IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 2000 Session

RONALD FREEMAN, JR. v. BOBBY SHANNON, SHERIFF OF BENTON COUNTY, TENNESSEE

Rule 3 Appeal from the Circuit Court for Henry County
No. 1025 Julian P. Guinn, Judge

No. W1999-01597-C0A-R3-CV - Decided September 7, 2000

This is a negligence suit under the Tennessee Governmental Tort Liability Act. The plaintiff is a prisoner who was injured when another car struck the patrol car in which he was being transported. The plaintiff sued the county sheriff under the Tennessee Governmental Tort Liability Act, asserting that his injuries were caused by the negligence of the sheriff's deputy. The plaintiff later amended his complaint to add the county as a defendant. The trial court granted motions to dismiss filed by both the sheriff and the county. The plaintiff appeals the trial court's dismissal of his suit against the county. We affirm, finding that the amended complaint against the county does not relate back to the date the plaintiff filed suit against the sheriff and therefore is barred by the statute of limitations.

Tenn. R. App. 3; Judgment of the trial court is affirmed

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., WS, and ALAN E. HIGHERS, J., joined.

Kathleen L. Caldwell, Memphis, Tennessee, for the appellant, Ronald Freeman, Jr.

Gregory H. Oakley, Nashville, Tennessee for the appellee, Bobby Shannon, Sheriff of Benton County, Tennessee

OPINION

On July 29, 1997, Plaintiff/Appellant Ronald Freeman, Jr. ("Freeman"), a state prisoner, was being transported from court to prison by Benton County Sheriff's Deputy Dennis Wheatley ("Wheatley")in a Benton County Sheriff's Deputy's car. Wheatley had placed Freeman, handcuffed, in the rear of the patrol car without fastening his seatbelt. On January 28, 1998, Freeman filed a *pro se* complaint against Bobby Shannon ("Shannon"), the Benton County Sheriff. Freeman alleged that his injuries were due to the negligence of Shannon, or of his agent Wheatley, in failing to fasten Freeman's seat belt when he was placed in the rear of the patrol car.

On August 5, 1998, Shannon filed a motion to dismiss for failure to state a claim, under Rule 12.02(6) of the Tennessee Rule of Civil Procedure. Shannon argued that, as a county employee, he was immune from suit under Section 29-20-310(b) of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated Section 29-20-101 *et seq.* ("TGTLA"), upon which Freeman's negligence suit would necessarily be based. Section 29-20-310(b) of the TGTLA provides that "no claim may be brought against an employee or judgment entered against an employee for damages for which the immunity of the governmental entity is removed by this chapter unless the claim is one for medical malpractice brought against a health care practitioner." Tenn. Code Ann. § 29-20-310(b) (Supp. 1998). In addition, Shannon argued that Freeman's complaint failed to state a cause of action against him because it contained no factual allegation regarding Shannon's actions upon which a claim of negligence could be based.

On November 9, 1998, after obtaining counsel, Freeman filed a motion for leave to amend his complaint to add Benton County ("the County") as a defendant. On November 13, 1998, the trial court granted Freeman permission to amend his complaint to add Benton County as a defendant, and gave him fourteen days to file his amended complaint. [1]

On December 2, 1998, the County filed a motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. The County noted that the amended complaint was filed more than one year after Freeman's injury. It argued that Freeman's claim against the County was barred by the one year statute of limitations in Section 29-20-305(b) of the TGTLA. The County maintained that Freeman's amended complaint against the County could not relate back to the date he filed his original complaint against Shannon under Rule 15.03 of the Tennessee Rules of Civil Procedure because the requirements of Rule 15.03 had not been met. Rule 15.03 states:

> Whenever the claim or defense asserted in the amended pleadings arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party or the naming of the party by or against whom a claim is asserted relates back if the foregoing provision is satisfied and if, within the period provided by law for commencing an action or within 120 days after commencement of the action, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

[1] The appellee points out that the record contains no indication that Freeman ever filed an amended complaint. The trial court, however, apparently treated Freeman's motion for leave to amend, in which he set out grounds for amendment, as an amended complaint.

Tenn. R. Civ. P. 15.03. The County contended that it had not received notice of the original lawsuit against Shannon. It also asserted that there was no mistake about the identity of the party to be sued; Freeman made a deliberate decision to sue the Sheriff rather than the County.

On January 25, 1999, the trial court dismissed Freeman's claim against the County. The trial court found that Freeman's decision to name Sheriff Shannon instead of the County in his original complaint had been a " 'mistake concerning the identity of the proper party to be sued' as contemplated by Rule 15.03," but that Freeman had "failed to carry his burden of proving that Benton County had notice of the lawsuit as required by Tenn. R. Civ. P. 15.03." The claim against Shannon was dismissed by an order of the trial court filed on February 1, 1999.

Freeman now appeals the trial court's dismissal of his claim against the County. Freeman argues that the trial court erred in finding that he failed to show that the County had notice of the original lawsuit against Shannon, as required by Rule 15.03 in order for his claim against the County to relate back to the date he filed his original complaint, thus falling within the one year statute of limitations. Freeman asserts that "it is an uncontroverted fact that Benton County received notice of the lawsuit." In support, he points out that service was made on " 'Sheriff' Bobby Shannon at his place of employment." Freeman also contends that a complaint that names a local governmental official in his official capacity is in reality a claim against the local governmental entity itself. Freeman argues that in his original *pro se* complaint, in which he sued Shannon in his official capacity as Benton County Sheriff, it was clear that the intended defendant was the County, and that consequently, the County had notice of the lawsuit against it.

The County denies that Freeman's original suit named Shannon in his official capacity or that suing the Benton County Sheriff was the equivalent of suing Benton County. In addition, the County maintain that it never received notice of the original lawsuit. Citing Rule 4.04(7) of the Tennessee Rules of Civil Procedure, the County argues that service on the Sheriff of the County does not constitute service on the County. Rule 4.04(7) states that service of process on a county shall be made by:

> delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the court clerk.

Tenn. R. Civ. P. 4.04(7). Since Freeman did not serve the proper parties under the Rule, and there was no proof that any County official, other than the Sheriff, had notice of the lawsuit, the County contends that Freeman failed in his burden of establishing that the County had notice of the original suit. In addition, the County contends that Freeman deliberately chose to sue the Sheriff rather than the County, and that Rule 15.03 was not designed for situations, such as this one, in which the plaintiff initially chooses one party, and then later seeks to change the party being sued.

In reviewing the trial court's grant of the County's motion to dismiss, all factual allegations in Freeman's complaint are taken as true, and the trial court's conclusions of law are reviewed *de*

novo on the record before this Court, with no presumption of correctness. ***See*** Tenn. R. App. P. 13 (d); ***Doe v. Sundquist***, 2 S.W.3d, 919, 922 (Tenn. 1999). A motion to dismiss for failure to state a claim tests the legal sufficiency of the plaintiff's complaint. ***Riggs v. Burson***, 941 S.W.2d 44,47 (Tenn. 1997). The grant of the defendant's motion to dismiss may be affirmed only if the allegations in the plaintiff's complaint, even if taken as true, fail to state a claim upon which the plaintiff would be entitled to relief. ***See Stein v. Davidson Hotel Co.***, 945 S.W.2d 714,716 (Tenn. 1997).

The Tennessee Governmental Tort Liability Act ("TGTLA"), Tennessee Code Annotated Section 29-20-101 *et seq*, upon which Freeman's claim against the County is based, contains a statute of limitations for all actions brought in circuit court:

> (a) If the claim is denied, a claimant may institute an action in the circuit court against the governmental entity in those circumstances where immunity from suit has been removed as provided for in this chapter; . . .
>
> (b) The action must be commenced within twelve (12) months after the cause of action arises.

Tenn. Code Ann. § 29-20-305. (Supp. 1998) Since Freeman filed his amended complaint, adding the County as a defendant, more than one year after the accident occurred, his claim against the County is barred by the twelve month statute of limitations provided by the TGTLA, unless service on the Sheriff is the legal equivalent of service on the County, or unless Freeman's amended complaint relates back to the date on which the original complaint was filed, under Rule 15.03 of the Tennessee Rules of Civil Procedure.

Freeman first argues that his original complaint named Shannon in his official capacity as Sheriff of Benton County, and that a claim against an officer such as Shannon is "in reality" a claim against the governmental entity. In support, Freeman cites caselaw under 42 U.S.C. §1983. ***See Monell v. New York City Dept. of Soc. Serv.***, 436 U.S. 658, 690 n. 55, 98 S.Ct. 2018, 2035 n.55 (1978); ***Kentucky v. Graham***, 473 U.S. 159, 167 n.14, 105 S.Ct. 3099, 3106 n.14 (1985); and ***Memphis Police Dept. v. Garner***, 471 U.S. 1, 105 S.Ct. 1694 (1985). However, the Tennessee Rules of Civil Procedure set forth clearly the method by which service of process must be made on a county, which does not include service to the sheriff of the county. ***See*** Rule 4.04(7) of the Tennessee Rules of Civil Procedure. We find Freeman's argument on this issue to be without merit.

Freeman also argues on appeal that the trial court erred in dismissing his claim against the County, based on its finding that he had failed to carry his burden of proving that the County had notice of the lawsuit, as required by Rule 15.03. However, the issue of whether the amended complaint relates back under Rule 15.03 is governed by this Court's recent decision in ***Doyle v. Frost***, No. 02A01-9812-CV-00338, 1999 WL 787432, at *1 (Tenn. Ct. App. Sept. 24, 1999), *cert.* granted Apr. 10, 2000.

In ***Doyle***, the plaintiff filed a lawsuit alleging medical malpractice against a physician. ***Doyle*** at *1. The lawsuit was also filed against West Tennessee Healthcare, which the plaintiff believed

was the physician's employer. ***Id.*** More than one year after the plaintiff's cause of action accrued, the plaintiff learned that the physician's employer was Jackson-Madison County Hospital, a governmental entity, rather than West Tennessee Healthcare. ***Id.*** The plaintiff sought to amend to add the Hospital as a defendant. The trial court denied the motion, and this Court affirmed. ***Id.*** at *7.

In ***Doyle***, we noted that the TGTLA states that claims under the Act must be brought in strict compliance with its provisions. ***Id.*** at * 3. The TGTLA provides that actions against governmental entities "'must be commenced within twelve (12) months after the cause of action accrues.'" ***Id.*** at * 3 (quoting Tenn. Code Ann. § 29-20-305(b) (Supp. 1998)). This Court emphasized that this provision means that bringing an action within the twelve months of the date the cause of action accrued is a "condition precedent to the bringing of a claim under the TGTLA." ***Id.*** at *4 (citing ***Lockaby v. City of Knoxville***, No. 03A01-9609-CV-00297, 1997 WL 129115, at *2 (Tenn. Ct. App. March 21, 1997); ***Nance v. City of Knoxville***, 883 S.W.2d 629, 632 (Tenn. Ct. App. 1994); ***Williams v. Memphis Light, Gas and Water Div.***, 773 S.W.2d 522, 523 (Tenn. Ct. App. 1988); ***Daniel v. Hardin County Gen. Hosp.***, 971 S.W.2d 21, 25 (Tenn. Ct. App. 1997)).

The ***Doyle*** Court also noted ***Daniel v. Hardin County General Hospital***, 971 S.W.2d 21, 25 (Tenn. Ct. App. 1997)), and ***Goodman v. Suh***, No. 03A01-9501-CV-00005, 1995 WL 507778 (Tenn. Ct. App. Aug. 29, 1995), which held that the twelve month statue of limitations of the TGTLA cannot be extended by use of Tennessee Code Annotated Section 20-1-119, which provides for the relation back of claims asserted by a plaintiff against a new defendant, identified in the original defendant's answer to the complaint as a party responsible for some or all of the plaintiff's injuries. Tenn. Code Ann.§ 20-1-119 (1994). The ***Doyle*** Court stated:

> It would be inconsistent to hold that section 20-1-119 is applicable to claims brought under the TGTLA and also hold that Rule 15.03 is applicable to such claims. In light of the inconsistency that would be created by such a holding, we are compelled to find that Rule 15.03 may not be used to extend the twelve month limitations period of section 29-20-305(b).

Id. at * 7. Therefore, in view of its holding that Rule 15.03 cannot be utilized to extend the one-year limitations period in the TGTLA, the appellate court in ***Doyle*** affirmed the trial court's denial of the plaintiff's motion to amend the complaint to add the Hospital as a defendant. ***Id.***

As in ***Doyle***, Freeman added the County as a defendant more than one year after his cause of action accrued. Thus, Freeman did not satisfy the condition precedent to his right to bring a claim against the County. Consequently, Freeman's claim against the County is barred by the expiration of the twelve month statute of limitations period provided by the TGTLA.

In sum, Freeman's service of the original lawsuit on Sheriff Shannon is not deemed service on the County under the facts of this lawsuit. In addition, Rule 15.03 cannot be utilized to extend the one-year limitations period contained in the TGTLA. Freeman failed to bring his action against

the County within one year after accrual of his claim; therefore, his claim against the County is barred by the twelve-month statute of limitations. Accordingly, the trial court's grant of the County's motion to dismiss must be affirmed.

The decision of the trial court is affirmed. Costs on appeal are taxed to the Appellant, Ronald Freeman, Jr., and his surety, for which execution may issue, if necessary.

HOLLY KIRBY LILLARD, J.