

SUPREME COURT OF TENNESSEE

Davey Mann v. Alpha Tau Omega Fraternity

380 S.W.3d 42 (Tenn. 2012) · No. W2010-02316-SC-R11-CV · Decided July 3, 2012

SUMMARY

The Tennessee Supreme Court held that a defendant dismissed by a written trial-court order is no longer a "party to the suit" for purposes of Tennessee Code Annotated section 20-1-119, even when the dismissal order is interlocutory and not certified as final under Tennessee Rule of Civil Procedure 54.02. The Court concluded that the plaintiffs could amend their complaint to reassert claims against the dismissed defendants after another defendant alleged their comparative fault. The Court reversed the Court of Appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Cornelia A. Clark, Chief Justice; Janice M. Holder, Justice; Gary R. Wade, Justice; William C. Koch, Jr., Justice; Sharon G. Lee, Justice
JURISDICTION	Tennessee
DECIDED	July 3, 2012
DOCKET	W2010-02316-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Tennessee Supreme Court granted permission to appeal under Tennessee Rule of Appellate Procedure 11 from the Court of Appeals' affirmance of the trial court's dismissal of the plaintiffs' second amended complaint as barred by the statute of limitations.
STANDARD OF REVIEW	Questions of law and statutory construction are reviewed de novo with no presumption of correctness. The court also explained that matters outside the pleadings convert a Rule 12.02(6) motion into a motion for summary judgment under Rule 12.02.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential
PARTIES	Davey Mann, Teresa Mann v. Alpha Tau Omega Fraternity, Tennessee Zeta Rho Chapter, Nicholas Beaver, Zachary Beaver, E.J. Cox, Daniel Kelly, John Condon, III

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QUESTIONS PRESENTED

1. Whether a defendant dismissed by a written order that is not final under Tennessee Rule of Civil Procedure 54.02 is a person 'not a party to the suit' for purposes of Tennessee Code Annotated section 20-1-119.
2. Whether the plaintiffs could invoke section 20-1-119 to re-add the previously dismissed defendants within ninety days after a timely sued defendant alleged that they caused or contributed to the plaintiffs' injuries.
3. Whether res judicata barred the second amended complaint.

HOLDINGS

1. A named defendant ceases to be a 'party to the suit' for purposes of section 20-1-119 when the trial court issues a written order dismissing that defendant, whether the order is final or interlocutory.
2. The plaintiffs satisfied section 20-1-119 because they filed their second amended complaint within ninety days after the Callicutts alleged the appellees' fault, and the appellees had already been dismissed from the suit by written orders.
3. Res judicata did not bar the second amended complaint because the dismissal orders concerning the first amended complaint were not final judgments from a prior suit.

KEY QUOTATIONS

"We adopt the reasoning of Townes and hold that a named defendant ceases to be a "party to the suit," for purposes of section 20-1-119, when the trial court issues an order—whether final or interlocutory—dismissing that defendant." (Conclusion)

"The purpose of section 20-1-119 is to afford plaintiffs a reasonable opportunity to bring into the lawsuit those persons to whom a timely sued defendant has attributed fault." (Conclusion)

"We hold that "a person not a party to the suit," for purposes of Tennessee Code Annotated section 20-1-119, includes any defendant previously dismissed pursuant to a written, non-final order; thus, we reverse the judgment of the Court of Appeals upholding the trial court's dismissal of Appellees from this suit and remand to the trial court for further proceedings." (Conclusion)

FACTUAL BACKGROUND

The plaintiffs were injured in a July 22, 2006 automobile accident involving a vehicle driven by Jeffrey Callicutt. They alleged that Callicutt had consumed alcohol at a social gathering associated with Alpha Tau Omega and its Tennessee Zeta Rho Chapter and that the appellees contributed to the accident. The plaintiffs first

sued several defendants within the one-year limitations period, later added the appellees, and then filed a second amended complaint after the appellees had been dismissed by written but non-final orders.

PROCEDURAL HISTORY

The trial court dismissed the plaintiffs' claims against the appellees as time-barred, initially entering non-final dismissal orders and later certifying its ruling as final under Tennessee Rule of Civil Procedure 54.02. The Court of Appeals affirmed, reasoning that the appellees remained parties when the comparative-fault answer was filed. The Tennessee Supreme Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Circuit Court for Shelby County for further proceedings consistent with the opinion.

CASES CITED

- Mills v. Fulmarque, Inc., 360 S.W.3d 362, 366, 368, 370 (Tenn. 2012)
- McIntyre v. Balentine, 833 S.W.2d 52, 56-58 (Tenn. 1992)
- Jones v. Professional Motorcycle Escort Service, L.L.C., 193 S.W.3d 564, 567, 572-73 (Tenn. 2006)
- Browder v. Morris, 975 S.W.2d 308, 310-12 (Tenn. 1998)
- McNabb v. Highways, Inc., 98 S.W.3d 649, 654-55 (Tenn. 2003)
- Townes v. Sunbeam Oster Co., 50 S.W.3d 446, 451, 453-54 (Tenn. Ct. App. 2001)
- McCullough v. Johnson City Emergency Physicians, P.C., 106 S.W.3d 36, 46 (Tenn. Ct. App. 2002)
- Ward v. AMI SUB (SFH), Inc., 149 S.W.3d 35, 38-39 (Tenn. Ct. App. 2004)
- Austin v. State, 222 S.W.3d 354, 356-58 (Tenn. 2007)
- Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 7-10 (1980)
- Fox v. Fox, 657 S.W.2d 747, 749 (Tenn. 1983)
- State v. Flood, 219 S.W.3d 307, 314 (Tenn. 2007)
- Monceret v. Board of Professional Responsibility, 29 S.W.3d 455, 460 (Tenn. 2000)
- Boles v. Smith, 37 Tenn. (5 Sneed) 105, 106-07 (1857)
- State v. Thompson, 285 S.W.3d 840, 848 (Tenn. 2009)

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