IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

J. W. GIBSON COMPANY,	) C/A NO. 03A01-9809-CV-00312
	)
Plaintiff-Appellee,	) ANDERSON CIRCUIT
	)
v.	) HON. RUSSELL SIMMONS,
	) JUDGE
EAGLE INSTRUMENTS, INC.,	)
	)
Defendant-Appellant.	) REMANDED

DAVID S. CLARK, DAVID S. CLARK & ASSOCIATES, Oak Ridge, for Plaintiff-Appellee.

JAMES K. SCOTT, Oak Ridge, for Defendant-Appellant.

O P I N I O N

Franks, J.

J.W. Gibson Company brought this action in Sessions Court on a sworn account, breach of contract, and quantum meruit. The civil warrant listed the amount in controversy as "under $10,000.00." Judgment was entered for the plaintiff in Sessions Court against defendant Eagle Instruments, Inc., in the amount of $12,308.76, less $1,200.00, plus costs of suit on December 22, 1997. On January 29, 1998, defendant filed a Motion to Set Aside Default Judgment. Defendant filed a response to the Motion, asserting that General Sessions Court had no jurisdiction to hear the motion after the judgment had become final. The Sessions Court entered an

Order finding that the "Motion is not well founded." Defendant appealed to the Circuit Court, and after a hearing in Circuit Court, the court issued a Memorandum Opinion, stating:

> The defendant has appealed this case as an appeal of right. That appeal was not within the necessary ten (10) days of judgment, therefore, the appeal is dismissed and the case is remanded.

The defendant has appealed, presenting two issues, primarily dealing with the merits of the case and plaintiff presents issues dealing with jurisdiction and the merits of the case.

Neither party disputes that the General Sessions Court had both subject matter and personal jurisdiction over defendant, but the plaintiff argues that the General Sessions Court had no jurisdiction to hear a motion to set aside the default judgment because no mechanism exists for that procedure.

General sessions courts are creatures of statute. As such, they only have the jurisdiction to hear cases that is given them by the statute. They came into existence due to increasing dissatisfaction with the justice of the peace courts, but they share many attributes with the courts they replaced. *Ware v. Meharry Medical College*, 898 S.W.2d 181, 183 (Tenn. 1995). They are not courts of record, and the manner of pleading is informal. *Id.*

The procedures to be followed in general sessions courts are set out in the statute. Tenn. Code Ann. § 16-15-714 (1994) provides: "Practice and pleadings in the general sessions courts shall be as provided in this chapter and other provisions of law and private acts establishing such courts and local rules of practice not inconsistent with law." The statute authorizes general sessions courts to render judgments and execute on those judgments, but the statute makes no provisions for the general sessions courts to set aside their judgments after they become final. *See* Tenn. Code Ann. § 16-15-501 *et seq.* The Tennessee Rules of Civil Procedure, which do

provide for procedures to set aside default judgments under Tenn. R. Civ. P. 60.02, do not apply to general sessions courts. Tenn. R. Civ. P. 1.

Defendant cites no authority which would allow general sessions courts to entertain motions to set aside judgments. Our review reveals statutory provisions which allow general sessions courts to correct judgments under some circumstances. The statute, T.C.A. §16-15-727, provides:

> General sessions courts have the same power to correct the judgments rendered by them that courts of record have. The party asking the correction shall give the adverse party five (5) days' notice of the time and place of the intended application to correct the judgment, and from which judgment, so corrected, either party may appeal, or stay it, as in cases of original judgments before general sessions courts.

The very terminology, "power to correct the judgments," indicates that there is some error in the judgment itself. The statement, "from which judgment, so corrected, either party may appeal," indicates that a judgment still exists.

This interpretation is supported by the wording of the Tennessee Rule of Civil Procedure 60.01, which says,

> Clerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the court at any time on its own initiative or on motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.[1]

An instructive case dealing with this statute is *Torilla v. Alexander*, 104 Tenn. 453, 58 S.W. 124 (1900), wherein a plaintiff recovered a judgment against the defendant, for $131.61, before the Justice of the Peace. The judgment on the warrant stated, "Judgment for the plaintiff against the defendant for $136.61 subject to all credits, if any, and cost of suit and interest at the rate of 6 per cent., for which execution may issue." The plaintiff moved the Justice to correct the judgment by

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[1] Rule 60.02, on the other hand, does not provide a mechanism for correcting mistakes in judgments, but instead provides a mechanism for setting aside judgments altogether.

removing the words, "subject to all credits, if any," and the Justice complied. In reviewing the case, the Tennessee Supreme Court stated,

> The judgment of the Justice was valid. The words in the indorsement upon the warrant, "subject to all credits, if any," were mere surplusage, and did not prevent the judgment from being certain and final, and they might have been so treated by the Justice of the Peace.
>
> But the plaintiff had the right to have this entry corrected so as to conform to the actual facts and show a judgment definite and final. A Justice of the Peace has the same right and power to correct his judgment as Courts of Record have, upon five days' notice being given.

Id. at 455. Similarly, in *Conn v. Scruggs*, 64 Tenn. 567 (1875), the Supreme Court held that a Justice of the Peace had the power to correct his judgment by removing the words, "trustee of N.P. Crutcher," because the judgment was against the defendant personally, and the words, "trustee of N.P. Crutcher," were merely descriptive.

Since the appeal to the Circuit Court was not perfected within the ten days required by the Statute, the Circuit Court did not have jurisdiction to try the case *de novo* on the merits. T.C.A. §27-5-108. *Love v. College Level Assessment Serv. Inc.*, 928 S.W.2d 36, (Tenn. 1996). *See also Rutledge v. Swindle*, 45 Tenn. App. 27, 34 319 S.W.2d 488, 491 (1958). However, T.C.A. §16-15-727 does empower the Sessions Judge to correct the judgment, and the Statute also provides for an appeal to the Circuit Court of the judgment so corrected. The civil warrant shows on its face that the amount sued for was less than $10,000.00. The judgment entered on the warrant was in excess of $10,000.00. It is well settled that a court may not enter a judgment for default in an amount in excess of the amount asked for in the pleadings. *Holder v. Drake*, 908 S.W.2d 393, 395 (Tenn. 1995). We hold that under T.C.A. §16-5-727, both the Sessions Court and the Circuit Court could, and should have, corrected the amount of the judgment. Accordingly, the cause will be remanded to the Circuit Court to enter a judgment in the amount of $9,999.00 against defendant.

The cost of the appeal is assessed one-half to each party, and the cause remanded.

Herschel P. Franks, J.

CONCUR:

Houston M. Goddard, P.J.

Charles D. Susano, Jr., J.