IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 29, 2023 Session

ALYSSA VANDYKE v. LILLY CHEEK ET AL.

Appeal from the Circuit Court for Montgomery County
No. CC-18-CV1859 Adrienne Gilliam Fry, Judge

No. M2022-00938-COA-R10-CV

We granted this extraordinary appeal to determine whether the Governmental Tort Liability Act, Tennessee Code Annotated sections 29-20-307 and 29-20-313(b), requires severance in cases involving both non-governmental and governmental entities. Following the legislature's amendment of these statutes in 1994, we conclude that, when a jury is demanded, the entire case against both non-governmental and governmental entities shall be tried to a jury without severance.

Tenn. R. App. P. 10 Extraordinary Appeal; Judgment of the Circuit Court Reversed and Remanded

KENNY ARMSTRONG, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Charles Jordan Parrish, Matthew Edward Ryan McFarland, and Natalie Rowan Sharp Nashville, Tennessee, for the appellant, Alyssa Belle Vandyke.

William Timothy Harvey, Clarksville, Tennessee, for the appellees, Montgomery County, Tennessee, Montgomery County Sheriff, and Montgomery County Highway Department.

Gregory P. Patton, Clarksville, Tennessee, for the appellees, Larry Cheek and Lilly Cheek.[1]

Travis Nathaniel Meeks, Clarksville, Tennessee, for the appellee, Melissa Vandyke.[2]

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[1] By order of November 15, 2022, this Court excused the Cheeks from filing a brief or participating in oral argument.

[2] By order of December 15, 2022, this Court excused Melissa Vandyke from filing a brief.

OPINION

I. Background

The case arises from an automobile accident. Appellant Alyssa Vandyke was a passenger in a vehicle driven by her mother, Melissa Vandyke. Due to a malfunctioning traffic light, the Vandyke vehicle collided with a vehicle owned by Larry and Lilly Cheek.

On September 14, 2018, Appellant filed suit against Montgomery County, Tennessee, Montgomery County Sheriff, Montgomery County Highway Department (together, "Montgomery County," and with the Cheeks and Melissa Vandyke, "Appellees"). In her complaint, Appellant prayed for a jury trial.

On August 31, 2021, the Cheeks filed a motion for scheduling order. On January 14, 2022, Appellant filed a response to the motion for scheduling order, to which she attached a memorandum in support of a jury trial. Specifically, Appellant argued that under the relevant sections of the Governmental Tort Liability Act ("GTLA"), Tennessee Code Annotated sections 29-20-307 and 29-20-313(b), a jury should hear her claims against all defendants. Montgomery County countered that the GTLA required any claims against them to be tried by the court, not a jury.

On February 11, 2022, the trial court heard arguments on the question of severing the trial. By order of February 28, 2022, the trial court ruled in favor of Montgomery County. Appellant moved for interlocutory appeal under Tennessee Rule of Appellate Procedure 9. The motion was denied on May 24, 2022. Thereafter, Appellant moved for extraordinary appeal under Tennessee Rule of Appellate Procedure 10. By order of August 19, 2022, this Court granted the Rule 10 appeal.

II. Issue

As stated by Appellant, the sole issue for review is:

> Whether the trial court erred in ordering this matter to be bifurcated into two separate trials:
> (1) Plaintiff/Appellant's case in chief against the non-governmental Defendants to be decided by a jury, and
> (2) Plaintiff/Appellant's case in chief against the governmental Defendants to be decided by bench trial.

III. Standard of Review

The issue involves interpretation of two GTLA provisions, *i.e.*, Tennessee Code Annotated sections 29-20-307 and 29-20-313(b). In interpreting statutes, the Tennessee

Supreme Court has provided the following guidance:

> The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aid[s] to that end. We examine the language of the statute, its subject matter, the object and reach of the statute, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment. We must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.

Spires v. Simpson, 539 S.W.3d 134, 143 (Tenn. 2017) (citations and quotation marks omitted). "The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose." ***Coffee Cnty. Bd. of Educ. v. City of Tullahoma***, 574 S.W.3d 832, 839 (Tenn. 2019) (quoting ***Mills v. Fulmarque, Inc.***, 360 S.W.3d 362, 368 (Tenn. 2012)).

The Tennessee Supreme Court has further explained that:

> We consider the whole text of a statute and interpret each word "so that no part will be inoperative, superfluous, void or insignificant." ***Bailey v. Blount Cnty. Bd. of Educ.***, 303 S.W.3d 216, 228 (Tenn. 2010) (quoting ***Tidwell v. Collins***, 522 S.W.2d 674, 676 (Tenn. 1975)). We also consider "[t]he overall statutory framework." ***Coffee Cnty. Bd. of Educ. v. City of Tullahoma***, 574 S.W.3d 832, 846 (Tenn. 2019). "[S]tatutes '*in pari materia*'—those relating to the same subject or having a common purpose—are to be construed together . . . ." ***Wilson v. Johnson Cnty.***, 879 S.W.2d 807, 809 (Tenn. 1994).
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> We presume that a statute applies prospectively unless the legislature clearly provides for its retroactive application. ***State v. Thompson***, 151 S.W.3d 434, 442 (Tenn. 2004); ***Hannum v. Bank of Tenn.***, 41 Tenn. (1 Cold.) 398, 402 (1860) ("The very essence of a new law . . . is a rule for future cases.").
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> When a statute's meaning is clear and unambiguous after consideration of the statutory text, the broader statutory framework, and any relevant canons of statutory construction, we "enforce the statute as written." ***Johnson***, 432 S.W.3d at 848.

State v. Deberry, 651 S.W.3d 918, 925 (Tenn. 2022).

IV. Analysis

The current version of Tennessee Code Annotated section 29-20-307 is applicable here; it provides, in relevant part:

> The circuit courts shall have exclusive original jurisdiction over any action brought under this chapter and shall hear and decide such suits without the intervention of a jury, **except as otherwise provided in § 29-20-313(b)**. . . .

Tenn. Code Ann. § 29-20-307 (emphasis added). As referenced in Tennessee Code Annotated section 29-20-307, Tennessee Code Annotated section 29-20-313(b) provides:

> (b) When suit is brought in circuit court in a case in which there are multiple defendants, one (1) or more of which are a governmental entity or entities or governmental entity employee or employees whose liability or lack thereof is to be determined based upon this chapter and one (1) or more of which are not such governmental entity or entities or governmental entity employee or employees, the case shall be heard and decided by a jury upon the demand of any party. Nothing in this section shall be construed to abridge the right of any party to a trial by jury otherwise granted by the state or federal constitution or any statute.

Tenn. Code Ann. § 29-20-313(b).

The foregoing statutes were amended in 1994. Unlike the current version of Tennessee Code Annotated section 29-20-307, the pre-1994 version of the statute made no reference to Tennessee Code Annotated section 29-20-313(b). Rather, the pre-1994 version of Tennessee Code Annotated section 29-20-307 provided: "The Circuit courts shall have exclusive original jurisdiction over any action brought under this chapter and shall hear and decide such suits without the intervention of a jury. . . ." The pre-1994 version of Tennessee Code Annotated section 29-20-313(b) stated:

> (b) Where there are multiple defendants to a lawsuit and the plaintiff is entitled to a jury trial as to one (1) or more of such defendants and is not as to others, the court shall sever the trial of those defendants for which the plaintiff may demand a jury trial from those for which he may not.

Clearly, the pre-1994 version of section 29-20-307 provided that governmental entities were to be tried "without the intervention of a jury," and the pre-1994 version of section 29-20-313(b) required the court to "sever the trial" of the governmental entities because, under section 29-20-307, the plaintiff was not entitled to "demand a jury trial" of those governmental entities. However, as set out in context above, the post-1994 iterations of the relevant GTLA statutes clearly negate the need for severance. The current version of section 29-20-313(b) states that "the **case** shall be heard and decided by a jury upon the demand of any party." (Emphasis added). The legislature included no limiting language to indicate an intent that any part of the case should be heard by the court as opposed to the jury. Rather, the legislature stated that the "case" shall be heard by the jury; we read this

to mean the entire case against all parties.

A portion of the transcript from the House Ways and Means Committee meeting of March 29, 1994, is included in the record. The following portion of the discussion makes clear the legislative intent in amending section 29-20-313:

> MR. BUCK: All right . . . . If you recall some almost 20 years ago we have had a provision of a governmental tort liability where you have judge trials. Now, the problem you get into is where you have a City water truck collide with another vehicle. They bounce off, and hit another vehicle, where you have a suit brought against both governmental entities and private individuals. Under current law, it would mandate two separate trials, but you know. . . there's no guarantee that the judge is going to agree with the jury and it just creates a mess.
>
> So, all of us have agreed and TML drafted the amendment here. They agree in those circumstances where there are multiple defendants and the governmental entity is one of those defendants, that in fact, you just have one trial and that's the end of the matter, and it is subject to a jury trial if they ask for it.

From the plain language of the amended statute, and in view of Mr. Buck's comments concerning the need for the 1994 amendment, we conclude that Tennessee Code Annotated section 29-20-313(b) allows for a trial by jury where the case involves both governmental entities and non-governmental entities, and where a jury trial is requested.[3] Both of these criteria are met in the instant case.

We briefly note Appellees' argument that the language, "[n]othing in this section shall be construed to abridge the right of any party to a trial by jury otherwise granted by the state or federal constitution or any statute," Tenn. Code Ann. § 29-20-313(b), protects Montgomery County's right to a bench trial. In short, Montgomery County asks us to apply the inverse of the statutory language. This, we cannot do. The language Montgomery County relies on protects "the right of any party to a trial by jury"; it does not protect a party's right to a bench trial. Regardless, following the 1994 GTLA amendments, governmental entities do not have a right to a bench trial in cases, such as this, where the plaintiff has demanded a jury trial, and the case involves both governmental and non-governmental entities.

Turning to the trial court's February 28, 2022 order, it appears that the trial court applied the pre-1994 versions of the relevant GTLA statutes. The trial court held that, "The Tennessee Governmental Tort Liability Act . . . provides that the court shall give a governmental entity a bench trial and that the judge shall hear the case without the

[3] Nothing in our ruling should be construed to usurp the trial court's role as Thirteenth Juror.

intervention of a jury. Tenn. Code Ann. §§ 29-20-307-313(b) (1980 & Supp. 1994)." Although the trial court cited the 1994 code supplement, it apparently ignored the amended language in section 29-20-307, which states that a trial court shall hear any cases involving governmental entities "**except as otherwise provided in § 29-20-313(b)**." (Emphasis added). As discussed above, section 29-20-313(b) clearly provides that, where non-governmental and governmental entities are involved, the entire case will be tried to a jury, when a jury trial is demanded. Furthermore, in holding that Appellant is "entitled to a trial by jury only involving those claims not involving the governmental entity," the trial court relied on the case of ***Austin v. Cnty. of Shelby***, 640 S.W.2d 852 (Tenn. Ct. App. 1982), *perm. app. denied* (Tenn. Oct. 25, 1982). Although the ***Austin*** Court held that severance was mandatory under the GTLA, the case was decided before sections 29-20-307 and 29-20-313(b) were amended in 1994. In view of the 1994 amendment, to the extent ***Austin*** holds that the GTLA requires severance of the jury trial for non-governmental entities from the bench trial for governmental entities, it is no longer good law. As such, the trial court's reliance on the case was error.

V. Conclusion

For the foregoing reasons, we reverse the trial court's order. The case is remanded for trial by jury, and for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellees, Montgomery County, Tennessee, Montgomery County Sheriff, and Montgomery County Highway Department, for all of which execution may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE