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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 1, 2019[1]

LaRONDA JOHNSON v. BARRY DOMINICK

Appeal from the Circuit Court for Montgomery County
No. 63CC1-2015-CV-879 Ross H. Hicks, Judge

No. M2018-01025-COA-R3-CV

This is a case involving the propriety of retroactive child support. Following the death of the Respondent and notwithstanding the Petitioner's stated efforts to have an administrator ad litem appointed and thereafter substituted in the Respondent's stead, the trial court dismissed this case. For the reasons that follow, we conclude that the dismissal should be set aside

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

ARNOLD B. GOLDIN, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and FRANK G. CLEMENT, JR., P.J., M.S., joined.

LaRonda F. Johnson, New Market, Alabama, Pro Se.

MEMORANDUM OPINION[2]

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[1] In May 2019, we entered an order remanding this case to the trial court for further proceedings due to the lack of a final judgment, among other concerns. At that time, rather than dismiss the appeal, however, we held it in abeyance. Before the substantive matters in the case were conclusively addressed, it was dismissed by the trial court, thereby essentially mooting the previously outstanding issues in the case. The trial court's dismissal of the case resulted in a final judgment, and we allowed an opportunity for briefing to address the dismissal. The trial court's dismissal of the case is now addressed in this opinion

[2] 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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

This case, which has been the subject of protracted proceedings, including a prior appeal in this Court,[3] comes before us following an order of dismissal. The facts pertinent to our review here are as follows. During proceedings in the trial court, a suggestion of death was made upon the record concerning the death of the Respondent. The suggestion of death was filed on May 16, 2019, and thereafter, on August 13, 2019, the Petitioner LaRonda Johnson, proceeding *pro se*, filed her "Motion to Substitute Deceased Party." Although the motion to substitute was made within ninety days of the suggestion of death, it did not identify a specific party to be substituted. Rather, the motion reflected that the Petitioner was seeking to have an administrator ad litem appointed. A hearing was noticed for later that fall, on November 1, 2019.

The day after the motion to substitute was filed, a motion to dismiss was filed, wherein it was alleged that ninety days had passed since the filing of the suggestion of death without a request for substitution. The trial court subsequently granted the motion and dismissed the Petitioner's case following a hearing in August 2019. The Petitioner promptly filed a motion to set aside the dismissal. The Petitioner thereafter expressed her desire to be heard on her request for substitution and later referenced her efforts to have the Chancery Court appoint an administrator ad litem or personal representative. In one motion, the Petitioner requested that a hearing on her request for substitution occur after the appointment in Chancery Court of someone who could be substituted. The trial court ultimately denied the Petitioner's request to set aside the order of dismissal. Now, in this Court, the Petitioner challenges the dismissal of her case.

We agree with the Petitioner that the trial court's dismissal order should be set aside. While it is true that the Petitioner's motion to substitute did not name a specific party to be substituted, it is clear from our review of the record that the Petitioner, who has proceeded *pro se*, has been attempting to have a proper party appointed in place of the deceased. The motion to substitute reflected that the Petitioner was pursuing the appointment of an administrator ad litem, and we observe that the motion itself was made within ninety days of the suggestion of death. *See* Tenn. R. Civ. P. 25 ("Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record . . . the action shall be dismissed as to the deceased party."). The trial court was also alerted thereafter to the pendency of another judicial proceeding where the Petitioner was specifically pursuing the appointment of an administrator who could be substituted. Indeed, in one filing, the Petitioner specifically requested that a hearing on her request for substitution wait until the Chancery Court could appoint an administrator ad litem. Although the Petitioner's filings are somewhat inartful, we construe them as essentially requesting that an enlargement of time be given with respect to her request for a substitution. The period to make a proper motion for substitution may be extended due to excusable neglect, *Dubis v. Loyd*, 540 S.W.3d 4, 9 (Tenn. Ct. App. 2016), and this

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[3] *See Johnson v. Dominick*, No. M2016-01643-COA-R3-CV, 2017 WL 5508484 (Tenn. Ct. App. Nov. 16, 2017).

concept is broad enough to apply to simple faultless omissions to act, as well as omissions caused by carelessness. *Id.* at 13. Whether a trial court erred in granting or denying an enlargement of time is generally reviewed under an abuse of discretion standard. *Id.* at 12.

In this case, our review is somewhat hampered by the fact that the trial court's orders are devoid of any meaningful explanation of the court's ruling. The order adjudicating the Petitioner's motion to set aside, for instance, does not reference the Petitioner's request that the substitution issue be considered after an appointment of an administrator ad litem in Chancery Court. In fact, the trial court's orders do not even reference the Petitioner's efforts to secure the appointment of an administrator ad litem as a prerequisite to substitution. Really, the dismissal order and the court's order on the motion to set aside are little more than perfunctory rulings. They simply indicate that the Petitioner's case is "dismissed" and her request for relief "denied," without any explanation or elaboration. We have noted in previous cases that we are unable to afford appropriate deference to the trial court when no rationale for a ruling is provided. *Id.* Accordingly, we independently review whether the Petitioner should be excused for failing to file a proper motion for substitution within ninety days of the suggestion of death. *See id.*

Here, the Petitioner may well have been somewhat careless in seeking substitution. She did not name a specific person in her motion to substitute, evidently[4] believing at the time that the trial court had the authority to appoint an administrator ad litem. However, we again note that the initial motion to substitute was made within ninety days of the suggestion of death, and it clearly indicated that an appointment of an administrator ad litem was being pursued. "[T]here is nothing in this case to suggest that [Petitioner's] failure to timely substitute the proper party was willful or egregious." *Id.* at 13.

Having initially filed a motion for substitution, albeit an incomplete one, within ninety days of the suggestion of death and having thereafter alerted the trial court of her efforts to have an administrator ad litem appointed in the Chancery Court, the Petitioner took steps here to attempt to have this case proceed and be heard on its merits. Considering all of the circumstances of the case, we are of the opinion that the trial court erred in refusing to set its dismissal order aside and in failing to provide the Petitioner with an enlarged period of time within which to file a proper motion to substitute. The trial court's order of dismissal is hereby vacated,[5] and the case is remanded for the entry

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[4] It is somewhat ambiguous whether the Petitioner was seeking to have the trial court appoint an administrator ad litem or was simply referencing her efforts (which were clear later) to have the Chancery Court appoint one.

[5] In light of our disposition herein and the present posture of the case, any other concerns are pretermitted, including those the Petitioner initially attempted to raise on appeal before the case was dismissed by the trial court.

of an order allowing the Petitioner an opportunity to obtain the appointment of an administrator ad litem, and to re-file her motion for substitution once that appointment is made.

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ARNOLD B. GOLDIN, JUDGE