IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 10, 2023 Session

KIMBERLY D. FISHER, ET AL. v. GARRISON SMITH, M.D., ET AL.

Appeal from the Circuit Court for Madison County
No. C-21-158 Kyle C. Atkins, Judge

No. W2022-00779-COA-R3-CV

This appeal arises from a health care liability action. The plaintiffs filed their complaint against a physician and a surgical practice after the expiration of the statute of limitations, relying on the 120-day extension under Tennessee Code Annotated section 29-26-121(c). However, the physician was not employed by the surgical practice during the treatment at issue but was employed by a governmental entity that was not named as a defendant. Both the physician and the surgical practice filed motions to dismiss, which were ultimately treated as motions for summary judgment due to consideration of matters outside the pleadings. Afterward, the plaintiffs filed a motion for leave to amend their complaint to substitute parties. Pursuant to section 29-20-310(b) of the Tennessee Governmental Tort Liability Act, the trial court found that the plaintiffs had to sue the governmental entity in order to sue the physician individually. The court found that the motion for leave to amend the complaint was futile because the statute of limitations had run as to any claim against the governmental entity. The court explained that any claim against the governmental entity would be time-barred even if it related back to the date of the filing of the complaint. The court further explained that the plaintiffs relied on the 120-day extension contained in section 29-26-121(c) when they filed their complaint and that the extension did not apply to any potential claim against the governmental entity because they failed to provide pre-suit notice to it. The court also noted that the plaintiffs unduly delayed seeking to amend their complaint despite being explicitly informed before filing their complaint who the physician did and did not work for. Additionally, the court found that the surgical practice was not involved in the treatment at issue and did not employ the physician or any of the medical providers involved. Thus, the court found that the surgical practice negated an essential element of the plaintiffs' claim against it and demonstrated the evidence was insufficient to establish such a claim. Accordingly, the court granted the defendants' motions and denied the plaintiffs' motion for leave to amend the complaint to substitute parties. The plaintiffs appeal. We affirm.

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

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

Everett B. Gibson and Emily D. Johns, Memphis, Tennessee, for the appellants, Kimberly D. Fisher and Bryan Fisher.

Jerry D. Kizer, Jr., Marty R. Phillips, and Craig P. Sanders, Jackson, Tennessee, for the appellees, Garrison Smith, M.D., and Jackson Surgical Associates, P.A.

OPINION

I. FACTS & PROCEDURAL HISTORY

In March 2020, Mrs. Kimberly D. Fisher was admitted to Jackson-Madison County General Hospital ("the Hospital") for abdominal surgery. Dr. Garrison Smith performed the surgery. At the time, Dr. Smith was an employee of West Tennessee Medical Group, Inc. ("WTMG"), which was a governmental entity. Dr. Smith was previously employed with the surgical practice known as Jackson Surgical Associates, P.A. ("JSA") from August 2012 until March 2019, but WTMG acquired the assets of JSA in March 2019.[1] After this acquisition, WTMG continued to operate the surgical practice as "Jackson Surgical Associates" but dropped the "P.A." from the name.

On February 26, 2021, Mrs. Fisher and her husband, Mr. Bryan Fisher, ("the Fishers") mailed pre-suit notices to Dr. Smith, JSA, Jackson Medical Surgery Center, LLC, and the Hospital, notifying them of a potential health care liability action related to the surgery. They then mailed amended pre-suit notices on March 1, 2021. They did not send a pre-suit notice to WTMG. Pursuant to Tennessee Code Annotated section 29-26-121(a)(5), Dr. Smith, JSA, and the Hospital responded to their respective notices by informing the Fishers that Dr. Smith was employed by WTMG and not JSA and that WTMG was a governmental entity. Despite this information, the Fishers filed their complaint in June 2021 naming only Dr. Smith and JSA as defendants. Paragraph four of the complaint specifically stated as follows:

> On information and belief, plaintiffs allege that at all times material to the cause of action set forth below, Dr. Smith was employed by JSA and was working within the business of JSA while treating the plaintiff. Therefore,

[1] JSA continued to remain an active corporation in good standing with the Tennessee Secretary of State after the acquisition. It paid its taxes and fees, maintained tail coverage for any medical malpractice suits brought against it for care rendered prior to the acquisition, and kept a bank account open to receive payments for care rendered prior to the acquisition. However, after the acquisition, it did not have employees and did not render any care.

JSA is vicariously liable for damages resulting from Dr. Smith's professional negligence.

As such, both Dr. Smith and JSA filed motions to dismiss for failure to state a claim pursuant to Tennessee Rule of Civil Procedure 12.02(6). In Dr. Smith's motion, he stated that he was not employed by JSA but was employed by WTMG, which was a governmental entity. Therefore, he asserted that the Fishers failed to sue the governmental entity who employed him as mandated by section 29-20-310(b) of the Tennessee Governmental Tort Liability Act ("the GTLA"). With his motion, he filed the affidavit of Mr. Darrell King, who was the vice president of WTMG. Mr. King stated in his affidavit that Dr. Smith was employed as a physician of WTMG and treated Mrs. Fisher within the scope of such employment. In JSA's motion, it stated that Dr. Smith was not acting as an agent or employee of JSA when he treated Mrs. Fisher. Therefore, it asserted that it could not be held vicariously liable when it did not employ Dr. Smith and where it had no involvement whatsoever in the treatment at issue. With its motion, JSA filed the affidavit of Dr. Dean Currie, who was a physician and the president of JSA. Dr. Currie stated in his affidavit that JSA did not employ Dr. Smith or any of the medical providers involved in the treatment of Mrs. Fisher during the relevant timeframe.

Afterward, the Fishers deposed Dr. Smith, Mr. King, and Dr. Currie, with the depositions being limited to the issues raised in the motions to dismiss. In April 2022, the Fishers filed a response to the motions to dismiss and a motion for leave to amend the complaint to substitute parties. They specifically requested that the trial court grant their motion for leave to amend the complaint to substitute parties because they substantially complied with the pre-suit notice requirements of section 29-26-121. Additionally, they filed affidavits stating that they reasonably believed the treatment was provided by employees of JSA rather than WTMG. Dr. Smith and JSA then filed replies to the Fishers' response, and Dr. Smith filed a response to the Fishers' motion for leave to amend the complaint.

The trial court held a hearing on the parties' motions in May 2022. Counsel for the Fishers argued that the issue was a mere misnomer and asked the court for leave to correct it. In its oral ruling, however, the trial court stated, "I tend to agree with you that I don't think it is the embodiment of justice to handle these matters like this, but I think the Supreme Court has given clear indication of what the law is on this in the *Runions* case and the *Bidwell* case." The court indicated that its hands were tied and that it had no choice but to follow the law and grant the motions to dismiss because the wrong entity was sued.

The court then entered orders on the parties' motions.[2] Pursuant to section 29-20-310(b) of the GTLA, the court found that the Fishers had to sue WTMG in order to sue Dr.

[2] Due to the consideration of matters outside the pleadings, the court treated the motions to dismiss as motions for summary judgment.

Smith individually. The court found that the motion for leave to amend the complaint was "futile" because the statute of limitations had run as to any claim against WTMG. The court explained that any claim against WTMG would be time-barred even if it related back to the date of the filing of the complaint. The court further explained that the Fishers relied on the 120-day extension contained in section 29-26-121 when they filed their complaint, but the extension did not apply to any potential claim against WTMG because the Fishers failed to provide pre-suit notice to it. The court also noted that the Fishers unduly delayed seeking to amend their complaint until April 2022 despite being explicitly informed before filing their complaint who Dr. Smith did and did not work for. As for JSA, the court found that it was not involved in the treatment at issue and did not employ Dr. Smith or any of the medical providers involved. The court therefore found that JSA negated an essential element of the Fishers' claim against it and demonstrated the evidence was insufficient to establish such a claim. Accordingly, the court granted Dr. Smith's and JSA's motions to dismiss and denied the Fishers' motion for leave to amend the complaint to substitute parties. Thereafter, the Fishers timely filed an appeal.

II. ISSUES PRESENTED

The Fishers present the following issues for review on appeal, which we have slightly restated:

1. Whether the trial court erred in denying the Fishers' motion for leave to amend the complaint to substitute parties; and
2. Whether the trial court erred in granting the motions to dismiss filed by Dr. Smith and JSA.

For the following reasons, we affirm the decision of the trial court.

III. STANDARD OF REVIEW

When considering matters outside the pleadings, a trial court treats a motion to dismiss for failure to state a claim as a motion for summary judgment. *Mann v. Alpha Tau Omega Fraternity*, 380 S.W.3d 42, 46 (Tenn. 2012); *see* Tenn. R. Civ. P. 12.02 ("If, on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . ."). We review a trial court's decision on a summary judgment motion de novo with no presumption of correctness. *Lemon v. Williamson Cnty. Schs.*, 618 S.W.3d 1, 12 (Tenn. 2021) (citing *Tatham v. Bridgestone Ams. Holding, Inc.*, 473 S.W.3d 734, 748 (Tenn. 2015)). Summary judgment is only proper where "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. "Our standard of review requires 'a fresh determination of

whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.'" *Lemon*, 618 S.W.3d at 12 (quoting *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015)).

Additionally, a trial court has broad authority to grant or deny a motion to amend a pleading. *Pratcher v. Methodist Healthcare Memphis Hosps.*, 407 S.W.3d 727, 741 (Tenn. 2013). We review a trial court's decision to grant or deny a motion to amend under an abuse of discretion standard. *Id.* (citing *Hawkins v. Hart*, 86 S.W.3d 522, 532 (Tenn. Ct. App. 2001)). We are not permitted to second-guess the trial court or to substitute our discretion for that of the trial court. *Harmon v. Hickman Cmty. Healthcare Servs., Inc.*, 594 S.W.3d 297, 305 (Tenn. 2020) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). However, the abuse of discretion standard does not immunize a trial court's decision from any meaningful appellate scrutiny. *Id.* (quoting *Lee Med., Inc.*, 312 S.W.3d at 524). "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." *Moore v. Lee*, 644 S.W.3d 59, 63 (Tenn. 2022) (citing *Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020)).

IV. DISCUSSION

We begin our discussion with the doctrine of sovereign immunity and this Court's decision in *Braylon W. v. Walker*, No. W2020-00692-COA-R3-CV, 2021 WL 2965355, at *1 (Tenn. Ct. App. July 15, 2021), which Dr. Smith and JSA assert is "an analogous case." Notably, the case was a health care liability action involving the failure to include a governmental entity as a party defendant, which happened to be WTMG.[3] *Id.*

In *Braylon W.*, we addressed the issue of whether the trial court erred in granting summary judgment in favor of the defendant-physician. *Id.* The trial court had determined that the physician was immune from suit because the plaintiff failed to name as a defendant the governmental entity that was her employer at the time of the treatment at issue. *Id.* We began our discussion on appeal with the doctrine of sovereign immunity. *Id.* at *2. Pursuant to this doctrine, we explained that "the State of Tennessee is immune from lawsuits 'except as it consents to be sued.'" *Id.* at *2 (quoting *Smith v. Tenn. Nat'l Guard*, 551 S.W.3d 702, 708 (Tenn. 2018)). The GTLA, Tennessee Code Annotated section 29-20-101 *et seq.*, "works to retain 'the viability of sovereign immunity' but removes the tort liability exemption in limited circumstances for state and local governments." *Id.* (quoting *Hughes v. Metro. Gov't of Nashville & Davidson Cnty.*, 340 S.W.3d 352, 360 (Tenn. 2011)). "One of the enumerated exceptions of the GTLA's immunity includes '[injuries]

[3] Moreover, the case involved the same trial court and the same trial court judge as this case. *See generally Braylon W.*, 2021 WL 2965355, at *1 (involving an appeal of the decision of Judge Kyle C. Atkins from the Madison County Circuit Court).

proximately caused by a negligent act or omission of any employee within the scope of his employment."[4] *Id.* (quoting Tenn. Code Ann. § 29-20-205). We then explained that:

> A health care liability action against a governmental entity falls within this exception. *Clary v. Miller*, 546 S.W.3d 101, 107 (Tenn. Ct. App. 2017) (citing *Cunningham v. Williamson Cty. Hosp. Dist.*, 405 S.W.3d 41, 42-43 (Tenn. 2013)). Typically, "even where governmental immunity is removed by statute, governmental employees are generally immune from liability." *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000). Although the GTLA eliminates individual liability immunity for governmental employees who are "health care practitioner[s]," there still exists a requirement that a "health care practitioner" cannot be named individually *unless* his or her governmental employer "is also made a party defendant to the action." Tenn. Code Ann. § 29-20-310(b).

Id. The statute requiring the governmental employer to be made a party defendant to a health care liability action provides in part as follows:

> No claim may be brought against an employee or judgment entered against an employee for damages for which the immunity of the governmental entity is removed by this chapter unless the claim is one for health care liability brought against a health care practitioner. No claim for health care liability may be brought against a health care practitioner or judgment entered against a health care practitioner for damages for which the governmental entity is liable under this chapter, unless the amount of damages sought or judgment entered exceeds the minimum limits set out in § 29-20-403 or the amount of insurance coverage actually carried by the governmental entity, whichever is greater, and *the governmental entity is also made a party defendant to the action*.

Tenn. Code Ann. § 29-20-310(b) (emphasis added). The Tennessee Supreme Court has recognized this requirement, stating that "[t]he [GTLA] provides that in order to maintain a medical malpractice action against a health care practitioner who is employed by a governmental entity, that entity must be named as a defendant." *Doyle v. Frost*, 49 S.W.3d 853, 855 n.3 (Tenn. 2001) (citing Tenn. Code Ann. § 29-20-310(b)). Therefore, relying on *Doyle*, this Court in *Braylon W.* reiterated that "pursuant to the GTLA, in order for a plaintiff to properly sue a 'health care practitioner' employed by a governmental entity, he or she must also make the governmental entity a party defendant in the complaint." *Braylon W.*, 2021 WL 2965355, at *3 (quoting Tenn. Code Ann. § 29-20-310(b)). We ultimately concluded that the trial court did not err in granting summary judgment in favor

[4] There are exceptions to this, but none are applicable in this case. *See* Tenn. Code Ann. § 29-20-205(1)-(9).

of the physician because the plaintiff failed to include the governmental entity as a party defendant. *Id.* at *6. Likewise, the plaintiffs in this case filed their complaint against Dr. Smith but failed to include his governmental employer, WTMG, as a party defendant. As a result, they filed a motion for leave to amend their complaint to substitute WTMG as a party defendant, but their motion was denied by the trial court.

Thus, the Fishers' first issue presented on appeal is whether the trial court erred in denying their motion for leave to amend their complaint to substitute WTMG as a party. They maintain the characterization that this was simply a correction of a "misnomer" and argue that this case should not be concluded by "an extreme technicality." They ask to be allowed to change the name "from Jackson Surgical Associates, P.A., to West Tennessee Medical Group, Inc., d/b/a Jackson Surgical Associates."

Tennessee Rule of Civil Procedure 15 "governs the amendment of pleadings and the service of supplemental pleadings." *Doyle*, 49 S.W.3d at 856. With respect to Rule 15.03, its purpose is to "ameliorate the effect of a statute of limitations where the plaintiff has sued the wrong party but where the right party has had adequate notice of the institution of the action." *Id.* (quoting *Bloomfield Mech. Contracting, Inc. v. Occupational Safety & Health Rev. Comm'n*, 519 F.2d 1257, 1262 (3d Cir. 1975) (construing the corresponding federal rule)). The Rule provides in pertinent part as follows:

> Whenever the claim or defense asserted in amended pleadings arose out of the conduct, transaction, or occurrence set forth . . . in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party or the naming of the party . . . against whom a claim is asserted relates back if the foregoing provision is satisfied and if, within the period provided by law for commencing an action or within 120 days after commencement of the action, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Tenn. R. Civ. P. 15.03. Stated differently, "amendments to the pleadings to substitute or change the name of a party will be considered filed on the date of the original pleading" if the affected party "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 as to its identity, the suit would have been brought against it." *Doyle*, 49 S.W.3d at 856.

When deciding whether to allow an amendment, a trial court should consider factors such as "[u]ndue delay in filing; lack of notice to the opposing party; bad faith by the moving party[;] repeated failure to cure deficiencies by previous amendments[;] undue prejudice to the opposing party[;] and futility of amendment." *Cumulus Broad., Inc. v.*

Shim, 226 S.W.3d 366, 374 (Tenn. 2007) (citing *Merriman v. Smith*, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979)). Here, the trial court denied the Fishers' motion for leave to amend the complaint basing its decision on futility, lack of notice, and undue delay. The trial court thoroughly explained its reasoning and relied on the Tennessee Supreme Court's decision in *Runions v. Jackson-Madison Cnty. Gen. Hosp. Dist.*, 549 S.W.3d 77 (Tenn. 2018).

In *Runions*, which was a health care liability action, the Tennessee Supreme Court was presented with the issue of whether the trial court erred in granting the plaintiff's motion to amend her complaint, after the expiration of the statute of limitations, to substitute the hospital district as a defendant in the place of the hospital. *Id.* at 83. The Court analyzed Tennessee Code Annotated section 29-26-121(a)(1), which is the pre-suit notice provision for a potential health care liability claim. *Id.* at 86. The pre-suit notice provision provides as follows:

> Any person . . . asserting a potential claim for health care liability shall give written notice of the potential claim to each health care provider that will be a named defendant at least sixty (60) days before the filing of a complaint based upon health care liability in any court of this state.

Tenn. Code Ann. § 29-26-121(a)(1). Pre-suit notice under this provision is not directory but mandatory. *Runions*, 549 S.W.3d at 86 (citing *Arden v. Kozawa*, 466 S.W.3d 758, 762 (Tenn. 2015); *Foster v. Chiles*, 467 S.W.3d 911, 915 (Tenn. 2015)). Additionally, "[s]trict compliance with the pre-suit notice provision is required; substantial compliance is insufficient." *Id.* (citing *Arden*, 466 S.W.3d at 763; *Foster*, 467 S.W.3d at 915; *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012)). This provision "ensures that a plaintiff give[s] timely notice to a potential defendant of a health care liability claim so it can investigate the merits of the claim and pursue settlement negotiations before the start of litigation," and it "benefits the parties by promoting early resolution of claims, which also serves the interest of judicial economy." *Id.* (citations omitted). If a plaintiff gives pre-suit notice to a potential defendant, "the applicable statutes of limitations and repose shall be extended for a period of one hundred twenty (120) days from the date of expiration of the statute of limitations and statute of repose applicable to that provider."[5] Tenn. Code Ann. § 29-26-121(c).

The Court in *Runions* concluded that the trial court erred in granting the plaintiff's motion to amend to substitute the hospital district as a defendant based on the futility of the amendment. *Runions*, 549 S.W.3d at 90. It explained that the plaintiff did not comply with section 29-26-121(a)(1) by giving the hospital district written pre-suit notice. *Id.* Therefore, she could not rely on the 120-day extension of section 29-26-121(c). *Id.* The Court further explained that the proposed amendment would relate back to the filing of the

[5] The statute of limitations in a health care liability action is one year after the accrual of the cause of action. Tenn. Code Ann. § 29-26-116(a)(1) (citing *Id.* § 28-3-104(a)(1)).

original complaint under Rule 15.03, but the amended complaint would still be barred by the statute of limitations because the filing date of the original complaint was after the expiration of the statute of limitations. *Id.*

Like *Runions*, the Fishers' proposed amendment to substitute WTMG as a party defendant would be futile. We have explained that Rule 15.03 "may operate to cure a misnomer when the party entitled to notice has, among other requirements, received constructive notice of the claim." *Shockley v. Mental Health Coop., Inc.*, 429 S.W.3d 582, 594 (Tenn. Ct. App. 2013). However, constructive notice is not enough to satisfy section 29-26-121; strict compliance with the pre-suit notice provision is required. *Id.* The Fishers failed to provide pre-suit notice to WTMG as required by section 29-26-121(a)(1). *See id.* ("[B]y its plain language, the statute requires that the notice be given to the defendant that will ultimately be required to defend the medical malpractice action."). They argue that it is undisputed that WTMG had notice of this suit because pre-suit notices were sent to two of its employees, Dr. Smith and Dr. Currie.[6] Their argument, however, fails because "the proper inquiry is whether the plaintiff *gave* pre-suit notice to the health care provider to be named a defendant, not whether the health care provider knew about the claim [from another source]." *Webb v. Trevecca Ctr. for Rehab. & Healing, LLC*, No. M2019-01300-COA-R3-CV, 2020 WL 6581837, at *2 (Tenn. Ct. App. Nov. 10, 2020) (quoting *Runions*, 549 S.W.3d at 87). Thus, "[t]he key consideration" is whether, pursuant to section 29-26-121(a)(1), the Fishers gave written pre-suit notice to WTMG—not whether WTMG "knew about the claim or whether it acknowledged that it had learned about the claim based on pre-suit notice given to another potential defendant." *Breithaupt v. Vanderbilt Univ. Med. Ctr.*, No. M2021-00314-COA-R3-CV, 2022 WL 1633552, at *10 (Tenn. Ct. App. May 24, 2022) (quoting *Runions*, 549 S.W.3d at 89). As a consequence of their failure to provide pre-suit notice to WTMG, the Fishers could not rely on the 120-day extension of section 29-26-121(c). Therefore, even if their proposed amendment related back to the filing of the original complaint, the amended complaint would be barred by the statute of limitations because the Fishers filed their original complaint after the expiration of the statute of limitations.

In addition to futility, we agree with the trial court that the Fishers unduly delayed seeking to amend their complaint. The Fishers argue that there was "confusion" regarding the status and identity of the proper defendant to be sued. They state that the relationship between JSA and WTMG became clear once they deposed Mr. King. However, although there may have been some confusion regarding the relationship between JSA and WTMG, it is clear the Fishers were aware that Dr. Smith was employed by WTMG prior to filing their complaint. Section 29-26-121(a)(5) provides as follows:

In the event a person, entity, or health care provider receives notice of a

[6] Dr. Smith was sent pre-suit notice in his individual capacity, and Dr. Currie was sent pre-suit notice as the agent for service of process for JSA.

> potential claim for health care liability pursuant to this subsection (a), the person, entity, or health care provider shall, within thirty (30) days of receiving the notice, based upon any reasonable knowledge and information available, provide written notice to the potential claimant of any other person, entity, or health care provider who may be properly named defendant.

In accordance with this provision, both Dr. Smith and JSA responded to their respective notices within 30 days by informing the Fishers that Dr. Smith was employed by WTMG and not JSA. The Hospital also responded to its notice by informing the Fishers that Dr. Smith was employed by WTMG and not JSA. Additionally, all three of these responses informed the Fishers that WTMG was a governmental entity. Despite this information, the Fishers filed their complaint naming only Dr. Smith and JSA as defendants. They did not seek to amend their complaint to substitute WTMG until almost a year later in April 2022. Given that the Fishers were aware of Dr. Smith's employment with WTMG prior to filing their complaint, we find that the Fishers unduly delayed seeking to amend their complaint. *See March v. Levine*, 115 S.W.3d 892, 909 (Tenn. Ct. App. 2003) (stating that when addressing undue delay, one factor considered "is where the party seeking to amend has known all of the facts underlying the amendment since the beginning of the litigation").

Accordingly, we conclude that the trial court did not abuse its discretion in denying the Fishers' motion for leave to amend the complaint to substitute parties. The Fishers' second issue presented on appeal is whether the trial court erred in granting the motions to dismiss filed by Dr. Smith and JSA. However, their brief did not include any argument pertaining to this issue. Even when an issue has been specifically raised, it may be deemed waived when the brief fails to include an argument satisfying the requirements of Tennessee Rule of Appellate Procedure 27(a)(7). *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012); *see Baugh v. Novak*, 340 S.W.3d 372, 381 (Tenn. 2011); *Sneed v. Bd. of Prof'l Resp.*, 301 S.W.3d 603, 615 (Tenn. 2010). Therefore, we conclude that the Fishers' second issue is waived.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to the appellants, Kimberly D. Fisher and Bryan Fisher, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE