IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 20, 2023 Session

ROOSEVELT WALKER v. SHELBY COUNTY SHERIFF DEPARTMENT ET AL.

Appeal from the Circuit Court for Shelby County
No. CT-000623-17 Valerie L Smith, Judge

No. W2022-00466-COA-R3-CV

Plaintiff initiated this action related to the alleged misconduct of sheriff's deputies in general sessions court. After voluntarily dismissing the general sessions court action, the plaintiff appealed to the circuit court. The circuit court found that the plaintiff could not appeal a nonsuit from general sessions court and dismissed the action as barred by the applicable statute of limitations. We affirm.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN and CARMA DENNIS MCGEE, JJ., joined.

Malcolm B. Futhey, III, Memphis, Tennessee, for the appellant, Roosevelt Walker.

Michael Burnett Joiner and Megan Smith, Memphis, Tennessee, for the appellees, Matthew Keaton, Mark Laub, Shelby County Government, Shelby County Sheriff's Department.

Thomas E. Hansom and Jean E. Markowitz, Memphis, Tennessee, for the appellee, Joshua Fox.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 5, 2015, Shelby County Sheriff's officers appeared at the home of Plaintiff/Appellant Roosevelt Walker ("Plaintiff"), searching for Plaintiff's step-son. According to Plaintiff, the officers threatened him and his property if he did not permit a

search of his property. Plaintiff, a retired law enforcement officer himself, refused. Eventually, Plaintiff alleged that he was forcefully arrested and charged with "Accessory After the Fact." All criminal charges against Plaintiff were later dismissed.

On April 1, 2015, Plaintiff sued Shelby County, Tennessee and the Shelby County Sheriff's Department (collectively, "Shelby County"), as well as sheriff's officers Mark Laub, Matthew Keaton,[1] and Joshua Fox (together with Shelby County, "Appellees"), in Shelby County General Sessions Court ("general sessions court").

On January 26, 2017, Plaintiff took two actions. First, he filed a notice of nonsuit of his general sessions action.[2] Second, Plaintiff filed a notice of appeal of the general sessions matter to the Shelby County Circuit Court ("the trial court"). The case lay dormant for several months. Eventually, on October 3, 2017, Plaintiff filed an amended complaint against Appellees. The Shelby County Defendants responded with a motion to dismiss on November 1, 2017. That motion argued that the trial court lacked subject matter jurisdiction over the case because Plaintiff was not permitted to appeal his own nonsuit. The motion further asserted that the statute of limitations has expired as to Mr. Laub in particular. On November 6, 2017, Mr. Fox joined in the Shelby County Defendants' motion. Plaintiff responded in opposition to Appellees' efforts to dismiss his claims on April 10, 2018.

On April 13, 2018, Plaintiff filed a motion to amend his complaint for the second time. On September 5, 2018, the trial court granted in part and denied in part Appellees' motions to dismiss. Specifically, the trial court dismissed the claims against Mr. Laub, but declined to dismiss the claims as to the other defendants. The trial court further allowed Plaintiff to amend his complaint except as to Mr. Laub.

Plaintiff filed his second amended complaint on September 6, 2018.[3] For the first time, Plaintiff specifically alleged a claim under Tennessee Code Annotated section 8-8-302.[4] Plaintiff additionally claimed that Appellees committed malicious prosecution, false arrest and imprisonment, abuse of process, and negligent and intentional infliction of emotional distress. Plaintiff sought both compensatory and punitive damages totaling $6,000,000.00, and asked that Shelby County be held vicariously liable for the actions of

[1] In the trial court and on appeal, all defendants other than Mr. Fox are represented by the Shelby County Attorney's Office. As such, we will refer to these defendants collectively as "the Shelby County Defendants."

[2] Throughout this Opinion, we use the terms "nonsuit" and "voluntary dismissal" interchangeably. See ***Lemonte v. Lemonte***, No. M2018-02193-COA-R3-CV, 2019 WL 2157646, at *1 n.4 (Tenn. Ct. App. May 17, 2019); ***Autin v. Goetz***, 524 S.W.3d 617, 631 n.4(Tenn. Ct. App. 2017); ***Ewan v. Hardison L. Firm***, 465 S.W.3d 124, 129 n.3 (Tenn. Ct. App. 2014);

[3] Mr. Laub was still named as a defendant in this complaint, despite the trial court's order that Plaintiff file a complaint "that omits [Mr.] Laub as a defendant." The second amended complaint did note, however, that Mr. Laub had been dismissed.

[4] Although the second amended complaint was the first pleading to explicitly reference section 8-8-302, this statute was raised in response to Appellees' first motions to dismiss.

its employees. The Shelby County Defendants answered the second amended complaint on October 3, 2018, raising the applicability of the Governmental Tort Liability Act ("GTLA"), immunity, and the statute of limitations. In due course, both the Shelby County Defendants and Mr. Fox filed motions to dismiss, arguing that Plaintiff could not appeal from his own nonsuit and that the claims were barred by the applicable statute of limitations.

The trial court entered an order granting the motions to dismiss on March 17, 2022, ruling that Plaintiff could not appeal from a voluntary dismissal, that Plaintiff could not rely on the savings statute to refile his action, and that his claims in the circuit court were therefore barred by the statute of limitations.[5] Plaintiff thereafter timely appealed to this Court.

II. ISSUES PRESENTED

Plaintiff raises the following issues, which are taken from his appellate brief with minor alterations:

1. Did the circuit court err in dismissing Plaintiff's claims and ruling that a plaintiff cannot appeal a voluntary nonsuit from general sessions to circuit court pursuant to the "broad right" to appeal under the amended and broadened T.C.A. § 27-5-108(a)(1) that allows appeals "with unusual indulgence and with great liberality"?
2. Did the circuit court err in dismissing Plaintiff's claims brought under T.C.A. § 8-8-302 that has itself no express statute of limitations and where T.C.A. § 28-3-110 provides that "[a]ll other cases not expressly provided for" have a ten-year statute of limitations?

In the posture of appellee, Mr. Fox seeks attorney's fees incurred in defending against a frivolous appeal.

III. STANDARD OF REVIEW

This case was resolved by way of a motion to dismiss. The Tennessee Supreme Court has previously outlined the standard of review where a party defending an action files a motion to dismiss the plaintiff's complaint for failure to state a claim upon which relief can be granted:

[5] Respectfully, the trial court's order is not a model of clarity. As an example, many sentences are missing ending punctuation marks. The trial court also mentions the statute of limitations without ever stating what statute of limitation it is applying. Because this case was resolved on a motion to dismiss in which the trial court is under no express obligation to provide a detailed rationale for its ruling and our review is de novo with no presumption of correctness as to the trial court's ruling, we may proceed with this appeal in spite of the rather deficient order entered in this matter.

A [Tennessee Civil Procedure] Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence. ***Highwoods Props., Inc. v. City of Memphis***, 297 S.W.3d 695, 700 (Tenn. 2009); ***Willis v. Tenn. Dep't of Corr.***, 113 S.W.3d 706, 710 (Tenn. 2003); ***Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.***, 986 S.W.2d 550, 554 (Tenn. 1999); ***Sanders v. Vinson***, 558 S.W.2d 838, 840 (Tenn. 1977). The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone. ***Leggett v. Duke Energy Corp.***, 308 S.W.3d 843, 851 (Tenn. 2010); ***Trau-Med of Am., Inc. v. Allstate Ins. Co.***, 71 S.W.3d 691, 696 (Tenn. 2002); ***Cook ex rel. Uithoven v. Spinnaker's of Rivergate, Inc.***, 878 S.W.2d 934, 938 (Tenn. 1994); ***Cornpropst v. Sloan***, 528 S.W.2d 188, 190 (Tenn. 1975) (overruled on other grounds by ***McClung v. Delta Square Ltd. P'ship***, 937 S.W.2d 891, 899–900 (Tenn. 1996)). A defendant who files a motion to dismiss "'admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.'" ***Brown v. Tenn. Title Loans, Inc.***, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting ***Freeman Indus., LLC v. Eastman Chem. Co.***, 172 S.W.3d 512, 516 (Tenn. 2005)); *see* ***Edwards v. Allen***, 216 S.W.3d 278, 284 (Tenn. 2007); ***White v. Revco Disc. Drug Ctrs., Inc.***, 33 S.W.3d 713, 718 (Tenn. 2000); ***Holloway v. Putnam Cnty.***, 534 S.W.2d 292, 296 (Tenn. 1976).

In considering a motion to dismiss, courts "'must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.'" ***Tigg v. Pirelli Tire Corp.***, 232 S.W.3d 28, 31–32 (Tenn. 2007) (quoting ***Trau-Med***, 71 S.W.3d at 696); *see* ***Leach v. Taylor***, 124 S.W.3d 87, 92–93 (Tenn. 2004); ***Stein v. Davidson Hotel Co.***, 945 S.W.2d 714, 716 (Tenn. 1997); ***Bellar v. Baptist Hosp., Inc.***, 559 S.W.2d 788, 790 (Tenn. 1978); *see also* ***City of Brentwood v. Metro. Bd. of Zoning Appeals***, 149 S.W.3d 49, 54 (Tenn. Ct. App. 2004) (holding that courts "must construe the complaint liberally in favor of the plaintiff by . . . giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts"). A trial court should grant a motion to dismiss "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." ***Crews v. Buckman Labs. Int'l, Inc.***, 78 S.W.3d 852, 857 (Tenn. 2002); *see* ***Lanier v. Rains***, 229 S.W.3d 656, 660 (Tenn. 2007); ***Doe v. Sundquist***, 2 S.W.3d 919, 922 (Tenn. 1999); ***Pemberton v. Am. Distilled Spirits Co.***, 664 S.W.2d 690, 691 (Tenn. 1984); ***Fuerst v. Methodist Hosp. S.***, 566 S.W.2d 847, 848 (Tenn. 1978); ***Ladd v. Roane Hosiery, Inc.***, 556 S.W.2d 758, 759–60 (Tenn. 1977). We review the trial court's legal conclusions regarding the adequacy of the complaint de novo. ***Brown***, 328 S.W.3d at 855; ***Stein***, 945 S.W.2d at 716.

Webb v. Nashville Area Habitat for Human., Inc., 346 S.W.3d 422, 426 (Tenn. 2011).

III. DISCUSSION

A.

As we perceive it, Plaintiff first contends that the trial court erred in treating his action in the trial court as an initial action rather than a continuation of the general sessions matter by virtue of a timely appeal. Under this theory, Plaintiff argues that his claims were timely filed and should not have been dismissed. In support, Plaintiff cites the current version of Tennessee Code Annotated section 27-5-108, which provides that "Any party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with this chapter." Tenn. Code Ann. § 27-5-108(a)(1). To the extent that this dispute requires that we construe this or other statutes, we "begin with the plain, normal, and accepted meaning of the language contained within the statute." ***West v. Shelby Cnty. Healthcare Corp.***, 459 S.W.3d 33, 41 (Tenn. 2014) (citing ***Lee Med., Inc. v. Beecher***, 312 S.W.3d 515, 526 (Tenn. 2010)). "If the language is clear, we must apply that plain meaning. . . . If ambiguity exists, we may look to legislative history and other sources to ascertain the General Assembly's purpose." ***Id.*** (citing ***Thurmond v. Mid-Cumberland Infectious Disease Consultants, PLC***, 433 S.W.3d 512, 517 (Tenn. 2014); ***Mills v. Fulmarque, Inc.***, 360 S.W.3d 362, 368 (Tenn. 2012)). Issues involving the construction of statutes and their application to facts involve questions of law that are not entitled to a presumption of correctness. ***Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.***, 87 S.W.3d 67, 74 (Tenn. 2002).

According to Plaintiff, the plain language of section 27-5-108(a)(1) should be interpreted to allow a party to a general sessions court action a broad right to appeal, as evidenced by a 2008 amendment to the statute which removed the requirement that any appealed order be adverse to the appellant. *See* 2008 Tenn. Laws Pub. Ch. 756 (S.B. 2786), eff. July 1, 2008; *see also* Tenn. Code Ann. § 27-5-108(a)(1) (2007) ("Any party may appeal from *an adverse decision* of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the provisions of this chapter.") (emphasis added). He further argues that allowing an appeal of a nonsuit comports with the mandate that courts treat appeals from general sessions courts "with unusual indulgence and with great liberality so that the ends of justice may be reached." ***Spencer v. Dixie Finance Co.***, 327 S.W.2d 301, 303, 9 McCanless 485, 491 (Tenn. 1959).

Thus, Plaintiff contends that he was well within his rights to appeal the general sessions court's resolution regardless of the fact that it ended by voluntary dismissal. Indeed, Plaintiff contends that this Court has tacitly approved this practice in a prior case. *See* ***Stewart v. Cottrell***, 255 S.W.3d 582, 584 (Tenn. Ct. App. 2007) (involving an action where the plaintiffs appealed the dismissal of their case after a nonsuit in general sessions

court). And because the general sessions court action was timely filed, Plaintiff argues that the trial court erroneously dismissed this action as untimely.

As an initial matter, we conclude that ***Stewart*** is inapposite and does not resolve the dispute in this case. In ***Stewart***, the plaintiffs filed a general sessions action that they later voluntarily dismissed. ***Id.*** at 583. Due to a clerical error, however, the case was not immediately dismissed. The case lay dormant for many months until the defendant in a separate case filed a motion to consolidate the two cases. The general sessions court dismissed the case prior to a hearing on the consolidation issue. ***Id.*** at 583–84. The plaintiffs then appealed the dismissal of their case to the circuit court. ***Id.*** at 584. The defendant filed a motion to dismiss, not on the basis that no appeal could be filed from a nonsuit, but on the basis that the appeal from the general sessions court was untimely. The circuit court agreed, and an appeal to this Court followed. ***Id.***

On appeal, the sole issue for review was whether the plaintiffs' appeal was timely. The Court concluded that it was, and therefore reversed the dismissal of the appeal and remanded the matter back to the circuit court. ***Id.*** at 585. It does not appear that the question of whether a plaintiff could appeal his or her own nonsuit was ever raised by the parties; as a result, it was not discussed by the Court. And "[i]t is axiomatic that judicial decisions do not stand for propositions that were neither raised by the parties nor actually addressed by the court." ***Staats v. McKinnon***, 206 S.W.3d 532, 550 (Tenn. Ct. App. 2006) (citing ***Shousha v. Matthews Drivurself Serv., Inc.***, 210 Tenn. 384, 390, 358 S.W.2d 471, 473 (Tenn. 1962)). So unfortunately, ***Stewart*** simply offers no authority for Plaintiff's argument that an appeal of a nonsuit is authorized by section 27-5-108(a)(1).

Turning back to section 27-5-108(a)(1), Appellees argue that the trial court correctly treated Plaintiff's circuit court action as a new or refiled action because he did not have the right to appeal his own voluntary dismissal under the statute. In support, Appellees argue that persuasive federal law supports their position and that a nonsuit is not a "decision" as required by section 27-5-108(a)(1). We begin with the federal law cited on this subject, which may be persuasive in this Court when interpreting rules similar to our own. *See* ***Webb***, 346 S.W.3d at 430 (citing ***Harris v. Chern***, 33 S.W.3d 741, 745 n. 2 (Tenn. 2000)).

In ***Management Investors v. United Mine Workers of America***, 610 F.2d 384 (6th Cir. 1979), the plaintiff took and was granted a voluntary nonsuit of the entirety of its action filed in district court. ***Id.*** at 393. The plaintiff nevertheless appealed from that final judgment on the basis that the trial court's earlier dismissal of the plaintiff's pendent state claims was erroneous. The defendant argued that the nonsuit deprived the plaintiff of standing to appeal any of the trial court's earlier rulings. The United Stated Court of Appeals for the Sixth Circuit agreed, noting "the general rule . . . that a plaintiff who has requested and been granted or agreed to a voluntary dismissal of his action without prejudice cannot maintain or prosecute an appeal from the order of dismissal." ***Id.*** (citing ***Le Compte v. Mr. Chip, Inc.***, 528 F.2d 601, 603 (5th Cir. 1976); ***Scholl v. Felmont Oil***

Corp., 327 F.2d 697, 700 (6th Cir. 1964); ***Kelly v. Great Atlantic & Pacific Tea Company***, 86 F.2d 296 (4th Cir. 1936); Annot. 23, A.L.R.2d § 2, p. 664; 5 *Moore's Federal Practice* 41.05(3), at 41–79 (2d ed. 1978)). Quoting the United States Court of Appeals for the Fourth Circuit, the Sixth Circuit explained that

> [A]lthough a voluntary nonsuit is a final termination of the action, it has been entered at the request of plaintiff, and he may not, after causing the order to be entered, complain of it on appeal. For this reason, it is well settled in the federal courts that no appeal lies from a judgment of voluntary nonsuit.

Management, 610 F.2d at 393 (quoting ***Kelly***, 86 F.2d at 296–97). Moreover, the court offered the following explanation of the rationale behind this rule:

> This can easily be understood since the plaintiff has acquired that which he sought, the dismissal of his action and the right to bring a later suit on the same cause of action, without adjudication of the merits. The effect of this type of dismissal is to put the plaintiff in a legal position as if he had never brought the first suit.

Id. (citing ***Le Compte***, 528 F.2d at 603 (citing ***Maryland Casualty Co. v. Latham***, 41 F.2d 312, 313 (5th Cir. 1930); ***Humphreys v. United States***, 272 F.2d 411, 412 (9th Cir. 1959))).

The effect of a nonsuit being that the plaintiff is put "in a legal position as if he had never brought the first suit" is similar under Tennessee's voluntary dismissal jurisprudence. As the Tennessee Supreme Court explained in ***Himmelfarb v. Allain***, 380 S.W.3d 35 (Tenn. 2012),

> When a voluntary nonsuit is taken, the rights of the parties are not adjudicated, and *the parties are placed in their original positions prior to the filing of the suit.* The case may be refiled subject to the applicable statutes of limitations. *See, e.g.*, ***Crowley v. Thomas***, 343 S.W.3d 32, 34–35 (Tenn. 2011) ("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."); *see also Black's Law Dictionary* 537 (9th ed. 2009) (defining dismissal without prejudice).

Id. at 40; *see also* ***Justice v. Craftique Constr., Inc.***, No. E2019-00884-COA-R3-CV, 2021 WL 142146, at *3 (Tenn. Ct. App. Jan. 15, 2021) ("A plaintiff's voluntary nonsuit 'terminates the action without an adjudication of the merits' and leaves the parties 'as if no action had been brought at all.'" (quoting 27 C.J.S. *Dismissal and Nonsuit* § 11 (2020)));[6]

[6] The ***Justice*** opinion quotes two federal cases as authority for this proposition, indicating that

Jasinskis v. Cameron, No. M2019-01417-COA-R3-CV, 2020 WL 2765845, at *6 (Tenn. Ct. App. May 27, 2020) ("The Guzmans' nonsuit of all of their claims against Clark and the trial court's order that the claims were dismissed without prejudice placed the parties back where they were before the Guzmans filed their lawsuit against Clark . . . ." (citing ***Himmelfarb***, 380 S.W.3d at 40)). *But see* ***Reliance Ins. Co. v. Mackey***, No. M2003-03106-COA-R3-CV, 2004 WL 2636706, at *4 (Tenn. Ct. App. Nov. 18, 2004) ("A voluntary dismissal remains of record as does the complaint it dismisses. The dismissal does not vitiate the fact that the action was commenced. Indeed, the complaint remains of record, though dismissed, unlike criminal charges that have been expunged. . . . To hold that the voluntary dismissal of a civil action equates to the action never having been filed requires a strained reading of the statute, which is inappropriate.").

Of course, the ***Himmelfarb*** panel was considering a nonsuit taken under Rule 41 of the Tennessee Rules of Civil Procedure. *See generally* Tenn. R. Civ. P. 41.01. Except in certain excepted circumstances, the Tennessee Rules of Civil Procedure do not apply in the general sessions court. ***Mott v. Luethke***, 633 S.W.3d 585, 592 (Tenn. Ct. App. 2021), *perm. app. denied* (Tenn. July 13, 2021). Instead, a plaintiff's right to take a nonsuit in general sessions court is conferred by statute. *See generally* Tenn. Code Ann. § 28-1-105 (applying the savings statute to general sessions court judgments and decrees); Tenn. Code Ann. § 28-1-114(c) ("Any counterclaim, cross-claim, or third party complaint arising from an action or suit originally commenced in general sessions court and subsequently recommenced as an original action or as a counterclaim, cross-claim or third party complaint pursuant to this section in circuit or chancery court according to the provisions of § 28-1-105, shall not be subject to the monetary jurisdictional limit originally imposed in general sessions court."). But this Court has held that cases interpreting Rule 41 are persuasive in considering nonsuits taken in general sessions court. *See* ***Stewart v. Cottrell***, 255 S.W.3d 582, 585 (Tenn. Ct. App. 2007) ("Although the Tennessee Rules of Civil Procedure are not applicable to general sessions court, their logic is persuasive." (internal quotation marks and citations omitted) (citing ***Christopher v. Spooner***, 640 S.W.2d 833, 836 (Tenn. Ct. App. 1982))). We therefore held that "[i]n the absence of any other relevant authority, we will apply the principles of Rule 41 of the Tennessee Rules of Civil Procedure to resolve this dispute." ***Id.***

Plaintiff notes, however, that the de novo scope of review in general sessions court appeals means that such appeals should not be treated in the same manner as appeals to this Court. It is true that appeals to circuit court from general sessions court are de novo with no presumption of correctness as to the general sessions court's judgment. *See* Tenn. Code Ann. § 27-5-108(c). But this Court also reviews many issues under a de novo standard. *See, e.g.*, ***Bidwell ex rel. Bidwell v. Strait***, 618 S.W.3d 309, 318 (Tenn. 2021).

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federal law is, in fact, persuasive on this topic. *See* ***id.*** (citing ***Nat'l R.R. Passenger Corp. v. Int'l Ass'n of Machinists & Aerospace Workers***, 915 F.2d 43, 48 (1st Cir. 1990); ***Bryan v. Smith***, 174 F.2d 212, 214 (7th Cir. 1949)).

Even when our review is de novo, however, the trial judge must decide the issue in the first instance in order for an appealable issue to be created. *Cf.* ***Farmers Mut. of Tennessee v. Atkins***, No. E2011-01903-COA-R9-CV, 2012 WL 982998, at *4 (Tenn. Ct. App. Mar. 21, 2012) (vacating the grant of an interlocutory appeal on an issue of law where the trial court did not actually decide the issue). We concede, however, that the de novo review in circuit court of a general sessions court judgment is "a full evidentiary hearing akin to a new trial," rather than the review of the record that this Court performs. ***State ex rel. Groesse v. Sumner***, 582 S.W.3d 241, 260 (Tenn. Ct. App. 2019) (quoting ***In re Zamorah B.***, No. M2011-00864-COA-R3-JV, 2013 WL 614449, at *4 (Tenn. Ct. App. Feb. 15, 2013)); *see also* ***Reid v. Reid***, 388 S.W.3d 292, 294 (Tenn.Ct.App.2012) (noting that this Court "cannot hear proof and decide the merits of the parties' allegations in the first instance"). So Plaintiff is correct that the scope of review in an appeal to circuit court is markedly different than an appeal to this Court.

But the very nature of an appeal implies that there must be *something* to review. *See* Appeal, *Black's Law Dictionary* (9th ed. 2009) (defining appeal as "[t]o seek review (from a lower court's decision) by a higher court"). And despite the expanded scope of review allowed in appeals from general sessions court, we must conclude that the plain language of section 27-5-108(a)(1) preserves this requirement. As previously discussed, the 2008 amendment changed the language of section 27-5-108(a)(1) to remove the necessity of an adverse decision; a "decision", however is still required by the statute. The term decision is not defined by the statute. Mr. Fox contends that Tennessee caselaw suggests that a nonsuit is not a "decision" because it does not emanate from the trial judge but from the decision of the plaintiff, citing ***Kittrelle v. Philsar Development Co.***, 359 S.W.2d 837 (Tenn. Ct. App. 1962). We note, however, that ***Kittrelle*** involved construction of a different statute involving the timeliness of a petition to rehear a decision and therefore is little help here. ***Id.*** at 90.

Instead, we believe that the dictionary definition of "decision" is most helpful. As an initial matter, we note that it is permitted for courts to consult dictionary definitions in order to define words in statutes that are not expressly defined. *See* ***McGarity v. Jerrolds***, 429 S.W.3d 562, 578 (Tenn. Ct. App. 2013) (citing ***State v. Majors***, 318 S.W.3d 850, 859 (Tenn. 2010)); *see also* 82 C.J.S. *Statutes* § 415 ("If the statute does not sufficiently define a word used therein, the court may consider all known definitions of the word, including dictionary definitions, in order to determine the plain and ordinary meaning of the word." (footnotes omitted)). *Black's Law Dictionary* defines the term "decision" as follows: "[a] judicial or agency determination after consideration of the facts and the law; esp[ecially], a ruling, order, or judgment pronounced by a court when considering or disposing of a case." Decision, *Black's Law Dictionary* (9th ed. 2009). Thus, the general definition for the term "decision" implies some decision-making on the part of the tribunal. And we must presume that the Tennessee General Assembly chose to employ the term "decision" over a more general term, such as order or judgment. *See* ***Hardcastle v. Harris***, 170 S.W.3d 67, 88 (Tenn. Ct. App. 2004) (noting that we "presume[e] that the General Assembly chose its

words purposely and deliberately" (citing ***Tidwell v. Servomation-Willoughby Co.,*** 483 S.W.2d 98, 100 (Tenn. 1972))). Giving the term "decision" its ordinary meaning, we must conclude that the General Assembly intended that appeals under section 27-5-108(a)(1) would only lie from a judgment resulting from a general sessions court's decision-making.

When a plaintiff takes a nonsuit as of right, however, the extinguishment of the action "is not dependent upon the determination of the trial judge." ***Rickets v. Sexton***, 533 S.W.2d 293, 294 (Tenn. 1976). Rather,

> [t]he lawyer for the plaintiff is the sole judge of the matter and the trial judge has no control over it. It is not necessary that he approve the action of plaintiff's counsel by signing any order; nor may he nullify the rules by an order 'disallowing' the nonsuit. All that is required to dismiss prior to the trial, in the absence of the existence of any of the exceptions above noted, is the filing of a written notice of dismissal.

Id. As such, when Plaintiff voluntarily dismissed his action as of right, there was no "decision" needed from the trial court, only a confirmatory order reflected on the minutes of the court. *See* ***Autin v. Goetz***, 524 S.W.3d 617, 632 (Tenn. Ct. App. 2017) (citing ***Parker v. Vanderbilt Univ.***, 767 S.W.2d 412, 422 n.3 (Tenn. Ct. App. 1988); ***Evans v. Perkey***, 647 S.W.2d 636 (Tenn. Ct. App. 1982)). Section 27-5-108(a)(1) therefore does not confer on a plaintiff the right to appeal his or her own voluntary dismissal of a general sessions court action. Instead, the plaintiff is left with the same recourse as any other plaintiff who voluntarily dismisses its case: the option to refile under the savings statute, where applicable. *See* Tenn. Code Ann. § 28-1-105.

And even if we were to assume arguendo that the General Assembly's failure to expressly define the term "decision" renders the statute ambiguous, the legislative history surrounding the 2008 amendment to section 27-5-108(a)(1) confirms that the purpose of the amendment was not to allow appeals of non-suits. *See* ***Thurmond***, 433 S.W.3d at 517 (holding that the court can look to the legislative history of a statute only if it is ambiguous). Instead, the purpose of the bill was to allow a party to appeal a decision in which they prevailed but were not awarded all of their requested damages. For example, during the March 18, 2008 House Civil Practice and Procedure Subcommittee session, the sponsor of the bill described its purpose as

> [b]asically broadening the appeal rights of general sessions court to circuit court. Currently a person can appeal a judgment from general sessions court to the appropriate circuit court, but they can only appeal it if they get a judgment adverse to their claim. Therefore, if a plaintiff received a favorable decision but thought the award was too small, they could not appeal. This bill would change a couple of words that would allow that particular person to appeal an unfavorable ruling to a circuit court.

Similarly, when asked during the April 3, 2008 session why parties would want to appeal "a positive judgment," Representative David Shepard responded that the current version of the statute "doesn't take into consideration a settlement that is offered; now you can appeal the award if it's too small." Accordingly, while a broadening of the right to appeal was intended by the Tennessee General Assembly, it is clear that allowing a party to appeal from a nonsuit was simply not contemplated or considered by our legislature when it adopted the 2008 amendment.

In sum, the effect of a non-suit is that the parties are placed in the same position as they were prior to the filing of the lawsuit. As a result, no decision from which an appeal can lie is rendered by the judge. These authorities lead us to conclude that section 27-5-108(a)(1) simply does not confer on a plaintiff the right to appeal from his or her own nonsuit. The trial court therefore did not err in failing to treat Plaintiff's claims in the circuit court as merely a continuation of his general sessions court action by virtue of a timely filed and properly perfected appeal pursuant to section 27-5-108(a)(1).

B.

Plaintiff next argues that even if this case should not be considered a timely appeal from a general sessions court decision, his action under Tennessee Code Annotated section 8-8-302 against the individual defendants should not have been dismissed because it was filed within the general ten-year statute of limitation applicable to that statute. Section 8-8-302 specifically provides as follows:

> Anyone incurring any wrong, injury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of or under color of the office.

Despite the enactment of the GTLA, section 8-8-302 remains a viable cause of action when dealing with the "misconduct of sheriff's deputies, except to the extent that T.C.A. §§ 8-8-301, *et seq.*, could extend to actions for negligence under T.C.A. § 29-20-205." ***Jenkins v. Loudon Cnty.***, 736 S.W.2d 603, 609 (Tenn. 1987), *abrogated on other grounds by* ***Limbaugh v. Coffee Med. Ctr.***, 59 S.W.3d 73 (Tenn. 2001).

This Court has previously recognized that section 8-8-802 contains no express statute of limitations. *See* ***Cross v. Shelby Cnty.***, No. W2005-01231-COA-R3-CV, 2006 WL 1005168, at *5 (Tenn. Ct. App. Apr. 18, 2006). Although we declined to address the issue of what statute of limitations should apply to a claim under section 8-8-302, we encouraged the Tennessee General Assembly to consider this issue. ***Id.*** It does not appear that it has. Instead, Plaintiff cites a 1984 Tennessee Attorney General's Opinion that he

asserts opines that the general ten-year statute of limitations may apply to such an action. *See* Tenn. Op. Atty. Gen. No. 84-121, 1984 WL 186183, at *11 (1984) (applying Tenn. Code Ann. § 28-3-110 (providing that "all other cases not expressly provided for" shall be governed by a ten-year statute of limitations)). Applying a ten-year statute of limitations, Plaintiff argues that his claims against all defendants under section 8-8-302 were timely and should not have been dismissed.

As an initial matter, while opinions of the Attorney General are only persuasive authority, *see* ***Brown v. Knox Cnty.***, 39 S.W.3d 585, 589 (Tenn. Ct. App. 2000), we nevertheless conclude that Plaintiff misconstrues the reasoning employed in the cited opinion. In that opinion, the questioner had already obtained a judgment against Cocke County sheriff's deputies in a federal civil rights action. When discussing the federal civil rights action, the opinion appears to apply the personal injury statute of limitations under Tennessee Code Annotated section 28-3-104(a), which is one year. The action that the Attorney General opined would be subject to the ten-year statute of limitations was not a personal injury action under section 8-8-302, but an action against the county to collect on the judgment obtained in the federal action. Tenn. Op. Atty. Gen. No. 84-121, 1984 WL 186183, at *11. As the Attorney General explained:

> The Tennessee Supreme Court has recognized that, when an individual has obtained a judgment against county deputies sheriff in a civil rights case in Federal court for personal injuries caused by the deputies' actions, he may then bring an action on that judgment consistent with T.C.A. 8-8-302 and 8-8-303 against the deputies' county in the circuit court of that county, even though the county was not a party to the Federal court suit when the judgment was rendered, but the county must be allowed in the suit in the State trial court suit on the Federal court judgment to litigate liability and damages. ***Grundy County v. Dyer***, [] 546 S.W.2d 577[,] 581–582 (Tenn. 1977).
>
> Although no statute of limitations is specified in T.C.A. 8-8-302 or 8-8-303 for an action brought under those statutes, T.C.A. 28-3-110 provides in pertinent part that "The following actions shall be commenced within ten (10) years after the cause of action accrued: * * * (2) Actions on judgments and decrees of courts of record of this or any other state or government; and (3) All other cases not expressly provided for." An action on a judgment accrues on the date of its rendition in trial court, and the period in which to sue on the judgment is pending. ***Shepard v. Lanier***, 192 Tenn. 608, 615–621, 241 S.W.2d 587 (1951).
>
> Therefore, we conclude that the period of the statute of limitations on the action against Cocke County, under T.C.A. 8-8-302 and 8-8-303 on the judgment in the aforesaid Federal Court case is ten years, commencing on the date it was rendered, August 20, 1981.

Id. at *10–11. Thus, while the language concerning "other cases not expressly provided for" was cited in an offhanded manner, it is clear that the nature of the action as a collection on a judgment was the central reason that the ten-year statute of limitations was applicable in that particular circumstance.

The above Attorney General's opinion is therefore entirely consistent with a recent case concerning this issue, ***Anderson v. Lauderdale Cnty.***, No. W2022-00332-COA-R3-CV, 2023 WL 2138382, at *1 (Tenn. Ct. App. Feb. 21, 2023), *perm app. filed* (April 3, 2023).[7] In ***Anderson***, the plaintiff sued Lauderdale County and one of its sheriff's deputies based on allegations that the deputy assaulted, threatened, and falsely charged him with various crimes. ***Id.*** at *1. The incident occurred on February 8, 2020, and the complaint was filed on August 9, 2021, more than a year later. The complaint specifically alleged that the county was liable for the deputy's actions under section 8-8-302. The plaintiff later filed an amended complaint omitting the claims of intentional conduct, but continuing to assert that the claims arose under section 8-8-302. The county filed a motion to dismiss on the basis that the claim was barred by the one-year statute of limitations. The plaintiff voluntarily dismissed the claims against the deputy, and the trial court granted the county's motion to dismiss.

On appeal, the plaintiff raised a somewhat different argument than the one Plaintiff raises in this case: that his claims were governed by either the six-year statute of limitation under Tennessee Code Annotated section 28-3-109(a)(2) for claims against sheriffs or the two-year statute of limitations under Tennessee Code Annotated section 28-3-104(a)(2) for claims against law enforcement officers in which the officer has been criminally prosecuted. ***Id.*** at *4. In order to resolve this dispute, this Court explained that it was required to consider the gravamen of the complaint. ***Id.*** at *2 (citing ***Redwing v. Cath. Bishop for Diocese of Memphis***, 363 S.W.3d 436, 457 (Tenn. 2012) ("The choice of the correct statute of limitations is made by considering the gravamen of the complaint." (quotation marks omitted) (quoting ***Whaley v. Perkins***, 197 S.W.3d 665, 670 (Tenn. 2006))); *see also* ***Benz-Elliott v. Barrett Enters., LP***, 456 S.W.3d 140, 149 (Tenn. 2015) ("[I]n choosing the applicable statute of limitations, courts must ascertain the gravamen of each claim, not the gravamen of the complaint in its entirety.").

After reviewing the claims contained in the amended complaint, the court ruled that they "suggest claims for intentional torts of assault, false imprisonment, malicious prosecution, abuse of process, and perhaps intentional infliction of emotional distress." ***Anderson***, 2023 WL 2138382, at *4. As such, we concluded that the trial court correctly

[7] ***Anderson*** was issued following oral argument in this case. All parties were asked to submit supplemental briefs on the effect, if any, of the ***Anderson*** opinion on the issues in this case. *See* ***State v. Bristol***, 654 S.W.3d 917, 924 (Tenn. 2022) (cautioning courts to avoid deciding issues to which the parties have not had the opportunity to respond unless a recognized exception exists).

held that the one-year statute of limitations for personal injuries was correctly applied by the trial court:

> The trial court correctly held that these causes of actions are governed by the one-year statute of limitations period outlined in Tenn. Code Ann. § 28-3-104(a)(1). *See* ***Warwick v. Warwick***, No. E2011-01969-COA-R3-CV, 2012 WL 5960850, at *17 (Tenn. Ct. App. Nov. 29, 2012) (concluding that one-year statute of limitations period applicable to tort actions for personal injury applies to claims for abuse of process and intentional infliction of emotional distress). Federal courts examining Tenn. Code Ann. § 8-8-302 have looked to the gravamen of the complaint to determine the appropriate statute of limitations period and have also settled on a one-year statute of limitations period. *See* ***Lovingood v. Monroe Cnty.***, No. 3:19-CV-00009-DCLC, 2021 WL 2338832, at *1, 6 (E.D. Tenn. June 8, 2021) (finding a one-year statute of limitations period applied to plaintiff's allegations that deputies "beat him while handcuffed"); ***Clark v. Clawson***, No. 3:20-cv-00230, 2021 WL 37675, at *4, n.2 (M.D. Tenn. Jan. 5, 2021) (examining the gravamen of the claim and applying a one-year statute of limitations applicable to claims arising under 42 U.S.C. §§ 1983 and 1985). Plaintiff's claims brought against Lauderdale County are predicated on personal injury tort claims; therefore, pursuant to Tenn. Code Ann. § 28-3-104(a)(1), the claims are time-barred because they were brought more than one year after the cause of action accrued.

Anderson, 2023 WL 2138382, at *4. The court further rejected the plaintiff's claims that the two other cited statutes applied, noting that section 28-3-109(a)(2) only applied to the sureties of sheriffs and that section 28-3-104(a)(2) was inapplicable because the county was not criminally prosecuted as required under that statute. ***Id.*** at *4–5. So we affirmed the trial court's ruling that the claim under section 8-8-302 was filed outside the one-year statute of limitations.

Plaintiff argues, however, that ***Anderson*** was incorrectly decided because the ***Redwing*** gravamen of the complaint analysis is applicable only to common law claims, rather than statutory claims. But Plaintiff points to no legal authority in support of this argument other than the fact that ***Redwing*** involved a common law claim. We note, however, that this Court has previously employed the gravamen of the complaint framework even when considering statutory claims. *See, e.g.*, ***In re Est. of Freeman***, No. M2018-02131-COA-R3-CV, 2020 WL 4210936, at *5 (Tenn. Ct. App. July 22, 2020) (considering a claim involving breach of trust under various statutes); ***Snake Steel, Inc. v. Holladay Constr. Grp., LLC***, No. M2019-00322-COA-R3-CV, 2020 WL 365304, at *6 (Tenn. Ct. App. Jan. 22, 2020) (holding that the gravamen of a claim under the Prompt Pay Act was for a penalty and the one-year statute of limitations for actions involving statutory penalties governed the claim), *aff'd in part, rev'd in part*, 625 S.W.3d 830, 836 (Tenn.

2021) ("In this appeal, the parties do not dispute the holding of both the trial court and the Court of Appeals that the one-year statute of limitations . . . applies to Snake Steel's penalty claim."). Indeed, as cited as persuasive authority in ***Anderson***, federal courts have employed this framework to determine the proper statute of limitations for the very statute as issue here. *See* ***Anderson***, 2023 WL 2138382, at *4 (collecting cases); *see also* ***Spence v. Miles Lab'ys, Inc.***, 37 F.3d 1185, 1189 (6th Cir. 1994) ("Because § 68-32-102 does not reference a statute of limitations or repose, we look to the 'gravamen' of the action, rather than any designation as either contract or tort, in determining what limitations period is controlling."). Nothing in Plaintiff's argument convinces us that we were incorrect to apply the gravamen of the complaint analysis in ***Anderson***.

Plaintiff next argues that Appellees waived any argument that the proper statute of limitations for claims under section 8-8-302 should not be ten years because they did not address this issue in their responsive brief. In many cases, however, an appellee only waives an argument when it is seeking affirmative relief. *See* ***Forbess v. Forbess***, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (holding that the appellee husband waived arguments seeking affirmative relief that he did not properly designate as issues). Here, Appellees were successful in their argument that this case was barred by a one-year statute of limitations. Although the trial court's order lacked specificity as to the particular statute of limitations it was applying, given Appellees' arguments, it is clear that the trial court agreed that a one-year statute of limitations was applicable and accordingly, dismissed all of Plaintiff's claims, which necessarily includes his claim under section 8-8-302. As such, Appellees were not seeking affirmative relief on this issue and waiver is inapplicable. Thus, while we will not find a waiver under the particular circumstances of this case, we advise other appellees not to take such a risk in the future.

Returning to ***Anderson***, we conclude that the reasoning is sound and should be applied in this case. As such, we turn to consider the allegations against Appellees contained in the amended complaint. The second amended complaint did not contain any factual allegations that were particular to the section 8-8-302 claim. Instead, this claim referenced the earlier general allegations of the complaint. In relevant part, Plaintiff alleged that Appellees "maliciously, intentionally, fraudulently, or recklessly": (1) threatened Plaintiff with arrest and destruction of his property; (2) forcefully arrested Plaintiff; (3) forcefully wrenched Plaintiff's arm and tightly handcuffed him; (4) shoved him into a patrol car; (5) ignored pleas that he be handled less roughly due to a preexisting injury; (6) humiliated Plaintiff; and (7) charged him with unfounded criminal charges, which were later dismissed after Plaintiff was forced to hire an attorney. Like in ***Anderson***, these allegations "suggest claims for intentional torts of assault, false imprisonment, malicious prosecution, abuse of process, and perhaps intentional infliction of emotional distress." ***Anderson***, 2023 WL 2138382, at *4. Indeed, in this case, Plaintiff references these same allegations for exactly those claims in his second amended complaint.[8] As such, we follow

[8] Plaintiff also raises a claim for negligent infliction of emotional distress. As we explained in

the logic of the ***Anderson*** panel to hold that Plaintiff's claim under section 8-8-302 is governed by the one-year limitations period applicable to "injuries to the person, false imprisonment, [and] malicious prosecution[.]" Tenn. Code Ann. § 28-3-104(a)(1)(A).

Here, the second amended complaint, the first to specifically raise a claim under section 8-8-302, was filed on September 6, 2018. Even assuming arguendo that a section 8-8-302 claim was raised in Plaintiff's first complaint filed in the trial court, it was filed on October 3, 2017. The incident that was the catalyst for this action, however, occurred on April 5, 2015. Thus, both complaints filed in the trial court were filed more than one year after the cause of action against Shelby County accrued. As such, even treating these complaints as initial filings, as Plaintiff suggests, they were filed well outside the applicable statute of limitations. The trial court therefore did not err in dismissing this claim.[9]

C.

In his reply brief, Plaintiff raises a host of other arguments. Plaintiff's supplemental briefing on the ***Anderson*** case is illustrative of this issue. Specifically, Plaintiff asserts that he raised "three primary arguments in support of overturning the [trial] court's dismissal of [his] claims:

> 1. The Savings Statute (T.C.A. § 28-1-105) preserves [Plaintiff's] T.C.A. § 8-8-302 claims refiled in his first amended complaint.
> 2. A plaintiff can appeal a voluntary nonsuit in general sessions to circuit court pursuant to the "broad right" to appeal under the amended and broadened T.C.A. § 27-5-108(a)(1) that allows appeals "with unusual indulgence and with great liberality."
> 3. T.C.A. § 8-8-302 claims against Deputies have a ten-year statute of limitations under T.C.A. § 28-3-110.

In the argument section of Plaintiff's reply brief, he argues that the savings statute should be applied to save his section 8-8-302 claims because the saving statute can apply to that claim, or at least, should apply to the claims against the individual defendants.

As noted, above, however, only issues two and three were actually raised as issues in Plaintiff's initial brief. In fact, Plaintiff's initial brief does not appear to argue in any way that his filing in the trial court constituted a refiling under the savings statute; he does not reference the savings statute or section 28-1-105 even a single time in his initial brief.

Anderson, "the GTLA supersedes Tenn. Code Ann. § 8-8-301 *et seq.* regarding actions for negligent conduct." ***Anderson***, 2023 WL 2138382, at *2 (quoting ***Siler v. Scott***, 591 S.W.3d 84, 98–99 (Tenn. Ct. App. 2019)). As such, to the extent that the second amended complaint alleges negligence against Shelby County, the express one-year GTLA statute of limitation is applicable. *See* Tenn. Code Ann. § 29-20-305(b). As such, the result is the same.

[9] All other issues concerning the dismissal of Plaintiff's claims are pretermitted.

Nor did Plaintiff argue in any way in his initial brief that the claims against the individual defendants should be considered separately from the claims against Shelby County.

"We consider an issue waived where it is argued in the brief but not designated as an issue." ***Childress v. Union Realty Co.***, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002). Additionally, reply briefs are generally not a vehicle to correct deficiencies in initial briefs. ***Augustin v. Bradley Cnty. Sheriff's Off.***, 598 S.W.3d 220, 227 (Tenn. Ct. App. 2019). Here, Plaintiff waited until his reply brief to raise these contentions as either issues or arguments. As such, they are waived.

D.

Finally, Mr. Fox asks that this Court to award him attorney's fees incurred in defending against a frivolous appeal. Tennessee Code Annotated section 27-1-122 provides as follows:

> When it appears to any reviewing court that the appeal from any court of record is frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

This statute recognizes that parties should not be forced to bear the cost and vexation of baseless appeals. ***Davis v. Gulf Ins. Grp.***, 546 S.W.2d 583, 586 (Tenn. 1977). "An appeal is deemed frivolous if it is devoid of merit or if it has no reasonable chance of success." ***Wakefield v. Longmire***, 54 S.W.3d 300, 304 (Tenn. Ct. App. 2001). "Determining whether to award these damages is a discretionary decision." ***Young v. Barrow***, 130 S.W.3d 59, 66–67 (Tenn. Ct. App. 2003) (citing ***Banks v. St. Francis Hosp.***, 697 S.W.2d 340, 343 (Tenn. 1985)). Although we have not ruled in Plaintiff's favor, we do not deem this appeal frivolous. As such, we decline to award damages under section 27-1-122.

V. CONCLUSION

The judgment of the Shelby County Circuit Court is affirmed, and this cause is remanded to the trial court for further proceedings as may be necessary and consistent with this Opinion. Costs of this appeal are taxed to Appellant Roosevelt Walker, for which execution may issue if necessary.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE