IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 7, 2023 Session

MECHELLE HOLLIS EX REL. NICOLE N. ET AL. v. MANUEL M. SANCHEZ

Appeal from the Circuit Court for Davidson County
No. 20C-2181 Thomas W. Brothers, Judge

No. M2022-01190-COA-R3-CV

After a car accident, a plaintiff sued a defendant, but never served him with process. Almost two years later, the defendant moved to dismiss the case as time-barred. The plaintiff opposed the dismissal and moved for an enlargement of time to serve the defendant. The court denied the requested enlargement and dismissed the case. 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 FRANK G. CLEMENT JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Mechelle Hart, Nashville, Tennessee, pro se appellant.

Erik W. Benton, Brentwood, Tennessee, for the appellee, Manuel M. Sanchez.

MEMORANDUM OPINION[1]

I.

On October 5, 2019, Mechelle Hart was driving with her minor daughter when they were involved in a car accident with Manuel Sanchez. Nearly one year later, Ms. Hart filed a complaint on behalf of herself and her daughter, naming Mr. Sanchez as the defendant. The complaint alleged that Mr. Sanchez's negligence caused damage to Ms. Hart's vehicle and injured Ms. Hart and her daughter.

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[1] Under the rules of this Court, as a memorandum opinion, this opinion may not be published, "cited[,] or relied on for any reason in any unrelated case." TENN. CT. APP. R. 10.

Soon after, the Davidson County Sheriff's Office unsuccessfully tried to serve Mr. Sanchez. The return of service form indicated that there were "multiple trailers at [the] listed address" but there was "[n]o lot number listed" and thus "[n]o way to verify [the] residence."

The next day, Ms. Hart's attorney emailed Mr. Sanchez's insurer. Counsel informed the company that Mr. Sanchez had not been served and requested that the insurer provide him with Mr. Sanchez's lot number. A representative from the company responded two days later. Her email stated: "Assuming you can get [settlement] demands to me within the next few weeks, leaving the service on [Mr. Sanchez] incomplete at this time would not seem to prejudice the case in any way; that said, when I speak with him, I will obtain his correct address and permission to disclose same to you."

Following this exchange, the parties spent the next 15 months negotiating a settlement. But the case remained dormant in the trial court. In January 2022, the court dismissed the case for lack of prosecution. Two weeks later, Ms. Hart moved to set aside the dismissal. Her motion indicated that the parties had settled most of the claims but needed to set a trial date for Ms. Hart's personal injury claim, which remained unresolved. The court set aside the dismissal.

Then, on June 2, 2022, Mr. Sanchez moved to dismiss Ms. Hart's personal injury claim as time-barred. *See* Tenn. Code Ann. § 28-3-104(a)(1)(A) (2017) (setting a one-year statute of limitations for injuries to the person). He contended that, because Ms. Hart never served him with process, the statute of limitations did not toll when she filed her complaint in October 2020.[2]

Ms. Hart conceded that she did not serve Mr. Sanchez, but she argued that the email his insurer sent her attorney was an agreement to leave service of process incomplete while the parties negotiated. And the agreement was not revoked until Mr. Sanchez moved to dismiss the case. So he should be equitably estopped from asserting the statute of limitations as a defense. Ms. Hart also argued that her failure to serve Mr. Sanchez was the result of excusable neglect. And she moved to enlarge the time allotted to serve him with process. *See* TENN. R. CIV. P. 6.02.

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[2] Tennessee Rule of Civil Procedure 3 provides:

> If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

TENN. R. CIV. P. 3.

The court concluded that the email was not an agreement to leave process unserved indefinitely. And Ms. Hart had not shown that her failure to obtain service was the result of excusable neglect. So the court denied her motion and granted Mr. Sanchez's motion to dismiss the case.

II.

As an initial matter, Mr. Sanchez argues that Ms. Hart's brief does not comply with Rule 27 of the Tennessee Rules of Appellate Procedure or Rule 6 of the rules of this Court. *See* TENN. R. APP. P. 27(a) (listing the required contents in an appellant's brief); TENN. CT. APP. R. 6(a) (listing the required contents in appellate arguments). So we should dismiss this appeal.

Even as a pro se litigant, Ms. Hart "must comply with the same standards to which lawyers must adhere." *Watson v. City of Jackson*, 448 S.W.3d 919, 926 (Tenn. Ct. App. 2014). As we have explained,

> [p]arties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.

Hessmer v. Hessmer, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003) (internal citations omitted). Yet, when possible, we construe the rules of this Court and the Rules of Appellate Procedure liberally so as "to afford all parties a hearing on the merits." *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 397 (Tenn. Ct. App. 1997); TENN. CT. APP. R. 1(b). We "give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs." *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000)); *Paehler*, 971 S.W.2d at 397). And "we measure the papers prepared by pro se litigants using standards that are less stringent than those applied to papers prepared by lawyers." *Id.*

We agree with Mr. Sanchez that Ms. Hart's brief does not comply with the requirements of the Tennessee Rules of Appellate Procedure or the rules of this Court. Nevertheless, we exercise our discretion to consider the merits of her appeal. We do so because our review is limited to a technical record of less than 150 pages and because the brief's deficiencies do not impose any unfairness on Mr. Sanchez.

Ms. Hart's only argument on appeal is that the trial court erred in not granting her motion to enlarge the time to serve Mr. Sanchez. When a litigant fails to comply with a deadline specified by statute or the Rules of Civil Procedure, Rule 6.02 permits a court to extend the deadline if the litigant's failure to comply was the result of "excusable neglect." TENN. R. CIV. P. 6.02. We review a trial court's decision on a Rule 6.02 motion for an abuse of discretion. *Williams v. Baptist Mem'l Hosp.*, 193 S.W.3d 545, 551 (Tenn. 2006); *In re Estate of Link*, 542 S.W.3d 438, 455 (Tenn. Ct. App. 2017). A court abuses its discretion when it applies the wrong legal standard, reaches "an illogical or unreasonable decision," or bases its decision "on a clearly erroneous assessment of the evidence." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

When evaluating whether failure to meet a deadline was the result of excusable neglect, Tennessee courts consider the following four factors: "(1) the risk of prejudice to parties opposing the late filing, (2) the delay and its potential impact on proceedings, (3) the reasons why the filings were late and whether the reasons were within the filer's reasonable control, and (4) the good or bad faith of the filer." *Williams*, 193 S.W.3d at 551 (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (2007)). The "reason for failing to meet the deadline" is perhaps "the single most important of the four factors." *Kenyon v. Handal*, 122 S.W.3d 743, 756 (Tenn. Ct. App. 2003).

Although there was no evidence that Ms. Hart or her former counsel acted in bad faith, nearly two years had passed between her initial attempt to serve Mr. Sanchez and the filing of her motion to enlarge. During that time, she took no steps to obtain Mr. Sanchez's lot number or to serve him with process. And by the time she requested an extension, three years had elapsed since the car accident.

Ms. Hart argues that Mr. Sanchez agreed to waive service while the parties negotiated. As proof, she points to the email sent by Mr. Sanchez's insurer. But parties are not excused from the requirements of Tennessee Rule of Civil Procedure 3 just because they are engaged in settlement negotiations. *See Crump v. Bell*, No. W1999-00673-COA-R3-CV, 2000 WL 987289, at *4-5 (Tenn. Ct. App. July 12, 2000); *Occhipinti v. Stephens*, No. 01-A-01-9504-CV00133, 1995 WL 571849, at *2-3 (Tenn. Ct. App. Sept. 29, 1995); *cf Webster v. Isaacs*, No. M2018-02066-COA-R3-CV, 2019 WL 3946093, at *6 (Tenn. Ct. App. August 21, 2019) ("Tennessee courts have 'consistently held that participation in litigation does not constitute a waiver of insufficient service of process.'" (quoting *Krogman v. Goodall*, No. M2016-01292-COA-R3-CV, 2017 WL 3769380, at *8 (Tenn. Ct. App. Aug. 29, 2017))). And we do not construe the email from Mr. Sanchez's insurer as a waiver of service. The email merely indicated that leaving service incomplete *at that time* would not prejudice the case, so long as Ms. Hart's counsel furnished her settlement demands within a few weeks. *See Occhipinti*, 1995 WL 571849, at *3 (finding that an insurance adjuster's indication that "it didn't matter to him whether the defendant was served or not" did not constitute a waiver of service by the defendant).

Nothing prevented Ms. Hart from following up with Mr. Sanchez's insurer after she did not receive his lot number. Nor was there any reason why Ms. Hart could not seek issuance of a new summons and make another attempt to serve Mr. Sanchez. *See Webster*, 2019 WL 3946093, at *4 (finding no excusable neglect when a plaintiff "participate[d] in the litigation," but took no action to serve the defendant after discovering that the initial service attempt failed). Thus we conclude that the court did not abuse its discretion in denying her Rule 6.02 motion.

III.

Ms. Hart's personal injury claim against Mr. Sanchez was barred by the statute of limitations. She failed to obtain service of process and then failed to continue her action by obtaining issuance of new process within one year from issuance of the previous process. And the trial court did not abuse its discretion in denying her motion for enlargement of time to obtain service. So we affirm.

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