IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

JOHN JACO,

Petitioner/Appellant,

v.

DEPARTMENT OF HEALTH,
BUREAU OF MEDICAID,

Respondent/Appellee.

Davidson Chancery No. 95-192-III
C.A. No. 01-A-01-9507-CH-00285

Hon. Robert S. Brandt, Chancellor

FILED

April 26, 1996

Cecil W. Crowson
Appellate Court Clerk

THOMAS F. BLOOM, Nashville, Attorney for Petitioner/Appellant

CHARLES W. BURSON, Attorney General & Reporter, and MICHELLE K. HOHNKE,
Assistant Attorney General, Nashville
Attorneys for Respondent/Appellee

REVERSED AND REMANDED

Opinion Filed:

TOMLIN, Sr. J.

This appeal involves the judicial review of an administrative decision regarding the denial of petitioner's application for benefits for care at a nursing home facility. The chancellor granted the motion to dismiss of the Department of Health, Bureau of Medicaid (?respondent" or "State") on the ground that the trial court did not have subject matter jurisdiction due to the failure of petitioner[1] to cause a summons to be properly issued and served on the Department within the sixty (60) day time limit specified in T.C.A. § 4-5-322(b)(1) (1991). The sole issue presented for review by this court is whether the chancellor erred in dismissing petitioner's suit for judicial review for lack of subject matter jurisdiction. For the foregoing reasons, we reverse the judgment of the trial court and remand.

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[1]Mr. Jaco incorrectly identified the parties in his petition for review in the chancery court by naming himself as ?respondent/appellant" and the Department of Health, Bureau of Medicaid as ?petitioner/appellee." Inasmuch as Jaco commenced the action in chancery court, he is actually the petitioner. The Department of Health, Bureau of Medicaid should be identified as the respondent.

Petitioner applied for a preadmission evaluation (PAE) so as to make him eligible for Medicaid benefits for care at an Intermediate Care Facility (ICF). See T.C.A. § 71-5-107(a)(15) (1995). This is required because the Department of Health will not reimburse an ICF unless the Department has approved a PAE for this individual. Tenn. Comp. R. & Regs. r. 1200-12-1-.10(2) (1983). On November 21, 1994, respondent issued a final order denying petitioner's PAE application.

The Uniform Administrative Procedures Act (UAPA) provides judicial review for an individual who is aggrieved by a final decision of a state agency in a contested case. T.C.A. § 4-5-322(b)(1) (1991). Judicial review may be obtained as follows:

> (b)(1) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.
>
> (2) . . . Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

T.C.A. § 4-5-322(b)(1) & (2) (1991).

On January 18, 1995, Jaco filed a petition in the Chancery Court of Davidson County seeking review of the Department's final order. He also mailed a copy of the petition to the office of the state Attorney General and to the Department of Health. However, he failed to file and cause to be issued a summons. Petitioner did file a summons on March 24, 1995 which was more than sixty (60) days after respondent's final order. In granting respondent's motion to dismiss, the chancellor held that the petitioner's late filing and issuance of the summons was a jurisdictional defect as a matter of law.

It is undisputed that Jaco filed his petition for review within the sixty (60) day period as set out in T.C.A. § 4-5-322(b)(1). It is undisputed that he caused a copy of the petition for review to be mailed to the appropriate state agency and the state Attorney General. It is also undisputed that he failed to file and caused to be issued a summons before the sixty (60) day period had expired.

Statutory Interpretation

The outcome of this case turns on the proper interpretation and construction of T.C.A. § 4-5-322(b)(1) & (2) as quoted above. In both the trial court and this court respondent relied upon two cases from the middle section of this court to convince the trial court and an attempt to convince this court that T.C.A. § 4-5-322(b)(2) should be construed as a mirror reflection of Rule 3 of T.R.C.P., and thus would require the issuance of a summons to be served upon the agency and all parties of record within the sixty (60) day period specified by statute in order to confer subject matter jurisdiction.

The first of the two cases referred to above is Metropolitan Gov't of Nashville & Davidson County v. Tennessee State Board of Equalization, No. 01-A-01-9108-CH-00289, 1991 WL 274516 (Tenn. App. Dec. 27, 1991). In that case the Metropolitan Government of Nashville and Davidson County ("Metro") petitioned the Tennessee State Board of Equalization ("Board") to terminate the tax exemption of Nashville Memorial Hospital ("Memorial"), a non-profit corporation operating a hospital in Nashville. The Board dismissed the petition of Metro. Within sixty (60) days of the order of dismissal Metro filed a petition for judicial review in the Davidson County Chancery Court. A copy of the petition was mailed to the attorneys for Memorial, which was not named as a respondent. A copy of the petition was also mailed to the Board, and a summons was issued to and service of same was accepted by the Board. Prior to the hearing in the trial court Memorial was granted leave to intervene in that proceeding. There is no question that Memorial was an indispensable party, inasmuch as its tax status was at issue in the case. Memorial was never made a party to the action in the Chancery Court. Id. at *1-2.

Along with the motion to intervene, Memorial filed a motion to dismiss for failure to serve process, as provided by the provisions of the Uniform Administrative Procedures Act, codified as T.C.A. § 4-5-101 to 324 (1991). The trial court held that the proper service of the petition for review upon Memorial was a statutory prerequisite to relief and dismissed the petition. Id. at *2.

On appeal, the middle section of this court correctly noticed that the only relief requested by Metro related to the rights of Memorial. It further noted that the "the issue is the failure to serve a copy of the petition upon Memorial in the manner required by statute," and that "the proper means of assuring such service was to name Memorial as a party." Id. at *4-5. Noting that the issue on appeal was a question of first impression in this state, the middle section cited case law from Colorado and Connecticut as authority for its action, wherein the appellate court upheld the decision of the trial court in dismissing the action brought for the failure to include a necessary or indispensable party. Id. at *5 (citations omitted).

The ultimate conclusion reached by the middle section of this court in Metropolitan Gov't gives us no pause for concern. What this court conceives as the source of the legal problems with which we are now dealing are statements in the form of dicta made by the Metropolitan Gov't court in attempting to construe T.C.A. § 4-5-322(b)(2), which we repeat for sake of convenience and emphasis:

> (2) . . . Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process. (emphasis added)

In reaching this conclusion, in the opinion of this court our brothers on the middle section digressed from the controlling issue in Metropolitan Gov't when it proceeded to declare what the legislature intended by the underlined language in T.C.A. § 4-5-322(b)(2). The Metropolitan Gov't court concluded that the underscored language

encompassed both Rules 3 and 4 of the Tennessee Rules of Civil Procedure. The court proceeded to take another bold step in stating the following conclusion:

> Rule 4.01, quoted above, requires the issuance of summons with copy of complaint. As applied to petitions for review, the rule requires the issuance of summons with copies of petition.

Metropolitan Gov't at *4. We are constrained to observe that insofar as it related to the issues the court was considering on appeal, the above language is dicta. Second, the conclusion that the court reached above in essence amounts to a rewriting of section 4-5-322(b)(2).

The second case relied upon by the state is HRA, Inc. v. Tennessee Dep't of Commerce & Ins. 914 S.W.2d 512 (Tenn. App. 1995). HRA, as in Metropolitan Gov't, deals with the failure of petitioner to name in the petition for review a material or indispensable party. HRA was seeking a change in the workers compensation insurance risk factor assigned to it by the National Council on Compensation Insurance (NCCI). HRA did not name NCCI as a party, and did nothing more than send a copy of the petition for review filed against TDCI to NCCI by mail. Id. at 513-14. In HRA, Judge Todd noted that "service of process is not the issue in this appeal." Id. at 515. As the court found in Metropolitan Gov't in regards to Memorial, the HRA court found that NCCI was an omitted party against which HRA failed to preserve its right of review, and affirmed the dismissal of HRA's petition against TDCI. Id. at 516.

The HRA court reiterated the same dicta as set out in Metropolitan Gov't. After quoting the pertinent provisions of T.C.A. § 4-5-322(b)(2) and T.R.C.P. 3, as amended July 1, 1992, it stated: "Clearly, under the quoted statute and rule, the petitioner, HRA was required to *file* a complaint (petition for review) *and summons* upon all interested parties, including NCCI." Id. at 514.

With all due respect to our brothers in the middle section, we disagree with their interpretation of T.C.A. § 4-5-322(b)(2), as expressed in both Metropolitan Gov't and HRA. As a general rule, the purpose of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. Carson Creek Vacation Resorts, Inc. v. Department of Revenue, 865 S.W.2d 1, 2 (Tenn. 1993). Legislative intent is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. Where the language contained within the four corners of a statute is plain, clear, and unambiguous and the enactment is within legislative competency, the duty of the court is to obey it. Id.

The language of T.C.A. § 4-5-322, by its ordinary meaning, requires proceedings for review to be instituted only by the filing of a petition for review in the Davidson County Chancery Court[2] within sixty (60) days after the entry of the agency's final order thereon. T.C.A. § 4-5-322(b)(1). Subsection (b)(2) provides that the petition for review (with no mention of a summons) shall be served in accordance with the provisions of T.R.C.P. pertaining to service of process. (emphasis added).

By the same token, T.C.A. § 4-5-322 does not call for proceedings for review to be instituted by filing a petition for review and summons. It does not say that the petition

[2]Suit may be filed in some other chancery court as certain circumstances may dictate.

and summons shall be filed within sixty (60) days of the agency's final order, nor does it say that a petition for review is to be considered a "civil action" pursuant to T.R.C.P. 3, the interpretation given it by the Metropolitan Gov't and HRA courts.

To the contrary, in reading T.C.A. § 4-5-322 in accordance with the established guidelines of statutory construction, the statute says that petitions for review are to be served in the same manner as the provisions for service of process as are contained in the Tennessee Rules of Civil Procedure, namely, Rule 4. The "process" being served in section 4-5-322 is a petition for review, while the "process" being served in an ordinary civil suit under Rule 4 is a "complaint and summons." The nature of the process being served is different, but the methodology of service is to be the same. There is nothing contained in section 4-5-322 that reflects an intent to convert the nature of the process described therein to the nature of the process referred to in T.R.C.P. 3.

In the opinion of this court, our interpretation of T.C.A. 4-5-322(b) is wholly consistent with the fundamental rules of statutory construction in this state. In Austin v. Memphis Publishing Co. 655 S.W.2d 146 (Tenn. 1983), our Supreme Court observed:

> In a recent American work on Statutory Law, it is said that the intention of the legislature is to be learned from the words it has used; . . . and if that intention is expressed in a manner devoid of contradiction and ambiguity, there is no room for interpretation or construction, and the judges are not at liberty, on consideration of policy or hardship, to depart from the words of the statute; that they have no right to make exceptions or insert qualifications, however abstract justice or the justice of the particular case may seem to require it.

Id. at 148 (citing Heiskell v. Lowe, 153 S.W. 284, 290 (Tenn. 1912)). In the case before us, petitioner in his petition for review named respondent as a party. He filed the petition within the sixty (60) day limitation period as set forth in T.C.A. § 4-5-322(b)(1). In accordance with the provisions of T.R.C.P. 4.04(8), he mailed a copy to respondent and also to the office of the state Attorney General. In our opinion, he complied with all the provisions of T.C.A. § 4-5-322(b), and thus his case was properly before the trial court. The chancellor erred in dismissing the petition for lack of jurisdiction.

Accordingly, the judgment of the trial court is reversed. This case is remanded to the trial court for a hearing on the merits and for other proceedings not inconsistent with this opinion. Costs in this cause on appeal are taxed to respondent, for which execution may issue if necessary.

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TOMLIN, Sr. J.

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HIGHERS, J. (CONCURS)

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FARMER, J. (CONCURS)