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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 3, 2023

CHRISTA STEPHEN ET AL. v. SARAH HILL

**Appeal from the Circuit Court for Montgomery County
No. 19-CV-1689 Adrienne Gilliam Fry, Judge**

No. M2022-00672-COA-R3-CV

This appeal involves a personal injury case where the defendant died during the pendency of the litigation. Subsequent to the filing of a suggestion of death by the defendant's counsel, the plaintiff failed to timely file a motion for substitution within the time provided in the Tennessee Rules of Civil Procedure and, as a result, the defendant's counsel filed a motion to dismiss. Shortly thereafter, the plaintiff filed a motion for substitution and simultaneously moved the trial court to enlarge the time for filing the motion. The trial court denied the plaintiff's motions and dismissed the case. Upon our review of the record, we reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded.

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Dale Krout, Nashville, Tennessee, for the appellant, Christa Stephen.

Gregory P. Patton and Allison W. Jackson, Clarksville, Tennessee, for the appellee, Sarah Hill.

MEMORANDUM OPINION¹

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

BACKGROUND AND PROCEDURAL HISTORY

This case arises from a motor vehicle accident that occurred on October 10, 2018. On August 15, 2019, Christa Stephen, Leola Miles, and Erain Stephen filed suit against Sarah Hill (“Defendant”) in the Circuit Court of Montgomery County. On May 3, 2021, Leola and Erain dismissed their claims against Defendant with prejudice, leaving Christa Stephen (“Plaintiff”) as the sole remaining plaintiff.

On August 4, 2021, Defendant’s counsel, as a result of the death of Defendant, filed a suggestion of death pursuant to Rule 25.01(1) of the Tennessee Rules of Civil Procedure. On November 16, 2021, Defendant’s counsel filed a motion to dismiss the lawsuit as no motion to substitute a party had been filed by Plaintiff within the ninety-day time period provided for in Rule 25.01(1). Eight days later, on November 24, 2021, Plaintiff filed a motion to substitute, as well as a motion to enlarge time pursuant to Rule 6.02 of the Tennessee Rules of Civil Procedure. In a memorandum in support of the motion, Plaintiff argued that the time should be enlarged based on the doctrine of excusable neglect. Plaintiff’s motion to enlarge the time was heard before the trial court on February 4, 2022. In an order dated February 28, 2022, the trial court determined that Plaintiff had “failed to meet the standard of excusable neglect that would allow the [trial court] to grant an enlargement of time to substitute the proper party.” As such, the trial court dismissed Plaintiff’s case against Defendant with prejudice. Subsequent to the trial court’s order, Plaintiff filed a motion to alter or amend the order which was accompanied by a declaration of Plaintiff’s counsel explaining in detail the basis for the failure to timely file the motion for substitution. In an order dated April 28, 2022, the trial court denied the motion to alter or amend, citing largely the same reasons it did in its prior order. This appeal followed.

ISSUE PRESENTED

Plaintiff sets forth multiple issues for our review on appeal, which we have condensed and restated as follows:

Whether the trial court erred in denying Plaintiff an enlargement of time based on excusable neglect under the facts of this case.

STANDARD OF REVIEW

This Court reviews a denial of an enlargement of time under the abuse of discretion standard. *Dubis v. Loyd*, 540 S.W.3d 4, 12 (Tenn. Ct. App. 2016) (citing *Williams v. Baptist Mem’l Hosp.*, 193 S.W.3d 545, 551 (Tenn. 2006)). “A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.” *Lee Med., Inc., v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). This abuse of discretion standard does not permit this Court to substitute

its judgment for that of the trial court. *Id.* (citing *Williams*, 193 S.W.3d at 551).

DISCUSSION

Rule 6.02 of the Tennessee Rules of Civil Procedure provides in pertinent part as follows:

When by statute or by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done, where the failure to act was the result of excusable neglect[.]

Tenn. R. Civ. P. 6.02.

Here, Defendant's counsel filed a suggestion of death on August 4, 2021, pursuant to Rule 25.01, which provides, in pertinent part that, "[u]nless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." Tenn. R. Civ. P. 25.01. Accordingly, in order to avoid dismissal, Plaintiff was required to file a motion to substitute not later than ninety days after Defendant's counsel's filing of the suggestion of death. The deadline for filing the motion fell on November 2, 2021. On November 16, 2021, Defendant's counsel filed a motion to dismiss the lawsuit as no motion to substitute a party had been filed by Plaintiff within the ninety-day time period provided for in Rule 25.01(1). Eight days later, on November 24, 2021, Plaintiff filed a motion to substitute as well as a motion to enlarge the time to file said motion. In support of the motion to enlarge the time, Plaintiff cited excusable neglect but without specific detail. However, Defendant's counsel acknowledges that during oral argument on the motion Plaintiff advised the trial court that the failure to timely file a motion for substitution was a result of an oversight during a transition period in his office due to the COVID-19 pandemic. The trial court determined that Plaintiff's motion to enlarge time did not provide the trial court with a sufficient explanation of excusable neglect and denied the motion.

Plaintiff timely filed a Tenn. R. Civ. P. 59.04 motion to alter or amend the trial court's order. Attached as an exhibit to the motion was a declaration of Plaintiff's counsel which reiterated in detail what had been represented at the hearing in support of the motion for extension of time. Plaintiff's counsel stated in the declaration that, upon receiving the suggestion of death filed by Defendant's counsel, he forwarded the document to his staff so that it could be docketed in order for him to timely file the motion for substitution.

However, the date was inadvertently not docketed by either him or his staff who were still working both in person and remotely. He further explained that during this same time period, his staff underwent a transition, including the loss of his paralegal in September 2021, and other staff turnover, as a result of dealing with COVID-19 protocols.

As the appellate courts in this State have previously explained of excusable neglect:

[A] party's failure to meet a deadline may have causes ranging from forces beyond its control to forces within its control The former will almost always substantiate a claim of excusable neglect; the latter will not. However, neglect extends to more than just acts beyond a party's control and intentional acts. It encompasses "simple, faultless omissions to act and, more commonly, omissions caused by carelessness."

Dubis, 540 S.W.3d at 12 (quoting *Williams*, 193 S.W.3d at 551). In determining whether a failure to act was the result of excusable neglect, the courts are to consider the following factors: "(1) the risk of prejudice to the 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." *Id.* (quoting *Williams*, 193 S.W.3d at 551). Here, we note that the trial court's order, without "expressly articulating" an analysis of the requisite factors in its ruling, merely stated: "[a]fter reviewing the cited case law and factors to consider whether the actions of plaintiff's counsel constitute excusable neglect within the meaning of [Rule 6.02], the Court finds that the plaintiff failed to meet the standard of excusable neglect that would allow the Court to grant an enlargement of time to substitute the proper party."² When later denying the motion to alter or amend, the trial court stated that "consideration was [previously] given to all of the factors" within its prior order, but as noted, the court did not actually articulate how it considered all of those factors in the prior order. Nor did the court ever find that the first, second, or fourth factors from *Williams* weighed against Plaintiff. It appears the court's primary point of emphasis, and the only factor relied upon to deny Plaintiff relief, relates to the reasons for Plaintiff's delay. Indeed, the court even remarked when denying the motion to alter or amend that it had previously "highlighted" the factor regarding the reason for Plaintiff's delay.

Having considered *all* of the factors based on the facts of this case, we find that the trial court erred in failing to find excusable neglect on the part of Plaintiff's counsel pursuant to Rule 6.02. The concept of excusable neglect has been described as "broad enough to apply to 'simple, faultless omissions to act and, more commonly, [to] omissions

² Interestingly, in *Dubis*, we noted, concerning the trial court's order in that case, that the requisite factors were not "expressly articulated or considered by the trial court in its order" and that this Court "has recently taken issue with a trial court's decision to grant a motion to dismiss without providing a sufficient explanation for the basis for its ruling." *Dubis*, 540 S.W.3d at 12.

caused by carelessness.” *Kenyon v. Handal*, 122 S.W.3d 743, 756 (Tenn. Ct. App. 2003) (quoting *Pioneer Inv. Servs. Co.*, 507 U.S. at 394 (1993)). “[T]he excusable neglect concept may also apply to situations in which failure to comply with a filing deadline is attributable to a filer’s negligence.” *Dubis*, 540 S.W.3d at 13 (citing *Kenyon*, 122 S.W.3d at 756). We conclude that the present situation appears to fall within that category. Moreover, based on Plaintiff’s counsel’s declaration, there is no indication that his failure to timely file the motion to substitute was willful or egregious. *See Dubis*, 540 S.W.3d at 13 (noting that counsel’s failure to timely substitute the proper party did not appear to be willful or egregious). Although the trial court found Plaintiff’s explanations as to the delay insufficient, this Court has previously accepted “rather feeble excuse[s]” by parties *when the other factors* for excusable neglect favor parties so heavily such that a finding of excusable neglect is appropriate. *Id.* We find similarly here. There is no indication that Defendant was prejudiced by the delay of filing, nor was there any significant impact on the litigation as the motion to dismiss and Plaintiff’s motion to substitute were filed within days of one another. Moreover, we do not find any evidence of bad faith on the part of Plaintiff as it appears that once he became aware of his failure to timely file the motion to substitute he took prompt action in an attempt to rectify the matter by filing the motion to substitute and motion for an enlargement of time. Although it is certainly arguable that Plaintiff’s counsel’s actions here were negligent, we do not find them to be so egregious that it warrants a dismissal of the matter, especially in light of the “strong preference embodied in the Tennessee Rules of Civil Procedure that cases stating a valid legal claim brought by Tennessee citizens be decided on their merits.” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 432 (Tenn. 2011) (citing *Jones v. Prof’l Motorcycle Escort Serv., L.L.C.*, 193 S.W.3d 564, 572 (Tenn. 2006)). Under the particular facts of this case, we conclude that there was excusable neglect by Plaintiff’s counsel pursuant to Rule 6.02 and that the trial court erred in denying Plaintiff’s motion for an enlargement of time to file a motion for substitution pursuant to Rule 25.01.

CONCLUSION

Based on the foregoing, the trial court’s order of dismissal is reversed.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE