

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 21, 2015 Session

MICHAEL CARNAHAN v. JEFFREY CARNAHAN

**Appeal from the Circuit Court for Wilson County
No. 2014CV385 Clara W. Byrd, Judge**

No. M2014-01759-COA-R3-CV – Filed July 27, 2015

Money judgment was entered in suit to recover personal property which had been instituted in general sessions court. Defendant sought relief pursuant to Tenn. R. Civ. P. 60.02 more than ten days after judgment was entered and general sessions court denied relief. On appeal, the circuit court granted plaintiff's motion to dismiss the appeal for lack of jurisdiction because motion for relief was not timely, as required by Tenn. Code Ann. § 16-15-727. Discerning no error, we affirm the judgment of the trial court.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and ANDY D. BENNETT, J., joined.

Jeffrey A. Carnahan, Madison, Tennessee, Pro Se.

Michael W. Ferrell, Mt. Juliet, Tennessee, for the appellee, Michael Carnahan.

MEMORANDUM OPINION¹

¹ Tenn. R. Ct. App. 10 states:

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. BACKGROUND

On February 12, 2014, Michael Carnahan (“Plaintiff”) instituted an action in Wilson County General Sessions Court to recover personal property from his brother, Jeffrey Carnahan (“Defendant”), whom Plaintiff claimed was preventing him from entering the home that they inherited from their mother to recover personal property which was located there.² The warrant was served February 13 and the case set for hearing on March 13.³ The record shows that the following order was entered on the general sessions warrant on April 4, 2014: “Agreed that all items on attached list not redacted are property of Mr. Michael Carnahan and are not property of the estate nor of Jeffrey Carnahan. [Plaintiff] is entitled to possession of any items listed that are present at location. Issue re damages etc. reset to date to be determined.” While the exact chronology is not clear from the record, the hearing on damages was reset more than once and on June 5, the court entered a default judgment against Defendant in the amount of \$25,000 plus interest. On July 24, Defendant made an oral motion to set aside the judgment, which the court denied⁴; on August 24, Defendant filed an appeal to the circuit court.

On August 21, 2014, Plaintiff moved to dismiss the appeal on the grounds that (1) the general sessions court lacked subject matter jurisdiction because Tenn. Code Ann. § 16-15-727 requires that Tenn. R. Civ. P. 60.02 motions made in general sessions courts be filed within 10 days of the date of judgment and (2) that the circuit court lacked jurisdiction to consider the Defendant’s appeal because the denial of the motion “was not an ‘adverse’ ruling giving rise to a right of appeal,” citing Tenn. Code Ann. §§ 27-5-101 and 108. On September 5, 2014, the court granted the motion to dismiss. Defendant appeals, stating:

Appellant seeks relief from the Court of Appeals in the form of remand for trial. Based on Tenn. R. Civ. P. 60.02. Appellant has a meritorious defense to the plaintiff’s suit and that the trial court should have exercised its discretion so as to permit determination of the case on the merits.

² Attached to the summons were two exhibits: Exhibit A, an itemized list of the alleged \$37,405.00 in personal property at issue, and Exhibit B, an explanation that Defendant had taken possession of the home in which the parties were co-tenants and was preventing Plaintiff from recovering his personal property.

³ At oral argument of this appeal on July 21, 2015, Defendant acknowledged that he was duly served with process.

⁴ The nature of the pleading the Defendant filed which allowed him to appear before the Court on July 24 is not clear from the record.

II. DISCUSSION

Tenn. Code Ann. § 16-15-727, governing procedures in general sessions courts, provides:

(a) Tenn. R. Civ. P. 60.01, regarding clerical mistakes, shall apply to all courts of general sessions. The general sessions judge shall have the authority under the same circumstances and in the same manner as is provided in Tenn. R. Civ. P. 60.01 to correct such mistakes.

(b) Tenn. R. Civ. P. 60.02, regarding mistakes, inadvertence, excusable neglect, fraud and other similar reasons set out in that rule, shall apply to all courts of general sessions. A motion under the general sessions court's authority under Tenn. R. Civ. P. 60.02 shall be filed within ten (10) days of the date of judgment. Once filed, the motion shall toll the ten-day period for seeking de novo review in the circuit court until the determination of the motion is concluded. Thereafter, an appeal for de novo review in the circuit court shall be filed within ten (10) days of the general sessions court's ruling on the motion to relieve a party or the parties' legal representative from a final judgment, order or proceeding in the same manner as provided in Tenn. R. Civ. P. 60.02.

Pursuant to the statute, Defendant had ten days, or until June 15, 2014, to file a Tenn. R. Civ. P. 60.02 motion in the general sessions court; he also had the right within that ten day period to file an appeal to circuit court pursuant to Tenn. Code Ann. § 27-5-101. While Defendant asserts that there were conflicting notices as to when the damages hearing was to be held, the order entered on the warrant after the July 24 hearing states: "Defendant's motion to set aside made orally on July 24, 2014 is denied. Defendant admits he was made aware of June 5 action on June 5."⁵

Upon his failure to timely file the Rule 60.02 motion in general sessions court or a notice of appeal in circuit court, the June 5, 2014 judgment became final and neither court had jurisdiction to address any alleged infirmity in the judgment entered on June 5; the appeal was properly dismissed.

⁵ At oral argument Defendant acknowledged that on June 5, 2014, he called the office of the circuit court clerk after the hearing and was advised that a judgment had been entered against him on that date.

III. CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

RICHARD H. DINKINS, JUDGE