

## More on Voluntary Dismissals: Consequences of Inadequate Pleading

In an earlier [post](#), I talked about some of the deficiencies in a complaint that can prevent a party from taking advantage of the statute of limitations extension in [Rule 41\(a\)](#). In short, if a party voluntarily dismisses without prejudice a claim for which the underlying statute of limitations has expired, and—as it turns out—the complaint was never timely served or was not properly “commenced,” the refiled action is subject to dismissal with prejudice. Last week, the Court of Appeals expanded on this point, holding that Rule 41(a)’s savings provision does not extend the statute of limitations on a claim that failed to satisfy Rule 8(a)(1)’s notice pleading rule.

In [Murphy v. Hinton](#), a man died of carbon monoxide poisoning while he was sleeping in a barn heated by a propane unit sold by defendant. The wrongful death complaint alleged that defendant was “in the business of inspecting, maintaining, installing, and selling at retail to members of the public various types of propane...equipment, including the propane tank that was installed in the home and barn [in question].” The complaint went on to seek relief “by reason and consequence of the aforementioned negligence, carelessness, recklessness, and/or willfulness” of defendant. The complaint, however, included no specific allegations of such “aforementioned” wrongful conduct. Plaintiff later voluntarily dismissed the complaint and refiled within the one year allowed by Rule 41(a). Plaintiff also amended the refiled complaint to add more detailed allegations of defendant’s negligent conduct. By the time of refiled (and amendment), however, the original statute of limitations had run.

The Court of Appeals determined that the original complaint’s allegations were too bare to conform to [Rule 8\(a\)\(1\)](#)’s fundamental requirement of a “short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief.” This inadequacy was not remedied before the original limitations period expired. The court held that, because the original complaint did not “conform in all respects to the rules of pleading,” the plaintiff’s voluntary dismissal did not trigger Rule 41(a)’s tolling provision. Thus the trial court properly dismissed the refiled action with prejudice. *Murphy* is the latest reminder that Rule 41(a)’s savings provision—although generous in its own right—cannot be used to extend a party’s time to pursue claims not properly brought before the court the first time around.