

ROY A. DAY

v.

LORNA R. GREY et al.

Submitted on Briefs February 26, 2018  
Decided March 15, 2018

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

## MEMORANDUM OF DECISION

Roy Day appeals from a judgment entered by the Superior Court (Cumberland County, *L. Walker, J.*) denying his M.R. Civ. P. 15(a) motion for leave to amend his complaint and granting Lorna Grey's, Kenneth Grey's, and GEICO Insurance Company's M.R. Civ. P. 12(b)(6) motion to dismiss.

Day appeals only the court's denial of his motion to amend pursuant to Docket No. Cum-17-346.<sup>1</sup> Once a responsive pleading has been served, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." M.R. Civ. P. 15(a). "Whether to allow a pleading amendment rests with the court's sound discretion." *Diversified Foods, Inc. v. First Nat'l Bank*,

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<sup>1</sup> Although Day also appealed the denial of his motions to proceed *in forma pauperis* pursuant to Docket Nos. Cum-17-355 and Cum-17-356, he failed to raise an argument regarding those issues in his brief and they are thus waived. See *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979) ("It is a well-settled universal rule of appellate procedure that a case will not be reviewed by an appellate court on a theory different from that on which it was tried in the court below.").

605 A.2d 609. “In reviewing the denial of a motion to amend pleadings, we determine whether the party has demonstrated (1) that the court clearly and manifestly abused its discretion and (2) that the amendment was necessary to prevent injustice.” *Montgomery v. Eaton Peabody, LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106 (alterations omitted) (quotation marks omitted).

Here, the court did not abuse its discretion in denying Day’s motion to amend, as that denial was appropriate on the grounds that Day’s motion: (1) constituted bad faith; and (2) was appropriately subject to a motion to dismiss. See *Montgomery*, 2016 ME 44, ¶ 13, 135 A.3d 106; *Glynn v. City of S. Portland*, 640 A.2d 1065, 1067 (Me. 1994).

The entry is:

Judgments affirmed.

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Roy A. Day, appellant pro se

Lorna Grey, Kenneth Grey, and GEICO Insurance Company did not file a brief

Cumberland County Superior Court docket numbers CV-2016-428, CV-2017-285, and CV-2017-315  
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