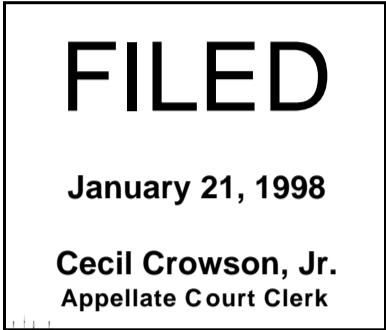


IN THE COURT OF APPEALS OF THE STATE OF TENNESSEE  
APPELLATE COURT IN THE FIRST DISTRICT

FRANCIS DUFFIELD, Plaintiff-Appellee,  
vs.  
The Board of Prisoners, Inc., Defendant-Appellee,  
and  
Robert E. Carley, Billy Compton, Harold Butler and John Dorst, Jr. and F. D. Dorst, Jr., Defendants-Appellees.

**AFFIRMED**

Francis Duffield,  
[Redacted] Counsel,  
[Redacted]  
[Redacted]  
John Dorst, Jr., Esq.,  
Attorney General Representative,  
194 E. Main St.  
Resident Attorney General  
Civil Rights and Crime Division  
Nashville, Tennessee  
[Redacted]



IN THE COURT OF APPEALS OF THE STATE OF TENNESSEE

***FARMER, J.***

The plaintiff, Francis Duffield, aka Paul Farmer and, and defendants Harold Campbell, Robert E. Carley, Billy Compton, Harold Butler and John Dorst, Jr. and F. D. Dorst, Jr. is an inmate in the custody of the Tennessee Department of Corrections, (T.D.C.). The complaint identifies Harold Campbell as a prisoner of the T.D.C.; Robert Carley as Warden of the correctional facility in Wake County, Tennessee at Highville; Billy Compton as Warden of the correctional facility at Lansing, Tennessee and Harold Butler as a physician at Wake County Regional Correctional Facility, (W.C.R.C.). John Dorst is identified as a correctional officer at W.C.R.C. and John Dorst and F.D. Dorst are identified as employees of the T.D.C.

The complaint alleges that the defendants were negligent in placing the plaintiff in a non-facilitated bunking room where he was injured in attempting to place his cell on a toilet seat, denied medical attention, forced to perform duties beyond his physical capacities and for taking from him and failing to return certain legal proceedings pertaining to certain litigation involving the

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Rule 10 (Court of Appeals). Unnumbered Opinions--(1) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by a numbered opinion when a formal opinion would become precedent. Where a case is decided by a numbered opinion it shall be designated "FILED [DATE] 19[ ] P.M. [ ]", shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

plaintiff.

Plaintiff filed a motion for default judgment which was denied. Plaintiff then attempted to appeal to this court a final order issued on the basis that the trial court order was interlocutory in nature and not appealable pursuant to Rule 4 F.R.C.P.

The trial court entered an order for issuing the default entry for failure of the plaintiff to obtain proper and timely service and this was the order that the plaintiff appeals.

The complaint was filed August 4, 1993. Plaintiff then attempted to serve process on the defendants by a mail pursuant to Rule 4.03(1)(1) F.R.C.P.<sup>2</sup> The Rule provides as follows:

Service by mail of the summons and complaint upon a defendant by leave of the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint is filed, the clerk shall, upon request, furnish the original summons, a certified copy thereof and a copy of the filed complaint to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant. The original summons shall be used for return of service of process pursuant to Rule 4.03(1). Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute. If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used.

According to the record before us, Plaintiff did not comply with the above rule in attempting to serve the defendants by mail. The process was not issued until February, 1994. According to Rule 4 F.R.C.P.:

All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced with the mailing of any statute of limitations upon such filing of a complaint, whether process be issued, court entered and whether process be returned served or returned. If process remains unissued for 60 days or is returned or is not returned within 60 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original summons entered to toll the

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<sup>2</sup> The title of this Rule is designated as 4.03(1)(1).

merging into statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

The order of the trial court granting the defendants' motion to dismiss states that 'plaintiff filed his complaint on August 4, 1993, attempting to obtain service of process on defendants by a writ process in Rule 4.04 of the Tennessee Rules of Civil Procedure. Proper service was not obtained. Plaintiff thereafter failed to obtain proper service until February, 1994.<sup>3</sup> Plaintiff failed to issue new process within one year from the issuance of the previous process pursuant to Rule 4 of the Tennessee Rules of Civil Procedure. Defendants' motion to dismiss based upon applicable statute of limitations is granted.' In reviewing this record, we do not find that the plaintiff has shown that the trial court erred in dismissing his action. We note that defendants Campbell and Cooper included within their motion to dismiss that exclusive jurisdiction for the plaintiff's cause of action rested with the Tennessee Claims Commission, although that is jurisdictional, it was not enforced by the trial court or dictated by the parties and we do not find it necessary to address in view of our affirmance of the trial court's order of dismissal on the basis of a timely process.

Plaintiff agrees in his brief that the trial court erred in failing to find the defendants' is entitled judgment for failure to file an answer to his complaint. This agreement has no merit. The judgment of the trial court is affirmed and the cost of this appeal are taxed to Leslie Paul Field, unless Paul Turner will, for a high execution may issue is necessary.

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LESLIE PAUL FIELD,

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LESLIE PAUL FIELD, Plaintiff. (0000000000)

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There is no indication in the record that Dr. Paul Turner is represented with process.

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