

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

SUE MONROE,

Plaintiff-Appellant,

Vs.

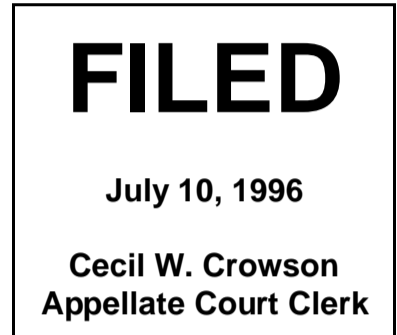
Davidson Circuit #94C-1874
C.A. No. 01A01-9511-CV00526

**CHRISTOPHER G. CUMMINGS,
DAVID P. HANNESWORTH,**

Defendants,

**EDDIE QUEENS, CNA INSURANCE
COMPANY,**

Defendants-Appellees.



FROM THE SIXTH CIRCUIT COURT OF DAVIDSON COUNTY

THE HONORABLE THOMAS W. BROTHERS, JUDGE

Sue Monroe, Pro Se

Tracy Shaw and Alice Margaret Essary of Nashville
For Appellees

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

Opinion filed:

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE

Plaintiff, Sue Monroe, also known as Carolyn Hayes, appeals from the trial court's order dismissing her complaint for failure to submit a more definite statement of her claims against defendants Eddie Queens and CNA Insurance Co.

Plaintiff is proceeding pro se in this appeal. She also acted pro se in the trial court. The record in the case consists of only what was formally called the technical record. The complaint, with exhibits, although inartfully drawn, appears to name four defendants: Christopher Cummings, Eddie Queens (owner of Queens Tree Surgery), David Hannesworth, and CNA Insurance Company. The complaint, as supplemented by the exhibits, appears to allege that on December 18, 1992, plaintiff's minor sons, Mark Hayes and Michael Hayes, were passengers in an automobile driven by Ednelia Williams, plaintiff's mother and the custodian of the minor children while plaintiff is incarcerated in a federal medical facility. The complaint alleges that Ms. Williams' car was on the Clarksville highway in Nashville, Tennessee, when the Hannesworth vehicle collided with the Williams vehicle that was stopped at a traffic light. The Hannesworth vehicle was apparently knocked or forced into the Williams vehicle when it was struck from the rear by the vehicle driven by Cummings and owned by Queens. The complaint alleges that the Queens vehicle had faulty brakes and was unable to stop before striking the Hannesworth vehicle. Plaintiff was not in the car at the time of the accident, and Ms. Williams, who was represented by counsel, settled her claim against Queens for an undisclosed amount. The complaint purports to be by plaintiff as the mother and next friend of the children for their injuries and also by the mother individually for her pain, suffering, and anguish resulting from their injuries.¹

The record reflects that defendants, Cummings and Hannesworth, were not served with process. Queens and CNA filed a motion to dismiss for failure to state a claim upon which relief can be granted. The trial court denied the motion, but ordered plaintiff to make a more definite statement. Subsequently, upon failure of plaintiff to make the more definite statement ordered by the court, the case was dismissed. Plaintiff has appealed and apparently presents the following issues for review:

1. Whether the trial court erred in failing to grant a default judgment against defendants Christopher Cummings and David

¹The trial court dismissed Ms. Monroe's individual claims, finding that Ms. Monroe, who was not a passenger or a witness to the accident, did not have standing to sue, on her own behalf, under Tennessee law. Ms. Monroe does not appeal the court's decision as to her personal claims. We will consider this suit as that of the two minors brought by plaintiff as next friend.

Hannesworth.

2. Whether the trial court erred in failing to grant plaintiffs' motion for an extension of time in which to find an attorney based on plaintiff's position as an incarcerated person.
3. Whether the trial court erred in not granting plaintiff's motion to meet and confer with defense counsel.
4. Whether the trial court erred in not finding that plaintiff properly and timely responded to defendants' motion to dismiss by providing a more definite statement of the claims presented.

We first consider plaintiff's claim that the trial court should have granted plaintiff's motion for a default judgment as to defendants Christopher Cummings and David Hannesworth. Pursuant to Tenn.R.Civ.P. 12.01, a defendant is required to file an answer within thirty days of service of the summons and complaint. Although service was attempted, it is clear that neither Cummings nor Hannesworth was served. Accordingly, there could be no default judgment against Cummings and Hannesworth.

Plaintiff's second issue on appeal concerns the trial court's refusal to grant plaintiff's motion for an extension of time in which to find an attorney, based on the fact that plaintiff Monroe is incarcerated. On October 14, 1994, plaintiff filed a motion seeking a continuance for 90 days, or until January 30, 1995, for the purpose of giving plaintiff sufficient time to secure counsel. Plaintiff's motion states that, should plaintiff Monroe fail to retain counsel by that date, she will continue the suit *pro se*. In fact, plaintiff did not secure counsel, but continued to litigate the instant

suit until the trial court dismissed it on June 22, 1995. The record reveals that the trial court did not respond to plaintiff's motion for an extension of time in which to find an attorney; however, the court did not enter another order in this case until January 19, 1995. Significantly, the court at that time did not grant defendants' second motion to dismiss, but instead allowed plaintiff an additional 45 days in which to submit a more definite statement. Based upon this record, we find that the court accorded plaintiff ample time in which to secure legal assistance.

The next issue plaintiff presents is whether the trial court erred in not granting plaintiff's motion to meet and confer with defense counsel. The trial court found that plaintiff's request

was “unknown at law and accordingly must be denied.” We agree. Plaintiff Monroe, like any other litigant, has open to her established modes of communication, which do not include a motion to meet and confer.

Plaintiff’s fourth issue on appeal is whether the trial court erred in not finding that plaintiff properly and timely responded to defendants’ motion to dismiss by providing a more definite statement of the claims presented. On July 26, 1994, defendants filed a motion to dismiss for failure to state a claim pursuant to Tenn.R.Civ.P. 12.02 (6), and in the alternative for a more definite statement pursuant to Rule 12.05. In an order entered August 25, 1994, the trial court found that defendants were entitled to a more definite statement and ordered plaintiff to:

[F]ile and serve upon opposing counsel a more definite statement as to the parties to the action (particularly the legal status of the relationship between the minor Plaintiffs and the Plaintiff Sue Monroe), the facts out of which this action arises, the specifics [sic] wrongs complained of, and the relief sought. The Court calls to Plaintiffs’ attention Rule 8.01, 8.05, 10.01, and 10.02, Tenn.R.Civ.P., and directs Plaintiffs to comply with those Rules in all subsequent proceedings.

Because of plaintiff Monroe’s status as an incarcerated person, the trial court sent her a copy of the rules with which the court urged plaintiffs to comply. In its order of January 19, 1994, the court again ordered plaintiff to comply with “basic pleading requirements” by letting defendants know “specifically what claims are made against the Defendant[s] and what is the legal relationship between the minor plaintiffs and Sue Monroe.”² Finally, in an order entered June 22, 1995, the court granted defendants’ motion to dismiss because plaintiff had failed to file a more definite statement.

When considering a motion to dismiss for failure to state a claim pursuant to Tenn.R.Civ.P. 12.02 (6), the court should construe the pleadings liberally, in favor of the pleader. *Collier v. Slayden Bros. Ltd. Partnership*, 712 S.W.2d 106, 109 (Tenn. App. 1985). In *Humphries v. West End Terrace, Inc.*, 795 S.W.2d 128 (Tenn. App. 1990), this Court said:

Such a motion admits the truth of all relevant and material averments contained in the complaint but asserts that such facts

²In her complaint, plaintiff Monroe states that her mother, Ms. Williams, is the guardian of the minor plaintiffs and has power of attorney in that regard; however, Monroe later claims that she is the minors’ legal guardian, thus creating uncertainty as to the who is the legal guardian of the minors.

do not constitute a cause of action. *Cornpropst*, 528 S.W.2d at 190. A complaint should not be dismissed upon such a motion “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Fuerst v. Methodist Hospital South*, 566 S.W.2d 847, 848 (Tenn. 1978).

As to defendant, CNA, we find no allegation except that CNA is the insurance company for Queens. There are no allegations to establish a direct cause of action against CNA. The complaint simply states no claim upon which relief can be granted against CNA.

As to defendant, Queens, we find that plaintiff Monroe has, in large part, complied with the requirements of Tenn.R.Civ.P. 8.01; that is, she has set forth “(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief which he deems himself entitled.” Although there are technical inaccuracies in plaintiff’s complaint, we are sensitive to the fact that plaintiff brings this action *pro se*. Moreover, the Rules direct this Court to construe all pleadings so as to do substantial justice. Tenn.R.Civ.P. 8.06; *Collier*, 712 S.W.2d at 108. Plaintiff’s complaint states that an accident occurred, that her children were injured, and the money damages that are sought. We find that plaintiff’s complaint was sufficient to put defendant Queens on notice of the claims against him and to enable him to file an answer. Additionally, we find that Ms. Monroe’s relationship to the minors had been adequately established for the purposes of this suit. Ms. Monroe is the children’s mother. Although a legal guardian may file suit on behalf of the ward, Tenn.R.Civ.P. 17.03, Ms. Williams, if she is in fact the legal guardian, has not done so. Regardless, the existence of a guardian does not alleviate the right of a parent to bring suit on behalf of minor children, as next friend, where justice requires. *Id.*

Plaintiff asserts that her constitutional rights have been violated because plaintiff has not received equal access to the courts as required under U.S. Const. amend. XIV. Neither the fact that Plaintiff Monroe has been unable to retain counsel nor the fact that the trial court denied Ms. Monroe’s “motion to meet and confer” constitute a denial of Ms. Monroe’s right to equal access to the courts. *See, e.g. Smith v. Peebles*, 681 S.W.2d 567 (Tenn. App. 1984). In her response to Defendants’ motion to dismiss filed January 3, 1995, Ms. Monroe asserted that she did not have access to Tennessee materials at the federal medical facility in Texas in which she is

incarcerated. However, by order filed September 9, 1994, the trial court provided Ms. Monroe with copies of the Tennessee Rules of Civil Procedure which are pertinent to her case. Moreover, in her response to the court's request for a more definite statement filed January 12, 1995, Ms. Monroe cites the court to numerous Tennessee statutes and cases. Under the record presented in this case, we do not find that plaintiff has been denied meaningful access to either the law or the courts.

The order of the trial court dismissing plaintiff's complaint against CNA is affirmed. The order of the trial court dismissing plaintiff's complaint against Queens is reversed, and the case is remanded for further proceedings as are necessary. Costs of the appeal are assessed against appellee Queens.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE