IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 23, 2008

PERRY H. YOUNG v. HAMILTON COUNTY, TENNESSEE, ET AL.

Appeal from the Circuit Court for Hamilton County
No. 07C481 L. Marie Williams, Judge

No. E2007-02317-COA-R3-CV - FILED JUNE 17, 2008

Perry H. Young ("Plaintiff") was arrested in 2004 for driving while intoxicated and for violating the habitual motor vehicle offender law, among other things. Following his arrest, Plaintiff filed several civil lawsuits claiming false arrest and attacking the validity of the habitual motor vehicle offender law. Plaintiff claims that he filed in a separate lawsuit bearing docket number 05C538 one or more motions for default which were not set for hearing by the Trial Court. Plaintiff filed the lawsuit now on appeal challenging the Trial Court's failure to set the motions for default for hearing and/or for otherwise failing to grant him a default judgment in the amount of $14 million. The Trial Court dismissed the lawsuit now before us after concluding that case number 05C538 was the proper forum for Plaintiff to address any procedural issues he has in case number 05C538. Plaintiff appeals, and we affirm.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Perry H. Young, pro se Appellant.

Mary Neill Southerland, Chattanooga, Tennessee, for the Appellee, Hamilton County, Tennessee.

MEMORANDUM OPINION[1]

The present pro se lawsuit was filed by Plaintiff in the Hamilton County Circuit Court and bears docket number 07C481. This is one of several civil lawsuits filed by Plaintiff. The lawsuits were precipitated by Plaintiff's arrest in November of 2004 for driving while intoxicated, driving on a revoked driver's license, violation of the financial responsibility law, violation of the seat belt law, and felonious operation of a motor vehicle. It appears that the criminal charges were awaiting trial when the Trial Court dismissed this case.

This Court has not been provided in the record now before it copies of the other civil lawsuits filed by Plaintiff. Based on what is in the record, it appears that Plaintiff filed a lawsuit in January of 2005 captioned "Lawsuit for False Arrest." This lawsuit was filed in the Hamilton County Circuit Court bearing docket number 05C162. In April of 2005, Plaintiff filed a separate lawsuit against the "Hamilton County Criminal Court Government." This lawsuit was filed in Hamilton County Circuit Court and was assigned docket number 05C538. The April 2005 lawsuit was brought "as a direct attack upon the Habitual [Motor Vehicle Offender] Petition and Judgment." There apparently is another lawsuit bearing docket numbers 04C1674, but this lawsuit is not discussed in any detail in the parties' briefs in this appeal.

The lawsuit before us on appeal challenges alleged inactions of the Trial Court in case number 05C538. The complaint begins as follows:

> On the matter of lawsuit case number 05C538, this lawsuit was filed on April 1, 2005. Accordingly, the County Attorney shall file a defense to [the] lawsuit … or Judgment by default will be taken against you for the relief demanded in the Complaint, as defined in its definition in motion for default judgment.

Plaintiff then goes on to claim that he filed one of more motions for default in case number 05C538, but the Trial Court failed to set his motions for hearing. Plaintiff asked the Trial Court in the case now before us to enter a default judgment against Hamilton County in case number 05C538, and to award him the relief he requested in case number 05C538 to the tune of fourteen million dollars.

The defendants filed a motion to dismiss claiming the present case should be dismissed for two reasons. First, the defendants claimed the present case was barred by the doctrine of res judicata. Second, they claimed that, to the extent Plaintiff is entitled to any relief, he must seek that relief in case number 05C538 and cannot file a separate lawsuit.

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[1] Rule 10 of the Rules of the Court of Appeals 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."

In July of 2007, the Trial Court entered an order sustaining the motion to dismiss without prejudice on the second basis. In relevant part, the Trial Court's order states:

> Case No. 05C538 is an open case, the last activity of which was the denial of an interlocutory appeal by the Court of Appeals. Activity in that case is the appropriate forum for the issue complained of by plaintiff in this case. He alleges procedural defects which can be addressed in that case. Accordingly, the motion to dismiss is sustained.

Following denial of Plaintiff's post-trial motion seeking relief from the final judgment, Plaintiff appealed to this Court. Plaintiff summarizes his argument as follows: "Lawsuit docket No. 07C481 is based on failure to docket default judgment and is not res judicata of all other lawsuits that are based on false arrest to different cases."

As we read the Trial Court's order, the lawsuit now on appeal was not dismissed based on res judicata. Rather, the Trial Court dismissed this case because the basis for the lawsuit was allegations of procedural errors in case number 05C538. We agree with the Trial Court that the proper forum to address the procedural problems in case number 05C38 as alleged in the case before us is in case number 05C538 and not in a separate lawsuit. Accordingly, the judgment of the Trial Court is affirmed.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Perry H. Young and his surety, if any.

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D. MICHAEL SWINEY, JUDGE