

FILED

05/02/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 3, 2023

EMMA GLOVER v. PAUL DUCKHORN

**Appeal from the Circuit Court for Shelby County
No. CT-4395-21 Robert Samuel Weiss, Judge**

No. W2022-00697-COA-R3-CV

At issue is whether Tennessee Code Annotated § 28-3-104(a)(2) extends the statute of limitations for a personal injury action to two years when a traffic citation for the violation of Memphis City Code Ordinance § 11-16-3 for Failure to Maintain Safe Lookout is issued to the driver alleged to be at fault. Stated another way, is an exception created to the one-year statute of limitations for personal injuries if a person involved in an automobile accident receives a ticket for the violation of a municipal ordinance from that accident? The trial court ruled in the negative. We affirm.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ARNOLD B. GOLDIN and KRISTI M. DAVIS, JJ., joined.

Alexandria G. Smartt, Clarksville, Tennessee, and Daryl A. Gray, New Orleans, Louisiana, for the appellant, Emma Glover.

Hal S. (Hank) Spragins, Jr., and Dawn Davis Carson, Memphis, Tennessee, for the appellee, Paul Duckhorn.

OPINION

FACTS AND PROCEDURAL HISTORY

Emma Glover and Paul Duckhorn were involved in a motor vehicle accident in Memphis, Tennessee, on October 29, 2020. A Memphis Police Department officer issued Mr. Duckhorn a traffic citation pursuant to Memphis City Code Ordinance § 11-16-3 for Failure to Maintain Safe Lookout. Mr. Duckhorn promptly paid the fine.

On October 30, 2021, which was one year and one day after the accident, Ms. Glover commenced this action to recover damages for personal injuries she sustained in the accident. Mr. Duckhorn responded to the complaint by filing a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss, arguing that because the complaint was filed more

than one year after the accrual of the cause of action, the case should be dismissed as time barred pursuant to Tennessee Code Annotated § 28-3-104. In support of this assertion, Mr. Duckhorn contended, inter alia, that he was not charged with a criminal offense. Rather, Mr. Duckhorn asserted that the citation was for the violation of a city ordinance that carried a \$30 fine with no possible jail time, and there was no criminal prosecution.

Ms. Glover responded that because Mr. Duckhorn was issued a traffic citation for his conduct in causing the accident and Ms. Glover's injuries, the statute of limitations was extended to two years pursuant to Tennessee Code Annotated § 28-3-104(a)(2). She also relied on the decision in *Younger v. Okbahhanes*, 632 S.W.3d 531 (Tenn. Ct. App. 2021). More specifically, Ms. Glover argued that: (1) the issuance of a traffic citation does not have to be issued by a state-employed officer pursuant to Tennessee Code Annotated § 7-63-101 in order for the two-year statute of limitations to apply; (2) the Memphis City Ordinance for which Mr. Duckhorn was issued a citation mirrors Tennessee Code Annotated § 55-8-136(b); and (3) pursuant to Memphis City Code Ordinance § 11-8-3, once the officer prepared the traffic citation for Mr. Duckhorn, Mr. Duckhorn accepted the citation, and it was filed with the clerk's office, it was deemed a lawful complaint for the purpose of prosecution.

When the motion came on for hearing, the motion was converted to one for summary judgment because the parties provided, and the trial court considered, matters outside the pleadings. Following the hearing, the trial court summarily ruled in favor of Mr. Duckhorn and dismissed the complaint as time barred. The trial court's reasoning reads, in pertinent part:

9. In the case a[t] bar, the Memphis Police Officer did not charge the Defendant with [a] State statute but instead cited him for violating the Memphis City Ordinance, for failing to maintain a safe lookout.

10. Plaintiff argued that being charged with the violation of a city ordinance would have the same effect as a violation of a State statute.

11. In paragraph (a)(3) the legislature provided that this subsection shall be strictly construed.

12. The Court denies the Plaintiffs' argument that (a)(2) should apply because a citation for a city ordinance was issued by the investigating officer. To do so would cause the exception to swallow the rule [and] have the practical effect of extending the statute of limitations to two years for all personal injury cases involving an automobile collision. If that was the intent of the statute then the Legislature could have affirmatively changed the statute of limitations for an automobile personal injury matter rather than carving out an exception and requiring that the statute be strictly construed.

Ms. Glover filed a motion to alter or amend pursuant to Rule 59 of the Tennessee Rules of Civil Procedure and attached as an exhibit a printout from the City Court Clerk's website of the traffic citation issued to Mr. Duckhorn. Mr. Duckhorn filed a motion to strike and, alternatively, response in opposition to Plaintiff's motion to alter or amend. The trial court denied Ms. Glover's Rule 59.04 motion and denied Mr. Duckhorn's motion to strike as moot. This appeal by Ms. Glover followed.

ISSUES

The issues as raised by Ms. Glover read:

1. Whether the trial court erred in denying Plaintiff's Tennessee Rule of Civil Procedure 59.04 Motion to Alter or Amend.
2. Whether Defendant was not entitled to summary judgment as a matter of law if the undisputed material facts demonstrate that Tennessee code Annotated § 28-3-104(a)(2) applies to extend the statute of limitations with regard to the citation issued to Defendant pursuant to Memphis City Code § 11-16-3 for Failure to Maintain Safe Lookout.

The issue raised by Mr. Duckhorn reads:

1. Whether the trial court abused its discretion in denying Emma Glover's motion to alter or amend summary judgment in favor of Paul Duckhorn because Duckhorn's receipt of a civil municipal ordinance violation did not create an exception to the one-year statute of limitations.

STANDARD OF REVIEW

This Court reviews "a trial court's decision on a motion for summary judgment *de novo*, without a presumption of correctness." *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Accordingly, this court must "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.*; *see also Hunter v. Brown*, 955 S.W.2d 49, 50 (Tenn. 1997). In so doing, we accept the evidence presented by the nonmoving party as true, consider the evidence in the light most favorable to the nonmoving party, and draw all reasonable inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002).

Summary judgment should be granted when "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. "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. R.R. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court explained in *Rye*:

[W]hen 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.

477 S.W.3d at 264 (emphasis in original).

To survive when a party files a properly supported motion for summary judgment pursuant to Rule 56, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading,” but rather, they must respond and set forth specific facts by affidavits—or one of the other means provided in Tennessee Rule of Civil Procedure 56—establishing that there is a genuine issue for trial. *Rye*, 477 S.W.3d at 265 (alteration in original) (quoting Tenn. R. Civ. P. 56.06).

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.”¹

TWB Architects, Inc. v. Braxton, LLC, 578 S.W.3d 879, 889 (Tenn. 2019) (alteration in original) (quoting *Rye*, 477 S.W.3d at 265).

When defendants move for summary judgment based on an affirmative defense, such as the statute of limitations, they must establish the elements of the affirmative defense before the burden shifts to the nonmovant. *See Carr v. Borchers*, 815 S.W.2d 528, 532 (Tenn. Ct. App. 1991) (“Since . . . a statute of limitations defense is an affirmative defense and no *prima facie* showing of the running of the statute of limitations is made by the record, the burden of establishing that the statute has run is upon the defendant.”); *Campbell v. Grand Trunk W. R.R. Co.*, 238 F.3d 772, 775 (6th Cir. 2001) (“Because the statute of limitations is an affirmative defense, the burden is on the defendant to show that the statute of limitations has run. If the defendant meets this requirement then the burden shifts to the plaintiff to establish an exception to the statute of limitations.”).

¹ As the Supreme Court explained in *TWB Architects, Inc. v. Braxton, LLC*, “This is the standard Tennessee courts must apply when ruling on summary judgment motions regardless of which party bears the burden of proof at trial.” 578 S.W.3d at 889.

If the moving party makes a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts *at the summary judgment stage* showing that there is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (internal quotation marks omitted) (emphasis in original).

ANALYSIS

I. SUMMARY JUDGMENT

Whether Ms. Glover’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 Mr. Duckhorn 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).²

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

² As addressed below, Ms. Glover argues that Mr. Duckhorn’s citation “mirrors” a crime considered to be a Class C misdemeanor under state law.

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, Mr. Duckhorn 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. Specifically, Memphis City Code Ordinance § 11-16-3 states:

Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver shall:

- A. Operate his or her vehicle at a safe speed;
- B. Maintain a safe lookout;
- C. Use due care to keep his or her vehicle under control.

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 Ms. Glover’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 Ms. Glover’s reliance on *Younger* is misplaced. The key distinction between *Younger* and Ms. Glover’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.

Ms. Glover’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, Mr. Duckhorn was cited for a municipal ordinance violation that merely carried a civil fine. Criminal charges were never brought against Mr. Duckhorn, and Mr. Duckhorn was not the subject of a criminal prosecution for failing to maintain a proper lookout. Thus, contrary to Ms. Glover’s arguments, Tennessee Code Annotated § 28-3-104(a)(2) is not implicated.

II. RULE 59.04 MOTION

Ms. Glover contends the trial court erred in denying her Tennessee Rule of Civil Procedure 59.04 motion to alter or amend the final judgment. Her motion stated in pertinent part:

The Plaintiff would state that the Court erred as a matter of law when it found that the applicable statute of limitations for Plaintiff s cause of action was not extended to two years pursuant to T.C.A. 28-3-104(a)(2) and *Younger v. Okbahhanes*, No. E2020-00429-COA-R10-CV (Tenn. Ct. App. Jan. 28, 2021).

In support of this motion, Plaintiff relies upon her previously filed “Response to Motion to Dismiss”, “Response to Defendant’s Reply to Plaintiff’s Response to Motion to Dismiss”, and the following memorandum.

Although it was not represented to be newly acquired evidence, Ms. Glover attached to her motion, as Exhibit A, the printout of Mr. Duckhorn’s traffic summons obtained from the Memphis City Court’s Clerk’s Office. However, her motion did not explain why the traffic summons was not previously available or why it was relevant to the Rule 59.04 motion. On appeal, she merely contends, “The trial court did not consider the newly submitted evidence in its ruling by either referencing it in findings of fact or conclusions of law and thus abused its discretion in denying Ms. Glover’s Motion to Alter or Amend.”

For his part, Mr. Duckhorn notes that when a party files a Rule 59.04 motion, such a motion should be supported by newly discovered evidence, yet Ms. Glover’s motion to

alter or amend merely restated her arguments from the summary judgment hearing. Thus, Mr. Duckhorn contends that the trial court acted within its discretion to deny the motion to alter or amend its judgment.

The trial court denied the Rule 59.04 motion finding that it “failed to assert any arguments that were not briefed and argued at the time of the hearing on the Motion for Summary Judgment.”

We review a trial court’s decision on whether to grant a Rule 59.04 motion to alter or amend a judgment under an abuse of discretion standard. *Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012) (citing *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003)). An abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice. *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011) (citations omitted). When reviewing a discretionary decision by the trial court, we presume that the decision is correct and should review the evidence in the light most favorable to the decision. *Westbrooks v. Westbrooks*, No. E2018-01993-COA-R3-CV, 2019 WL 5566351, at *2 (Tenn. Ct. App. Oct. 29, 2019) (citing *Loewen v. Loewen*, No. M2014-02501-COA-R3-CV, 2015 WL 6438753, at *2 (Tenn. Ct. App. Oct. 22, 2015)).

The purpose of a Rule 59.04 motion to alter or amend a judgment is to provide the trial court with an opportunity to correct errors before the judgment becomes final. *Burris v. Burris*, 512 S.W.3d 239, 245 (Tenn. Ct. App. 2016) (citations omitted). “The motion should be granted when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.” *Id.* (citations omitted).

To support her Rule 59 motion, Ms. Glover attached a printout of Mr. Duckhorn’s traffic summons obtained from the Memphis City Court’s Clerk’s Office, purportedly as the newly discovered evidence. However, the printout was of public record prior to the summary judgment hearing. Accordingly, the printout did not constitute newly discovered evidence in the context of a Rule 59 motion. Her motion also failed to show that the controlling law had changed or that the trial court had made a clear error of law in granting the motion for summary judgment. There was no other basis for her motion, other than the contention that the trial court was wrong in granting the summary judgment motion, but we have already determined that the trial court’s decision was not wrong. Accordingly, we find no abuse of discretion with the denial of Ms. Glover’s Rule 59.04 motion.

For the foregoing reasons, we affirm the summary dismissal of Ms. Glover’s complaint as time barred and the denial of Ms. Glover’s Rule 59.04 motion.

IN CONCLUSION

The judgment of the trial court is affirmed, and costs of appeal are assessed against the appellant, Emma Glover.

FRANK G. CLEMENT JR., P.J., M.S.