these considerations, that Hanna was therefore only "superficially...

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45 508 F.2d at 44.
46 Id.
47 See 508 F.2d at 41, n.2, where the court notes that it is conscious of the fact that it was the court which the Supreme Court unanimously reversed in Hanna.
48 Id. at 41.
49 Id. at 42-43.
50 MASS. GEN. LAWS ANN. ch. 197, § 9 (1958).
51 MASS. GEN. LAWS ANN. ch. 231, § 51 (1959).
52 See generally Johnson Chemical Co. v. Condado Center, Inc., 453 F.2d 1044, 1046 (1st Cir. 1972) (the court interprets Byrd v. Blue Ridge Rural Electric Coop. Inc., 356 U.S. 525 [1958], as having added a new criterion to Erie-type problems, viz., that a
apposite" to the decision of whether to look to state law or federal law under the facts of *Mulrenin.* 53 The *Hanna* Court, however, appeared to be fully cognizant of this underlying public policy argument since the opinion took note of the fact that the court of appeals seemed to frame the inquiry in terms of how "important" section 9 was to the state of Massachusetts and that section 9 was designed to make sure that the executors receive actual notice. 54

Mr. Justice Harlan, in his concurring opinion in *Hanna,* concluded that last and usual service under rule 4 affords substantially as good a notice as the Massachusetts statute. He did not see the application of rule 4(d)(1), instead of the Massachusetts service rule, as having a substantial effect on the speed with which estates are distributed. Such a practice would simply mean that an executor would have to check at his own house or the federal courthouse, as well as the registry of probate, before he could distribute the estate without fear of being held personally liable for further liabilities that may be outstanding. Mr. Justice Harlan then concluded that the variation between rule 4(d)(1) and the Massachusetts law was not substantial 55 and did "not seem enough to give rise to any impingement on the vitality of the state policy which the Massachusetts rule is intended to serve." 56

The *Hanna* Court did not appear to be compelled to classify a right as substantive merely because a strong state policy or clear legislative intent was present. Instead, the Court relied on Enabling Act rationale, referring to federal rules of civil procedure as "housekeeping" rules for the courts, even though some of them will inevitably differ from comparable state rules. 57

Continued application of the rationale of *Erie* and its progeny to resolve conflicts between the Federal Rules of Civil Procedure and state law will only preserve the confusion now inherent in this area of the law. The approach taken by the *Hanna* Court to resolve these conflicts appears to be much preferred over an analysis of whether a particular state policy is strong enough to classify the right as substantive. Uniform application of Enabling Act rationale would lend a great deal more certainty to this area of the law and would honor, rather than frustrate, the legislative intent of the Rules Enabling Act, *viz.,* the goal of uniformity in federal practices. 58

**Gary I. Kruger**

balancing of the policies behind the federal and state laws in conflict was added to the determination of which law to apply).

53 508 F.2d at 41.
54 380 U.S. at 468, n.9.
55 *Id.* at 469, n. 11.
56 *Id.* at 478.
57 *Id.* at 473.