IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 3, 2016

CASH AMERICA INTERNATIONAL, INC. v. GEICO GENERAL INSURANCE CO.

Appeal from the Chancery Court for Davidson County

No. 15366I Ben H. Cantrell, Senior Judge

No. M2015-01946-COA-R3-CV – Filed June 17, 2016

Insurance company filed garnishment action in general sessions court against employer garnishee. The sheriff served an hourly employee at one of the employer garnishee's retail locations. Employer garnishee did not appear in the garnishment action, and the general sessions court entered judgment. Employer garnishee filed this action in the chancery court collaterally attacking the general sessions judgment based on improper service. The chancery court granted summary judgment in favor of employer garnishee. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

J. STEVEN STAFFORD, P.J.,W.S., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., and RICHARD H. DINKINS, JJ., joined.

John R. Cheadle, Jr., and Mary Barnard Cheadle, Nashville, Tennessee, for the appellant, Geico General Insurance Company.

Frank L. Day, Jr., Memphis, Tennessee, for the appellee, Cash America International, Inc.

OPINION

BACKGROUND

This case involves the validity of a final judgment entered against an employer garnishee. On January 22, 2014, Geico General Insurance Company ("Geico") obtained a judgment against Juan Antonio Holguin-Rodriguez for $11,219.84 in the Davidson County General Sessions Court. The merits of the underlying general sessions judgment are not at issue in the instant appeal.

On February 20, 2014, a wage garnishment was issued to Cash America International, Inc. ("Cash America"), upon the earnings of Mr. Rodriguez, an alleged employee of Cash America. On February 24, 2014, the wage garnishment was purportedly served upon an employee of Cash America named Brandy Harmon at one of its retail locations in Nashville, Tennessee.

On December 11, 2014, a conditional judgment was entered by the general sessions court in favor of Geico against Cash America for $11,433.26, based on Cash America's failure to answer the garnishment. The conditional judgment includes a certificate of service indicating that counsel for Geico mailed the conditional judgment to Cash America's registered agent for service of process[1] and to Mr. Rodriguez.

Subsequently, on December 22, 2014, Geico filed a *scire facias* to obtain a judgment against Cash America for its failure to honor the garnishment upon the wages of Mr. Rodriguez. The *scire facias* indicates that it was served upon Cash America's registered agent for service of process on January 5, 2015, with a hearing date set in the general sessions court for January 28, 2015. The general sessions court conducted the hearing as scheduled on January 28, 2015. Cash America did not appear, and a judgment on the *scire facias* was entered in Geico's favor on the same day. Cash America did not appeal the general sessions court's judgment. On February 11, 2015, an execution for the *scire facias* was issued to Cash America. On February 23, 2015, Cash America was purportedly served with the execution.

On March 24, 2015, Cash America filed a complaint in the Davidson County Chancery Court ("the trial court") seeking immediate injunctive relief, a declaration that the general sessions judgment was void, and damages. The trial court entered an order to set a hearing on April 6, 2015, for Cash America's request for immediate injunctive relief. Geico filed an answer to Cash America's complaint on April 6, 2015. Cash America filed a Memorandum of Law in Support of Complaint seeking injunctive relief on April 16, 2015. With its memorandum, Cash America included the declarations of

[1] Cash America's registered agent is Capital Corporate Services, Inc. However, to avoid confusion, we refer to Cash America generally. As discussed later in this Opinion, the service of the conditional judgment and *scire facias* is not determinative of this appeal.

Brandy Harmon, the Cash America employee who received service of process, and Brian Brock, a regional director at Cash America.[2]

Geico filed a motion to dismiss Cash America's complaint on May 22, 2015, asserting that Cash America failed to state a claim upon which relief may be granted. Cash America filed a motion for summary judgment on June 3, 2015, and filed a response to Geico's motion to dismiss on June 12, 2015. As the basis for its motion and response, Cash America disputed that it had received proper service in the garnishment action in the general sessions court. The chancery court subsequently entered an order on June 12, 2015, temporarily staying execution of the judgment against Cash America.[3] On August 21, 2015, Geico filed a response to Cash America's motion for summary judgment, which included a response to the statement of undisputed facts.

The trial court conducted a hearing on August 28, 2015, on Cash America's motion for summary judgment and Geico's motion to dismiss. At the hearing, Geico requested additional time to depose Ms. Harmon, the Cash America employee who received service. The trial court denied Geico's request for additional time, finding that Geico had not requested such time in any written response to the motion for summary judgment. Eventually, the trial court entered a written order granting the motion for summary judgment and denying the motion to dismiss. From this order, Geico appeals.

ISSUES

Geico raises two issues on appeal, as taken from its brief and restated and reordered:

> 1. Whether the trial court erred in finding that it was undisputed that the individual served with the garnishment was not a person designated as an agent for service?
> 2. Whether the trial court erred when it found that Cash America did not waive the defense of improper service in the original garnishment action?

STANDARD OF REVIEW

This case was determined on the basis of summary judgment. Summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts

[2] Both declarations indicated that they were filed pursuant to Rule 72 of the Tennessee Rules of Civil Procedure, which permits an unsworn declaration in lieu of a sworn declaration so long as the declarant signs and dates the form and indicates that information is true and given under penalty of perjury.

[3] On June 22, 2015, Chancellor Claudia Bonnyman entered an order providing that all remaining matters would be heard by Senior Judge Ben H. Cantrell.

relevant to the claim or defense contained in the motion and (2) the moving party is entitled to judgment as a matter of law on the undisputed facts. Tenn. R. Civ. P. 56.04. On appeal, this Court reviews a trial court's grant of summary judgment de novo with no presumption of correctness. *See* ***City of Tullahoma v. Bedford Cnty.***, 938 S.W.2d 408, 412 (Tenn. 1997). In reviewing the trial court's decision, we must view all of the evidence in the light most favorable to the nonmoving party and resolve all factual inferences in the nonmoving party's favor. ***Luther v. Compton***, 5 S.W.3d 635, 639 (Tenn. 1999); ***Muhlheim v. Knox. Cnty. Bd. of Educ***., 2 S.W.3d 927, 929 (Tenn. 1999). If the undisputed facts support only one conclusion, then the court's summary judgment will be upheld because the moving party was entitled to judgment as a matter of law. *See* ***White v. Lawrence***, 975 S.W.2d 525, 529 (Tenn. 1998); ***McCall v. Wilder***, 913 S.W.2d 150, 153 (Tenn. 1995).

DISCUSSION

The crux of this appeal concerns whether the trial court correctly ruled that the judgment against Cash America was void for lack of proper service of process. Cash America argues that GEICO failed to comply with the statute governing service in garnishment actions in serving notice of the original garnishment action in general sessions court. Accordingly, Cash America contends that it never received proper service and summary judgment was therefore proper.

On appeal, Geico's challenge to the trial court's grant of summary judgment is two-fold. First, Geico argues that summary judgment was improper because there was a genuine factual dispute as to whether Ms. Harmon was a "managing agent" of Cash America, who could accept service pursuant to Tennessee Code Annotated Section 26-2-216(b). Second, Geico asserts that the trial court erred in finding that Cash America did not waive the defense of improper service in the general sessions garnishment action. We address each argument in turn.

I. AGENT FOR SERVICE

We begin with Geico's argument that the trial court erred when it concluded that Ms. Harmon was undisputedly not a "managing agent" of Cash America and therefore could not accept service pursuant to Tennessee Code Annotated Section 26-2-216(b). Geico first asserts that the grant of summary judgment was premature because it did not have the opportunity to depose Ms. Harmon.[4]

[4] In its brief to this Court, Cash America argues that this issue was not properly raised by Geico in its statement of the issues. While we agree that Geico's statement of the issues is less than precise, we exercise our discretion to consider the issue involving Geico's request for additional time to depose Ms. Harmon. We caution litigants that we may not be so forgiving in the future and urge parties to formulate precise, specific statements of the issues they intend to present on appeal.

When a party's defense to a motion for summary judgment is that it requires additional time to conduct discovery, it must follow the procedure outlined in the Tennessee Rules of Civil Procedure and elaborated upon by caselaw. As stated in ***Rye v. Women's Care Ctr. Of Memphis, MPLLC***, 477 S.W.3d 235, 264–65 (Tenn. 2015), *cert. denied*, No. 15-1168, 2016 WL 1077577 (U.S. May 23, 2016), "If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07." Rule 56.07 of the Tennessee Rules of Civil Procedure provides that a trial court may deny a motion for summary judgment when it "appear[s] from the affidavits of a party opposing the motion that such party cannot for reasons stated present by affidavit facts essential to justify the opposition . . . ." Indeed, Tennessee law is clear that a nonmoving party must set forth in an affidavit before the hearing the request for additional discovery. *See* ***Frazier v. Brock's Open Air Market***, No. E2002-00203-COA-R3-CV, 2002 WL 31059221 (Tenn. Ct. App. Sept. 17, 2002) (citing ***Hughes v. Effler***, No. E2000-03147-COA-R3-CV, 2001 WL 881352 (Tenn. Ct. App. Aug. 7, 2001), *perm. app. denied* (Tenn. Dec. 27, 2001)). Rule 56.07 is a "safeguard against an improvident or premature grant of summary judgment" by insuring that a diligent party is given a reasonable opportunity to prepare its case. *See* ***Kenyon v. Handal***, 122 S.W.3d 743, 753 n.7 (Tenn. Ct. App. 2003) (citations omitted). The trial court's denial of the request for a continuance to conduct additional discovery is reviewed for an abuse of discretion. ***Hughes***, 2001 WL 881352 at *1.

Upon review of the record, and specifically Geico's response to the motion for summary judgment, no such request for additional time to conduct discovery was ever made in the filings prior to the hearing. Even more glaringly, Geico failed to file an affidavit making such request. Geico argues that it disputed Ms. Harmon's inability to accept service in its response to Cash America's statement of undisputed facts and also asserts that "Geico's counsel properly put the Court on notice that it had not had an opportunity to depose Ms. Harmon." Geico asserts that it made its request for additional time at the hearing on the motion for summary judgment before the trial court. However, in our view, and as argued by Cash America to this Court, such request came too late and was not made in accordance with Rule 56.07, which plainly requires an affidavit. Furthermore, Geico did not provide any reason in its appellate brief or in its response to Cash America's motion for why it was unable to conduct meaningful discovery in the five-month period before Cash America filed its motion for summary judgment. Numerous cases have refused to grant relief to a party whose own conduct has caused it a disadvantage. ***Hughes***, 2001 WL 881352 at *2 (citing ***Kerney v. Cobb***, 658 S.W.2d 128 (Tenn. Ct. App. 1983); ***Ravenwood Homeowners Ass'n v. Bailey***, C.A. No. 758, 1988 WL 87676 (Tenn. Ct. App. Aug. 26, 1988); ***Laue v. Richardson***, Shelby Law No. 14, 1987 WL 9374 (Tenn. Ct. App. Apr. 14, 1987)). Based on the foregoing, we are not persuaded by Geico's argument that it should have been given additional time to depose Ms. Harmon when it failed to respond to Cash America's motion with such request via affidavit. *See* ***id.*** (holding that the trial court did not abuse its discretion when it denied

the non-moving party's request for a continuance to conduct additional discovery where the party failed to submit an affidavit); ***Fed. Nat'l Mortg. Assoc. v. Daniels***, No. W2015-00999-COA-R3-CV, 2015 WL 9304278, at *7 (Tenn. Ct. App. Dec. 21, 2015) (holding that the trial court did not abuse its discretion when it denied the non-moving party's request for a continuance where the party's affidavit failed to include facts related to the reason it was unable to oppose the motion); ***Frazier***, 2002 WL 31059221 at *5 ("Plaintiffs never filed an affidavit setting forth why they needed additional time for discovery or why this discovery had not been completed. This issue was not brought to the attention of the Trial Court until the actual hearing was underway. . . . We find no abuse of discretion [for the trial court's denial of a continuance to conduct additional discovery]."). Once Cash America filed its properly supported motion for summary judgment, the burden shifted to Geico to respond by showing genuine factual disputes that necessitated a trial. Geico failed to do so and also failed to comply with Rule 56.07 in the event it needed additional discovery. We must conclude that the trial court did not err in proceeding to the merits of the motion for summary judgment.

Next, Geico challenges the trial court's grant of summary judgment to Cash America on the basis that Ms. Harmon was not a proper agent for service. The issue before this Court requires consideration of the law regarding who is a proper agent for service under Tennessee Code Annotated Section 26-2-216(b). Section 26-2-216(b) provides that the sheriff or other officer serving the garnishment summons upon the employer garnishee shall:

> (A) Obtain a receipt acknowledging service of such summons signed by the employer garnishee, if a person, or signed by an officer, managing agent or designated agent for service of the employer garnishee, if a corporation, company or business entity; or
> (B) Sign and return to the court a sworn statement to the effect that the summons was duly served but such employer garnishee or such officer, managing agent or designated agent of the employer garnishee refused to sign a receipt acknowledging service; . . . .

Tenn. Code Ann. § 26-2-216(b)(1)(A)–(B). Thus, for Geico's service to be effective against Cash America in this case, Ms. Harmon must qualify as an "officer, managing agent or designated agent for service of the employer garnishee, if a corporation, company or business entity." ***Id.***

In filing its motion for summary judgment, Cash America included several undisputed facts relevant to this issue, which we find helpful to reproduce here:

> 4. On February 24, 2014, Brandy Harmon was working at the Cash America store . . . when the person serving the summons on behalf of Geico entered the store and asked Ms. Harmon to accept the summons and to sign for it.
> 5. Brandy Harmon complied with the request made by the serving agent, and she signed the notice of garnishment. . . .
> 6. On the date that Brandy Harmon accepted the garnishment summons, she was a regular employee, who was paid by the hour, and she did not have any authority to make management level decisions such as those relating to hiring, firing, employee discipline, preparing employee work schedules, etc.
> 7. Cash America has never asked Brandy Harmon to accept service of process on behalf of the corporation . . . .
> 8. Brandy Harmon had never received any training relating to service of process, and she had no prior experience accepting service.
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> 10. Brandy Harmon did not qualify as a corporate officer or managing agent of Cash America, and the corporation had never designated her to serve as its agent for service of process.

These facts were fully supported by Ms. Harmon's affidavit.

Although Geico did dispute that Ms. Harmon was the person who signed for service of process and that the person who signed was not authorized to accept service pursuant to Tennessee Code Annotated Section 26-2-216(b), Geico did not respond to Cash America's statement of undisputed material facts with any evidence showing a dispute of fact as to either issue. The Tennessee Supreme Court in ***Rye v. Women's Care Ctr. Of Memphis, MPLLC***, 477 S.W.3d 235 (Tenn. 2015), *cert. denied*, No. 15-1168, 2016 WL 1077577 (U.S. May 23, 2016), recently opined on the procedure a nonmoving party must abide by in challenging the moving party's motion for summary judgment:

> "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" *at the summary judgment stage* "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec.*

> *Indus. Co.*, 475 U.S. at 586, 106 S.Ct. 1348. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.

Rye, 477 S.W.3d at 264–65 (emphasis in original). Here, Geico's unsupported assertions merely raise metaphysical doubt regarding Ms. Harmon's unequivocal assertions that she: (1) was the person who signed for service of process; and (2) does not hold any of the relevant positions under Tennessee Code Annotated Section 26-2-216(b). They are not, therefore, sufficient to show a genuine dispute of material fact for purposes of defeating Cash America's summary judgment motion.

Instead, in its brief to this Court, Geico argues that Tennessee law provides that a "sheriff's return is presumptive proof that service of process was properly executed." In support of this contention, Geico cites several Tennessee cases; however, we are not persuaded that the cases stand for the proposition posited by Geico. In one case cited by Geico, ***Royal Clothing Co. v. Holloway***, 347 S.W.2d 491, 574–75 (Tenn. 1961), the Supreme Court opined: "It is well settled that the officer's return is regarded in law as the best evidence of the fact it states, and the oath of an interested party is not sufficient in law to overcome such return." (Citations omitted). Although Geico has interpreted this to mean that a sheriff's return creates a presumption that service was accomplished on the statutorily defined designee, we find this conclusion misplaced. Instead, the Court in ***Royal*** held that the facts within the return of service were presumed to be properly recorded by the sheriff; service itself is not presumed to be proper. ***Id.***; *see also* Tenn. R. Civ. P. 4.01 (providing that the return endorsed on the summons "shall be proof of the time and manner of service"). Indeed, in ***Watson v. Garza***, 316 S.W.3d 589 (Tenn. Ct. App. 2008), this Court again squarely rejected the argument asserted by Geico here, holding that presumptive weight is given to the facts as stated by the sheriff in the return and not given to the propriety of the service itself. ***Id.*** at 594. Accordingly, in the case at bar, the only presumption this Court may elicit from the return of service is that Ms. Harmon was the person who received service.

We next proceed to determine whether service upon Ms. Harmon constituted proper service for Cash America pursuant to Tennessee Code Annotated Section 26-2-216(b). The undisputed facts show that Ms. Harmon did not qualify in any of the categories listed in Section 26-2-216(b). Her affidavit and Cash America's statement of undisputed facts include averments that she was not an "officer, managing agent or designated agent for service." *See* Tenn. Code Ann. § 26-2-216(b). In addition, Tennessee law is clear that, "[i]n the workplace context, service is not effective when another employee whom the individual defendant has not appointed as an agent for service of process nonetheless accepts process on the defendant's behalf." ***Hall v. Haynes***, 319 S.W.3d 564, 572 (Tenn. 2010). Upon review of the record, we agree that Cash America has carried its burden on summary judgment to demonstrate that service

upon Ms. Harmon was insufficient. The record is devoid of, and Geico does not set forth, any evidence that Cash America intended to confer upon Ms. Harmon the authority to accept service of process for its corporation. ***Id.*** at 573 (stating that the record must contain such information in order to prove that the agent had such authority). Ms. Harmon's acceptance of service is simply insufficient to establish that she had any authority to do so, especially in light of the statements in her affidavit that she had never been trained to accept service and had no knowledge of what to do with the documents once received from the sheriff. *See* ***id.*** ("Nor is the mere fact of acceptance of process sufficient to establish agency by appointment."). Here, the undisputed evidence in the record indicates that Cash America never authorized Ms. Harmon to accept service on behalf of the corporation. The mere fact that she accepted service while at one of Cash America's retail locations was insufficient to bind Cash America to the jurisdiction of the general sessions court in the original garnishment action. Thus, we must conclude that Cash America was never properly served in the garnishment action.

II. WAIVER OF THE DEFENSE OF IMPROPER SERVICE

Geico next argues that Cash America waived the defense of improper service because it failed to appear during the general sessions proceedings to assert the defense. The trial court found that, although Cash America was allegedly properly served with the subsequent *scire facias*, "if the initial garnishment summons is not served on the garnishee in the manner required by law . . . all proceedings that follow are void." Accordingly, the trial court concluded that Cash America did not waive the defense of improper service because it was never obligated to appear and assert it.

The trial court relied upon the Tennessee Supreme Court case ***Illinois Cent. R. Co. v. Brooks***, 16 S.W. 77 (Tenn. 1891). The facts in ***Brooks*** are similar to the facts in the instant case. In ***Brooks***, the garnishee did not appear, and the court entered a conditional judgment against the garnishee in the amount of the plaintiff's debt. ***Id.*** at 78. *Scire facias* issued, commanding the garnishee to appear to show cause why final judgment was improper. Again, the garnishee failed to appear, and the conditional judgment was made final. The garnishee thereafter collaterally attacked the judgment, but the trial court denied relief to the garnishee. ***Id.*** at 77. On appeal, the ***Brooks*** Court reversed, holding that "there was no service of written notice in the first instance[,]" and "[b]ecause of that vital omission, all that followed was a nullity." ***Id.*** at 78.

The ***Brooks*** Court also noted that the issuance and service of the *scire facias* did not "cure that defect, or have any effect upon it." ***Id.*** Thus, the service of the *scire facias* was deemed to not be a sufficient substitute for the requisite garnishment notice. In fact, the ***Brooks*** Court opined that the *scire facias* "may without peril be ignored" by the garnishee. In sum, the court concluded that both the *scire facias* and the final judgment, when subsequent to faulty notice in the first instance, are invalid, and a failure to appear does not constitute a waiver of the defense of improper service. ***Id.*** Although ***Brooks*** was

decided over a century ago, no Tennessee cases have ever called its holding into question. *See* ***Rowland v. Quarles***, 20 Tenn. App. 470, 100 S.W.2d 991, 996 (1936) ("If the garnishee had failed to receive service upon it and had failed to appear thereby, the final judgment rendered on it would have been void.") (citing ***Brooks***, 16 S.W. at 78); *see also* ***Gen. Truck Sales, Inc. v. Simmons***, 343 S.W.2d 884 (Tenn. 1961) (citing ***Brooks*** with approval); ***Meadows v. Meadows***, No. 88-135-II, 1988 WL 116382 (Tenn. Ct. App. Nov. 2, 1988) (same); ***Ball Bros. Furniture Co. v. Ferren***, C.A. No. 166, 1987 WL 12388 (Tenn. Ct. App. June 18, 1987) (same). As such, it remains good law upon which this Court must base its decision.

Geico also points out, however, that the ***Brooks*** Court concluded that the initial service was deficient because the original service was not written, but rather constituted only verbal notice. At the time ***Brooks*** was written, the statutes governing the service of garnishments required written notice, and, as such, the ***Brooks*** Court found the verbal notice deficient in the first instance. Geico avers in the instant case that Cash America admitted that Ms. Harmon was served with written notice and, for this reason, ***Brooks*** is inapposite. We respectfully disagree.

The general premise of ***Brooks*** is applicable to the case-at-bar. In this case, notice was deficient pursuant to the current statute governing service of garnishments, as discussed above. Although Ms. Harmon was served with written notice, the service did not comply with Tennessee Code Annotated Section 26-2-216(b)(1)(A). While the ***Brooks*** Court found the service in that case deficient because it was not written, the importance of analyzing the method of service (i.e. written vs. verbal) was to determine whether service in the first instance complied with the relevant statute. Here, we have previously concluded that service upon Ms. Harmon failed to comply with Section 26-2-216(b)(1)(A). It follows then, from our reading of ***Brooks***, that Cash America was not obligated to appear at any point during the general sessions garnishment action, and accordingly, did not waive the defense of improper service.

Additionally, despite the clear pronouncement in ***Brooks*** otherwise, Geico argues that Cash America was obligated to respond to the garnishment action because Geico subsequently served Cash America's registered agent for service of process with the *scire facias*. Geico argues that this subsequent service demonstrates that Cash America had knowledge of the action and ignored its alleged duty to respond. The subsequent service of any other general sessions proceedings, such as the *scire facias* in this case, are a "nullity." ***Brooks***, 16 S.W. at 78. In another case considering whether service was proper, this Court has stated, "The record must establish that the plaintiff complied with the requisites of the procedural rules. The fact that the defendant had actual knowledge of attempted service does not render the service effectual if the plaintiff did not serve the process in accordance with the rule." ***Wallace v. Wallace***, No. 01A01-9512-CH-00579, 1996 WL 411627, at *2 (Tenn. Ct. App. July 24, 1996). Simply stated, any knowledge allegedly obtained by Cash America through service of subsequent filings in the

garnishment actions is immaterial to the question of whether it was properly served in the first instance, and thus obligated to appear and present a defense. To this end, Geico is precluded by well-established Tennessee law from asserting that service of subsequent proceedings corrected its initial error.

In sum, Tennessee law is clear that "[s]ervice of process which does not meet the requirements of the rule is void, and a judgment based on void service is a void judgment." ***Wallace v. Wallace***, No. 01A01-9512-CH-00579, 1996 WL 411627 (Tenn. Ct. App. July 24, 1996) (citing ***Overby v. Overby***, 457 S.W.2d 851, 852 (Tenn. 1970)). Based on our earlier determination that Cash America was not properly served in the underlying garnishment action, any judgment resulting from that action is void. Because Cash America was never obligated to appear, its institution of proceedings in chancery court was not barred by any waiver of the defense of improper service, and the trial court's grant of summary judgment in favor of Cash America was not erroneous.

CONCLUSION

Based on the foregoing, we hold that the trial court did not err in granting summary judgment in favor of Cash America. The judgment of the Chancery Court of Davidson County is, therefore, affirmed, and this cause is remanded to the trial court for all further proceedings as may be necessary and are consistent with this Opinion. Costs are taxed to Appellant, Geico General Insurance Co., and its surety.

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J. STEVEN STAFFORD, JUDGE