

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 3, 2023

FILED 08/08/2023 Clerk of the Appellate Courts

TIMOTHY L. MORTON v. DAVIDSON COUNTY GOVERNMENT¹

**Appeal from the Circuit Court for Davidson County
No. 22C736 Don R. Ash, Senior Judge**

No. M2022-01572-COA-R3-CV

The plaintiff made a claim for the return of bond money he paid to a private bonding company to secure his release from jail for charges that were pending and then nolloed nearly 22 years before the filing of the present cause of action. The trial court dismissed the complaint for failure to state a claim for which relief can be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. The trial court held that the complaint, giving it the benefit of all reasonable inferences, fails to articulate any facts or legal authority showing a right to relief against the defendant. Further, the court determined that if the gravamen of the claim is a tort action for conversion, the claim was also properly dismissed because it would have accrued long ago and is therefore barred under the applicable one-year statute of limitations. The plaintiff appeals. We affirm.

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

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and KENNY W. ARMSTRONG, JJ., joined.

Timothy L. Morton, pro se, Gallatin, Tennessee.

Andrew D. McClanahan and Angela D. Williams, Nashville, Tennessee, for the appellee, Metropolitan Government of Nashville & Davidson County.

¹ The defendant in this action is the Metropolitan Government of Nashville and Davidson County (“Metro”).

OPINION

I. BACKGROUND

On March 21, 2000, Timothy L. Morton, plaintiff, was arrested in Sumner County after a high-speed chase that began in Davidson County. *See Morton v. State*, No. M2008-02305-COA-R3-CV, 2009 WL 3295202, at *1 (Tenn. Ct. App. Oct. 13, 2009). After Mr. Morton made bond in Sumner County, he was transported to Davidson County, where he was charged with the same offenses that he had been charged with in Sumner County – evading arrest and reckless endangerment. Public records from the Davidson County Criminal Court Clerk’s Office regarding General Sessions Case Nos. GS5461 – GS5463 reveal that on March 31, 2000, bond was set in each of these cases. Further, these records show that on April 1, 2000, Aaron Bonding Company, a private company, posted bonds in the amount of \$5,000, \$15,000, and \$15,000 in each of these cases respectively, securing Mr. Morton’s release from jail that same day. On June 5, 2000, a nolle prosequi was entered in the Davidson County proceedings and the bond was released. The records do not show that Mr. Morton posted his own bail or that the bonds posted by Aaron Bonding Company were forfeited for any reason. After Mr. Morton pled guilty to the charges pending in Sumner County, he was sentenced to four years at 30% for evading arrest and received the same sentence for reckless endangerment, both of which were ordered to run consecutively. *Id.*

In 2005, Mr. Morton filed a petition for habeas corpus, alleging that his convictions for evading arrest and reckless endangerment violated the constitutional prohibition against double jeopardy. Ultimately, the judgment for reckless endangerment was set aside and a nolle prosequi entered. A few years later, in April 2008, Mr. Morton filed a claim with the Division of Claims Administration claiming that his constitutional right against double jeopardy was violated because he was charged for the same two crimes in both Sumner and Davidson counties. He noted that he was required to post bond on the reckless endangerment charge in both counties, and that his conviction on that charge was later vacated. He sought return of the bond money he posted. Mr. Morton’s claim was transferred to the Tennessee Claims Commission. *Id.*

After the State filed a motion to dismiss pursuant to Rules 12.02(1) and (6) of the Tennessee Rules of Civil Procedure for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted, the Claims Commission dismissed the claim for lack of subject matter jurisdiction. *Id.* at *1-2. Mr. Morton appealed, and this court upheld the Claims Commission’s dismissal. *Id.* at *2-4.

On June 25, 2009, Mr. Morton filed a “Motion to Have the Conviction of Reckless Endangerment Removed for[sic] My Official Record and to be Refunded the Cost of the Bond Money Due to Double Jeopardy” in Davidson County General Sessions Court. The motion was denied and Mr. Morton did not appeal the denial.

On March 25, 2022, Mr. Morton, pro se, filed a document titled “Refund of Forfeiture Payment Upon Reversal Pertaining to GS5461 thru GS5463” with the Davidson County Criminal Court Clerk. On April 14, 2022, the Complaint was docketed in the Circuit Court, seeking the return of an unspecified amount of money Mr. Morton paid to a private bonding company to secure a bail bond for his release from jail while criminal charges were pending against him in three Davidson County General Sessions criminal cases (Case Nos. GS5461 – GS5463). Because case numbers GS5461 through GS5463 were dismissed, Mr. Morgan argues that he is entitled to a “refund of forfeiture payment.” The Complaint cites Tennessee Code Annotated sections 40-11-205 and 40-11-124 in support of the claim for a “refund,” and Mr. Morton argues that the “clerks of the courts have a duty to enforce these rules.” The Complaint acknowledges that Mr. Morton “made an appearance around this matter in this[sic] past as the records would indicate, the judge said to pursue the Bonding Company, which went [out] of business.” Mr. Morton also requests \$1,800 in accumulated interest that he calculates at 3% over a 22-year period pursuant to Tennessee Code Annotated section 9-8-307. His Complaint further seeks \$10,000 for mental anguish and stress in dealing with “the corrupt, who elected to suppress the rules and steal under the color of law.”

After Metro moved to dismiss pursuant to Rule 12.02(6) for failure to state a claim for which relief could be granted, the trial court entered an order dismissing Mr. Morton’s claims on November 3, 2022. The court found that the present cause of action is not Mr. Morton’s first attempt to collect the bond money for which he seeks reimbursement, as in 2008, Mr. Morton filed a claim for damages with the Division of Claims Administration requesting the return of the same bond money at issue here. That claim was transferred to the Claims Commission and dismissed for lack of subject matter jurisdiction; the ruling was affirmed in all aspects on appeal. The trial court also observed that on June 25, 2009, Mr. Morton filed a motion in Davidson County Criminal Court (General Sessions) seeking a refund of the same bond money at issue here. That motion was denied on July 2, 2009, and Mr. Morton did not file an appeal.

Ultimately, the trial court dismissed the claim for reimbursement of the bond payment pursuant to Rule 12.02(6), finding that it is not clearly stated and provides no authority that could provide Mr. Morton with any relief against Metro. The court observed that Mr. Morton offers no new evidence since his prior attempts that would support a claim for return of the money. Further, the trial court dismissed the claims for mental anguish and stress, finding that the injury giving rise to this cause of action occurred in the year 2000, and, therefore, the claims are barred under the one-year statute of limitations of the Tennessee Governmental Tort Liability Act (“GTLA”), found at section 29-20-305(b) of the Tennessee Code Annotated. Mr. Morton thereafter filed a timely notice of appeal.

II. ISSUE

The issue raised in this appeal by Mr. Morton is as follows:

Whether the trial court properly dismissed Mr. Morton's complaint for failure to state a claim for which relief can be granted against Metro for the return of money paid to a private bonding company to secure Mr. Morton's release from jail while criminal charges were pending that were nolle prosecuted almost 22 years before the filing of the present complaint.

III. STANDARD OF REVIEW

The standard of review on appeal of the dismissal of a complaint pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure is "de novo, with no presumption of correctness as to the court's legal conclusions, and all allegations of fact in the complaint below are taken as true." *Brown v. Ogle*, 46 S.W.3d 721, 726 (Tenn. Ct. App. 2000).

Parties who represent themselves, such as Mr. Morton, are entitled to fair and equal treatment by the courts. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903–04 (Tenn. Ct. App. 2003) (citing *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000)). However, courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. *Id.* Courts may not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995). Although papers prepared by pro se litigants should be measured using standards that are less stringent than those applied to papers prepared by lawyers, *Winchester v. Little*, 996 S.W.2d 818, 824 (Tenn. Ct. App. 1998), pro se litigants are not generally permitted to shift the burden of the litigation to the courts or to their adversaries. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1989) (internal citation omitted).

IV. DISCUSSION

Our review of the record reveals that the Complaint is devoid of allegations demonstrating a cognizable claim against Metro. There are no allegations, facts, or documents provided or referenced with specific details to the alleged bonding payment made in Davidson County, including who paid the bail or posted bond; whether there was a contract between Mr. Morton and a bondsman or surety; and what right Mr. Morton would have, if any, to the return of any bond or collateral posted for his bail. As noted above, public records reveal that Aaron Bonding Company posted a bond on Mr. Morton's behalf in the General Sessions cases referenced in his Complaint (GS5461 – GS5463) and Mr. Morton was released from jail on bond; ultimately, the charges were "nolled," and the bond was released. The Complaint provides no facts, however, as to how or why Mr.

Morton would be owed any money from the Davidson County Criminal Court Clerk's Office for the return of any money he paid to a private bonding company to post his bond. Whether Mr. Morton was entitled to the return of the money he paid to secure a bond is a contractual matter between Mr. Morton and the bonding company.

Mr. Morton's Complaint sets forth three statutes upon which he relies: Tennessee Code Annotated sections 40-11-205, 40-11-124 and 9-8-307. None of these statutes, however, provide an avenue to relief for Mr. Morton against Metro. First, section 40-11-205 provides for refund of money paid by virtue of a judgment for a "forfeited recognizance" upon the reversal of the judgment by the Supreme Court.² The Complaint does not allege that Mr. Morton paid a judgment for failing to appear at a court proceeding and then subsequently got the judgment reversed by the Supreme Court; further, the record does not support such a claim or inference.

Section 40-11-124 is a statute setting forth a requirement that clerks, sheriffs, municipal courts and other inferior courts shall have an available list of professional bondsmen; rules concerning their qualification; and to whom the lists should be furnished. Section 40-11-124 provides in full:

(a) The clerk, sheriff, municipal courts, and other inferior courts shall have available a list of professional bondsmen or other sureties approved and qualified as solvent by the courts of record with criminal jurisdiction within the county. These approved lists shall be provided by the judges of those courts. No undertaking shall be accepted unless the professional bondsman or other surety is so certified as approved. (b) In counties having a population of seven hundred seventy thousand (770,000) or more, according to the 1980 federal census or any subsequent federal census, the rules concerning the qualifications of bail bond companies as established by the criminal court of record shall be applicable in any inferior court in the county. The clerk of any such inferior court shall have the duty and the responsibility to enforce the rules.

Clearly, this statute has no provisions upon which Mr. Morton may pursue a claim against Metro.

Section 9-8-307 is a codification of the establishment of the Tennessee Claims Commission and outlines what claims may be asserted against the State of Tennessee in derogation of the general common law principle of sovereign immunity. *See generally*

² Tennessee Code Annotated section 40-11-205 provides in full: "Money paid into the treasury by virtue of a judgment of the circuit or criminal court upon a forfeited recognizance shall be refunded to the party paying the same, upon the reversal of the judgment by the supreme court, on appeal or writ of error duly prosecuted. The commission of finance and administration shall give the party a warrant for the same money upon the production of a certified copy of the judgment or reversal."

Lucas v. State, 141 S.W.3d 121 (Tenn. Ct. App. 2004) and *Shell v. State*, 893 S.W.2d 416, 418 (Tenn. 1995). This statute has no application to local governments, including Metro.

Construing the claim for the return of the bonding money as a tort claim for conversion, the trial court properly determined that this claim would fall under the purview of the GTLA. As noted by Metro, any tort claim that could be discerned from the Complaint would be time barred under the GTLA's one-year statute of limitations requiring actions to be commenced within twelve months after the cause of action arises. Tenn. Code Ann. § 29-20-305(b). It does not matter when the cause of action arose because Mr. Morton's prior litigation history establishes that, at least by April 2008, when he commenced his first lawsuit to recover the same money, he knew or should have known of any potential claim against Metro and should have attempted to advance it then. He certainly knew of this claim when he sought the return of the bond money in 2009 in the Davidson County General Sessions Court and was denied any relief. Any conceivable claim Mr. Morton may have ever had against Metro is time-barred under the GTLA's one-year statute of limitations. The claim is likewise barred under the equitable principle of laches for waiting 22 years to bring it.

V. CONCLUSION

We affirm the trial court's dismissal of Mr. Morton's Complaint and cause of action. The case is remanded and costs of this appeal assessed to the appellant Timothy L. Morton.

JOHN W. MCCLARTY, JUDGE