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IN THE COURT OF APPEALS OF INDIANA

William Pumphrey, III, RPM Pizza Midwest, LLC, d/b/a Domino's Pizza, and Millbank Insurance Company,[1]

Appellants-Defendants,

v.

Melody Jones,

Appellee-Plaintiff.

June 9, 2021

Court of Appeals Case No. 21A-CT-47

Appeal from the Hamilton Superior Court

The Honorable Jonathan M. Brown, Judge

Trial Court Cause No. 29D02-1902-CT-1520

Altice, Judge.

[1] Pizza Midwest, LLC, d/b/a Domino's Pizza and Millbank Insurance Company are not participating in this appeal, but since they are parties of record in the trial court, they are parties on appeal. *See* Ind. Appelllate Rule 17(A).

Case Summary

[1] While delivering pizzas for RPM Pizza Midwest, LLC d/b/a/ Domino's Pizza (RPM), William Pumphrey, III was involved in an automobile accident with Melody Jones. Jones swiftly filed suit against RPM and Pumphrey. RPM's third-party administrator retained counsel (Defense Counsel) to defend RPM and Pumphrey, but Defense Counsel, after an initial brief contact, encountered difficulties locating Pumphrey and, ultimately, filed an answer on behalf of RPM and Pumphrey without input from Pumphrey.

[2] Nearly eighteen months later, an associate with Defense Counsel's firm located Pumphrey, who provided an entirely different account of the accident and indicated Jones was actually the party at fault. With the statute of limitations deadline looming, Defense Counsel consulted with RPM and obtained permission to represent Pumphrey in a counterclaim for his own personal injuries and damages against Jones. Defense Counsel, on behalf of Pumphrey, filed a motion for leave to amend the answer to assert a counterclaim (the Motion to Amend) and then, with no ruling yet, filed the counterclaim five days later on the eve of the running of the statute of limitations. The trial court summarily denied Pumphrey's motion, as well as a subsequent motion to reconsider that Defense Counsel supported with several affidavits detailing the underlying events.

[3] Pumphrey raises one issue on appeal, which we restate as whether the trial court abused its discretion in denying the Motion to Amend by which he sought to pursue his individual personal injury claims.

[4] We reverse and remand.

Facts and Procedural History

[5] On November 30, 2018, while Pumphrey was delivering pizzas for RPM, he and Jones were involved in a motor vehicle accident. Less than three months after the collision, Jones filed a complaint alleging that she was injured by Pumphrey's negligence. She sued Pumphrey and RPM for damages and filed a claim against Millbank Insurance Company, her own insurer, for underinsured motorist coverage.

[6] On February 17, 2019, RPM's third-party administrator, Applied Risk Solutions, contacted Defense Counsel to represent both RPM and Pumphrey, as the accident occurred while Pumphrey was in the course and scope of his employment with RPM. Defense Counsel entered his appearance on February 21 and then contacted Pumphrey to inform him of counsel's retention by Applied Risk Solutions to defend RPM and Pumphrey in Jones's suit. Defense Counsel scheduled to meet Pumphrey on April 14, 2019, but Pumphrey did not appear for the meeting.

[7] After several unsuccessful attempts to contact Pumphrey, Defense Counsel filed an answer for RPM and Pumphrey on May 8, 2019. The answer did not raise any counterclaims but did assert the following affirmative defenses:

> 1. Plaintiff's claims are barred because Plaintiff's fault was greater than fifty percent (50%) of the total fault which proximately caused this incident.

> 2. Plaintiff's claims should be reduced by the percentage of fault attributable to Plaintiff which proximately contributed to Plaintiff's damages and injuries, if any.

Appellant's Appendix Vol. 2 at 20. That same day, Defense Counsel also informed Jones's attorney that he could not locate Pumphrey, which was impeding his efforts to respond to the discovery that had been requested.

[8] On July 8, 2019, Defense Counsel again advised opposing counsel of his inability to locate Pumphrey to respond to discovery. Defense Counsel indicated, as he had in prior correspondence, that both sides were essentially stuck between a rock and a hard place because neither "want[ed] RPM's insurance carrier to be put in the position of having to attempt to disclaim coverage for Pumphrey's lack of cooperation[.]" *Id*. at 60. Thus, without conceding the issue of fault, Defense Counsel suggested that the two sides "work on the evaluation of the damages side of the case" because "the liability side of this matter is less of an issue … so that we might be able to agree on an appropriate valuation and look to resolve the case." *Id*. In response, Jones's attorney agreed to hold off on the written discovery responses while still proceeding with Jones's deposition and mediation.

[9] Jones's deposition was taken on October 3, 2019, and mediation was set for February 14, 2020. The mediation was continued in February, however, so that Defense Counsel could depose Dr. Christy Kellams, one of Jones's treating physicians who had recently provided a narrative report that raised questions for Defense Counsel. Dr. Kellams's deposition was delayed several times,

including as a result of the COVID-19 pandemic. It was finally taken on November 20, 2020.

[10] In the meantime, on September 29, 2020, Jones's attorney sent Defense Counsel a letter that demanded discovery responses, threatened to file a motion to compel discovery, and asked to depose Pumphrey. Defense Counsel again advised that he had lost contact with Pumphrey – despite attempts through phone, email, and a personal visit to his (incorrect) home address – and could not produce him for a deposition or have him respond to discovery. Defense Counsel, however, indicated that he would provide RPM's responses to discovery with the information in RPM's possession.

[11] Defense Counsel engaged the assistance of an associate in the law firm, Erin Radefeld, to assist in preparing RPM's discovery responses. In the process, on October 21, 2020, Radefeld discovered that Pumphrey was now employed at a different RPM store. She immediately contacted the store and learned that Pumphrey was working later that same day. Radefeld spoke with him at the store that night, and Pumphrey provided Radefeld with his new home address, email, and phone number, all of which were different than what Defense counsel had been using to try to reach him since early in the case. Other than the initial contact in early 2019, none of Defense Counsel's communications had been received by Pumphrey.

[12] Upon speaking with Radefeld, Pumphrey "immediately and unequivocally disputed the police report and Jones' claims" and supplied Radefeld with the

contact information for a potential witness. *Id*. at 105. Pumphrey also agreed to meet the following day to discuss the case and review discovery responses with Radefeld, which he did. At the meeting, Pumphrey detailed his account of the collision and indicated that he was still receiving treatment for his physical injuries. Radefeld then advised Pumphrey that if he wanted to assert a claim for his own personal injuries and damages that he would need to do so before the expiration of the statute of limitations.

[13] After serving Jones with RPM and Pumphrey's discovery responses on November 2, 2020, Defense Counsel consulted with RPM and obtained permission to represent Pumphrey in an individual counterclaim. On November 25, 2020, Defense Counsel filed on Pumphrey's behalf the Motion to Amend. With no ruling yet from the trial court, Defense Counsel filed the counterclaim on November 30, 2020, just prior to the expiration of the statute of limitations. The next day, Jones filed an objection, and on December 9, 2020, the trial court summarily denied the Motion to Amend.

[14] On December 10, 2020, before receiving notice of the order denying the Motion to Amend, Pumphrey filed a lengthy reply to Jones's objection, along with the affidavits of Defense Counsel, Radefeld, and Pumphrey,[2] and argued that

[2] In his affidavit, Pumphrey explained that given the severity of the collision, which sent him into a deep ditch and then to the emergency room, he was unable to provide police at the scene with his account of the accident. An officer later came to the hospital and issued a ticket to Pumphrey. Pumphrey was medicated at the time and unable to discuss the accident. About a week later, Pumphrey attempted to share his version of events and dispute the facts as represented in the police report/ticket, but the officer informed Pumphrey it

justice required allowing Pumphrey to proceed with his compulsory counterclaim, which would otherwise be lost. On December 22, 2020, Pumphrey filed a motion to reconsider the order, to which Jones objected.

[15] On December 31, 2020, the trial court once again denied the Motion to Amend without explanation. In addition, the court expressly determined that there was no just reason for delay and directed the entry of judgment. Pumphrey now appeals.

Discussion and Decision

[16] Pumphrey contends the trial court abused its discretion in denying the Motion to Amend. Ind. Trial Rule 15(A) permits belated amendments to pleadings with leave of the court and provides that such leave "shall be given when justice so requires." In determining what justice requires, the trial court should consider factors such as "undue delay, bad faith, or dilatory motive on the part of the movant and undue prejudice to the opposing party." *Gen. Motors Corp. v. Northrop Corp.*, 685 N.E.2d 127, 142 (Ind. Ct. App. 1997), *trans. denied*.

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was too late to change the police report. Believing he had no chance of disputing it further, Pumphrey paid the citation.

Regarding his contact with Defense Counsel, Pumphrey recalled only an initial communication indicating that Jones had filed suit. He did not receive any other calls or communications until October 21, 2020. Pumphrey noted that the address for him on the police report was incorrect and that sometime after a domestic breakup in January 2019, his internet provider, cell phone number, and email address were changed. Without receiving the ongoing communication attempts from Defense Counsel, Pumphrey averred that he "was not aware additional cooperation was needed or wanted from me regarding this claim." *Id*. at 110.

Ultimately, we have recognized that "[a]mendments to pleadings are to be liberally granted to allow all issues to be presented to the factfinder." *Id.*

[17] Moreover, when a party fails to raise a counterclaim in its answer, Ind. Trial Rule 13(F) specifically allows the party to seek leave from the trial court to assert the counterclaim. The rule states: "When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment." *Id.* "A decision to grant or deny leave to file an omitted counterclaim is committed to the sound discretion of the trial court." *See Freedom Exp., Inc. v. Merch. Warehouse Co.*, 647 N.E.2d 648, 653 (Ind. Ct. App. 1995). An abuse of discretion is a ruling that is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences drawn therefrom. *Id.*

[18] Here, Pumphrey sought to add to his answer a compulsory counterclaim, which is one that "arises out of the transaction or occurrence that is the subject-matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Ind. Trial Rule 13(A). It is undisputed that the effect of not allowing the addition of Pumphrey's counterclaim is that it will be lost forever.

[19] We have recognized that "[t]he reasons for allowing amendment become more persuasive in the case of an omitted compulsory counterclaim, as the pleader would otherwise lose any opportunity to have the claim adjudicated." *Jensen v.*

Laudig, 490 N.E.2d 405, 406 (Ind. Ct. App. 1986); *see also Metro. Real Estate Corp. v. Frey*, 480 N.E.2d 267, 272 (Ind. Ct. App. 1985) (holding that "if plaintiff is not prejudiced in the preparation of a defense against it, a compulsory counterclaim may be filed with leave of court after filing defendant's first responsive pleading"), *trans. denied*; *cf. Hilliard v. Jacobs*, 927 N.E.2d 393, 402 (Ind. Ct. App. 2010) ("The reason for allowing compulsory counterclaims in reply is because, in fairness, parties should have an opportunity to assert their compulsory counterclaims or they will be barred from pursuing them later by res judicata.") (quoting *Cmty. State Bank Royal Ctr. v. O'Neill*, 553 N.E.2d 174, 179 (Ind. Ct. App. 1990)), *trans. denied*.

[20] We find the case of *Crider v. State Exch. Bank of Culver*, 487 N.E.2d 1345 (Ind. Ct. App. 1986), *trans. denied*, instructive. There, a bank filed suit against Crider to collect on two notes and to foreclose on the related mortgage. Crider filed an answer with a set-off and a two-count counterclaim for trespass and forcible entry, and he also demanded a jury trial. At the pre-trial conference, the trial court determined that the issues raised by the complaint, answer, and set-off would be tried to the bench, with a jury trial on Crider's counterclaim to follow.

[21] After the bench trial, the court entered findings in favor of the bank but withheld entry of judgment pending resolution, by a jury, of Crider's counterclaim. Subsequent proceedings were delayed due to Crider filing for bankruptcy. After the bankruptcy stay was lifted two years later, at a hearing to select a date for the jury trial, Crider moved for leave to file supplemental

counterclaims based on failure of consideration, breach of contract, and fraud. The trial court denied Crider's request.

[22] On appeal, we found that the trial court did not abuse its discretion by rejecting the addition of the counterclaims alleging failure of consideration and fraud. We held that the former was actually an affirmative defense asserted "too late" (i.e., after the bench trial) and the latter was not, as alleged by Crider, an after-acquired counterclaim.[3] *Id*. at 1348, 1350.

[23] Regarding the breach of contract counterclaim, however, we concluded that the court abused its discretion in refusing to allow the compulsory counterclaim. In so holding, we explained:

> The Bank's complaint sought to recover only for the unpaid amount of the credit actually advanced. Crider's claim concerning the unadvanced credit constitutes a separate and distinct claim cognizable without regard to the basic suit by the Bank against him even though it arose out of the transaction upon which the Bank filed suit.
>
> As required by Trial Rule 13(A), a compulsory counterclaim must be stated at the first opportunity if it exists at the time the plaintiff's complaint is served and if it arises out of the transaction or occurrence which is the subject matter of the

[3] Because Crider did not contend that it was a compulsory counterclaim, we expressly did not decide "the arguable merit of a contention which would categorize the fraud counterclaim as a compulsory counterclaim." *Id*. at 1350.

plaintiff's complaint. Quite clearly that is the case with respect to the breach of contract claim….

Crider correctly contends that the judicial policy which favors litigation and disposition of all issues together, if possible, is not violated in this instance. The trial court with good reason had bifurcated the resolution of the issues joined by the Bank's complaint and Crider's set-off, as separate and apart from the issues presented by the original counterclaims. The counterclaims in question were tendered while the original counterclaims remained pending and awaiting trial by jury.

The controlling consideration here is that the trial court did not enter any judgment but only made findings and held judgment in abeyance pending trial by jury upon the original counterclaims. Were it otherwise, we might have been persuaded to follow those cases which hold that Trial Rule 13 bars a counterclaim in a subsequent action.

A compulsory counterclaim is not barred unless the first action has proceeded to judgment…. [Here, n]either the court nor the parties impliedly or explicitly litigated that claim. This is so even though the facts underlying the claim were involved in the litigation which resulted in the finding for the Bank upon its complaint for foreclosure.

In *Metropolitan Real Estate Corp. v. Frey*, *supra*, 480 N.E.2d 267, we quoted from 6 C. Wright & A. Miller, Federal Practice & Procedure: Civil § 1430 at 158 as follows:

> When the omitted counterclaim is compulsory, the reasons for allowing its introduction by amendment become even more persuasive, since an omitted compulsory counterclaim cannot be asserted in subsequent cases (at

> least in the federal courts) and the pleader will lose his opportunity to have the claim adjudicated.
>
> Our analysis of the law prompts us to hold that the trial court erred in refusing Crider's breach of contract counterclaim. Our decision in this regard is not, and cannot be, affected by the relative probabilities of his success in asserting that claim.

Crider, 487 N.E.2d 1349 (cleaned up).

[24] To summarize, Crider sought to amend his answer more than two years after several issues had already been litigated at a bench trial, with findings entered but judgment withheld, and just as the jury trial regarding his original counterclaim for trespass and forcible entry was about to be scheduled. Focusing on the fact that no final judgment had been entered and that the counterclaim Crider sought to add was compulsory and had not been litigated – expressly or impliedly – at the bench trial, we concluded that the trial court abused its discretion by not allowing him to add the counterclaim.

[25] The facts in this case are much more compelling than in *Crider*. When Pumphrey filed the Motion to Amend to add his compulsory counterclaim, discovery was still ongoing, Dr. Kellams had just been deposed, and Pumphrey had yet to be deposed. Further, Pumphrey himself had been out of the loop regarding the ongoing litigation because Defense Counsel did not have Pumphrey's correct contact information. And while Defense Counsel entered an appearance on Pumphrey's behalf regarding defending RPM and Pumphrey against Jones's claims, Pumphrey played no role in retaining Defense Counsel,

was not involved in responding to the complaint, and likely viewed Defense Counsel as representing RPM. Indeed, Pumphrey had barely communicated with Defense Counsel and certainly had not sought representation at that point.

[26] While the eighteen-month delay was lengthy, there is no indication that Pumphrey acted in bad faith or with dilatory motive. He had simply gone on with his life – dealing with his injuries from the accident, going through a domestic breakup, and working at a new location delivering pizza – unaware of the ongoing communication attempts from Defense Counsel or the need for his additional cooperation in defending against the lawsuit. Additionally, prior to being located by Radefeld in October 2020, Pumphrey had not provided his side of the story to Defense Counsel, and he immediately and fully cooperated with Defense Counsel after being located. Once his version came to light, the Motion to Amend was promptly filed.

[27] Finally, we observe that allowing the counterclaim to be added will not cause undue prejudice to Jones. The answer included the affirmative defense that "Plaintiff's claims are barred because Plaintiff's fault was greater than fifty percent (50%) of the total fault which proximately caused the incident." *Appellant's Appendix Vol. 2* at 20. Thus, in light of Pumphrey's conflicting account, it is evident that discovery would still need to be had[4] and the relevant facts regarding who was at fault would be litigated regardless. While additional

[4] In fact, Jones had requested to depose Pumphrey as recently as September 2020, less than a month before the Motion to Amend was filed.

discovery dealing with Pumphrey's alleged injuries would likely cause some delay in the proceedings, we do not find that this constitutes undue prejudice.

[28] On the specific facts of this case, we conclude that the trial court's denial of the Motion to Amend was an abuse of discretion because "justice requires" the granting of the motion. T.R. 13(F). Pumphrey deserves his day in court. On remand, the trial court is directed to permit the proposed amendment.

[29] Reversed and remanded.

Weissmann, J., concurs.

Kirsch, J., dissents with opinion.

IN THE
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William Pumphrey, III, RPM Pizza Midwest, LLC, d/b/a Domino's Pizza, and Millbank Insurance Company,
Appellants-Defendants,

v.

Melody Jones,
Appellee-Plaintiff.

Court of Appeals Case No. 21A-CT-47

Kirsch, Judge, dissenting.

[30] In concluding that the trial court abused its discretion in denying Pumphrey's Motion to Amend, which Pumphrey filed one year and nine months after Jones filed her complaint, I believe the majority has reweighed the evidence, substituted its judgment for the trial court, and failed to apply the standard for belated counterclaims as set forth in Indiana Trial Rule 13(F). Therefore, I respectfully dissent.

[31] When a party fails to raise a counterclaim in its answer, Indiana Trial Rule 13(F) allows the party to seek leave from the trial court to raise a counterclaim. The rule states: "When a pleader fails to set up a counterclaim through *oversight, inadvertence, or excusable neglect, or when justice requires*, he may by leave of court set up the counterclaim by amendment." *Id*. (emphasis added). "A decision to grant or deny leave to file an omitted counterclaim is committed to the sound discretion of the trial court." *See Freedom Exp., Inc. v. Merch. Warehouse Co.*, 647 N.E.2d 648, 653 (Ind. Ct. App. 1995). A trial court abuses its discretion if its action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom. *Husainy v. Granite Mgmt., LLC*, 132 N.E.3d 486, 492 (Ind. Ct. App. 2019).

[32] In reversing the trial court, the majority accepts Pumphrey's version of events, which the trial court, in its discretion, was free to reject. For instance, the majority states that until Radefeld contacted Pumphrey in October of 2020, Pumphrey had only one communication with Defense Counsel, who simply told Pumphrey that Jones had sued him, and that because of this limited communication, Pumphrey was not up to speed on the status of the case and did not realize his cooperation in the lawsuit was necessary. It would have been reasonable for the trial court to reject this explanation on its face, but this would be especially true because Defense Counsel scheduled a meeting for April 14, 2019, to discuss the case with Pumphrey. *Appellant's App. Vol. 2* at 53. The trial court could have concluded that Defense Counsel and Pumphrey discussed the meeting but Pumphrey nevertheless chose to not attend, that

Defense Counsel would have discussed a potential counterclaim with Pumphrey at the meeting, and that attending the meeting would have brought Pumphrey up to speed about the status of the case. The trial court could have also observed that Defense Counsel did not file the answer on behalf of Pumphrey until May 8, 2019, twenty-five days after the April 14, 2019 meeting. *Id*. at 18. Had Pumphrey attended the meeting, these twenty-five days would have given Defense Counsel ample time to preliminarily investigate a potential counterclaim, draft language for the counterclaim, and incorporate the counterclaim in the May 8, 2019 answer.

[33] The trial court could have also concluded that if Pumphrey had attended the April 14, 2019 meeting, he could have avoided communication problems with Defense Counsel because he could have given Defense Counsel his new contact information, which had changed ten weeks before, and Defense Counsel could have provided his contact information to Pumphrey. *Id*. at 109-10. It would also have been reasonable for the trial court to conclude that Pumphrey could have easily acquired Defense Counsel's contact information through RPM, Pumphrey's employer, because Defense Counsel told Pumphrey that he represented both RPM and Pumphrey. *Id*. at 53

[34] Considering these facts and reasonable inferences, the trial court could have found that Pumphrey's failure to raise a counterclaim in his answer was not the product of mere "oversight, inadvertence, or excusable neglect," or that "justice require[d]*"* allowing Pumphrey to file a belated counterclaim one year and nine months after Jones filed her complaint. *See* T.R. 13(F). The majority states that

these facts and inferences fail to show that Pumphrey acted with a dilatory motive. *See Gen. Motors Corp. v. Northrop Corp.*, 685 N.E.2d 127, 142 (Ind. Ct. App. 1997) (determining if justice requires allowing an amendment to a pleading requires courts to determine whether there was "undue delay, bad faith, or dilatory motive on the part of the movant"), *trans. denied*. Even though I admit this is a close call, it was not outside the trial court's discretion to determine that Pumphrey did act with a dilatory motive. However, Indiana Trial Rule 13(F) does not ask a trial court to determine if the movant acted with a dilatory motive but only asks if the movant acted with something worse than oversight, inadvertence, or excusable neglect. The trial court have reasonably found that Pumphrey did not meet the criteria of Indiana Trial Rule 13(F).

[35] Moreover, the majority's reliance on *Crider v. State Exch. Bank of Culver*, 487 N.E.2d 1345 (Ind. Ct. App. 1986), *trans. denied* is misplaced. *Crider* ruled that the trial court abused its discretion in denying Crider's request to file a supplemental counterclaim for breach of contract, which alleged that State Exchange Bank of Culver ("the Bank") advanced only $85,000 of a $150,000 line of credit that the Bank had originally promised to Crider. *Id*. at 1349. However, *Crider* is distinguishable. It turned, in part, on our finding that Crider's supplemental counterclaim for breach of contract was "a separate and distinct claim cognizable without regard to the basic suit by the Bank against him even though it arose out of the transaction upon which the Bank filed suit." *Id*. Here, Pumphrey's counterclaim was not a separate and distinct claim cognizable without regard to Jones's lawsuit against him but was inextricably

bound up in Jones's lawsuit. Moreover, the two-year delay in the Bank's lawsuit against Crider was not the result of something more than Crider's oversight, inadvertence, or excusable neglect because the delay was the result of Crider filing a bankruptcy petition and receiving a stay of the proceedings in the Bank's lawsuit against him. The same cannot be said for the delay caused by Pumphrey, which the trial court could have reasonably determined was Pumphrey's fault.

[36] I believe the majority has also reweighed the evidence in determining that Jones was not prejudiced by the delay created by Pumphrey's actions and his belated request to file a counterclaim. The majority states Jones was not prejudiced because discovery was ongoing and Pumphrey himself had yet to be deposed. The trial court could have rejected this argument by concluding that discovery was lasting so long because of the delays created by poor communication between Pumphrey and Defense Counsel, which the trial court could have concluded was at least partly the fault of Pumphrey. Defense Counsel staved off Jones's counsel's requests for discovery at least three times between May and October of 2019 because of the lack of communication between Defense Counsel and Pumphrey. *Appellant's App. Vol. 2* at 53-54. Soon after that, because any attempt to resolve the case on the merits was fruitless at the time, mediation was delayed and Jones's attorney agreed to allow Defense Counsel to depose Jones's treating physician. *Id*.

[37] Weighing the evidence in accord with the trial court's discretion leads me to conclude that allowing Pumphrey to file his belated counterclaim would add

significant delay. Jones would need to conduct substantial discovery, including depositions of Pumphrey, Pumphrey's co-worker who allegedly witnessed the accident, the doctors who treated Pumphrey at the emergency room, and any other doctors who provided additional care to Pumphrey after he was released from the emergency room. Jones would also need to obtain and review Pumphrey's medical records related to his treatment.

[38] Finally, I acknowledge that the stakes are high for Pumphrey because his counterclaim is a mandatory counterclaim, and, as such, could not be raised in a subsequent proceeding. *See Jensen v. Laudig*, 490 N.E.2d 405, 406 (Ind. Ct. App. 1986) (reasons for allowing amendment become more persuasive in the case of an omitted compulsory counterclaim). Nonetheless, the decision to grant his motion to amend answer was still a matter of trial court discretion. *See Freedom Exp., Inc.*, 647 N.E.2d at 653 ("A decision to grant or deny leave to file an omitted counterclaim is committed to the sound discretion of the trial court."). Given the facts before the trial court, the reasonable inferences arising therefrom, the trial court's discretion to accept or reject Pumphrey's version of the events, I cannot agree that the trial court abused its discretion in denying Pumphrey's Motion to Amend. Accordingly, I dissent and would affirm the trial court.