

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

PAULETTE DORSEY)	CASE NO: CV 09 683771
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
CIARA HUNTER, et al.)	<u>JOURNAL ENTRY</u>
)	
Defendants)	

John P. O'Donnell, J.:

The plaintiff filed a motion on July 20, 2009, to substitute parties pursuant to Ohio Rule of Civil Procedure 15. The defendants filed a brief in opposition and the plaintiff responded with a reply brief. Having considered the briefs and arguments, the court finds as follows:

FACTS

This is a personal injury case arising from a car accident on June 20, 2008. The plaintiff Paulette Dorsey alleges that the defendants Ciara Hunter and Trey Tate darted into the street in front of her and were not in a crosswalk. The defendant Ciara Hunter was 12 years old at the time of the accident and defendant Trey Tate was eight. The plaintiff swerved to miss them and hit a pole, sustaining injury.

The complaint names as defendants the following:

- Ciara Hunter, a minor by and through her father John Doe;
- Ciara Hunter, a minor by and through her mother John Hoe;
- Trey Tate, a minor by and through his father John Goe; and
- Trey Tate, a minor by and through his mother John Poe.¹

¹ See complaint at Page 1.

Although they are not named as defendants in the caption of the complaint, paragraph 2 of the complaint refers to John Doe, John Hoe, John Goe and John Poe as “defendants” who are parents of Ciara Hunter and Trey Tate. However, the body of the complaint contains no assertions of tortious conduct by the parents. The complaint alleges negligence only by Ciara Hunter and Trey Tate.

LAW

The plaintiff’s motion to substitute defendants is made under Rule 15 of the Ohio Rules of Civil Procedure. That rule provides, in pertinent part:

- (D) **Amendments where name of party unknown.** When the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. When the name is discovered, the pleading or proceeding must be amended accordingly. The plaintiff, in such case, must aver in the complaint the fact that he could not discover the name. The summons must contain the words “name unknown,” and a copy thereof must be served personally upon the defendant.

Civil Rule 15(D) is inapplicable in this case. As remarked above, the parents of Ciara Hunter and Trey Tate are not named, either by their actual names or as “name unknown,” in the caption of the complaint. There are no allegations of negligence in the complaint against the parents. Additionally, despite being implied, the complaint does not aver that the plaintiff could not discover the names of the parents. Finally, the court cannot locate any separate *praecipe* for service on the parents individually.

Therefore, the requested relief is not available pursuant to Civil Rule 15.

It appears to the court that the plaintiff may have captioned her complaint in the manner that she did in order to sue the minors through their guardians. Civil Rule 17(B) provides, in pertinent part, as follows:

(B) **Minors or incompetent persons.** Whenever a minor . . . has a representative . . . , the representative may sue or defend on behalf of the minor.

Although the court is aware of case authority that requires a minor plaintiff to bring a lawsuit through a representative², this court is not aware of similar authority in the case of a minor who is defending a lawsuit. Indeed, the language of Civil Rule 17(B) is not mandatory. By the terms of that rule, a minor “may” defend through an adult representative. It is also worth noting that the minor defendants are defending through a representative, namely, their counsel.

Because there are no separate allegations of negligence against Felicia McCrary and Terrell Tate, and because it is not necessary that Felicia McCrary and Terrell Tate be named as parties to defend the allegations of negligence against their son, Trey Tate, the plaintiff’s motion is denied.

IT IS SO ORDERED:

Date: _____

Judge John P. O’Donnell

² See *e.g.*, *Mominee v. Scherbarth* (1986) 28 Ohio St.3d 270, 275: It is beyond dispute that a minor has no standing to sue before he or she reaches the age of majority.

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this _____ day of August, 2009, to the following:

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Judge John P. O'Donnell