

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 15, 2026 Session

FILED

10/26/2026

Clerk of the
Appellate Courts

**WILLIAM GREEN ET AL. v. BLUE OAK OYSTER BAR & GRILL, LLC
ET AL.**

**Appeal from the Circuit Court for Weakley County
No. 2024-CV-27 Jeff Parham, Judge**

No. W2025-01744-COA-R3-CV

Appellees moved for judgment on the pleadings, arguing that Appellants' premises liability complaint failed to state a claim. Appellants argued that their complaint was sufficient but nevertheless sought leave to file an amended complaint to address the alleged deficiencies. The trial court granted the motions for judgment on the pleadings. The motion to amend was denied in the same order, which stated that the motion was not addressed as it was moot. The trial court then denied Appellants' motion to alter or amend its judgment, finding that it had applied the correct standard by reviewing only the original complaint. Because the motion to amend should have been heard before the motions for judgment on the pleadings and because we conclude the motion to amend should have been granted under the circumstances, the trial court's order is reversed as to the denial of the motion to amend and vacated as to the grant of judgment on the pleadings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated in
Part; Reversed in Part; and Remanded**

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and CARMA DENNIS MCGEE, JJ., joined.

Andrew C. Clarke and Noorhan Taube, Memphis, Tennessee, for the appellant, Patricia Robertson Green and William Green.

Keely N. Wilson and Myrah Ramirez, Jackson, Tennessee, for the appellee, C & H Investment Properties, LLC.

Garrett H. O'Brien, Memphis, Tennessee, Blue Oak Oyster Bar & Grill, LLC.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs/Appellants William Green and Patricia Green (together, “Appellants”) filed a premises liability action in the Weakley County Circuit Court (“the trial court”) on October 10, 2024. The complaint alleged that Mr. Green suffered an injury while leaving Blue Oak Oyster Bar & Grill (“the Restaurant”), a restaurant “owned, controlled, maintained and/or operated” by Defendants/Appellees Blue Oak Oyster Bar & Grill, LLC (“Blue Oak”) and C & H Investment Properties, LLC (“C & H” and together, “Appellees”), through the Restaurant’s Oxford Street entrance. According to the complaint,

18. Upon information and belief, the Oxford Street entrance was constructed, modified and/or maintained in contravention of industry standards and applicable codes and regulations such that it presented a dangerous condition.
19. On or around January 23, 2024, at approximately 6:30 p.m., [Mr.] Green was a business invitee of [Appellees].
20. On or around January 23, 2024, at approximately 6:30 p.m., [Mr.] Green was exiting the Restaurant through the side door on Oxford Street and tripped which caused him to fall forward to the sidewalk below.
21. As a direct and proximate result of the fall, [Mr.] Green sustained injuries which required medical attention.
22. [Mr.] Green was acting in a cautious and prudent manner and did nothing to cause the fall and his resulting injuries.
23. At all times material hereto, [Appellees] knew or should have reasonably anticipated that restaurant patrons, including [Mr.] Green, would use the Oxford Street entrance to exit the premises.
24. [Appellees] either created the dangerous condition or knew or should have known of the dangerous condition, and they failed to take action to either remedy or warn of the dangerous condition before [Mr.] Green fell.
25. At all times material hereto, [Appellees] were required to inspect for defects and dangerous conditions on the premises.

Appellants asserted that by failing to, inter alia, maintain the premises in a safe condition, adequately inspect the premises for hazards, or remove, correct, or warn of a dangerous condition, Appellees had breached their duty to “act reasonably and use ordinary care under the circumstances,” which directly and proximately caused Mr. Green’s injuries. The complaint sought at least \$25,000.00 in personal injury damages for Mr. Green and at least \$25,000.00 in loss of consortium damages for Mrs. Green.

In its answer to the complaint, Blue Oak denied any breach of duty or responsibility for Appellants' injuries. Blue Oak also raised affirmative defenses including the failure to state a claim upon which relief can be granted, modified comparative fault, the lack of notice or knowledge of any dangerous condition, the assumption of risk, the failure to mitigate damages, and an open and obvious dangerous condition. C & H filed its own answer, likewise denying any breach of duty or responsibility and raising similar defenses.

C & H then filed a motion for judgment on the pleadings on April 15, 2025. C & H argued that the complaint did not comply with Tennessee Rule of Civil Procedure 8.05, because it did not identify the codes, ordinance, or regulations allegedly violated or specify the nature of the allegedly dangerous or defective condition. C & H argued that the complaint also failed to allege sufficient facts as to how such a condition caused Mr. Green's fall. And C & H asserted that Appellants had admitted in a discovery response that Mr. Green did not trip over any item or obstacle, further limiting their ability to prove causation.

Blue Oak filed its own motion for judgment on the pleadings and to join C & H's motion on June 12, 2025. Blue Oak argued that Appellants failed to specify the nature of the allegedly dangerous condition or identify the allegedly violated industry standard or regulation. Blue Oak argued that the complaint was insufficient to put it on notice of the violation charged. Both motions were set to be heard on July 14, 2025.

On July 3, 2025, Appellants moved for leave to amend their complaint. Therein, Appellants asserted that their original complaint was legally sufficient under Tennessee's liberal pleading standard, but "out of an abundance of caution," they wanted to amend their complaint "to include additional factual allegations in support of their claims[.]" The proposed amended complaint contained two substantive alterations. First, paragraph (18) no longer referenced "industry standards and applicable codes and regulations," instead alleging merely that "[u]pon information and belief, the Oxford Street entrance was constructed, modified and/or maintained in such a manner that it presented a dangerous condition." Second, the following additional paragraph was added between original paragraphs (20) and (21):

21. [Mr.] Green avers that the exit is dangerous as the door opens over a sill and brick step which obstructs the view of the step while exiting the [R]estaurant and is not otherwise adequately marked and the exit lacks a level platform on both sides of the door. As such, the exit from the Restaurant creates a foreseeable risk of fall while exiting the Restaurant without adequate warnings.

Appellants asserted that they sought "only the opportunity for this dispute to be resolved on the merits rather than legal technicalities" and emphasized the directive in Tennessee Rule of Civil Procedure 15 that leave to amend be "freely given when justice so requires."

Tenn. R. Civ. P. 15.01.

Appellants also filed a response to Appellees' motions for judgment on the pleadings on the same day. They again argued that their original complaint alleged sufficient facts to establish a valid premises liability cause of action. Appellants emphasized that the admission that Mr. Green did not trip over an item or obstacle did not contradict the complaint, which set out the Oxford Street entrance itself as having caused Mr. Green's injury.¹ They also argued that the failure to set out any specific statute or ordinance in the original complaint should not prove fatal to the action, as their claims sounded in general negligence, not solely negligence per se. To the extent that the original complaint could be seen as deficient, Appellants requested leave to file their proposed amended complaint to "include[] additional details as to the dangerous nature of the exit and remove[] reference to the violation of applicable codes and regulations regarding the exit in question."

Blue Oak opposed Appellants' request for leave to amend their complaint, stressing that Appellants only filed the motion in response to Appellees' motions for judgment on the pleadings. Blue Oak argued that removing the reference to codes or regulations from paragraph (18) would compound rather than resolve Appellants' non-compliance with Rule 8.05. It also took issue with the additional detail included in new paragraph (21), arguing that the information was known to Appellants at the time of filing their original complaint. As such, Blue Oak argued that the amendment was both unduly delayed and prejudicial to Appellees, as well as ultimately futile; it asserted that the proposed amended complaint was merely a bad faith attempt to delay or avoid judgment on the pleadings. Thus, Blue Oak argued that Appellants should not be allowed to amend their complaint. C & H later joined Blue Oak's response.

A hearing was held as scheduled on July 14, 2025, and the trial court issued its order granting Appellees' motions for judgment on the pleadings on August 11, 2025. Therein, the trial court found that Appellants' original complaint (1) failed to sufficiently plead a statement of their claim or identify the dangerous or defective condition on which their claim was based; and (2) failed to clearly identify the allegedly violated statute, ordinance, or regulation on which their claim was based. The order further stated that Appellants' motion for leave to amend their complaint was not addressed because it was moot. Indeed, at the hearing, the trial court expressly stated during Appellants' counsel's argument:

¹ Additionally, Appellants argued that Appellees' motions for judgment on the pleadings had been converted into motions for summary judgment, as, by relying on the discovery responses, Appellees had directed the trial court to consider matters outside the pleadings. *See* Tenn. R. Civ. P. 12.03 (providing that if "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). Appellants argued that Appellees had failed to comply with the requirements associated with bringing motions for summary judgment, meaning their motions should be summarily denied. Appellants further argued that they would be entitled to conduct additional discovery before responding to a summary judgment motion.

“We’re not arguing the motion to amend.”² And when Appellants’ counsel asked to clarify whether their motion to amend was denied, the trial court stated: “We didn’t get to that motion. . . . Ordinarily, that would be freely given, but it came after the motion to dismiss on the pleadings.” The transcript of the hearing was incorporated into the order.

Appellants then filed a timely motion to alter or amend the trial court’s judgment pursuant to Tennessee Rule of Civil Procedure 59.04. They argued that the trial court committed clear error by failing to consider their motion to amend their complaint before resolving the motions for judgment on the pleadings. Appellants also argued that their motion to amend should be granted, leaving Appellees to re-file their motions for judgment on the pleadings to test the sufficiency of the amended complaint should they so choose.

Blue Oak opposed the motion, arguing that the trial court correctly limited its review to the pleading at the heart of the motions for judgment on the pleadings, i.e., the original complaint. And once the motions for judgment on the pleadings were granted, there was no active complaint to amend, rendering Appellants’ motion moot. Blue Oak also argued that the motion to amend was much delayed and the proposed amended complaint did not contain any information not previously known to Appellants, further supporting the trial court’s decision that the request to amend was moot. C & H joined in Blue Oak’s response and filed its own reply to Appellants’ motion raising similar arguments.³

The trial court denied Appellants’ motion to alter or amend by order of November 10, 2025. The trial court again noted that while leave to amend is normally freely given, “a Motion for Judgment on the Pleadings was pending months prior to the Motion to Amend being filed.” The trial court stated that it had applied the correct standard in reviewing only the pleadings in the record at the time of the hearing on Appellees’ motions, specifically Appellants’ original complaint, and that there was no clear error of law in the findings granting the motions for judgment on the pleadings.⁴ This appeal followed.

² Appellants’ counsel did nevertheless discuss the factors to be reviewed in considering a motion to amend.

³ In their responses and during the hearing on Appellants’ motion to alter or amend, Appellees each indicated that Appellants’ motion to amend their complaint had been heard at the July 14, 2025 hearing and denied after due consideration, despite the language included in the August 11 order.

⁴ The transcript of the hearing was again attached to the trial court’s written order. Therein, the trial court made the following ruling:

Although normally motions to amend are freely given, particularly in circumstances under Rule 12.02(6), which states failure to state a claim, I find that judgment on the pleadings is different.

In this case, the [c]ourt considered the arguments of [Appellants’] counsel in telling the [c]ourt what they anticipated the amended complaint to say.

And basically paraphrasing, she said, We’re going to take out the statutes and ordinances. We think our complaint is good. Of course, that’s not been sufficient. Rule 8 requires if you’re going to allege statutes that you cite the statutes.

II. ISSUES PRESENTED

Appellants raise two questions on appeal, (1) whether the trial court erred in granting Appellees' motions for judgment on the pleadings based on the sufficiency of the original complaint and (2) whether the trial court erred in failing to consider and grant Appellants' motion to amend their complaint before ruling on the motions for judgment on the pleadings. We will address the second issue first, as it is dispositive of this appeal.

III. ANALYSIS

It is well established that "Tennessee law and policy have always favored permitting litigants to amend their pleadings to enable disputes to be resolved on their merits rather than on legal technicalities." *Hardcastle v. Harris*, 170 S.W.3d 67, 80 (Tenn. Ct. App. 2004) (citing *Karash v. Pigott*, 530 S.W.2d 775, 777 (Tenn. 1975); *Patton v. Dixon*, 105 Tenn. 97, 103, 58 S.W. 299, 301 (1900); *Rutherford v. Rains*, 158 Tenn. Append. 35, 42 (1814)). Rule 15.01 of the Tennessee Rules of Civil Procedure reflects this policy, providing that even while sometimes a party must receive written consent of the adverse party or leave of the court before amending a pleading, such "leave shall be freely given when justice so requires." To that end, "trial courts [are required] to be liberal in allowing pretrial motions to amend." *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 374 (Tenn. 2007) (collecting cases).

When considering a motion to amend, the trial court may consider several factors, including "[u]ndue delay in filing; lack of notice to the opposing party; bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Merriman v. Smith*, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979) (citation omitted). We have previously held, however, that a court "should not deny a plaintiff's [Rule 15.01] Motion to Amend based on an examination of whether it states a claim on which relief can be granted." *Conley v. Life Care Centers of Am., Inc.*, 236 S.W.3d 713, 723 (Tenn. Ct. App. 2007) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962) ("If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits."))).

The decision to grant or deny a motion to amend lies within the sound discretion of the trial court, and we will not reverse such a decision absent an abuse of that discretion.

So the [c]ourt is confident that I ruled correctly on the motion for judgment on the pleadings, and I'm going to deny the motion.

Appellants' counsel clarified that the amended complaint not only removed the reference to statutes from paragraph (18), it added an additional paragraph detailing the nature of the dangerous condition in response to Appellees' arguments, but the trial court did not make any additional statements.

Cumulus Broad., 226 S.W.3d at 374 (citing *Harris v. St. Mary's Med. Ctr., Inc.*, 726 S.W.2d 902, 904 (Tenn. 1987); *Welch v. Thuan*, 882 S.W.2d 792, 793 (Tenn. Ct. App. 1994)). “Under the abuse of discretion standard, a trial court’s ruling ‘will be upheld so long as reasonable minds can disagree as to [the] propriety of the decision made.’” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000)). The decision may properly be set aside “if we find the trial court applied an incorrect legal standard or misconstrued or misapplied the controlling legal principles.” *Conley*, 236 S.W.3d at 723 (citing *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999)). Nevertheless, as this Court has stated, “[a]lthough amendments to the pleadings lie within the discretion of the trial court, the rule mandates the allowance of amendments if justice requires.” *HMF Tr. v. Bankers Tr. Co.*, 827 S.W.2d 296, 301 (Tenn. Ct. App. 1991); see also *Branch v. Warren*, 527 S.W.2d 89, 91 (Tenn. 1975) (noting that the directive in Rule 15.01 that leave be freely given “substantially lessens the exercise of pre-trial discretion on the part of a trial judge”); *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010) (“The abuse of discretion standard of review does not . . . immunize a lower court’s decision from any meaningful appellate scrutiny. . . . Discretionary decisions must take the applicable law and the relevant facts into account.”).

The Tennessee Supreme Court Special Worker’s Compensation Appeals Panel considered a situation similar to the case-at-bar in *Henderson v. Bush Brothers & Co.*, 868 S.W.2d 236 (Tenn. 1993). In *Henderson*, the trial court granted the defendant’s motion for summary judgment without ruling on or considering the plaintiff’s pending motion to amend its complaint beyond stating that the amendment was “too late.” *Id.* at 236. The Tennessee Supreme Court ruled, however, that the trial court abused its discretion in failing to properly consider the motion to amend. *Id.* at 238.

In reaching this result, the court considered federal caselaw on Rule 15.01’s federal counterpart, Rule 15(a) of the Federal Rules of Civil Procedure. See *id.* at 237 (“The Federal Rule of Civil Procedure 15(a) is essentially the same as the Tennessee Rule of Civil Procedure 15.01, and even though federal decisions are not binding upon the state courts, we find assistance in reviewing cases concerning rules of procedure which have been in effect in the federal courts [for] many years.”). Like Rule 15.01, Rule 15(a) provides that leave of court to amend a pleading should be “freely given.” *Id.* (citing Fed. R. Civ. P. 15(a)). Given this language, federal courts have held that “it was an abuse of discretion for a district court to dismiss a suit on the basis of the original complaint without first considering and ruling on a pending motion to amend.” *Id.* (citing *Marks v. Shell Oil Co.*, 830 F.2d 68, 69 (6th Cir. 1987)). The Tennessee Supreme Court agreed with federal courts that “[g]iven the policy of liberality behind Rule 15(a), it is apparent that when a motion to amend is not even considered, much less not granted, an abuse of discretion has occurred.” *Id.* (quoting *Marks*, 830 F.2d at 69). Applying this precedent to Rule 15.01, the court therefore held that

[T]he trial court must give the proponent of a motion to amend a full chance to be heard on the motion, must consider the motion in light of the amendment policy embodied in [Rule] 15.01, that amendments must be freely allowed; and in the event the motion to amend is denied, the trial court must give a reasoned explanation for his action.

Id. at 238. Because the trial court’s order did not state that the motion had been fully considered or provide “a reasoned explanation for [the trial court’s] action[,]” the grant of the motion for summary judgment was vacated in *Henderson* and the case remanded to consider the motion to amend prior to taking up the motion for summary judgment. *Id.*

Tennessee courts continue to follow the precedent set in *Henderson*, even when the request to amend is filed after the dispositive motion. *See, e.g., Cumulus Broad.* 226 S.W.3d at 375 (holding that under the precedent set in *Henderson*, the trial court should have fully considered a motion to amend filed after a motion for summary judgment before granting the summary judgment motion); *Shaw v. Metro. Gov’t of Nashville*, No. M2016-02455-COA-R3-CV, 2017 WL 6398341, at *5 (Tenn. Ct. App. Dec. 14, 2017) (vacating the grant of summary judgment after determining that the trial court abused its discretion in failing to first rule on a motion to amend that had been filed after the summary judgment motion); *Knight v. Hosp. Corp. of Am.*, No. 01A01-9509-CV-00408, 1997 WL 5161, at *4 (Tenn. Ct. App. Jan. 8, 1997) (providing that “courts should not grant a motion for summary judgment without first considering a pending motion to amend”); *Lowery v. Faires*, No. 03A01-9605-CV-00177, 1996 WL 718290, at *2 (Tenn. Ct. App. Dec. 16, 1996) (finding that the trial court’s decision to deny a motion to amend simply because it was filed after the motion for summary judgment was “clearly in conflict with the Supreme Court’s decision in *Henderson*.”). Thus, the fact that a dispositive motion has been filed is not a proper ground to refuse to consider a motion to amend.

In this case, however, Appellees assert that the trial court’s ruling did include some implicit consideration of the merits of Appellant’s motion to amend: according to Appellees, the trial court’s statement that the motion was moot for being filed after the motions for judgment on the pleadings constitutes a finding of undue delay. Respectfully, we disagree. The trial court unambiguously stated that “[w]e’re not arguing the motion to amend,” and later that “[w]e didn’t get to that motion.” The August 11, 2025 order likewise provided that the trial court “did not address” Appellants’ motion at the hearing beyond finding it to be moot. The trial court’s order made no reference to the relevant factors or Appellants’ counsel’s argument on the matter. Instead, the trial court found the motion to be moot because it “came after the motion[s] to dismiss on the pleadings.” And although Appellants’ motion to alter or amend that judgment specifically argued that the trial court erred by failing to consider their motion for leave to amend, the trial court’s November 10, 2025 order did not dispute this characterization.

The *Henderson* court expressly found that a similar statement that “the motion to

amend comes too late” did not constitute either “a consideration of the motion or a reasoned explanation for [the trial court’s] action.” *Henderson*, 868 S.W.2d at 238. The trial court’s order denying Appellants’ motion to alter or amend did not contain any discussion on this issue or provide additional insight into the trial court’s reasoning. See *Roach v. Moss Motor Co.*, No. M2021-00511-COA-R3-CV, 2022 WL 1439349, at *4 (Tenn. Ct. App. May 6, 2022) (agreeing that the trial court’s initial order “was deficient, because it merely denied the motion to amend ‘as untimely,’ without clear explanation” but finding that the “more detailed order denying the motion to alter or amend” allowed for meaningful review of the trial court’s decision).

We also do not find any explanation for the denial of the motion to amend in the distinction the trial court made between motions to dismiss based on the failure to state a claim under Rule 12.02(6) and motions for judgment on the pleadings under Rule 12.03.⁵ See *Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 736 (Tenn. 2011) (“The legal sufficiency of a complaint can be tested by a [Rule] 12.03 motion for judgment on the pleadings or a [Rule] 12.02(6) motion for failure to state a claim upon which relief can be granted. The motions, being essentially the same, are reviewed under the same standards.” (footnotes and citations omitted)). Moreover, this Court has previously vacated an order granting a motion for judgment on the pleadings where the trial court did not first address a request to amend made in response to the motion. *Fid. & Cas. Co. of N.Y. v. Gregory Ent., Inc.*, No. 01-A-01-9804-CH00203, 1999 WL 173629, at *2 (Tenn. Ct. App. Mar. 31, 1999) (“It appears to us that amendment is the most straightforward method to further resolution of this apparently straightforward dispute.”). The trial court’s treatment of Appellants’ motion to amend simply does not comport with established Tennessee precedent.

Still, as noted, *supra*, the factors related to the consideration of a motion to amend were indeed addressed by the parties, both in their pre-hearing filings and at the July 14, 2025 hearing itself. Appellees also indicated that the motion had been adequately heard in their response to Appellants’ motion to alter or amend the trial court’s judgment. Furthermore, all parties have addressed the relevant factors in their briefs to this Court. As a result, we conclude that the record contains sufficient argument on these issues to enable us to soldier on in the interest of judicial economy and review the merits of Appellants’

⁵ C & H cites to *Thornley v. U.S. Bank, N.A.*, No. M2014-00813-COA-R3-CV, 2015 WL 3989380, at *5 n.5 (Tenn. Ct. App. June 30, 2015) to highlight the differences between Rule 12.02(6) motions and Rule 12.03 motions. Of course, the primary differences are when the respective motions may be filed and which pleadings may be considered. *Id.* The third difference set out by *Thornley* is that “[a] motion for judgment on the pleadings . . . theoretically is directed towards a determination of the substantive merits of the controversy;” a motion to dismiss for failure to state a claim is directed to procedural defects or the statement of the claim for relief.” *Id.* (alterations in original) (citation omitted). This distinction does not seem to support the decision to file a motion for judgment on the pleadings when Appellees’ argument is focused on the content of Appellants’ complaint, rather than the merits of their claim. Regardless, the technical or theoretical differences between the motions have no bearing on the consideration of Appellants’ motion to amend their complaint.

motion to amend despite the trial court's failure to provide a proper analysis of the relevant factors. For their part, Appellees, treating the motion to amend as if the trial court had actually ruled on its merits, argue that the trial court was well within its discretion to deny the motion, as the *Merriman* factors—particularly those factors involving undue delay, bad faith, undue prejudice, and futility—weigh against allowing Appellants to amend their complaint. See *Cumulus Broad.* 226 S.W.3d at 375 (finding that the failure to consider the motion to amend before granting summary judgment was ultimately harmless because the trial court did partially rule on the motion and the portion not considered was “at least temporarily of no consequence”). Appellees emphasize that Appellants have failed to explain why their motion to amend their complaint was filed three months after C & H's motion for judgment on the pleadings and a total of nine months after their original complaint. Appellees further highlight that the information added to the proposed amended complaint, i.e., the description of the Oxford Street entrance, was known to Appellants at the time they filed their original complaint. Appellees argue that Appellants' motion to amend was merely a bad faith attempt to avoid the dismissal of their claims in response to Appellees' motions for judgment on the pleadings. They point to statements made by Appellants' counsel indicating Appellants' position that the original complaint was sufficiently detailed. Finally, Appellees argue that allowing Appellants to file their proposed amended complaint would be futile, as it would not cure the deficiencies pointed out in the motions for judgment on the pleadings. Respectfully, we are unconvinced that any of these facts militate against allowing the amendment.

Appellees rely on the case of *March v. Levine* for the proposition that unexplained delay can constitute undue delay when “the party seeking to amend has known all of the facts underlying the amendment since the beginning of the litigation.” 115 S.W.3d 892, 909 (Tenn. Ct. App. 2003). In *March*, however, this Court went on to clarify that “[l]ate amendments to *assert new theories* are not reviewed favorably when the facts and the theory have been known to the party seeking amendment since the inception of the cause of action.” *Id.* (emphasis added) (citations omitted); see also *Allen v. Saturn Corp.*, No. M2002-01238-COA-R3-CV, 2003 WL 22055959, at *3 (Tenn. Ct. App. Sept. 4, 2003) (finding undue delay and prejudice where the motion to amend “added new theories of liability seven years after the filing of the complaint, and would essentially mean that the parties had to start over”). In this case, Appellants sought to amend their complaint to *remove* a theory contained in their original complaint rather than add one. While the facts Appellants sought to include in their proposed amended complaint did involve facts known to Appellants since the inception of the case, Appellees had asserted that such additional detail was needed in order for them to defend the action. And the nine-month period between Appellants' original and proposed amended complaints is a far cry from the almost three-year delay at issue in *March* and the seven-year delay in *Allen*.

Additionally, Appellees provide no examples of the prejudice they would face should Appellants be allowed to amend their complaint. See *Wynn v. La Maruja Realty Corp.*, No. M2008-01511-COA-R9-CV, 2009 WL 2957922, at *3 (Tenn. Ct. App. Sept.

15, 2009) (explaining that a finding of undue prejudice may be justified “when the amendment will cause additional expense and the burden of a more complicated or lengthy trial, when it will require the opposing party to engage in additional pre-trial preparation, when it will unduly increase the discovery required, or when it will unduly delay the trial”). Appellants did not seek to amend their complaint to add or substitute a party, as did the plaintiff in *Bodine v. Long John Silver’s LLC*, another case relied on by Appellees. No. M2021-00168-COA-R3-CV, 2022 WL 128473 (Tenn. Ct. App. Jan. 14, 2022).⁶ Nor did Appellants wait until after the end of the discovery period, the entry of a scheduling order, the close of their proof at trial, or the dismissal of their claims to raise their request to amend. *See March*, 115 S.W.3d at 909 (noting that “[r]eopening discovery alone creates significant prejudice”); *Merriman*, 599 S.W.2d at 559 (affirming the denial of the plaintiffs’ motion to amend their complaints filed in response to the defendants’ motions for involuntary dismissal at the conclusion of the plaintiffs’ case in chief, three years after the operative complaint had been filed); *Isbell v. Travis Elec. Co.*, No. M1999-00052-COA-R3-CV, 2000 WL 1817252, at *16 (Tenn. Ct. App. Dec. 13, 2000) (affirming the denial of the plaintiff’s motion to amend filed after the trial court granted the defendants’ motions for directed verdict, finding it “less likely that justice will require amendment” in such situations). *But see Richland Country Club, Inc. v. CRC Equities, Inc.*, 832 S.W.2d 554, 559 (Tenn. Ct. App. 1991) (reversing the denial of a motion to amend a cross-claim that had already been summarily dismissed for failure to state a claim; providing that, in light of the directive that leave to amend be freely given, “when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint”). Of course, merely having to continue defending the case is not prejudicial. *E.g.*, *HMF Tr.*, 827 S.W.2d at 301 (“The case had not been set for trial, and granting of the motion to amend would not in any way delay the case or otherwise prejudice the defendants, except insofar as the claim itself might prevail.”); *Gregory v. Melhorn*, No. E2012-02417-COA-R3-CV, 2013 WL 6857945, at *5 (Tenn. Ct. App. Dec. 27, 2013) (“In this case, there is no prejudice to defendants that would result from the amendment—they will only have to defend the same lawsuit that was initially brought by plaintiff.”); *Wynn*, 2009 WL 2957922, at *3 (“Simply being forced to defend a pending claim is not normally considered the sort of prejudice that would justify declining a plaintiff’s motion to amend a complaint.”).

As to the argument that the motion to amend was a bad faith attempt to avoid their motions for judgment on the pleadings, Appellees point to nothing to suggest that a motion to amend a complaint filed after a motion contesting the sufficiency of the complaint is inherently improper.⁷ This Court has repeatedly affirmed the opposite conclusion. *See, e.g.*,

⁶ Also of note in *Bodine* was the fact that the request to substitute parties came after the applicable statute of limitations had expired, a consideration not at issue in this case. *Id.* at *4.

⁷ The cases relied upon by Appellees for this point, *Bodine* and *Allen*, not only involved motions to amend seeking to make significantly more drastic alterations—substituting a party and adding new theories of liability, respectively—but they also were resolved by motions for summary judgment. While a belated request to expand one’s claims in the face of an alleged evidentiary shortcoming may amount to an

HMF Tr., 827 S.W.2d at 301 (“The case at bar was being considered in the trial court under a motion to dismiss for failure to state a claim, which is even more reason why a motion to amend should be allowed.”); *Lee v. State Volunteer Mut. Ins. Co.*, No. E2002-03127-COA-R3-CV, 2005 WL 123492, at *12 (Tenn. Ct. App. Jan. 21, 2005) (noting that requiring a trial court to invite plaintiffs to amend their complaints before granting a motion to dismiss would “remove any incentive for plaintiffs to be proactive in amending defective complaints in the face of meritorious [] motions to dismiss”); *Fid. & Cas. Co. of N.Y.*, 1999 WL 173629 (finding Tennessee policy supported allowing the amendment when judgment on the pleadings was granted based on the failure to attach certain documents to the complaint and the amendment sought to attach said documents). And we find no fault with Appellants’ position that they only sought to amend their complaint out of an abundance of caution rather than as an acknowledgement that their original complaint was insufficient.⁸ Indeed, a party responding to the opposing party’s allegations that the complaint is deficient by attempting to cure the alleged deficiencies is squarely in line with Tennessee public policy favoring matters being heard on their merits and not dismissed on legal technicalities, regardless of the party’s subjective belief in the accuracy of the allegations.

Moreover, despite Appellees’ insistence otherwise, we find no futility in granting Appellants’ motion to amend: their proposed amended complaint successfully addresses the concerns raised in Appellees’ motions for judgment on the pleadings.⁹ Appellees have argued that the original complaint is deficient on two counts: (1) the failure to specify the statutes, ordinances, or regulations allegedly violated by Appellees; and (2) the failure to explain the nature of the allegedly dangerous condition and its connection to Mr. Green’s injury. Appellants’ proposed amended complaint (1) removed the allegation that any statutes, ordinances, or regulations were violated by Appellees; and (2) included additional allegations describing the dangerous nature of the Oxford Street entrance and the risk of harm it created. It is unclear what more could be required of Appellants at this stage in the litigation. *See Brewer v. Piggee*, No. W2006-01788-COA-R3-CV, 2007 WL 1946632, at *6 (Tenn. Ct. App. July 3, 2007) (“A motion for judgment on the pleadings tests only the validity of the legal theories pled by the party opposing the motion, and not the strength of the proof.”); *see also Lester v. Walker*, 907 S.W.2d 812, 814 (Tenn. Ct. App. 1995)

improper attempt to avoid summary dismissal, the same cannot be said of a request to clarify one’s factual allegations to resolve an alleged technical deficiency.

⁸ An attorney that filed a complaint he or she believed to be defective would be flouting the representations made to the court under Rule 11.02 of the Tennessee Rules of Civil Procedure upon the attorney’s filing of the complaint. *See* Tenn. R. Civ. P. 11.02 (providing that by presenting a pleading to the court, an attorney is certifying, inter alia, that to the best of his or her knowledge and belief the pleading is not being presented for any improper purpose or without evidentiary support).

⁹ Our ruling that the trial court should have heard and granted Appellants’ motion to amend their complaint before resolving Appellees’ motions for judgment on the pleadings pretermits any discussion of the merits of Appellees’ motions. So regardless of our own thoughts on the matter, we offer no opinion regarding the legal sufficiency of Appellants’ original complaint.

(providing that “the purpose of liberal leave for amendment is to permit the pleader to supply additional facts to support the position of the pleader”). Furthermore, when the legal sufficiency of the amended complaint is the primary consideration behind whether to grant a motion to amend, “the better protocol is to grant the motion to amend the pleading, which will afford the adversary the opportunity to test the legal sufficiency of the amended pleading by way of” a motion to dismiss or a motion for judgment on the pleadings. **Conley**, 236 S.W.3d at 724 (citing **McBurney v. Aldrich**, 816 S.W.2d 30, 33 (Tenn. Ct. App. 1991)) (explaining that “granting the Motion to Amend would not have delayed the case or prejudiced the defendants, except insofar as the claim itself might prevail”).

Overall, the relevant factors weigh in favor of allowing Appellants to amend their complaint. By focusing on the fact that the motion to amend was filed after Appellees’ motions for judgment on the pleadings rather than the admonition in Rule 15.01 that leave to amend shall be freely given when justice so requires, the trial court “misapplied the controlling legal principles.” *Id.* at 723; *see also Branch*, 527 S.W.2d at 92 (holding that Rule 15.01 “needs no construction; it means precisely what it says, that ‘leave shall be freely given.’”). We therefore conclude that the trial court erred in rendering its judgment. So then, the trial court’s order must be reversed to the extent that it denied Appellants’ motion to amend and vacated in relation to Appellees’ motions for judgment on the pleadings.¹⁰ If Appellees choose to renew their arguments regarding the sufficiency of Appellants’ allegations after the amended complaint is filed, any motions to that effect should be considered in light of our foregoing analysis.

IV. CONCLUSION

The judgment of the Weakley County Circuit Court is vacated in part and reversed in part, and this matter is remanded to the trial court for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Appellees Blue Oak Oyster Bar & Grill, LLC and C & H Investment Properties, LLC, for which execution may issue if necessary

s/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE

¹⁰ C & H cited to Appellants’ response to a request for admission in support of its motion for judgment on the pleadings. It does not appear that the trial court relied on the contents of this discovery response when ruling on Appellees’ motions. Nevertheless, the conclusions we reach today would not be affected regardless of whether we treated Appellees’ motions as requesting judgment on the pleadings or summary judgment. *See Knight*, 1997 WL 5161, at *4 (“If an amendment would change the outcome of the motion for summary judgment, the amendment should be permitted and the motion for summary judgment be denied.”).