

FILED

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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs October 3, 2022

**BRANDON K. ANDERSON v. LAUDERDALE COUNTY, TENNESSEE**

**Appeal from the Circuit Court for Lauderdale County**  
**No. 7208      A. Blake Neill, Judge**

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**No. W2022-00332-COA-R3-CV**

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Plaintiff filed an action against Lauderdale County under Tenn. Code Ann. § 8-8-301 to -303, more than one year after his cause of action accrued. The trial court examined the gravamen of the complaint and determined a one-year statute of limitations applied rather than the two or six-year limitations periods advocated for by the plaintiff. Discerning no error in the court's analysis of the issues, we affirm.

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

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and KENNY W. ARMSTRONG, JJ., joined.

Stephen Rutland Leffler, Memphis, Tennessee, for the appellant, Brandon K. Anderson.

Haynes Tyler Russell and Nathan Daniel Tilly, Jackson, Tennessee, for the appellee, Lauderdale County, Tennessee.

**OPINION**

FACTUAL AND PROCEDURAL HISTORY

This appeal requires us to examine Tenn. Code Ann. §§ 8-8-301 to -303 and the applicable statute of limitations associated with causes of action arising thereunder. This lawsuit was first initiated on August 9, 2021, when Brandon K. Anderson (“Plaintiff”) filed a “Complaint on Sheriff Bond Pursuant to Tennessee Code Annotated § 8-8-301, et[] seq.” against Lauderdale County, Tennessee and Lauderdale County Deputy Sherriff Robert Wenzler (“Deputy Wenzler”). In his Complaint,<sup>1</sup> Plaintiff alleged, among other things,

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<sup>1</sup> We note that the facts provided in this Opinion are taken from the allegations in the Complaint and Amended Complaint. As will be explained *infra*, the case comes to this Court as an appeal from the grant

that on February 18, 2020, Deputy Wenzler approached his vehicle while he was parked on a gravel road at night, pointed a gun at him, and when Plaintiff moved his car forward requesting to meet the deputy at a more public location, Deputy Wenzler fired his gun. Plaintiff asserted that he sped away from the scene toward his home and that Deputy Wenzler “radioed for other officers to assist in stopping [him] claiming that [Plaintiff] had tried to run over [Deputy Wenzler].” Plaintiff further averred that he “tried to get home but officers shot [him] with a taser incapacitating him when [he] got out of his car.” On February 19, 2020, Deputy Wenzler charged Plaintiff with “attempted vehicular homicide, felony evading arrest, nine counts of disobeying traffic controls and simple possession of schedule VI drugs.” Plaintiff averred that Deputy Wenzler made false representations in the “narrative of the factual basis for the charges.” Plaintiff further averred that, “[w]hen it was determined by law enforcement that [Deputy] Wenzler swore under oath to the false representations against [Plaintiff], the District Attorney General voluntarily dismissed all charges against [Plaintiff].” Plaintiff alleged that a grand jury returned an indictment against Deputy Wenzler and asserted that Lauderdale County is liable for Deputy Wenzler’s actions under Tenn. Code Ann. § 8-8-302 and -303 for “intentional tortious assault,” “false imprisonment,” “malicious prosecution,” “abuse of process,” and “invasion of privacy.” Lauderdale County and Deputy Wenzler filed motions to dismiss the Complaint.

Plaintiff filed an Amended Complaint on November 30, 2021, articulating the same factual basis for his lawsuit. However, in the Amended Complaint, Plaintiff removed any reference to intentional torts and continued to assert that his cause of action arose under Tenn. Code Ann. §§ 8-8-302 and -303. Plaintiff asserted broadly that “[a]s a proximate result of the conduct of [Deputy] Wenzler as alleged herein, [Plaintiff] suffered damages.” Lauderdale County filed a motion to dismiss the Amended Complaint on December 9, 2021, arguing that a one-year statute of limitations applied barring Plaintiff’s claims. Plaintiff voluntarily dismissed his claims against Deputy Wenzler. Plaintiff filed a response to the motion to dismiss asserting that either a six-year or two-year statute of limitations applied pursuant to Tenn. Code Ann. § 28-3-109 or Tenn. Code Ann. § 28-3-104(a)(2), respectively.

The trial court held a hearing on February 7, 2022 and entered an Order Granting Defendant Lauderdale County’s Motion to Dismiss on February 24, 2022. The court held that a one-year statute of limitations governed Plaintiff’s cause of action and bars his claim. Plaintiff timely appealed to this Court.

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of a motion to dismiss; thus, the applicable standard of review requires us to presume that the allegations in the complaint are true. *See Story v. Bunstine*, 538 S.W.3d 455, 462 (Tenn. 2017).

## STANDARD OF REVIEW

A statute of limitations defense is appropriately addressed in a motion to dismiss under Rule 12.02(6) of the Tennessee Rules of Civil Procedure. *See Martin v. Rolling Hills Hosp., LLC*, 600 S.W.3d 322, 330 (Tenn. 2020). A motion filed under Tenn. R. Civ. P. 12.02(6) “tests only the legal sufficiency of the plaintiff’s complaint, not the strength of the plaintiff’s proof.” *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 455 (Tenn. 2012) (citing *Highwoods Props., Inc. v. City of Memphis*, 297 S.W.3d 695, 700 (Tenn. 2009)). When ruling on a motion to dismiss, “courts ‘must construe the complaint liberally,’ presume all alleged facts are true, and ‘giv[e] the plaintiff the benefit of all reasonable inferences.’” *Cooper v. Mandy*, 639 S.W.3d 29, 33 (Tenn. 2022) (quoting *Ellithorpe v. Weismark*, 479 S.W.3d 818, 824 (Tenn. 2015)). A trial court’s determination of “the applicable statute of limitations is an issue of law that we review de novo.” *Bates v. Greene*, 544 S.W.3d 345, 347 (Tenn. Ct. App. 2017) (citing *Gunter v. Lab. Corp. of Am.*, 121 S.W.3d 636, 638 (Tenn. 2003)); *see also Benz-Elliott v. Barrett Enters., LP*, 456 S.W.3d 140, 147 (Tenn. 2015).

## ANALYSIS

Plaintiff brought his claim pursuant to Tenn. Code Ann. § 8-8-302<sup>2</sup> and -303, neither of which contains a statute of limitations period.<sup>3</sup> *See Cross v. Shelby Cty.*, No. W2005-01231-COA-R3-CV, 2006 WL 1005168, at \*5 (Tenn. Ct. App. Apr. 18, 2006) (noting the absence of a limitations period in Tenn. Code Ann. § 8-8-302 and inviting the General Assembly to consider the applicable limitations period). When a specific statute of limitations is not clearly set forth in a statute, courts must determine the applicable statute of limitations period by “considering the “gravamen of the complaint.”” *Redwing*, 363

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<sup>2</sup> Tennessee Code Annotated section 8-8-302, entitled “Suits against counties for wrongs of deputies,” states:

Anyone incurring any wrong, injury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of or under color of the office.

“Tennessee Code Annotated section 8-8-303 provides a waiver of sovereign immunity for claims raised pursuant to section 8-8-302.” *Merolla v. Wilson Cty.*, No. M2018-00919-COA-R3-CV, 2019 WL 1934829, at \*6 (Tenn. Ct. App. May 1, 2019).

<sup>3</sup> Neither party has asserted that the Tennessee Governmental Tort Liability Act should have applied in this case; however, we note that our Supreme Court “has held that the GTLA supersedes Tenn. Code Ann. § 8-8-301 *et seq.* regarding actions for negligent conduct.” *Siler v. Scott*, 591 S.W.3d 84, 98-99 (Tenn. Ct. App. 2019) (citing *Jenkins v. Loudon Cty.*, 736 S.W.2d 603, 609 (Tenn. 1987); *accord Hensley v. Fowler*, 920 S.W.2d 649, 652 (Tenn. Ct. App. 1995); *Swanson v. Knox Cty.*, No. E2007-00871-COA-R3-CV, 2007 WL 4117259, at \*4 (Tenn. Ct. App. Nov. 20, 2007); *Warnick v. Carter Cty.*, No. E2002-00833-COA-R3-CV, 2003 WL 174754, at \*2 (Tenn. Ct. App. Jan. 27, 2003)).

S.W.3d at 457 (quoting *Whaley v. Perkins*, 197 S.W.3d 665, 670 (Tenn. 2006)); *see also Pera v. Kroger Co.*, 674 S.W.2d 715, 719 (Tenn. 1984) (“It is well settled in this state that the gravamen of an action, rather than its designation . . . determines the applicable statute of limitations.”); *Blalock v. Preston Law Grp., P.C.*, No.M2011-00351-COA-R3-CV, 2012 WL 4503187, at \*5 (Tenn. Ct. App. Sept. 28, 2012) (“When determining which of several possible statutes of limitations applies to a particular claim, the court must look to the gravamen of the complaint.”). Where a complaint has multiple claims, courts look to the gravamen of each claim. *Benz-Elliott*, 456 S.W.3d at 148-49, 151. To determine the gravamen of a claim, “a court must first consider the legal basis of the claim and then consider the type of injuries for which damages are sought.” *Id.* at 151.

The trial court found that the gravamen of the complaint was for personal injuries and that the claims were governed by a one-year statute of limitations found in Tenn. Code Ann. § 28-3-104.<sup>4</sup> Because Plaintiff filed his claim over one year from the date of his alleged injuries, the court concluded the claims were time barred. Plaintiff argues that either the six-year statute of limitations period in Tenn. Code Ann. § 28-3-109 or the two-year statute of limitations period in Tenn. Code Ann. § 28-3-104(a)(2) applies allowing his claim to proceed. We will address each contention in turn.

First, we look to the allegations in the complaint to determine the gravamen of the claims including the legal basis of the claims and the types of injuries alleged. The Amended Complaint is not a model of clarity in outlining the specific claims asserted or the injuries alleged; however, Plaintiff avers that he was “surprised and fearful” when he saw Deputy Wenzler pointing a gun at him, and he “feared for his safety.” Plaintiff states that Deputy Wenzler made “false representations” against him and quotes extensively from excerpts from a grand jury indictment against Deputy Wenzler:

(a) “...did unlawfully, feloniously and knowingly by use of a deadly weapon cause [Plaintiff] to reasonably fear imminent bodily injury by pointing his gun at [Plaintiff] and threatening to shoot him if [Plaintiff] did not exit his vehicle . . .”

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<sup>4</sup> Tennessee Code Annotated section 28-3-104(a)(1) states:

(a)(1) Except as provided in subdivision (a)(2), the following actions shall be commenced within one (1) year after the cause of action accrued:

(A) Actions for libel, injuries to the person, false imprisonment, malicious prosecution, or breach of marriage promise;

(B) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; and

(C) Actions for statutory penalties.

Tenn. Code Ann. § 28-3-104.

(b) "...did unlawfully feloniously and knowingly by the use of a deadly weapon cause [Plaintiff] to reasonably fear imminent bodily injury by firing his weapon at [Plaintiff's] vehicle as it was driving away from [Deputy] Wenzler . . ."

(c) ". . . did unlawfully feloniously and knowingly, while a public servant, acting under color of office or employment commit an offense intentionally subjecting [Plaintiff] to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure when the said [Deputy] Wenzler knew the conduct was unlawful . . ."

(d) ". . . did unlawfully feloniously and knowingly, while a public servant, with intent to harm [Plaintiff], commit an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power . . ."

(e) ". . . did unlawfully feloniously and knowingly, while a public servant, with intent to harm [Plaintiff], commit an act relating to the servant's office or employment that exceeds he said [Deputy] Wenzler's official power . . ."

(f) ". . . did unlawfully feloniously and knowingly, while a public servant, with intent to harm [Plaintiff], violate a law relating to the said [Deputy] Wenzler's office or employment . . ."

(g) ". . . did unlawfully feloniously and knowingly, make a false entry in or false alteration of a governmental record . . ." and,

(h) ". . . did unlawfully feloniously and knowingly make a report or statement in response to a legitimate inquiry by a law enforcement officer, . . . concerning a material fact about an offense or incident within the officer's concern knowing that such report or statement is false and with the intent to obstruct or hinder the officer from preventing the offense or incident from occurring or continuing to occur . . ."

These averments in the Amended Complaint suggest claims for intentional torts of assault, false imprisonment, malicious prosecution, abuse of process, and perhaps intentional infliction of emotional distress. The trial court correctly held that these causes of actions are governed by the one-year statute of limitations period outlined in Tenn. Code Ann. § 28-3-104(a)(1). *See Warwick v. Warwick*, No. E2011-01969-COA-R3-CV, 2012 WL 5960850, at \*17 (Tenn. Ct. App. Nov. 29, 2012) (concluding that one-year statute of limitations period applicable to tort actions for personal injury applies to claims for abuse of process and intentional infliction of emotional distress). Federal courts examining Tenn. Code Ann. § 8-8-302 have looked to the gravamen of the complaint to determine the appropriate statute of limitations period and have also settled on a one-year statute of limitations period. *See Lovingood v. Monroe Cty.*, No. 3:19-CV-00009-DCLC, 2021 WL 2338832, at \*1, 6 (E.D. Tenn. June 8, 2021) (finding a one-year statute of limitations period applied to plaintiff's allegations that deputies "beat him while handcuffed"); *Clark v. Clawson*, No. 3:20-cv-00230, 2021 WL 37675, at \*4, n.2 (M.D. Tenn. Jan. 5, 2021) (examining the gravamen of the claim and applying a one-year statute of limitations

applicable to claims arising under 42 U.S.C. §§ 1983 and 1985). Plaintiff's claims brought against Lauderdale County are predicated on personal injury tort claims; therefore, pursuant to Tenn. Code Ann. § 28-3-104(a)(1), the claims are time-barred because they were brought more than one year after the cause of action accrued.

Plaintiff attempts to circumvent the one-year statute of limitations period by asserting that two alternative statutes enlarge the relevant limitations period. To resolve these issues, we must construe Tenn. Code Ann. § 28-3-109 and Tenn. Code Ann. § 28-3-104(a)(2). When engaging in statutory construction, we follow the instruction of our Supreme Court:

Issues of statutory construction present questions of law that we review de novo with no presumption of correctness. *Martin v. Powers*, 505 S.W.3d 512, 518 (Tenn. 2016). The primary goal of statutory interpretation is to carry out legislative intent without expanding or restricting the intended scope of the statute. *State v. Smith*, 484 S.W.3d 393, 403 (Tenn. 2016) (citations omitted). In determining legislative intent, we first must look to the text of the statute and give the words of the statute “their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.” *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012) (citations omitted). When a statute’s language is clear and unambiguous, we enforce the statute as written; we need not consider other sources of information. *Frazier v. State*, 495 S.W.3d 246, 249 (Tenn. 2016). We apply the plain meaning of a statute’s words in normal and accepted usage without a forced interpretation. *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013). We do not alter or amend statutes or substitute our policy judgment for that of the Legislature. *Armbrister v. Armbrister*, 414 S.W.3d 685, 704 (Tenn. 2013).

*Younger v. Okbahhanes*, 632 S.W.3d 531, 534 (Tenn. Ct. App. 2021), *app. denied* (June 11, 2021) (quoting *Coleman v. Olson*, 551 S.W.3d 686, 694 (Tenn. 2018)). We examine each statute in turn.

First, Plaintiff asserts that the six-year limitations period provided in Tenn. Code Ann. § 28-3-109 applies to his cause of action. Tennessee Code Annotated section 28-3-109(a)(2) provides a six-year limitations period for “[a]ctions against the *sureties* of . . . sheriffs.” (emphasis added). As the trial court noted, Tenn. Code Ann. § 28-3-109(a)(2) governs actions against “sureties”<sup>5</sup> not actions against sheriff’s deputies or municipalities. Here, Plaintiff has not sued a surety; instead, he has sued Lauderdale County. The case of

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<sup>5</sup> Black’s Law Dictionary defines “surety” as, “[s]omeone who is primarily liable for paying another’s debt or performing on another’s obligation[.]” *Surety*, BLACK’S LAW DICTIONARY (11th ed. 2019).

*State v. Head*, 253 S.W.2d 756 (Tenn. 1952) is instructive.<sup>6</sup> In *Head*, the plaintiff sued both the sheriff and Globe Indemnity Company of New York, as surety on the sheriff's bond, for injuries inflicted by a deputy sheriff more than four years prior to institution of the suit. *Head*, 253 S.W.2d at 756. The trial court determined that the one-year statute of limitations for personal injuries applied to the suit rather than the six-year statute of limitations applicable to a suit against a surety, because "the one year statute of limitations applies to a suit for personal injuries, no matter in what guise or form the suit may be brought." *Id.* at 757. Similarly, in this case, the gravamen of the underlying suit is one for personal injuries against the deputy sheriff and not based on any contractual relationship between Plaintiff and a surety. Therefore, the six-year statute of limitations in Tenn. Code Ann. § 28-3-109 does not apply to enlarge the statute of limitations period in this case.

Next, Plaintiff asserts that the two-year limitations period from Tenn. Code Ann. § 28-3-104(a)(2) controls. Tennessee Code Annotated section 28-3-104(a)(2) extends the statute of limitations period for certain causes of actions, including "injuries to the person, false imprisonment, [and] malicious prosecution" to two-years where: (1) "[c]riminal charges are brought against any person alleged to have caused or contributed to the injury;" (2) "[t]he conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year" by a law enforcement officer, district attorney general, or a grand jury; and (3) "[t]he cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct." Importantly, the statute states it "shall be strictly construed." Tenn. Code Ann. § 28-3-104(a)(3). Plaintiff contends that the statute applies because Deputy Wenzler was criminally charged for his actions during the episode with Plaintiff. The trial court, determined that the extension of the statute of limitations applies "to the prosecuted defendant whom the claim is brought, not against non-prosecuted co-defendants, such as Lauderdale County." We agree with the trial court.

This Court has previously held that "the language of Tennessee Code Annotated § 28-3-104(a)(2) is clear and unambiguous." *Younger*, 632 S.W.3d at 535 (applying the two-year extension of the statute of limitations where the defendant was charged with a criminal offense). Thus, "we enforce the statute as written" and "we need not consider other sources of information." *Coleman*, 551 S.W.3d at 694. The plain language of Tenn. Code Ann. § 28-3-104(a)(2)(C) dictates that the statute of limitations is extended only where "the cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct." Here, there is no dispute that Deputy Wenzler was indicted for the criminal conduct, not Lauderdale County, and Plaintiff has sued Lauderdale County in this action, not Deputy Wenzler. We see no reason to employ the expansive interpretation advocated for by Plaintiff to extend the statute of limitations where the suit is against a governmental entity that was not "criminally prosecuted." Plaintiff's argument

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<sup>6</sup> The *Head* Court construes "Section 8600 of Williams' Tennessee Code" which is essentially identical to the current version of Tenn. Code Ann. § 29-3-109.

to extend the statute of limitations fails, and his claim is time-barred by the applicable one-year statute of limitations.

#### CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Brandon K. Anderson, for which execution may issue if necessary.

/s/ Andy D. Bennett  
ANDY D. BENNETT, JUDGE