IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 07, 2015

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY v. ROBERT BLONDIN

Appeal from the Circuit Court for Rutherford County
No. 66926 Robert E. Corlew, III, Judge

No. M2014-01756-COA-R3-CV – Filed March 14, 2016

Automobile insurance company brought action to recover from the defendant payments made under the policy to its insured and her passenger for personal injuries and property damage resulting from an automobile accident between the insured and the uninsured Defendant's daughter. Judgment was entered in favor of company in the amount of $20,575.00, which was reduced by 20% to $16,460.00 in accordance with the court's apportionment of 20% fault to the policy holder. Defendant appeals the denial of his motion to dismiss, the award of damages, and the allocation of fault.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J. joined.

Kerry Knox, Murfreesboro, Tennessee, for the appellant, Robert Blondin.

John R. Cheadle, Jr. and Mary Barnard Cheadle, Nashville, Tennessee, for the appellee, State Farm Mutual Automobile Insurance Company.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This appeal has its genesis in a civil warrant filed on May 17, 2010 by State Farm Mutual Automobile Insurance Company ("State Farm") to recover amounts paid to its insured, Jenny Rone ("Ms. Rone"), and Lisa Martin ("Ms. Martin"), a passenger in the car being driven by Ms. Rone, under the uninsured motorist provision of Ms. Rone's policy;

State Farm was subrogated to Ms. Rone's rights to recover for her injuries under the policy terms. The claim had been filed by Ms. Rone as a result of a two-vehicle accident she had on July 7, 2009, with Olivia Blondin ("Ms. Blondin"), the daughter of Robert Blondin ("Mr. Blondin"); at all times material the Blondins were uninsured. Ms. Rone's vehicle sustained damage to the front right side and was not driveable. Both she and Ms. Martin were transported from the scene by ambulance to a nearby hospital, treated, and released. Ms. Rone subsequently received physical therapy and chiropractic care; Ms. Martin also received chiropractic care.

On May 17, 2010, State Farm filed a civil warrant in Rutherford County General Sessions Court against Robert Blondin. The warrant recited that State Farm brought the action "to recover damages to the property of plaintiff's insured, Jenny R. Rone, caused by the negligence of the defendant. The date of loss was July 7, 2009. The amount of damages totaled $7,371.22, plus pre-judgment interest, court costs and private process server fees." On July 15, State Farm filed a motion to amend the warrant to state the following:

> Suit to recover damages to the property and person of plaintiff's insured, Jenny Rone, caused by the negligence of the defendant. The date of loss was July 7, 2009. The amount of damages totaled $24,999.99, plus pre-judgment interest, court cost and private process server fees. Attached are medical bills pursuant to T.C.A. § 24-5-113.

The motion was heard in general sessions court on July 16; the judge wrote on the motion the following: "motion denied as to personal injuries. Statute of limitations has expired."[1] On February 3, 2011, following an unsuccessful attempt to appeal the denial of the motion to amend to circuit court, State Farm filed a motion to remove the case to circuit court; this motion was denied on March 18, and the case was set for trial on May 20. When the case came on for trial, State Farm voluntarily dismissed the case without prejudice.

State Farm refiled the action in general sessions court on January 31, 2012. This time, the warrant stated that suit was brought:

> . . . to recover damages to the person and/or property of plaintiff's insured, Jenny R. Rone, caused by negligence of the defendant(s). The date of loss was July 7, 2009. The amount of damages totaled $7,371.22, plus pre-judgment

[1] On August 3 the court entered a separate order reiterating the notations which were hand-written on the motion.

> interest, court costs and private process server fees. Any applicable medical bills are attached pursuant to T.C.A. § 24-5-113.[2]

In due course, Mr. Blondin moved to dismiss the action on the grounds that the action:

> . . . was not re-filed within one year of the prior dismissal or re-filed within the three year statute of limitations period for torts involving property damage. Likewise, Plaintiff appears to be suing for personal injury, which claim is well past the one year statute of limitation, and it is worth noting that the personal injury claim was never part of the prior lawsuit, as this Court disallowed Plaintiff's Motion to Amend to add the personal injury claim.

On August 16, 2013, a hearing was held and the case dismissed with prejudice.

On August 21, State Farm appealed to the circuit court and subsequently filed an Amended Complaint for Damages seeking $44,124.57 in damages.[3] Mr. Blondin moved to dismiss the claim for personal injury as barred by the statute of limitations. The motion was denied, and the case proceeded to trial, resulting in a judgment for State Farm in the amount of $20,575.00, which was reduced by 20% to $16,460.00 upon the determination that Ms. Rone was 20% responsible for the accident. Mr. Blondin appeals, raising the following issues:

1. Whether the trial court erred in awarding damages for medical bills when State Farm failed to offer competent medical proof of the reasonableness and necessity of treatment.
2. Whether the trial court erred in awarding uninsured motorist damages against Mr. Blondin when State Farm failed to offer the basis for the damages.
3. Whether the trial court erred in failing to grant Mr. Blondin's Motion to Dismiss State Farm's claim for personal injury because it was time barred.
4. Whether the trial court erred in its allocation of fault.

[2] The portion of the record on appeal designated by the clerk of the circuit court as "Collective Copies of General Sessions Court File" does not contain any medical records.

[3] Attached as an exhibit to the Amended Complaint was a list of medical and other expenses paid by State Farm.

II. ANALYSIS

A. Motion to Dismiss

We first address the issue of whether the trial court erred by denying Mr. Blondin's motion to dismiss; he asserts that State Farm's claim for personal injury is barred by the one-year statute of limitations because State Farm's "first claim for personal injury was filed more than 2 ½ years after the car wreck giving rise to these claims." What we perceive to be the actual issue, however, is whether the January 31, 2012 warrant, which State Farm filed after nonsuiting the prior warrant, properly stated an additional claim for personal injuries.[4]

Personal injury actions have a one-year statute of limitations, while actions for injury to property have a three year statute of limitations. Tenn. Code Ann. §§ 28-3-104(a)(1), -105. "Whether a claim is barred by an applicable statute of limitations is a question of law." *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007) (citing *Owens v. Truckstops of Am.*, 915 S.W.2d 420, 424 (Tenn. 1996)). The court reviews legal issues under a *de novo* standard for review, according no deference to the conclusions of law made by the lower court. *Toms v. Toms*, 209 S.W.3d 76, 79 (Tenn. Ct. App. 2005).

State Farm did not assert a cause of action for personal injuries in the first warrant it filed in general sessions court; the claim was not made until after the applicable statute of limitations, Tenn. Code Ann. § 28-3-104, had run. The general sessions court properly denied the attempt to add the cause of action to recover for personal injuries as barred by the statute of limitations. The later action of State Farm in voluntarily dismissing and subsequently refiling the action could not serve to expand the subject matter jurisdiction of the general sessions court to hear a claim barred by the statute of limitations.

State Farm argues that it was entitled to amend its warrant because pleadings in general sessions court are not required to be in writing; citing language in *Ware v. Meharry Medical College*, 898 S.W.2d 181 (Tenn. 1995), State Farm asserts that the general sessions court erred in failing to apply Tenn. Code Ann. § 16-15-729[5] to allow the amendment to the

[4] The original civil warrant only stated that it sought "to recover damages to the property of plaintiff's insured." Though State Farm attempted to amend the warrant to add a cause of action for personal injuries shortly after the statute of limitations ran, the general sessions court denied the motion, stating in an order that "it is clear from the face of the Civil Warrant that the accident giving rise to the claim for personal injury occurred more than one year prior to the filing of the Motion to Amend such claim . . . [which] has not been filed within the one year limitations period for a claim for personal injury."

[5] Tenn. Code Ann. § 16-15-729 reads in full:

> No civil case, originating in a general sessions court and carried to a higher court, shall be

warrant. We do not agree. Neither the statute nor the language in *Ware* stands for the proposition that an action which is barred by the statute of limitations in the general sessions court may be made timely as a result of an appeal from the general sessions court to the circuit court. In this case, the statute of limitations operated to deprive the general sessions court of subject matter jurisdiction to hear the claim for personal injuries; the appeal to the circuit court could not extend the statute of limitations applicable to that claim and confer subject matter jurisdiction on the circuit court.[6]

Neither is State Farm assisted by Tenn. R. Civ. P. 15.01 and 15.03.[7] The Tennessee Rules of Civil Procedure "govern procedure in the circuit or chancery courts in all civil actions . . . and in all other courts while exercising the civil jurisdiction of the circuit or chancery court." Tenn. R. Civ. P. 1. The rules "are expressly not applicable in the general sessions court, except in those instances where that court exercises equivalent jurisdiction to circuit or chancery by virtue of a special statutory provision." *Vinson v. Mills*, 530 S.W.2d 761, 765 (Tenn. 1975); *see also Brown v. Roland*, 357 S.W.3d 614, 618 (Tenn. 2012). On a case appealed from general sessions court, the Rules of Civil Procedure do not operate to expand the circuit court's subject matter jurisdiction.

We do not agree with State Farm's argument that the savings statute, Tenn. Code Ann. § 28-1-105, permitted State Farm to refile the previous action "and rely upon the original filing of the lawsuit to toll the statute of limitations," such that State Farm could add a claim

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> dismissed by such court for any informality whatever, but shall be tried on its merits; and the court shall allow all amendments in the form of action, the parties thereto, or the statement of the cause of action, necessary to reach the merits, upon such terms as may be deemed just and proper. The trial shall be de novo, including damages.

[6] Given the timeline of this case, if the warrant originally filed in general sessions court had sought to recover only for personal injuries, there would have been no impediment to the amendment to add a claim for property damage either in general sessions court or when the case was appealed to circuit court.

[7] Tenn. R. Civ. P. 15.01, titled "Amendments," provides in relevant part:

> A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within 15 days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires.

When the matter pled in an amendment falls outside the applicable statute of limitations, Tenn. R. Civ. P. 15.03 provides in pertinent part: "Whenever the claim or defense asserted in amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."

for personal injuries. "The saving statute permits a plaintiff who commenced an action within the applicable statute of limitations to nonsuit the cause of action and refile it in the trial court within one year of the order of dismissal." *Crowley v. Thomas*, 343 S.W.3d 32, 34-35 (Tenn. 2011) (citing *Frazier v. E. Tenn. Baptist Hosp.*, 55 S.W.3d 925, 927-28 (Tenn. 2001); *Cronin v. Howe*, 906 S.W.2d 910, 913 (Tenn. 1995)). This is not the situation presented here.

Because State Farm's claim was barred by the statute of limitations, it was not entitled to recover damages for personal injuries. Our decision in this regard pretermits a consideration of the issues pertaining to payments made for medical treatment.

B. Allocation of Fault

Mr. Blondin argues that the evidence preponderates against the trial court's allocation of fault of 80 percent to Ms. Blondin and 20 percent to Ms. Rone. He contends that Ms. Rone "was distracted and inattentive at the time of the collision," "was talking with Ms. Martin at the time of the accident," and that "[a]t best, the allocation of fault is 50/50, which would require that this case be dismissed and the judgment against Mr. Blondin vacated."

"[T]he comparison and allocation of fault is a question of fact to be decided by the finder-of-fact, that is the jury or the trial court sitting without a jury." *Henley*, 2002 WL 100402, at *6 (citing *Brown v. Wal-Mart Discount Cities*, 12 S.W.3d 785, 789 (Tenn. 2000); *Turner v. Jordan*, 957 S.W.2d 815, 824 (Tenn. 1997); *Prince v. St. Thomas Hosp.*, 945 S.W.2d 731, 735 (Tenn. Ct. App. 1996)). "[T]he de novo standard of review in Rule 13(d) is the applicable standard of appellate review for findings of fact made by a trial court." *Cross v. City of Memphis*, 20 S.W.3d 642, 645 (Tenn. 2000). Thus, our review centers on whether the evidence preponderates against the factual findings of the trial court; to do so, we determine whether the evidence supports another finding of fact with greater convincing effect. *Nw. Tennessee Motorsports Park, LLC v. Tennessee Asphalt Co.*, 410 S.W.3d 810, 816 (Tenn. Ct. App. 2011) (citing *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999)).

The trial court found as follows:

> Upon consideration of all of the testimony, the evidence shows that the daughter of the Defendant substantially contributed to the cause of the accident. Her travel was subject to a traffic control device, a stop-sign. Under the law, this sign placed on her a duty not to enter the intersection until she could do so with safety. The law also places on Ms. Rone and duty to observe that which was there to be seen and to take reasonable steps to avoid another

> vehicle which has entered the intersection. She had the duty to keep a proper lookout, and to use reasonable care to avoid an accident. We find both the Defendant's daughter, Olivia Blondin, and the Plaintiff's insured, Jenny Rone, to be at fault, and we assess the fault at 80% to the Defendant's daughter and 20% to the Plaintiff's insured.

Mr. Blondin argues that certain testimony of the investigating officer and Ms. Rone preponderate against the allocation of fault. In the testimony cited by Mr. Blondin, Officer Price testifies that Ms. Rone told her at the scene of the accident that "she hit the brakes and attempted to move into the next lane" but that Officer Price did not see any skid marks on the road which would have indicated "hard aggressive braking or any sharp turning motion"; that she did not issue a citation to Ms. Rone but that she noted in her report that Ms. Rone was inattentive and that Ms. Martin had told her to brake; that Ms. Blondin failed to yield the right of way. In her testimony, Ms. Rone agreed that she struck the Blondin vehicle "behind the back tire in the bumper area"; that she saw the vehicle "a few seconds" prior to the accident"; and that she and Ms. Martin were talking at the time of the accident.

This testimony does not preponderate against the allocation of fault, particularly when considered in the context of other evidence and the duties imposed upon Ms. Blondin and Ms. Rone. Ms. Blondin was traveling on a country road near an intersection with a five lane state highway, and was required to stop at the intersection; in addition to the duty to maintain a proper lookout, she had a duty to not cross the highway until it was safe to do so. Ms. Blondin testified that she did not see Ms. Rone's vehicle before the accident. Her decision to cross five lanes of traffic was a substantial contributing cause of the accident. Similarly, Ms. Rone had a duty to keep a proper lookout and to keep her vehicle under proper control. She did not fully satisfy her duty, resulting in the allocation of fault to her.

III. CONCLUSION

For the foregoing reasons, we vacate so much of the judgment that awards damages for personal injuries. We affirm allocation of fault and award of $7,220 in property damage; accordingly, we modify the judgment and award State Farm the sum of $5,776.00. Costs on appeal are taxed equally.

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RICHARD H. DINKINS, JUDGE