

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 12, 2015

**JOHN MILTON ARLEDGE v. BRENDA PAULETTE CRIPPS ARLEDGE,
ET AL.**

**Appeal from the General Sessions Court for Warren County
No. 8719 William M. Locke, Judge**

No. M2014-01344-COA-R3-CV – Filed May 28, 2015

This case concerns the applicability of Tennessee Code Annotated Section 20-12-119(c). When the trial court grants a motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12 for failure to state a claim upon which relief may be granted, Section 20-12-119(c) requires the trial court to award the dismissed party his or her reasonable attorney's fees. In this case, Appellant was dismissed from the lawsuit, but the trial court denied an award of attorney's fees. Because the trial court's orders do not specify on what grounds it dismissed Appellant, we cannot determine whether Section 20-12-119(c) was triggered in this case. Accordingly, we vacate and remand for entry of an order specifying the grounds for dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the General Sessions Court is
Vacated and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Carol A. Malloy, Lynnville, Tennessee, for the appellant, Robert Hattaway.

Randy Wakefield, Carthage, Tennessee, for the appellee, Brenda Paulette Arledge.

**OPINION
I. Background**

On June 22, 2012, John Milton Arledge filed a complaint for divorce against his then-wife, Appellant Brenda Paulette Cripps Arledge. In her answer, filed on July 18, 2012, Ms. Arledge averred that Mr. Arledge had not disclosed all of the marital property in his complaint for divorce. On July 20, 2012, Ms. Arledge filed a cross-complaint against Mr. Arledge and also named, as a cross-defendant, Appellee Mr. Robert R. Hattaway. In her cross-complaint, Ms. Arledge stated that she had discovered that, in February of 2012 (shortly before filing the divorce), Mr. Arledge had “transferred the land that was accumulated by husband during marriage to a living trust for the benefit of Robert R. Hattaway via a living trust with husband John Arledge as the trustee.” As attachments to her cross-complaint, Ms. Arledge provided the court with three warranty deeds, each transferring certain tracts of real property to “John M. Arledge, Trustee of the Robert R. Hattaway Living Trust dated December 1, 2006.” Ms. Arledge claimed that there was no consideration for the transfers and “[t]hat the purpose of the transfer[s] is clearly to defeat wife’s claim to her marital interest.”

On August 6, 2012, Mr. Hattaway filed a motion to dismiss Ms. Arledge’s cross-complaint against him. The motion states that it is brought “pursuant to Tennessee Rules of Civil Procedure 12.02(6).” In his memorandum filed in support of the motion to dismiss, Mr. Hattaway states that he has no interest in the disputed parcels and, thus, is not an indispensable party on the question of whether Ms. Arledge had any interest in the transferred properties.

The trial court heard Mr. Hattaway’s motion to dismiss on September 12, 2012. There is no transcript or statement of the evidence adduced at this hearing in our record. On October 3, 2012, the trial court entered an order. Concerning dismissal of Mr. Hattaway from the lawsuit, the order states only that “the Cross-Complaint against Robert Hattaway is dismissed;” however, the order does not set forth the trial court’s grounds for dismissal.

On October 12, 2012, Mr. Hattaway filed a motion for attorney’s fees and expenses pursuant to Tennessee Code Annotated Section 20-12-119(c), along with a fee affidavit from his lawyer. While his motion for attorney’s fees was pending, Mr. Hattaway filed a motion to intervene in the complaint for divorce for the limited purpose of “protecting his right to privacy in a checking account.” Mr. Hattaway alleged that, although Mr. Arledge’s name was on the checks for the disputed account, Mr. Arledge had no right to the funds contained in the account. By Agreed Order, entered on February 28, 2013, Mr. Hattaway was granted leave to intervene for the limited purpose of protecting his rights concerning the checking account. Also, while Mr. Hattaway’s motion for attorney’s fees was pending, the trial court entered its Final Decree of Divorce on March 20, 2014. However, because the motion for attorney’s fees was pending, in the

absence of Tennessee Rule of Civil Procedure 54.02 language,¹ the divorce decree did not constitute a final judgment for purposes of appeal. Tenn. R. App. P. 3(e).

On May 21, 2014, the trial court heard Mr. Hattaway's motion for attorney's fees under Tennessee Code Annotated Section 20-12-119(c). There is no transcript or statement of the evidence adduced at the May 21 hearing. By order of June 19, 2014, the trial court denied the motion. The order states:

This cause came to be heard before the Court on May 21, 2014, on Cross-Defendant's Motion for Attorney's Fees pursuant to 20-12-119(c).

Cross-Defendant was dismissed from the within case by Order of the Court dated October [3], 2012.

After hearing arguments the Court denied Cross-Defendant's Motion for Attorney's fees.

IT IS THEREFORE ORDERED that Cross-Defendant's Motion for Attorney's fees be denied.²

The entry of the June 19, 2014 order resolved all remaining issues, and was, therefore, a final judgment so as to confer jurisdiction on this Court to hear the appeal. Tenn. R. App. P. 3(e).

II. Issue

Mr. Hattaway appeals. The sole issue is whether the trial court erred in denying Mr. Hattaway's motion for attorney's fees pursuant to Tennessee Code Annotated Section 20-12-119(c).

¹ Tennessee Rule of Civil Procedure 54.02 provides:

When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

² Although the June 19, 2013 order references Tennessee Code Annotated Section 20-12-119(c), it is silent as to whether the trial court denied Mr. Hattaway his fees and costs based upon any exception listed in Section 20-12-119(c)(5).

III. Analysis

The statute at issue here, Tennessee Code Annotated Section 20-12-119(c) states, in pertinent part, that

in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure **for failure to state a claim upon which relief may be granted**, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(Emphasis added). By its plain language, the foregoing statute applies only in those instances where the trial court dismisses a claim for “failure to state a claim upon which relief may be granted.” Under Tennessee Rule of Civil Procedure 12, there are numerous grounds for dismissal of a claim, including, *inter alia*: (1) lack of jurisdiction, Tenn. R. Civ. P. 12.02(1); (2) insufficiency of service of process, Tenn. R. Civ. P. 12.02(5); and failure to join a party under Rule 19, Tenn. R. Civ. P. 12.02(7). It is only under Tennessee Rule of Civil Procedure 12.02(6) that a trial court may dismiss for failure to state a claim upon which relief may be granted. Because Tennessee Code Annotated Section 20-12-119(c) applies only to dismissal for failure to state a claim, it is imperative to know what grounds the trial court relied upon in granting dismissal in order to determine whether a dismissed party is entitled to his or her attorney’s fees under the statute.

Although Mr. Hattaway’s motion to dismiss cites Tennessee Rule of Civil Procedure 12.02(6) as a ground for dismissal, the trial court’s order, as set out in full context above, does not indicate whether the trial court actually relied upon this ground. Rather, the order states only that “the Cross-Complaint against Robert Hattaway is dismissed.” Likewise, we find no guidance in the trial court’s June 19, 2014 order, denying Mr. Hattaway’s request for attorney’s fees. Again, without citing the grounds for dismissal, the June 19 order states only that Mr. Hattaway “was dismissed from the [the] case by Order of the Court dated October [3], 2012,” and that his request for fees is denied.

A trial court speaks through its orders. *Palmer v. Palmer*, 562 S.W.2d 833, 837

(Tenn. Ct. App. 1997). Here, the trial court's order is silent on the grounds for dismissal. Without knowing what grounds the trial court relied upon in dismissing Mr. Hattaway from the case, we cannot make a determination as to whether Tennessee Code Annotated Section 20-12-119(c) is applicable to this case.

V. Conclusion

For the foregoing reasons, we vacate the order of the trial court. The case is remanded for such further proceedings as may be necessary and are consistent with the opinion, including, but not limited to, entry of an order stating the trial court's grounds for dismissing Mr. Hattaway from the case. Costs of the appeal are assessed one-half to the Appellant, Robert Hattaway and his surety, and one-half to the Appellee, Brenda Paulette Cripps Arledge, for all of which execution may issue if necessary.

KENNY ARMSTRONG, JUDGE