

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 28, 2015 Session

JACK PARKS ET AL. v. SUN BELT MANAGEMENT COMPANY ET AL.

**Appeal from the Circuit Court for Washington County
No. 31568 Jean Stanley, Judge**

No. E2014-01968-COA-R3-CV-FILED-NOVEMBER 30, 2015

The plaintiffs voluntarily non-suited an action against the defendants. Later, this suit against the same defendants for the same cause of action was filed. The plaintiffs in their second suit failed to have process issued and served on the defendants. The defendants moved to dismiss based upon this failure. The trial court dismissed the plaintiffs' suit. They appeal. We affirm.

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

CHARLES D. SUSANO, JR., C.J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and THOMAS R. FRIERSON, II, JJ., joined.

Jack Parks and Michael Parks, Johnson City, Tennessee, appellants, pro se.

Richard M. Currie, Jr. and Andrew T. Wampler, Kingsport, Tennessee, for the appellees, Sunbelt Management Company, Elizabeth Lowe, Missy Doe, and John Does.

MEMORANDUM OPINION¹

¹ Rule 10 of the Rules of the Court of Appeals provides as follows:

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The complaint alleges that the defendants – owner and manager of the plaintiffs’ apartment – intentionally maintained a commode in the plaintiffs’ apartment in an unsatisfactory and dangerous manner. There is no dispute that process was never issued on the plaintiffs’ second suit. The failure to have process issued and served is a total bar to the plaintiffs’ suit. *See* Tenn. R. Civ. P. 3 and 4.

The plaintiffs contend a deputy in the trial court clerk’s office told them that they did not have to have process served on the defendants in the second suit. This is no excuse for a failure to comply with the provisions of Tenn. R. Civ. P. 3 and 4. *See Clark v. McClung*, No. M2003-00552-COA-R3-CV, 2003 WL 22994304, at *2, *5 (Tenn. Ct. App. M.S., filed Dec. 17, 2003) (rejecting plaintiff’s argument “that the failure to file an alias summons within the one year statute of limitations outlined in Tenn. R. Civ. P. 3, was due to the mistake of the Circuit Court Clerk in refusing to allow them to file an alias summons” and stating that under the circumstances, “the Clerk’s mistake, if any, does not excuse Plaintiffs’ failure to discover and remedy the error”).

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellants, Jack Parks and Michael Parks. The case is remanded, pursuant to applicable law, for collection of costs assessed below.

CHARLES D. SUSANO, JR., CHIEF JUDGE