FILED
10/06/2023
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 1, 2023

THERESA BARRETT v. JUSTIN GARTON

Appeal from the Circuit Court for Davidson County
No. 20C1216 Thomas W. Brothers, Judge

No. M2022-01064-COA-R3-CV

A plaintiff filed suit alleging that the defendant's negligence caused her to sustain personal injuries in an automobile accident. The plaintiff filed the complaint within one year of the accident, but she failed to have process issued within one year from the filing of the complaint. Thus, the defendant sought summary judgment based on a statute of limitations defense. In response, the plaintiff claimed that the defendant should be estopped from asserting a statute of limitations defense because the parties had agreed that issuance of process was unnecessary. The trial court rejected the plaintiff's estoppel argument and granted summary judgment to the defendant. Discerning no error, we affirm the trial court's decision.

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

ANDY D. BENNETT, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and J. STEVEN STAFFORD, P.J., W.S., joined.

George H. Rieger, II, Brentwood, Tennessee, for the appellant, Theresa Barrett.

Nathan Evan Shelby and Annabelle Pauline Harris, Nashville, Tennessee, for the appellee, Justin Garton.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

On June 4, 2020, Theresa Barrett filed a complaint against Justin Garton, alleging that she sustained personal injuries in an automobile accident caused by Mr. Garton's negligence on June 4, 2019. Ms. Barrett did not have process issued when she filed the complaint and, when process remained unissued over a year later, Mr. Garton filed a motion for summary judgment on February 2, 2022. Mr. Garton asserted that he was

entitled to summary judgment because the statute of limitations on Ms. Barrett's claim had expired. Specifically, Mr. Garton argued that the failure to issue process meant that Ms. Barrett could not rely upon the original filing date of the complaint to toll the statute of limitations. In her response to the motion for summary judgment, Ms. Barrett acknowledged that process had not been issued, but she argued that Mr. Garton could not rely on a statute of limitations defense because her attorney and an adjuster from Mr. Garton's insurance company entered into an agreement that service of process was not necessary while the parties attempted to negotiate a resolution.

After considering the motion for summary judgment, the response in opposition, and the parties' written briefs,[1] the trial court entered an order concluding that Ms. Barrett could not rely on the filing of the complaint to toll the statute of limitations because she failed to have process issued. The court rejected Ms. Barrett's equitable estoppel argument, finding that she failed to present proof demonstrating that "any specific promise, representation, assurance, or written agreement" existed between the parties regarding a delay in service of process. Based on these findings, the court granted summary judgment to Mr. Garton.

Ms. Barrett appealed and presents the following issue for review: whether the trial court erred in granting the motion for summary judgment.

STANDARD OF REVIEW

We review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). This means that "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.* We "must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *see also Acute Care Holdings, LLC v. Houston Cnty.*, No. M2018-01534-COA-R3-CV, 2019 WL 2337434, at *4 (Tenn. Ct. App. June 3, 2019).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04. A disputed fact is material if it is determinative of the claim or defense at issue in the motion. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must submit evidence either "affirmatively negating an essential element of the nonmoving party's claim" or "demonstrating that the nonmoving party's evidence *at*

[1] The trial court did not hear oral arguments on the matter.

the summary judgment stage is insufficient to establish the nonmoving party's claim or defense." *Rye*, 477 S.W.3d at 264. Once the moving party has satisfied this requirement, the nonmoving party "'may not rest upon the mere allegations or denials of [its] pleading.'" *Id.* at 265 (quoting TENN. R. CIV. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." TENN. R. CIV. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." TENN. R. CIV. P. 56.06. If the moving party fails to show that he or she is entitled to summary judgment, however, "'the non-movant's burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails.'" *Martin*, 271 S.W.3d at 83 (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

ANALYSIS

Resolution of the issue before us turns on Mr. Garton's statute of limitations defense. Statutes of limitations have been described as "shields, not swords." *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 456 (Tenn. 2012) (citing *Lawman v. Barnett*, 177 S.W.2d 121, 128 (Tenn. 1944)). They are premised "on the presumption that persons with the legal capacity to litigate will not delay bringing suit on a meritorious claim beyond a reasonable time." *Id.* Courts have often emphasized that statutes of limitations:

> (1) promote stability in personal and business relationships, *see Potts v. Celotex Corp.*, 796 S.W.2d 678, 684 (Tenn. 1990) (quoting *Teeters v. Currey*, 518 S.W.2d 512, 515 (Tenn. 1974)), (2) give notice to defendants of potential lawsuits, *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 33 (Tenn. 2007), (3) prevent undue delay in filing lawsuits, *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004) (quoting *Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818, 820 (Tenn. 1994)); *Weber v. Moses*, 938 S.W.2d 387, 393 (Tenn. 1996), (4) "avoid the uncertainties and burdens inherent in pursuing and defending stale claims," *John Kohl & Co. v. Dearborn & Ewing*, 977 S.W.2d 528, 533 (Tenn. 1998); *Wyatt v. A-Best, Co.*, 910 S.W.2d 851, 855 (Tenn. 1995), and (5) "ensure that evidence is preserved and facts are not obscured by the lapse of time or the defective memory or death of a witness," *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d at 621; *Applewhite v. Memphis State Univ.*, 495 S.W.2d 190, 195 (Tenn. 1973) (quoting *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)).

Id. The application of a statute of limitations presents a question of law that we review de novo with no presumption of correctness. *Fahrner v. SW Mfg., Inc.* 48 S.W.3d 141, 144 (Tenn. 2001).

Because statutes of limitations "are predominantly 'creatures of the legislative branch of government[,]' . . . the General Assembly customarily defines limitations periods by statute." *Redwing*, 363 S.W.3d at 457 (quoting *Carney v. Smith*, 477 S.W.2d 246, 248 (Tenn. 1969)). Courts look to the "'gravamen of the complaint'" to determine the applicable statute of limitations. *Whaley v. Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006) (quoting *Gunter v. Lab. Corp. of Am.* 121 S.W.3d 636, 638 (Tenn. 2003)). In other words, "the 'substantial point,' the 'real purpose,' or the 'object' of the complaint" determines the applicable statute of limitations. *Redwing*, 363 S.W.3d at 457 (quoting *Estate of French v. Stratford House*, 333 S.W.3d 546, 557 (Tenn. 2011)).

The gravamen of Ms. Barrett's complaint is a claim based on personal injuries. Tennessee Code Annotated section 28-3-104(a)(1)(A) provides the statute of limitations for such a claim and states, in pertinent part, as follows: causes of action based on "injuries to the person" must "be commenced within one (1) year after the cause of action accrued." The parties agree that Ms. Barrett's personal injury claim accrued on the date of the accident, June 4, 2019. Therefore, she needed to commence the action by June 4, 2020.

Rule 3 of the Tennessee Rules of Civil Procedure governs the commencement of an action:

> All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. *If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.*

TENN. R. CIV. P. 3 (emphasis added). Thus, filing a complaint commences an action but, if no process is issued upon the filing of the complaint, the plaintiff must issue process within one year from the filing of the complaint to rely on the filing of the complaint to toll the statute of limitations.

In the present case, the record shows that Ms. Barrett filed her personal injury complaint on June 4, 2020, which was within one year from the date the cause of action accrued. The record further shows, however, that she failed to have process issued at the time she filed the complaint or within one year from filing the complaint. Indeed, process had yet to be issued as of the entry of the trial court's order granting summary judgment—more than two years after the filing of the complaint. As a result, Ms. Barrett could not

rely on the filing of the complaint to toll the statute of limitations. We, therefore, agree with the trial court's finding that Mr. Garton had a valid statute of limitations defense.

Nevertheless, Ms. Barrett contends that Mr. Garton was not entitled to summary judgment because the doctrine of equitable estoppel tolled the statute of limitations. "The doctrine of equitable estoppel arises from the equitable maxim that no person may take advantage of his or her own wrong." *Redwing*, 363 S.W.3d at 460 (footnote omitted). It may be applied "to prevent a defendant who has actively induced a plaintiff to delay filing suit . . . from asserting what would otherwise be a valid statute of limitations defense." *Hardcastle v. Harris*, 170 S.W.3d 67, 84 (Tenn. Ct. App. 2004) (citing *Fahrner*, 48 S.W.3d at 145). As the Tennessee Supreme Court has remarked, "a plaintiff invoking equitable estoppel, in effect, asks the court to waive" the statute of limitations in regard to his or her claim. *Fahrner*, 48 S.W.3d at 146. Because statutes of limitations are favored, courts have been cautioned to invoke the doctrine sparingly so as not "to prevent a defendant from asserting an otherwise valid statute of limitations defense." *Hardcastle*, 170 S.W.3d at 84. Thus, when determining whether to invoke the doctrine, courts must "examine the facts and circumstances of the particular case to determine whether the defendant's conduct is sufficiently unfair or misleading to outweigh the public policy favoring statutes of limitations." *Id.* at 85 (internal citation omitted).

The burden of proof lies with the party seeking to invoke the doctrine of equitable estoppel. *Redwing*, 363 S.W.3d at 460 (citing *Hardcastle*, 170 S.W.3d at 85). To invoke the doctrine when a defendant has made a prima facie statute of limitations defense, a plaintiff must demonstrate that: (1) "the defendant lulled [him or her] into putting off filing [his or her] suit by conduct, suggestions, or assurances that the defendant knew or should have known would induce the plaintiff to delay filing suit," (2) "[his or her] delay in filing suit was not attributable to their own lack of diligence," and (3) "the delay was not unreasonably prolonged." *Hardcastle*, 170 S.W.3d at 85; *see also Redwing*, 363 S.W.3d at 460. Therefore, the inquiry focuses "on the defendant's conduct and the reasonableness of the plaintiffs' reliance on that conduct." *Hardcastle*, 170 S.W.3d at 85 (citing *Fahrner*, 48 S.W.3d at 146).

"Evidence of vague statements or ambiguous behavior by a defendant will not carry the day for a plaintiff asserting equitable estoppel." *Id.* Rather, "[t]he plaintiff must identify specific promises, inducements, representations, or assurances by the defendant that reasonably induced the plaintiff to delay filing suit." *Id.* Examples of conduct that has prompted a court to invoke the doctrine to defeat a statute of limitations defense include: "(1) a promise not to plead the statute of limitations; (2) a promise to pay or otherwise satisfy the plaintiff's claim without filing suit; or (3) encouraging the plaintiff not to pursue available legal remedies." *Id.* (internal citations omitted).

Here, Ms. Barrett asserts that the insurance adjuster from Mr. Garton's insurance company made "promises, representations, and assurances" to counsel for Ms. Barrett

indicating that a statute of limitations defense "would not be raised based on the timeliness of service of the Summons and Complaint." To support this assertion, Ms. Barrett relies solely on an affidavit of her attorney, George H. Rieger, II, that she submitted with her response opposing the motion for summary judgment. In particular, Ms. Barrett relies on Mr. Rieger's statement that "[a]fter filing the Complaint, [he] spoke with Defendant's insurance adjuster, and it was agreed that [he] would not serve Defendant while we continued to try to resolve the matter." Notably absent from the affidavit, however, are any details whatsoever regarding this supposed agreement between Mr. Rieger and the insurance adjuster. In fact, the affidavit is so lacking in information it even fails to include any information as to whether the "agreement" was oral or written.

Ms. Barrett believes the affidavit provides sufficient information to establish the existence of this "agreement" because paragraph six of the affidavit contains the following statement from Mr. Rieger: "Defendant's insurance adjuster has made several follow ups requesting [Ms. Barrett's Medical Release Authorizations] and I continued to reassure him I would get him the information he requested. On one such occasion, dated September 10, 2020, [the adjuster] reiterated that there was no rush on the matter." We do not believe that the insurance adjuster's statement that "there was no rush" on providing releases to receive medical records equates to "promises, representations, or assurances" of an agreement to waive the requirements of Tenn. R. Civ. P. 3. Therefore, we must conclude that it was unreasonable for Ms. Barrett and her attorney to rely upon the insurance adjuster's patience in receiving medical records as a waiver to the requirement that she issue process and serve Mr. Garton.

In sum, Ms. Barrett failed to meet her burden of proof to invoke the doctrine of equitable estoppel to prevent Mr. Garton from asserting his otherwise valid statute of limitations defense. We affirm the trial court's decision granting summary judgment to Mr. Garton.

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Theresa Barrett, for which execution may issue if necessary.

_/s/ Andy D. Bennett_____
ANDY D. BENNETT, JUDGE