SLIP OPINION

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SUPREME COURT OF ARKANSAS

No. 12-369

RONALD LEE MAY APPELLANT V. RAYMOND COLE GOODMAN, JR., M.D. AND WILLIAM FORREST DUDDING, M.D., ET AL. APPELLEES	**Opinion Delivered** February 28, 2013 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. CV11-796] HONORABLE STEPHEN MERRILL TABOR, JUDGE REVERSED AND REMANDED.

JIM HANNAH, Chief Justice

In this case, the court is called upon to construe the effect of an amendment to Arkansas Rule of Civil Procedure 12. Appellant, Ronald May, and his wife, Julie May,[1] filed a complaint on May 2, 2011, in the Sebastian County Circuit Court, alleging medical malpractice against appellees, William F. Dudding, M.D.; William F. Dudding, M.D., P.A., a/k/a East Side Family Practice Clinic, P.A. (collectively referred to as "Dudding"); Raymond Cole Goodman, Jr., M.D.; and John or Jane Does 1–4. That same day, in accordance with the law at that time, the Sebastian County Circuit Court issued summonses stating that appellees, who were Arkansas residents, had twenty days after service of the complaint to file an answer. *See* Ark. R. Civ. P. 12(a)(1)(A) (2011) ("A defendant shall file his or her answer within 20 days after the service of summons and complaint upon him or

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[1]Julie May took a voluntary nonsuit without prejudice, as reflected in an order entered on December 9, 2011. She is not a party to this appeal.

SLIP OPINION

her, except that a defendant not residing in this state shall file an answer within 30 days after service.").

On June 2, 2011, after the summonses had been issued, but before appellees were served, this court issued a per curiam amending our rules of civil procedure to provide that all defendants, whether resident or nonresident, have thirty days after service of the complaint to file an answer, and we stated that the "amendments shall be effective July 1, 2011." *See In re Ark. R. of Civ. P.*, 2011 Ark. 250, at 1–2 (per curiam). Further, we stated that the amendment would "require a change in the official summons form." *Id*. at 1.

Dudding was served on July 28, 2011, and Goodman was served on August 9, 2011. Thereafter, Dudding filed a motion to dismiss, alleging that May's complaint should be dismissed with prejudice because the summons was defective and the statute of limitations had expired. Goodman filed a motion for summary judgment, asserting, inter alia, that May's claim should be dismissed with prejudice due to defective process because the summons served upon him indicated that he had twenty days, rather than thirty days, to file a responsive pleading. In response to the motions, May argued that the rule change that gives a defendant thirty days to file a responsive pleading does not apply to summonses issued prior to July 1, 2011. The circuit court granted Dudding's motion to dismiss and Goodman's motion for summary judgment, concluding that the summonses were defective when served. Consequently, the circuit court dismissed the complaint with prejudice because the statute of limitations had run.

May appeals, arguing that the circuit court erred in dismissing his complaint on the

SLIP OPINION

ground that the summonses were defective. He contends that the amended rule changing the time for filing a responsive pleading does not apply to summonses issued before July 1, 2011. He further contends that he should be allowed to rely on the summonses that were correct when issued, even if those summonses were not served until after the rule change had become effective. Appellees contend that the circuit court correctly dismissed May's complaint because the validity of the summonses should be assessed upon service and not upon issuance.

When this court construes the meaning of a court rule, our review is de novo, and we use the same means and canons of construction that we use to interpret statutes. *E.g.*, *Richard v. Union Pac. R.R. Co.*, 2012 Ark. 129, ___ S.W.3d ___. In considering the meaning and effect of a statute or rule, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* The basic rule of statutory construction to which all other interpretive guides defer is to give effect to the intent of the drafting body. *Id.* As a guide in ascertaining the drafter's intent, this court often examines the history of the statute or rule involved, as well as the contemporaneous conditions at the time of their enactment, the consequences of interpretation, and all other matters of common knowledge within the court's jurisdiction. *Id.*

This court's per curiam amending Rule 12(a)(1) did not address what the Arkansas Trial Lawyers Association, as amicus curiae, aptly refers to as "straddle" cases, or those cases where the summons was issued before the effective date of the rule change but not served until after that date. Still, when we adopted the rule change, our purpose was clear: to

SLIP OPINION

prevent "the issuance of an incorrect summons by the clerk's office and subsequent issues as to the sufficiency of process." *See In re Ark. R. of Civ. P.*, 2011 Ark. 250, at 5. In changing the rule, this court sought to eliminate, not create, procedural traps. We did not intend, and certainly did not clearly express an intention, that the amended rule would require parties to have summonses issued before July 1, 2011, reissued if served on or after July 1, 2011. As such, we hold that the rule change did not invalidate summonses issued before July 1, 2011. The circuit court erred in granting Dudding's motion to dismiss and Goodman's motion for summary judgment. Accordingly, we reverse and remand.

Finally, we do not address Goodman's contention that, even if this court concludes that service was valid, we should nevertheless affirm the circuit court's grant of summary judgment because May had no expert testimony to support his claim of medical malpractice and because May's answers, sent and signed by an attorney not authorized to practice law in Arkansas, were a nullity and were deemed admitted under Arkansas Rule of Civil Procedure 36(a). Although Goodman raised these arguments below, he did not obtain rulings on the arguments from the circuit court. It is well settled that this court will not address an argument on appeal if a party fails to obtain a ruling from the circuit court. *E.g.*, *Philadelphia Indem. Ins. Co. v. Austin*, 2011 Ark. 283, 383 S.W.3d 815.

Reversed and remanded.

Tony W. Edwards and *Robert S. Tschiemer*, for appellant.

Kutak Rock, LLP, by: *Mark W. Dossett*, *Jeff Fletcher*, and *Samantha B. Leflar*, for appellees.