

PAUL KEVIN NELSON, )  
)  
Plaintiff/Counter-Defendant/ )  
Appellee, )  
v. )  
)  
THE APPLICATION GROUP, INC., )  
)  
Defendant/Counter-Plaintiff/ )  
Appellant. )

Appeal No.  
01-A-01-9703-CV-00137  
  
Davidson Circuit  
No. 96C-1861

**FILED**  
  
November 14, 1997  
  
Cecil W. Crowson  
Appellate Court Clerk

CONCURRING OPINION

I concur with the court’s conclusion that the defendant/appellant is entitled to relief under Tennessee Rule of Civil Procedure 60.02(1). I also concur with the concurring opinion of Judge Koch. This relief should not be granted on every occasion that a “lawyer realizes his oversight and takes steps to correct it.” The trial court should consider each case and determine which “terms as are just.”

Additionally, I would point out that the lawyer did not in fact comply “with [local] Rule 19 by timely filing a motion to set” because the Rule requires the actual setting for trial. Nevertheless, the lawyer took steps to comply and relief should be granted.

Perhaps the draftsmanship of Rule 19 should be reviewed.

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WALTER W. BUSSART, JUDGE

