

## SUPREME COURT OF TENNESSEE

### Jennie Jones v. Professional Motorcycle Escort Service, L.L.C., et al.

No. W2005-00079-SC-S09-CV · No. W2005-00079-SC-S09-CV · Decided May 19, 2006

#### SUMMARY

The Tennessee Supreme Court held that a plaintiff invoking Tennessee Code Annotated section 20-1-119 to add a nonparty alleged to share fault must obtain written consent of the adverse parties or leave of court under Tennessee Rule of Civil Procedure 15.01. The Court nevertheless concluded that the plaintiff substantially complied with the statute and rule because the amended complaint was filed, process was issued and served, and leave to amend was granted within the statutory ninety-day period. The Court affirmed the denial of the defendant's motion to dismiss and remanded the case for further proceedings.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Tennessee                                                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Cornelia A. Clark, Justice; Cornelia A. Clark; William M. Barker, Chief Justice; E. Riley Anderson; Adolpho A. Birch, Jr.; Janice M. Holder                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Tennessee                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | May 19, 2006                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | W2005-00079-SC-S09-CV                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Professional Motorcycle Escort Service, L.L.C., pursued a Tennessee Rule of Appellate Procedure 9 interlocutory appeal from the denial of its motion to dismiss the plaintiff's amended personal-injury complaint as time-barred. The Tennessee Supreme Court granted the interlocutory appeal to decide whether a plaintiff must obtain leave of court before filing an amended complaint under Tennessee Code Annotated section 20-1-119. |
| STANDARD OF REVIEW    | The denial of the motion to dismiss and questions of statutory construction are reviewed de novo without a presumption of correctness.                                                                                                                                                                                                                                                                                                      |
| PRECEDENTIAL VALUE    | Published Tennessee Supreme Court opinion; precedential under Tennessee law.                                                                                                                                                                                                                                                                                                                                                                |

## TOPICS

motion to amend

statute of limitations

joinder

service of process

interlocutory appeal

## PRACTICE AREAS

civil procedure

appellate procedure

torts

statutory interpretation

## QUESTIONS PRESENTED

1. Whether Tennessee Code Annotated section 20-1-119 requires a plaintiff to obtain written consent of adverse parties or leave of court under Tennessee Rule of Civil Procedure 15.01 before filing an amended complaint adding a nonparty alleged to be at fault.
2. Whether the plaintiff substantially complied with section 20-1-119 and Rule 15.01 when the amended complaint and process were filed and served before the motion for leave to amend was filed, but the motion was granted within the statutory ninety-day period.
3. Whether the amended complaint was time-barred and subject to dismissal because the plaintiff completed the amendment-related steps out of sequence.

## HOLDINGS

1. When a plaintiff uses Tennessee Code Annotated section 20-1-119 to add a nonparty as a defendant, the plaintiff must obtain written consent of the adverse parties or leave of court as required by the second sentence of Tennessee Rule of Civil Procedure 15.01.
2. A plaintiff substantially complies with section 20-1-119 and Rule 15.01 when the motion for leave to amend is filed and granted, the amended complaint is filed, and process is issued and served within the statutory ninety-day period, even though the amended complaint and process precede the motion for leave by one day.

## KEY QUOTATIONS

*“Consistent with the liberal amendment policies of Tennessee and other jurisdictions, we hold that Plaintiff’s one day delay in filing a motion to amend her complaint is not fatal under Rule 15.01, where the amended complaint was filed, service of process was obtained, and leave to amend was granted within the time frame required by section 20-1-119.”* (-9)

*“When a plaintiff utilizes section 20-1-119 to amend a complaint to name a nonparty as a defendant, the plaintiff must first seek permission of the trial court or adverse parties as provided by Tennessee Rule of Civil Procedure 15.01.”* (-10)

## FACTUAL BACKGROUND

On August 10, 2002, Jennie Jones was injured in a motor-vehicle accident while riding as a passenger in a funeral procession in Memphis, Tennessee. She filed a negligence action against three defendants before the one-

year personal-injury limitations period expired. After one defendant alleged that Professional Motorcycle Escort Service and M.J. Edwards & Sons Funeral Home were additional tortfeasors, Jones filed an amended complaint, caused process to issue, and obtained service within ninety days, but sought leave to amend one day after filing the amended complaint.

## PROCEDURAL HISTORY

Jones filed a negligence complaint against Verna Brown, Michael Graves, and Robert Jones. After Robert Jones alleged in his answer that Professional Motorcycle Escort Service and M.J. Edwards & Sons Funeral Home were potentially at fault, Jones filed an amended complaint, issued process, and served the additional defendants within the statutory ninety-day period, then filed a motion for leave to amend one day later. The trial court granted leave and denied Professional Motorcycle Escort Service's motion to dismiss. The Court of Appeals denied an interlocutory appeal, and the Tennessee Supreme Court granted the application, affirmed the denial of dismissal, and remanded.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The case is remanded to the trial court for further proceedings consistent with the opinion.

## CASES CITED

- Conley v. State, 141 S.W.3d 591, 594-95 (Tenn. 2004)
- Leach v. Taylor, 124 S.W.3d 87, 90 (Tenn. 2004)
- Ki v. State, 78 S.W.3d 876, 879 (Tenn. 2002)
- McIntyre v. Balentine, 833 S.W.2d 52, 57-58 (Tenn. 1992)
- Curtis v. G.E. Capital Modular Space, 155 S.W.3d 877, 880-81 (Tenn. 2005)
- Brown v. Wal-Mart Discount Cities, 12 S.W.3d 785, 788 (Tenn. 2000)
- Gunter v. Lab. Corp. of Am., 121 S.W.3d 636, 638 (Tenn. 2003)
- Young v. Toys R Us, Inc., 987 F. Supp. 1035, 1036 (E.D. Tenn. 1997)
- Ward v. AMI SUB (SFH), Inc., 149 S.W.3d 35, 39 (Tenn. Ct. App. 2004)
- Nipper v. Axtrom Indus., Inc., No. M2005-00349-COA-R10-CV, 2005 WL 1046797, at \*2 (Tenn. Ct. App. May 4, 2005)
- Harris v. Chern, 33 S.W.3d 741, 745 n.2 (Tenn. 2000)
- Shephard v. Allstate Ins. Co., No. 2:04-CV-936, 2006 WL 82961, at \*1-2, \*4 (S.D. Ohio Jan. 6, 2006)
- Holman Auto. Group, Inc. v. Capps Mgmt. XVII, Inc., No. 05-72620, 2005 WL 3334748, at \*2 (E.D. Mich. Dec. 8, 2005)
- Fischer v. Senior Living Properties, L.L.C., 771 N.E.2d 505, 508-12 (Ill. App. Ct. 2002)
- Anderson v. Emro Mktg. Co., 550 So. 2d 531, 532-33 (Fla. Dist. Ct. App. 1989)

- Rambur v. Diehl Lumber Co., 394 P.2d 745, 748 (Mont. 1964)
- Smith v. Traxler, 78 S.E.2d 630, 632 (S.C. 1953)
- Miller v. Perry, 38 Iowa 301, 303 (Iowa 1874)
- Butman v. Christy, 198 N.W. 314 (Iowa 1924)
- Patton v. Dixon, 58 S.W. 299, 301 (Tenn. 1900)
- Vythoukas v. Vanderbilt Univ. Hosp., 693 S.W.2d 350, 355 (Tenn. Ct. App. 1985)
- Branch v. Warren, 527 S.W.2d 89, 91 (Tenn. 1975)
- McCracken v. Brentwood United Methodist Church, 958 S.W.2d 792, 797 (Tenn. Ct. App. 1997)
- Roadrunner Mining, Eng'g & Dev. Co. v. Bank Josephine, 558 S.W.2d 597 (Ky. 1977)
- Taylor v. Nashville Banner Publ'g Co., 573 S.W.2d 476, 484 (Tenn. Ct. App. 1978)

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