

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs June 2, 2015

**JUDY MUFFLEY v. DAVID GEORGE**

**Appeal from the Chancery Court for Williamson County  
No. 0327652 Jeffrey S. Bivins, Judge**

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**No. M2012-00097-COA-R3-CV – Filed October 28, 2015**

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This appeal arises from the grant of a Rule 60.02 motion to set aside a final judgment. The plaintiff, acting pro se, filed a motion to revive or renew a judgment against the defendant. Due to inclement weather, the plaintiff was unable to attend the hearing on her motion. The trial court dismissed her motion with prejudice and released the underlying judgment. Subsequently, the plaintiff obtained counsel and filed a Rule 60.02 motion to set aside the trial court's order. The trial court granted her motion and reinstated the original judgment. Finding no abuse of discretion, we affirm the trial court's decision.

**Tenn. R. App. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and  
Case Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Lance B. Mayes, Brentwood, Tennessee, for the appellant, David George.

Megan E. Tull, Spring Hill, Tennessee, for the appellee, Judy Muffley.

**OPINION**

**I. BACKGROUND**

The original plaintiff, Daryl E. Dinkla, filed suit in the Chancery Court for Williamson County, Tennessee, against the defendant, George David George, for nonpayment of a

\$200,000 promissory note. Mr. Dinkla obtained a default judgment against Mr. George on March 15, 2001. After repeated unsuccessful attempts to obtain payment from Mr. George, Mr. Dinkla assigned the judgment to Judy Muffley.

On August 5, 2010, Ms. Muffley, acting pro se, filed a Motion to Revive and Renew Judgment. In his response, Mr. George alleged he had not been properly served with the motion, the motion did not comply with the procedural rules, and the judgment had already been satisfied.

At the December 13, 2010 hearing on Ms. Muffley's motion, Mr. George appeared with his attorney, but Ms. Muffley did not. On December 30, 2010, the court entered an order denying Ms. Muffley's motion with prejudice. In addition, the court "released and dismissed" the 2001 judgment.<sup>1</sup>

On March 10, 2011, Ms. Muffley, now represented by counsel, filed a motion to set aside the December 30, 2010 order under Tennessee Rule of Civil Procedure 60.02(1) and (5). As grounds for the motion, Ms. Muffley submitted that she was unexpectedly caught in severe weather while traveling to the December 13 hearing from her home in Georgia. Ms. Muffley also moved for an extension of the 2001 judgment under Tennessee Rule of Civil Procedure 69.04.

After hearing oral argument and reviewing the parties' written briefs, the court granted Ms. Muffley's Rule 60.02 motion and reinstated the 2001 judgment. The court also ordered an evidentiary hearing on Ms. Muffley's motion to extend the judgment.

Ultimately, the court granted the Rule 69.04 motion and extended the 2001 judgment for an additional ten years. Mr. George timely filed a notice of appeal, raising a single issue: whether the trial court abused its discretion in granting Ms. Muffley's Rule 60.02 motion.

## II. ANALYSIS

### A. STANDARD OF REVIEW

We review a trial court's ruling on a Rule 60.02 motion to set aside a final judgment under the abuse of discretion standard. *Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012). In our review, we consider whether "the trial court applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous

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<sup>1</sup> The Honorable Robbie T. Beal signed the order denying the motion, as well as, releasing and dismissing the 2001 judgment.

assessment of the evidence, or employed reasoning that caused an injustice to the complaining party.” *Id.* (quoting *State v. Jordan*, 325 S.W.3d 1, 39 (Tenn. 2010)). This is not an opportunity for the appellate court to substitute its judgment for the judgment of the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001). The “trial court’s ruling will be upheld as long as reasonable minds can disagree as to the propriety of the decision.” *Id.* (quoting *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000)).

## B. RELIEF FROM A FINAL JUDGMENT UNDER RULE 60.02

At the outset, we bear in mind Ms. Muffley was a pro se plaintiff when the trial court denied her motion to renew the 2001 judgment with prejudice. “Parties who decide to represent themselves are entitled to fair and equal treatment by the courts.” *Hessmer v. Hessmer*, 138 S.W.3d 901, 903-04 (Tenn. Ct. App. 2003). Although many pro se litigants are not familiar with the judicial system, courts are still required to strike a balance between fairness to the pro se litigant and unfairness to the opponent. Thus, pro se litigants must comply “with the same substantive and procedural rules that represented parties are expected to observe.” *Id.*

Relief under Rule 60.02 is “an exceptional remedy.” *Nails v. Aetna Ins. Co.*, 834 S.W.2d 275, 294 (Tenn. 1992). The rule is intended “to alleviate the effect of an oppressive or onerous final judgment.” *Spence v. Helton*, No. M2005-02527-COA-R3-CV, 2007 WL 1202407, at \*3 (Tenn. Ct. App. Apr. 23, 2007). It “acts as an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principal of finality embedded in our procedural rules.” *Thompson v. Firemen’s Fund Insurance Co.*, 798 S.W.2d 235, 238 (Tenn. 1990). The movant has the burden of proving the grounds for relief. *Spence*, 2007 WL 1202407 at \*3.

### 1. Excusable Neglect

In her Rule 60.02 Motion, Ms. Muffley asked for relief based on reasons (1) and (5). Under Rule 60.02(1), the court may set aside a final judgment for reasons of “mistake, inadvertence, surprise or excusable neglect.” Tenn. R. Civ. P. 60.02. Motions based on reason (1) must be filed within a reasonable time, not more than one year after the order was entered. *Id.*<sup>2</sup> Ms. Muffley argues that her failure to appear at the hearing constituted excusable neglect because she was caught in unanticipated bad weather while traveling to court from her home in Georgia.

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<sup>2</sup> Ms. Muffley filed her Rule 60.02 motion less than three months after the December 30, 2010 order. The timeliness of her motion is not an issue in this case.

The causes of excusable neglect range “from forces beyond [a party’s] control to forces within its control.” *State ex rel. Sizemore v. United Physicians Ins. Risk Retention Grp.*, 56 S.W.3d 557, 567 (Tenn. Ct. App. 2001). When the party’s action or inaction is due to forces beyond its control, those circumstances almost always substantiate a claim of excusable neglect. *Williams v. Baptist Mem’l Hosp.*, 193 S.W.3d 545, 551 (Tenn. 2006). Rule 60.02 is not designed to relieve a party from the consequences of a “free, calculated and deliberate choice.” *Spence*, 2007 WL 1202407, at \*4. Whether neglect is excusable is an equitable determination that takes into account all relevant circumstances. *Dendy v. Dendy*, No. E2010-02319-COA-R3-CV, 2012 WL 194993, at \*12 (Tenn. Ct. App. Jan. 20, 2012).

Under some circumstances, failure to appear at a hearing, even when the party had notice, can constitute excusable neglect. *Id.* at \*13. In *Dendy*, the pro se wife failed to appear at the final divorce hearing. The trial court conducted the hearing without her and divided the marital property based on the husband’s evidence. In her Rule 60.02 motion, the wife alleged she had no money or car and was dependent on family and friends for transportation at the time of the hearing. She had arranged for a friend to drive her to the hearing, but on that morning, her friend was unavailable to drive her to court. *Id.* at \*12. This Court found the wife had met the standard of excusable neglect. *Id.* at \*13.

In this case, Ms. Muffley had a valid judgment. The statute of limitation on the judgment did not expire until March 15, 2011. *See* Tenn. Code Ann. § 28-3-110(2) (Supp. 2015) (providing ten year statute of limitation for actions on a judgment). On August 5, 2010, she timely filed a motion to extend the judgment under Rule 69.04.<sup>3</sup> At the time of the hearing, the judgment was still valid. Her failure to appear was not willful. She had no control over the weather. *See Tyus v. Pugh Farms, Inc.* No. W2011-00826-COA-R3-CV, 2012 WL 938509, at \*3 (Tenn. Ct. App. Mar. 19, 2012) (affirming trial court’s grant of Rule 60.02 motion because failure to receive final order in time to file notice of appeal was not a willful choice and, thus, excusable neglect).

Moreover, Ms. Muffley had no notice that a potential consequence of her failure to appear would be the “release[] and dismiss[al]” of her underlying judgment. Mr. George did not request such relief in his response to the motion to extend the judgment. He simply asked for the court to strike the motion until such time as the plaintiff complied with the procedural rules.

We find no abuse of discretion in the grant of Ms. Muffley’s motion to set aside the December 30, 2010 judgment. The abuse of discretion standard provides the trial court with

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<sup>3</sup> While Ms. Muffley did not reference Rule 69.04 in her motion, we will give effect to the substance of her pleading, not the terminology. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903-04 (Tenn. Ct. App. 2003).

“considerable latitude in the range of reasonable choices.” *Newgate Recovery v. Holrob-Harvey Rd.*, No. E2013-01899-COA-R3-CV, 2014 WL 3954026, at \*5 (Tenn. Ct. App. Aug. 14, 2014) (affirming the trial court’s grant of Rule 60.02(1) motion on grounds of excusable neglect). “The trial court is in the best position to assess the various factors that should be considered in determining whether a judgment should be vacated.” *Henry v. Goins*, 104 S.W.3d 475, 482 (Tenn. 2003) (quoting *Tenn. Dep’t. of Human Serv. v. Barbee*, 689 S.W.2d 863, 867 (Tenn. 1985)). Our review of this record<sup>4</sup> reveals no willful act by the plaintiff and no undue prejudice to the defendant. This is not a case of “impermissible indulgence towards a pro se litigant to the other party’s detriment.” *See Spence*, 2007 WL 1202407 at \*5. Under these circumstances, we will not disturb the decision of the trial court.

## 2. Other Reasons Justifying Relief

Ms. Muffley also argued she was entitled to relief under Rule 60.02(5). That portion of the rule allows the movant to seek relief from a final judgment for “any other reason justifying relief from the operation of the judgment.” Tenn. R. Civ. P. 60.02. “Despite its broad language, which implies that the section is something of a catch-all provision, Tennessee courts have very narrowly construed Tenn. R. Civ. P. 60.02(5).” *Spence*, 2007 WL 1202407, at \*3. Rule 60.02(5) is intended to provide relief only in the “most compelling, unique, exceptional, and extraordinary circumstances.” *DeLong v. Vanderbilt Univ.*, 186 S.W.3d 506, 512 (Tenn. Ct. App. 2005). Because Ms. Muffley was appropriately granted relief under Tennessee Rule of Civil Procedure 60.02(1), we need not consider whether relief was also appropriate under the higher bar of Tennessee Rule of Civil Procedure 60.02(5). *See id.*

## III. CONCLUSION

For the foregoing reasons, we affirm the decision of the trial court.

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W. NEAL MCBRAYNER, JUDGE

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<sup>4</sup> The record is limited to the parties’ pleadings and a transcript of the November 14, 2011 hearing.