

FILED

12/30/2020

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
October 7, 2020 Session

**CAMILLE BLACK v. MARYAM H. MULA KHEL**

**Appeal from the Circuit Court for Shelby County**  
**No. CT-2063-19 Mary L. Wagner, Judge**

---

**No. W2020-00228-COA-R3-CV**

---

This appeal involves a personal injury action stemming from an automobile accident. The trial court granted the defendant's motion to dismiss, holding that the plaintiff's filing fell outside of the applicable statute of limitations. In granting dismissal, the trial court found that the plaintiff was not entitled to relief under Tennessee Rule of Civil Procedure 15.03. For the same reasons, the trial court denied the plaintiff's motion to alter or amend. The plaintiff appealed. We affirm the trial court's decisions and remand.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY W. ARMSTRONG, J., joined.

Brittany M. Smith, Memphis, Tennessee, for the appellant, Camille Black.

Christopher M. Sobczak, Memphis, Tennessee, for the appellee, Maryam H. Mula Khel.

**OPINION**

**I. FACTS & PROCEDURAL HISTORY**

On May 11, 2018, Camille Black ("Plaintiff") and Maryam Mula Khel ("Defendant") were involved in an automobile accident in Shelby County, Tennessee. According to Plaintiff, on March 20, 2019, she was involved in a second automobile accident in Shelby County, Tennessee. The second accident did not involve Defendant. The other driver involved in the second accident was Taylor Antonsen, who is not a party to this suit.

On May 8, 2019, Plaintiff filed a complaint in the circuit court of Shelby County, seeking to recover for the personal injuries that she sustained in her first automobile accident on May 11, 2018. However, Plaintiff failed to list Defendant as the opposing party in her complaint. Instead, Plaintiff listed “Taylor G. Antonsen” as the defendant and continued to refer to Taylor Antonsen throughout the complaint. Nowhere in Plaintiff’s complaint did she list Defendant as the opposing party or as a party responsible for the accident on May 11, 2018. The parties agree that no summons was issued with Plaintiff’s initial complaint. One week later, on May 15, 2019, after realizing her mistake, Plaintiff filed an amended complaint, naming “Maryam H. Mula Khel” as the defendant. Aside from substituting Defendant’s name as the party involved in the original automobile accident, Plaintiff’s amended complaint was identical to her original complaint.

After receiving a summons for Plaintiff’s amended complaint, Defendant filed a motion to dismiss under Tennessee Rule of Civil Procedure 12. In her motion, Defendant asked the trial court to dismiss Plaintiff’s cause of action with prejudice for failing to include Defendant as a party within the applicable one-year statute of limitations. In response to Defendant’s motion, Plaintiff argued that, pursuant to Tennessee Rule of Civil Procedure 15.03, her amended complaint related back to the original date of filing. Plaintiff asserted that because she amended her complaint and included Defendant as a party within 120 days of filing her original complaint, her amended complaint was timely filed. The trial court disagreed.

The trial court concluded that Rule 15.03 does not allow a party to amend a complaint and relate it back to the date of filing for merely mislabeling a party or for adding a party that was previously omitted. It also found that Plaintiff failed to prove that her “mistake” in naming Defendant in her original complaint was caused by a mistake of Defendant’s identity as the proper party to be named. The trial court concluded that Plaintiff’s amended complaint did not relate back to the original date of filing and, therefore, was not filed within the one-year statute of limitation. As a result, the court granted Defendant’s motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure.

Within thirty days of the trial court’s dismissal of the case, Plaintiff filed a “motion to reconsider” citing Tennessee Rule of Civil Procedure 60.02.<sup>1</sup> In her motion, Plaintiff argued that she mistakenly named the wrong tortfeasor by confusing the parties involved in two accidents. Due to her “mistake” or “excusable neglect” in naming the wrong party, Plaintiff requested relief under Rule 60.02(1). The trial court declined to alter or amend its

---

<sup>1</sup> “The Tennessee Rules of Civil Procedure do not recognize a Motion to Reconsider,” and therefore, “a motion captioned as a Motion to Reconsider should be treated as a Motion to Alter or Amend under Rule 59.04.” *Howell v. Ryerkerk*, 372 S.W.3d 576, 579 n.3 (Tenn. Ct. App. 2012); *see also U.S. Bank, N.A. v. Tenn. Farmers Mut. Ins. Co.*, 410 S.W.3d 820, 826 (Tenn. Ct. App. 2012). In the present case, the trial court appropriately treated Plaintiff’s motion as a motion to alter or amend.

prior ruling. Plaintiff timely appealed.

## II. ISSUE PRESENTED

On appeal, although Plaintiff's brief lists only one issue, we find that two issues are presented:

1. Whether the trial court erred in granting Defendant's motion to dismiss; and
2. Whether the trial court erred in denying Plaintiff's motion to alter or amend.

## III. STANDARD OF REVIEW

Determining whether a claim is barred by a 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)). Questions of law are reviewed *de novo*, with no presumption of correctness. *Eberbach v. Eberbach*, 535 S.W.3d 467, 473 (Tenn. 2017) (citing *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006); *Taylor v. Fezell*, 158 S.W.3d 352, 357 (2005)). Motions to dismiss involve questions of law and are therefore reviewed *de novo*, with no deference being afforded to the trial court's decision. *See Mortg. Elec. Registration Sys., Inc. v. Ditto*, 488 S.W.3d 265, 275 (Tenn. 2015); *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010).

A trial court's decision on a Rule 59.04 motion is reviewed under an abuse of discretion standard. *Kirk v. Kirk*, 447 S.W.3d 861, 870 (Tenn. Ct. App. 2013); *Chambliss v. Stohler*, 124 S.W.3d 116, 120 (Tenn. Ct. App. 2003) (citing *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998)). "A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

## IV. DISCUSSION

### A. Motion to Dismiss

Personal injury actions, such as those that arise out of an automobile accident, are subject to a one-year statute of limitations. Tenn. Code Ann. § 28-3-104(a)(1)(A) (2019); *Jones v. Prof'l Motorcycle Serv., LLC*, 193 S.W.3d 564, 567 (Tenn. 2006). "Plaintiffs who file their lawsuit at or near the end of the statute of limitations period face a difficult predicament if they make a mistake regarding the name of the defendant." *McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792, 796 (Tenn. Ct. App. 1997). Pursuant to Rule 15.03 of the Tennessee Rules of Civil Procedure, only under certain

conditions will an amended complaint relate back to a previously-filed complaint to comply with the statute of limitations. *See Sallee v. Barrett*, 171 S.W.3d 822, 829–30 (Tenn. 2005). Analyzing Rule 15.03, our Supreme Court has stated:

An amended pleading that substitutes a party will be considered filed on the date of the original pleading if the party to be substituted had notice of the suit during the limitations period, or within 120 days of the filing date, and knew or should have known that, but for a mistake about its identity, the original suit would have been brought against it

*Runions v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 549 S.W.3d 77, 84 (Tenn. 2018) (citing *Doyle v. Frost*, 49 S.W.3d 853, 856 (Tenn. 2001)).

In order for a plaintiff to change the party against whom a claim is asserted, which allows relation back to the original date of filing, two requirements must be satisfied. “First, the new party must have received sufficient notice of the action within the specified time-frame so that it will not be prejudiced in maintaining its defense.” *Sallee*, 171 S.W.3d at 830 (citing *Doyle*, 49 S.W.3d at 856-57; *Smith v. Se. Props. Ltd.*, 776 S.W.2d 106, 109 (Tenn. Ct. App. 1989)). Second, “each potential new party must have known that but for a misnomer or mistake concerning his or her identity, the action would have been brought against him or her.” *Id.* (quoting *Rainey Bros. Constr. Co. v. Memphis & Shelby County Bd. of Adjustment*, 821 S.W.2d 938, 941 (Tenn. Ct. App. 1991)). Under the second prong of Rule 15.03, a party’s “mistake” “does not exist merely because a party who may be liable for conduct alleged in the original complaint was omitted as a party defendant.” *Id.* (quoting *Smith*, 776 S.W.2d at 109). “[T]he purpose of Tennessee Rule of Civil Procedure 15.03 is to enable parties to correct the ‘mislabeling of a party they intended to sue,’ *Grantham v. Jackson-Madison County Gen. Hosp. Dist.*, 954 S.W.2d 36, 38 (Tenn.1997), not to add a new party who was simply overlooked.” *Shockley v. Mental Health Coop., Inc.*, 429 S.W.3d 582, 591 (Tenn. Ct. App. 2013).

When a defendant successfully asserts that a statute of limitation defense applies, “the burden of proof shifts to the plaintiff to establish the exception to the statute being claimed.” *Smith*, 776 S.W.2d at 109 (citing *Stockburger v. Ray*, 488 S.W.2d 378, 382 (Tenn. Ct. App. 1972)). Similarly, when a plaintiff argues that an amended complaint relates back to the original date of filing under Rule 15.03, “[i]t is the plaintiff that has the burden of showing that the failure to name the new defendant in the original complaint resulted from a mistake concerning the identity of the proper party.” *Sallee*, 171 S.W.3d at 830-31.

In the present case, the automobile accident between Plaintiff and Defendant occurred on May 11, 2018. On May 15, 2019, Plaintiff filed her amended complaint, one week after filing the original. Like the original complaint, the amended complaint clearly states that the accident occurred on May 11, 2018. Accordingly, it is undisputed that

Plaintiff filed her amended complaint one year and four days after the date of the accident. *First Tenn. Bank, N.A. v. Mungan*, 779 S.W.2d 798, 801 (Tenn. Ct. App. 1989) (stating “[t]he general rule is that factual statements in pleadings are judicial admissions being conclusive against the pleader in the proceedings in which they are filed”). Therefore, unless an exception to the one-year statute of limitations applies, Defendant successfully proved that Plaintiff’s claims are barred. *See* Tenn. Code Ann. § 28-3-104(a)(1)(A).

While this case was before the trial court, Plaintiff asserted that her amended complaint “relates back” to the filing of her original complaint under Rule 15.03. She presents the same argument on appeal. However, there is nothing in the record that permits this Court to conclude that the requirements of Rule 15.03 were met. Again, after Defendant established that the statute of limitations barred Plaintiff’s amended complaint, it was Plaintiff’s burden to show that Rule 15.03 applied. *See Sallee*, 171 S.W.3d at 830-31; *Smith*, 776 S.W.2d at 109. To her detriment, she presented no evidence to indicate whether all of the requirements of Rule 15.03 exist in this case.

In response to Defendant’s motion to dismiss, Plaintiff submitted two exhibits that indicated Defendant was served with the amended complaint on June 19, 2019. Plaintiff did not include any other exhibits in her responsive pleadings. As such, there is no evidence for this Court to determine whether Defendant “must have known that but for a misnomer or mistake concerning . . . her identity, the action would have been brought against . . . her.” *Sallee*, 171 S.W.3d at 830 (quoting *Rainey Bros. Constr. Co.*, 821 S.W.2d at 941). Plaintiff attempted to satisfy this requirement by providing details of the case in her response to Defendant’s motion, at oral arguments before the trial court, and in her appellate brief. However, arguments by attorneys are not evidence. *Maloney v. Maloney*, No. W2013-02409-COA-R9-CV, 2014 WL 3538553, at \*2 (Tenn. Ct. App. July 17, 2014) (citing *Elliot v. Cobb*, 320 S.W.3d 246, 252 (Tenn. 2010) (Koch, J. concurring)). Additionally, nothing in Plaintiff’s amended complaint provides support under Rule 15.03 by explaining how or why this mislabeling occurred. Except for Defendant being substituted as the opposing party, the amended complaint is merely a replica of the original.

In the absence of sufficient support that indicates Plaintiff proved both requirements of Rule 15.03, we agree with the trial court in that Plaintiff’s amended complaint did not relate back to the original date of filing. As a result, we find that the amended complaint was filed outside of the one-year statute of limitations and affirm the trial court’s decision to grant Defendant’s motion to dismiss.

### ***B. Motion to Alter or Amend***

Following the trial court’s grant of Defendant’s motion to dismiss, Plaintiff timely filed a motion to alter or amend. Plaintiff continues to argue that her post-judgment motion was a Rule 60.02 “motion to reconsider,” but the substance and timing of the motion show otherwise.

Post-judgment motions made under Rule 59.04 and Rule 60.02 occur under distinctly different circumstances. Under either rule, a party may seek relief from a judgment due to “mistake, inadvertence, or excusable neglect.” See Tenn. R. Civ. P. 60.02(1); *Pryor v. Rivergate Meadows Apartments Assocs. Ltd. P’ship*, 338 S.W.3d 882, 885 (Tenn. Ct. App. 2009). However, the allowable time periods to present each motion differ. “Rule 59.04 allows a party to seek relief from a judgment within thirty days after being entered; conversely, Rule 60.02 affords a party a means to seek relief from a final, non-appealable judgment.” *Ferguson v. Brown*, 291 S.W.3d 381, 387 (Tenn. Ct. App. 2008). Meaning, “Rule 59.04 is appropriate for a party seeking relief from a judgment that is not yet final,” whereas Rule 60.02 provides relief for *final* judgments. *Thigpen v. First City Bank*, No. 27349, 1997 WL 351247, at \*2 (Tenn. Ct. App. June 27, 1997). Although these motions are appropriate at different points of litigation, the mislabeling of a motion is not fatal to the moving party. See *Estate of Doyle v. Hunt*, 60 S.W.3d 838, 842 (Tenn. Ct. App. 2001) (stating “trial court[s] [are] not bound by the title of a pleading”). If a party mislabels a motion, “court[s] [are] to give effect to the pleading’s substance and treat it according to the relief sought therein.” *Id.*

On September 18, 2019, the trial court entered its order granting Defendant’s motion to dismiss. Thirty days later, on October 18, 2019, Plaintiff filed her motion to “reconsider,” which the trial court appropriately treated as a motion to alter or amend. See *Howell*, 372 S.W.3d at 579 n.3. Because Plaintiff filed her motion within 30 days of the entry of judgment, the order granting Defendant’s motion to dismiss was not yet a final decision. See Tenn. R. App. P. 4(a); *Thigpen*, 1997 WL 351247, at \*3. As such, despite Plaintiff labeling her motion as a Rule 60.02 motion, it should be reviewed under Rule 59.04. See *Ferguson*, 291 S.W.3d at 387; *Thigpen*, 1997 WL 351247, at \*3.

As she did before the trial court, on appeal, Plaintiff asserts that her “mistake” in naming the wrong tortfeasor justifies relief. As the moving party, Plaintiff bears the burden of proving that her mistake, inadvertence, or neglect entitles her to relief. See *Ferguson*, 291 S.W.3d at 388. To satisfy this burden, she must “show[] that the trial court ‘applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.’” *Collins v. Collins*, No. M2014-02417-COA-R3-CV, 2016 WL 4132400, at \*4 (Tenn. Ct. App. Aug. 1, 2016) (quoting *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002)). In the present case, Plaintiff has made no such showing.

Plaintiff simply states that she mistakenly named the wrong tortfeasor in her initial complaint and, as a result, she is entitled to relief. She offers no explanation for her mistake nor does she explain how the trial court erred in granting Defendants’ motion to dismiss. From our own review, we cannot say that the trial court abused its discretion in denying Plaintiff’s motion to alter or amend. The case was properly dismissed for being filed outside of the one-year statute of limitations.

For the reasons previously stated, we agree with the trial court that Plaintiff's amended complaint was untimely and that the case should be dismissed accordingly. We affirm the trial court's decision to deny Plaintiff's motion to alter or amend.<sup>2</sup>

## V. CONCLUSION

For the reasons stated herein, the circuit court's decisions are affirmed and remanded for further proceedings as may be necessary. Costs of this appeal are taxed to appellant, Camille Black, for which execution may issue if necessary.

---

CARMA DENNIS MCGEE, JUDGE

---

<sup>2</sup> Regardless of whether the trial court gave a different analysis than this Court on the issues presented, the conclusions are the same. As a result, the ultimate decisions may be affirmed. *See Shutt v. Blount*, 249 S.W.2d 904, 907 (Tenn. 1952) (stating "if the [t]rial [j]udge reached the right result for the wrong reason, there is no reversible error"); *Tolliver v. Tellico Vill. Prop. Owners Ass'n*, 579 S.W.3d 8, 20 (Tenn. Ct. App. 2019).