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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 20, 2023

**JASON M. PETERSON v. JODI L. CAREY**

**Appeal from the Circuit Court for Sullivan County**  
**No. C43245(M) John S. McLellan, III, Judge**

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**No. E2022-01656-COA-R3-CV**

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Jason M. Peterson (“Plaintiff”) was the passenger in a vehicle driven by Jodi L. Carey (“Defendant”) at the time of a motor vehicle accident. Plaintiff filed a personal injury action against Defendant more than one year after the accident. Plaintiff argues that Tennessee Code Annotated section 28-3-104(a)(2) extends the statute of limitations for his action to two years because Defendant was cited for the violation of a traffic ordinance contained in the Kingsport Municipal Code in relation to the accident. The Circuit Court for Sullivan County (“trial court”) applied the one-year statute of limitations set forth in section 28-3-104(a)(1) and granted summary judgment in favor of Defendant. Finding no error, we affirm the judgment of the trial court.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Frank L. Slaughter, Jr., Bristol, Tennessee, for the appellant, Jason M. Peterson.

S. Curtis Rose, Kingsport, Tennessee, for the appellee, Jodi L. Carey.

**OPINION**

**I. Background**

This is the second appeal of this action. The pertinent background has already been established by this Court in the first appeal, *Peterson v. Carey*, No. E2021-00430-COA-R3-CV, 2022 WL 202634 (Tenn. Ct. App. Jan. 24, 2022), which we quote in relevant part at length:

The complaint alleges that Defendant was driving a car with Plaintiff as passenger, and Defendant “for unknown reasons left the roadway to the left,” lost control of the car, and flipped it several times. Plaintiff alleged negligence per se in that Defendant violated four traffic statutes. The accident happened on September 29, 2019. The complaint was filed on October 14, 2020.

The complaint states that “[d]ue to COVID-19 and the pandemic shutting down the country and the courts, statute September 29, 2019 was missed and have been advised [*sic*] to file accordingly due to the pandemic shutting down the court systems and businesses, in the country.” Defendant filed a motion to dismiss for failure to file within the one-year statute of limitations.

On January 19, 2021, Plaintiff’s counsel filed a response stating that “due to Covid-19 and the pandemic scheduling issues were less than optimal and filing issues arose whereby I missed the statute deadline but had every intention of filing same.” On January 28, 2021, this Court filed *Younger v. Okbahhanes*, 632 S.W.3d 531, 537 (Tenn. Ct. App. 2021), holding that

the traffic citation issued to Defendant for failure to exercise due care [under T.C.A. § 55-8-136], which had been prepared, accepted, and the original citation filed with the court, is a criminal charge and a criminal prosecution by a law enforcement officer, such that Tennessee Code Annotated § 28-3-104(a)(2) is applicable to extend the statute of limitations in this action to two years.

\* \* \*

*Id.* at [] 537.

Nineteen days later, Plaintiff filed a “brief in response to Defendant’s motion to dismiss,” arguing that the suit was filed “within two years of the statute of limitations as the Defendant did receive a citation for [f]ailure to [e]xercise [d]ue [c]are just like the case in” *Younger*. Defendant responded by asserting that she was cited under Kingsport Municipal Code 98-62, “which mirrors the citation of T.C.A. § 55-8-136,” but because it is a violation of a municipal code, not a state statute, it does not carry criminal penalties, so the limitations period is not extended to two years. As noted, there is no actual evidence of the citation in the record; there is only Plaintiff’s assertion that Defendant received a citation “just like in” *Younger*,

and Defendant's response that the citation was written for a violation of the Kingsport Municipal Code, not the Tennessee Code Annotated, which arguably distinguishes *Younger*.

The trial court dismissed the action as untimely filed, stating only that "the lawsuit was filed after the one-year statute of limitations had expired, and therefore this matter is, accordingly, DISMISSED with prejudice." The trial court made no reference to or ruling regarding Defendant's citation, the authority under which it was issued, or the arguments regarding the potential application of the two-year limitations period provided at Tenn. Code Ann. § 28-3-104[(a)](2) and discussed in *Younger*.

*Peterson*, 2022 WL 202634, at \*1–2. Because the trial court had not "considered or ruled upon what we perceive to be the dispositive issue, which is whether Tenn. Code Ann. § 28-3-104[(a)](2) applies under the circumstances," and "no evidence of the actual nature of the citation issued to Defendant was entered for the trial court's consideration," we vacated the trial court's judgment and remanded the case for the trial court to consider and rule upon the dispositive issue. *Id.* at \*2.

On remand, Defendant filed a motion for summary judgment, memorandum of law in support thereof, and a statement of undisputed material facts pursuant to Rule 56.03 of the Tennessee Rules of Civil Procedure. Defendant again argued that the one-year statute of limitations set forth in Tennessee Code Annotated section 28-3-104(a)(1) applies to this case and not the two-year statute of limitations set forth in section 28-3-104(a)(2). Defendant attached, as exhibits to her Rule 56.03 statement of facts, a copy of the citation she was issued by the Kingsport Police Department on the day of the accident and an affidavit of the citing officer, Jacob Hutton. Officer Hutton's affidavit stated that Defendant was cited "under Kingsport Municipal Code 98-62," that the "Kingsport Municipal Code does not carry any Class C misdemeanors," and that Defendant's fine for the purported violation of the Kingsport Municipal Code was "capped at \$50.00."

Following a hearing, the trial court granted Defendant's motion, finding that a citation for a violation of Kingsport Municipal Code 98-62 is a civil infraction and is punishable only by a \$50.00 fine; therefore, the trial court found that *Younger* "is not applicable insofar as [Defendant] was not cited under a statute carrying a criminal fine." This timely appeal followed.

## **II. Issue Presented on Appeal**

Plaintiff's appellate brief did not comply with Rule 27(a)(4) of the Tennessee Rules of Appellate Procedure in that it failed to include a statement of the issue(s) presented for review. "The requirement of a statement of the issues raised on appeal is no mere

technicality,” and “this Court is not charged with the responsibility of scouring the appellate record for any reversible error the trial court may have committed.” *In re Conservatorship of Young*, No. M2022-01448-COA-R3-CV, 2023 WL 6366762, at \*2 (Tenn. Ct. App. Sept. 29, 2023) (quoting *Owen v. Long Tire, LLC*, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at \*4 (Tenn. Ct. App. Dec. 22, 2011)). “[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Rule 27(a)(4).” *City of Memphis v. Edwards by & through Edwards*, --- S.W.3d ----, No. W2022-00087-SC-R11-CV, 2023 WL 4414598, at \*2 (Tenn. July 5, 2023).

Nonetheless, “[f]or good cause, we may suspend the requirements or provisions of these rules in a given case.” *Bean v. Bean*, 40 S.W.3d 52, 54 (Tenn. Ct. App. 2000); Tenn. R. App. P. 2. Given that this Court previously identified what we perceive to be the dispositive issue in this case, the issue we deem Plaintiff to have raised for our review is:

1. Whether the statute of limitations set forth in Tennessee Code Annotated section 28-3-104(a)(2) applies in this case.

### III. Standard of Review

This case was disposed of by summary judgment. A trial court may grant summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . 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. The propriety of a trial court’s summary judgment decision presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019).

“The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the nonmoving party’s claim or defense.

*Rye v. Women’s Care Ctr. of Memphis*, 477 S.W.3d 235, 264 (Tenn. 2015). “[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would

entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

When a party files and properly supports a motion for summary judgment as provided in Rule 56, “to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts . . . showing that there is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (internal quotation marks and brackets in original omitted). “Whether the nonmoving party is a plaintiff or a defendant – and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense – at the summary judgment stage, “[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.”” *TWB Architects*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265). In reviewing the trial court’s summary judgment decision, we accept the evidence presented by the nonmoving party as true; allow all reasonable inferences in its favor; and “resolve any doubts about the existence of a genuine issue of material fact in favor of” Plaintiff, the party opposing summary judgment. *Id.* at 887.

#### IV. Analysis

This Court recently addressed whether Tennessee Code Annotated section 28-3-104(a)(2) extends the statute of limitations for a personal injury action when the defendant received a citation for the violation of a municipal ordinance in *Glover v. Duckhorn*, No. W2022-00697-COA-R3-CV, 2023 WL 3193204 (Tenn. Ct. App. May 2, 2023), *no perm. app. filed*. As *Glover* is highly analogous to the present case, we quote it at length:

Whether [plaintiff]’s cause of action is time barred hinges on whether the application of Tennessee Code Annotated § 28-3-104(a)(2) extends the one-year statute of limitations for her personal injury lawsuit to two years. The dispositive question is whether the traffic citation for violation of a municipal ordinance issued to [defendant] for his alleged negligent acts which caused the personal injury constitutes a “criminal charge” and a “criminal prosecution” within the meaning of Tennessee Code Annotated § 28-3-104(a). [footnote omitted]

Tennessee Code Annotated § 28-3-104(a)(2)–(3) reads as follows:

(2) A cause of action listed in subdivision (a)(1) shall be commenced within two (2) years after the cause of action accrued, if:

(A) Criminal charges are brought against any person alleged to have caused or contributed to the injury;

(B) The conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year by:

- (i) A law enforcement officer;
- (ii) A district attorney general; or
- (iii) A grand jury; and

(C) The cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct.

(3) This subsection (a) shall be strictly construed.

We begin by acknowledging the legislative directive that we construe subsection (a) strictly. Further, when construing legislation, we are to give full effect to the General Assembly's purpose, stopping just short of exceeding its intended scope. *See Larsen-Ball v. Ball*, 301 S.W.3d 228, 232 (Tenn. 2010); *see also In re Est. of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009). In doing so we are to give the statutory words their natural and ordinary meaning. *See Hayes v. Gibson Cnty.*, 288 S.W.3d 334, 337 (Tenn. 2009).

For the two-year statute of limitations to apply, Tennessee Code Annotated § 28-3-104(a)(2) expressly requires, inter alia, a criminal charge and commencement of criminal prosecution, neither of which are present here. To the contrary, [defendant] only received a ticket for the violation of a city ordinance that was civil in nature, and the ticket only carried a civil fine with no possibility of jail time.

\* \* \*

Significantly, the ordinance provides for only a modest fine and no jail time.

Tennessee courts have consistently held that municipal ordinance violations are civil matters and that violations of state statutes are criminal

matters. *Guidi v. City of Memphis*, 263 S.W.2d 532, 536 (Tenn. 1953) (citations omitted); *see also Clark v. Metro. Gov't of Nashville and Davidson Cnty.*, 827 S.W.2d 312, 316 (Tenn. Ct. App. 1991). In *Guidi*, a city warrant was issued charging a man with the offense of violating the speed limit within the city of Memphis, and a judgment was entered against him in city court, then in circuit court. 263 S.W.2d at 533. Ultimately, in determining that criminal cases did not support Guidi's petition for a rehearing, the Supreme Court held that "a proceeding for the violation of a municipal ordinance is not a criminal prosecution but a civil action." *Id.* at 536.

Our sister court, the Tennessee Court of Criminal Appeals, has reached similar conclusions. In *City of McMinnville v. Hubbard*, the Court of Criminal Appeals acknowledged the civil nature of the defendant's traffic violation: "Defendant, Steven Erich Hubbard, appeals from his conviction for failure to obey a stop sign in violation of a municipal ordinance. Because such appeals are considered civil in nature, we are without subject matter jurisdiction to hear this appeal." No. M2018-00223-CCA-R3-CO, 2019 WL 719077, at \*1 (Tenn. Ct. Crim. App. Feb. 20, 2019). As the court explained in more detail:

To determine whether this Court possesses subject matter jurisdiction, we must first determine whether Defendant was charged with a violation of a state statute or a municipal ordinance. *See generally State v. Joe Clyde Tubwell*, No. W2012-01385-CCA-R3-WM, 2012 WL 6476097, at \*2 (Tenn. Crim. App. Dec. 13, 2012) (noting that the nature of appellate jurisdiction is dependent on whether the defendant was charged with violating a municipal ordinance or a state statute), *no perm. app. filed*. Violations of state statutes are criminal, and the jurisdiction of this Court extends to the review of final judgments in criminal cases, both felony and misdemeanor. *See* T.C.A. § 16-5-108(a)(1); *City of Church Hill v. Roger Elliott*, No. E2016-01915-CCA-R3-CD, 2017 WL 2591371, at \*4 (Tenn. Crim. App. June 15, 2017), *no perm. app. filed*. On the other hand, violations of municipal ordinances, which do not involve the potential for incarceration, are considered civil for the purposes of procedure and appeal. *See City of Chattanooga v. Myers*, 787 S.W.2d 921, 928 (Tenn. 1990). Thus, jurisdiction over such appeals lies with the Tennessee Court of Appeals. *See* T.C.A. § 16-4-108; *City of Chattanooga v. Davis*, 54 S.W.3d 248, 260 (Tenn. 2001). **Though municipal ordinances may mirror, duplicate, or**

**cross-reference state criminal or traffic statutes, the two are not interchangeable.** *City of La Vergne v. Randall T. LeQuire*, No. M2016-00028-COA-R3-CV, 2016 WL 6124117, at \*3, \*5 (Tenn. Ct. App. Oct. 19, 2016), *no perm. app. filed*.

*Id.* at \*3 (emphasis added).

For completeness, we acknowledge [plaintiff]’s reliance on *Younger v. Okbahhanes*. In *Younger*, the plaintiff, Reginald Younger, was injured in a car accident with the defendant, Kibreab Okbahhanes. 632 S.W.3d at 532. Following the accident, a state trooper issued Mr. Okbahhanes a traffic citation listing three violations, including “failure to exercise due care, pursuant to Tennessee Code Annotated § 55-8-136.” *Id.* Mr. Okbahhanes paid the fine for this citation. *Id.* More than one year after the accident, Mr. Younger filed a personal injury action against Mr. Okbahhanes. *Id.* Mr. Okbahhanes filed a motion for summary judgment based on the one-year statute of limitations. *Id.* Mr. Younger responded to the motion contending that instead of being subject to the standard one-year statute of limitations for personal injury claims, the statute of limitations for his case was extended to two years by virtue of Tennessee Code Annotated § 28-3-104(a)(2). *Id.* The trial court ruled in favor of Mr. Younger and concluded that:

[Mr. Younger]’s action was timely, in part, because Defendant had been charged with a criminal offense and a criminal prosecution had been initiated against him related to his conduct that gave rise to the present cause of action. Relying on these conclusions, the Trial Court determined that the statute of limitations was extended from one to two years, pursuant to Tennessee Code Annotated § 28-3-104(a)(2).

*Id.* at 535.

We note, however, that [plaintiff]’s reliance on *Younger* is misplaced. The key distinction between *Younger* and [plaintiff]’s case is that *Younger* was cited for violating a state statute, Tennessee Code Annotated § 55-8-136, which unlike here, is a Class C misdemeanor. *Younger*, 632 S.W.3d at 535–36. As we explained in *Younger*, the violation of Tennessee Code Annotated § 55-8-136 was a criminal offense in Tennessee, and when the state-employed officer issued the citation and delivered it to the court, that was sufficient for commencement of criminal prosecution. *Id.* at 537.



[Plaintiff]’s case differs because it does not fit into the limited exception provided in Tennessee Code Annotated § 28-3-104(a)(2), which we are to strictly construe. *See* Tenn. Code Ann. § 28-3-104(a)(3). Mr. Okbahhanes was issued a citation for violation of a state statute, which was a misdemeanor crime that carried possible jail time. *See Younger*, 632 S.W.3d at 537; Tenn. Code Ann. § 55-8-136. In contrast, [defendant] was cited for a municipal ordinance violation that merely carried a civil fine. Criminal charges were never brought against [defendant], and [defendant] was not the subject of a criminal prosecution for failing to maintain a proper lookout. Thus, contrary to [plaintiff]’s arguments, Tennessee Code Annotated § 28-3-104(a)(2) is not implicated.

*Glover*, 2023 WL 3193204, at \*3–5.

In this case, like in *Glover*, Defendant was cited for a municipal ordinance violation that merely carried a civil fine. Specifically, Defendant was cited for a purported violation of section 98-62 of the Kingsport Municipal Code. Section 1-14(a) thereof provides that, except where otherwise provided, the violation of any provision of the Kingsport Municipal Code “shall be punished by a penalty of not less than \$10.00 or more than \$50.00[.]” There is no evidence in the record that criminal charges were brought against Defendant due to the accident or that the accident was “the subject of a criminal prosecution” as anticipated by section 28-3-104(a)(2). As such, this case does not fit into the limited exception provided in section 28-3-104(a)(2), and the trial court did not err in applying the one-year statute of limitations set forth in section 28-3-104(a)(1) and granting summary judgment in favor of Defendant.

## **V. Conclusion**

For the aforementioned reasons, we affirm the judgment of the Circuit Court for Sullivan County, and this case is remanded for proceedings consistent with this opinion. Costs of this appeal are taxed to the appellant, Jason M. Peterson, for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE