

FILED

09/22/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs August 1, 2023

**MICHAEL BRIARS ET AL. v. JOHN IRVING ET AL.**

**Appeal from the Circuit Court for Tipton County**  
**No. 7786     A. Blake Neill, Judge**

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**No. W2022-01159-COA-R3-CV**

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Plaintiffs sued for injuries and damages allegedly resulting from an automobile accident. The trial court dismissed one of two defendants based on the statute of limitations. Although the complaint was filed within one year of the accident, the original summons went unserved, and plaintiffs did not obtain issuance of new process until over a year after the issuance of the previous process. On appeal, plaintiffs contend that, because the automobile accident resulted in a criminal prosecution, the time period for issuance of new process under Tennessee Rule of Civil Procedure 3 was extended. We affirm.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON II and KENNY W. ARMSTRONG, JJ., joined.

Bradley G. Kirk, Memphis, Tennessee, for the appellants, Michael Briars and Martez Somerville.

Nicholas J. Owens, Jr. and Ashleigh C. Kiss, Memphis, Tennessee, for the appellees, John Irving and Martha Key.

**OPINION**

**I.**

Two vehicles collided in Tipton County, Tennessee, on July 23, 2019. Following the accident, one of the drivers, John Irving, was cited for crossing the center line of the roadway. *See* Tenn. Code Ann. § 55-8-115 (2020) (specifying that vehicles should be driven on the right side of a roadway).

On July 2, 2020, the driver of the other vehicle, Michael Briars, and his passenger, Martez Somerville, sued Mr. Irving and the owner of the vehicle he was driving. Although summonses were issued the same day, Mr. Irving was not served; there was no return on the summons. An alias summons for Mr. Irving was not issued until September 3, 2021. Mr. Irving was served on September 12, 2021.

Mr. Irving moved for judgment on the pleadings or, in the alternative, to dismiss for failure to state a claim upon which relief can be granted. He contended the plaintiffs' claims were subject to a one-year statute of limitations. And, in order to rely on the July 2, 2020 filing of the complaint to toll the statute of limitations, the plaintiffs were required to continue the action by obtaining the issuance of new process within one year from the issuance of the previous process.

The trial court granted the motion to dismiss, dismissing the claims against Mr. Irving with prejudice. The court concluded that the plaintiffs "failed to comply with the requirements of Rule 3 of the Tennessee Rules of Civil Procedure to continue their action in order to rely upon the original commencement of the action to toll the statute of limitations." So the claims against Mr. Irving were time-barred. The court then certified its judgment dismissing the claims against Mr. Irving as final. *See* TENN. R. CIV. P. 54.02.

## II.

A statute of limitations defense is appropriately addressed in a motion to dismiss under Rule 12.02(6) of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief can be granted. *See Gunter v. Lab. Corp. of Am.*, 121 S.W.3d 636, 638 (Tenn. 2003). A Rule 12.02(6) motion "challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). Thus, "[t]he resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone." *Id.*

We "construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). The complaint should not be dismissed "unless it appears that the plaintiff can establish no facts supporting the claim that would warrant relief." *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). Making such a determination presents a question of law. Our review of a trial court's determinations on issues of law is de novo, with no presumption of correctness. *Id.* (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)).

Under Rule 3 of the Tennessee Rules of Civil Procedure, "[a]n action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved." TENN. R. CIV. P. 3. But, if process either "remains unissued for 90 days or is not served

within 90 days from issuance, regardless of the reason,” a plaintiff must do more in order for the filing of the complaint to toll the statute of limitations. *Id.* If process was not issued for 90 days after the filing of the complaint, the plaintiff must continue the action by obtaining issuance of process “within one year of the filing of the complaint.” *Id.* If process was issued but not served within 90 days of issuance, the plaintiff must “continue[] the action by obtaining issuance of new process within one year from issuance of the previous process.” *Id.*

Here, the plaintiffs, Mr. Briars and Mr. Somerville, filed suit and obtained issuance of summons for Mr. Irving on the same day, July 2, 2020. This summons was not served. But an alias summons was not issued until over one year later.

On appeal, Mr. Briars and Mr. Somerville contend that their cause of action was subject to a two-year statute of limitations because “the underlying automobile accident resulted in a criminal prosecution.”<sup>1</sup> *See* Tenn. Code Ann. § 28-3-104(a)(2)(A) (2017) (providing that causes of action for personal injuries must be commenced within two years of accrual if “[c]riminal charges are brought against any person alleged to have caused or contributed to the injury”). So, they reason, Rule 3 of the Tennessee Rules of Civil Procedure should be interpreted to allow them to re-issue process “within two years of the commencement of the original action on July [2], 2020.”

Such an interpretation is not possible. Absent an ambiguity, we must “apply the plain meaning of the words used” in the rule. *Fair v. Cochran*, 418 S.W.3d 542, 544 (Tenn. 2013) (citing *Garrison v. Bickford*, 377 S.W.3d 659, 663 (Tenn. 2012)). And “[o]ur duty is to enforce the rule as written.” *Id.* After failing to serve Mr. Irving within 90 days of issuance of the original summons, Mr. Briars and Mr. Somerville had to “continue[] the action by obtaining issuance of new process within one year from issuance of the previous process.” TENN. R. CIV. P. 3. Because they did not, the filing of the complaint did not toll the running of the statute of limitations for their claims against Mr. Irving.

### III.

Mr. Briars and Mr. Somerville waited too long to obtain issuance of new process after failing to obtain service on Mr. Irving. So we affirm the judgment granting Mr. Irving’s motion to dismiss.

s/ W. Neal McBrayer  
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W. NEAL MCBRAYER, JUDGE

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<sup>1</sup> The court applied a one-year statute of limitations. *See* Tenn. Code Ann. § 28-3-104(a)(1)(A). But even under a two-year statute of limitations, an action was not timely commenced against Mr. Irving.