

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 18, 2025 Session

FILED

07/28/2026

Clerk of the
Appellate Courts

**CONSTANCE LYNN BENNETT, AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF JENNIFER DIANE VICKERS,
DECEASED v. DIVERSICARE LEASING CORPORATION ET AL.**

**Appeal from the Circuit Court for Rutherford County
No. 73909 Bonita Jo Atwood, Judge**

No. M2024-01035-COA-R3-CV

This is the second appeal from the dismissal of a health care liability action for failure to comply with the Health Care Liability Act. In the first appeal, we held that the Health Care Liability Act required the plaintiff to file a new certificate of good faith with an amended complaint that added a new health care liability claim against the existing defendants. Even so, we vacated the dismissal and remanded for reconsideration of the plaintiff's motion for an extension of time to file a new certificate. On remand, the trial court concluded that the plaintiff failed to demonstrate a good faith basis for an extension of time. Again, it denied the plaintiff's motion and dismissed the amended complaint. Because we conclude that the court erred in denying the plaintiff's motion, we reverse.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ., joined.

Luvell L. Glanton, Luvell L. Glanton, Jr., and Daimon S. Duggar, Nashville, Tennessee, for the appellant, Constance Lynn Bennett.

F. Laurens Brock, Donna L. Boyce, and Joshua Counts Cumby, Nashville, Tennessee, for the appellee, Diversicare Leasing Corporation.

Karl M. Braun, and Ethan A. Rudnicki, Nashville, Tennessee, for the appellee, Dr. Paul H. Straughn.

D. Edward Harvey, Nashville, Tennessee, for the appellee, OneCare Dental Solutions, LLC.

MEMORANDUM OPINION¹

I.

After an adverse reaction from a major dental procedure, Jennifer Diane Vickers filed a complaint asserting health care liability claims against three defendants, Diversicare Leasing Corporation, Dr. Paul H. Straughn, DDS, and OneCare Dental Solutions, LLC. *Est. of Vickers v. Diversicare Leasing Corp.*, No. M2021-00894-COA-R3-CV, 2022 WL 2111850, at *1 (Tenn. Ct. App. June 13, 2022). As required, Ms. Vickers’s attorney filed proof of pre-suit notice and a certificate of good faith as exhibits to the complaint. *See* Tenn. Code Ann. §§ 29-26-121(b), -122(a) (2024). While the litigation was pending, Ms. Vickers died of unrelated causes; Constance Lynn Bennett, the personal representative of her estate, was substituted as plaintiff. *Est. of Vickers*, 2022 WL 2111850, at *1 n.1.

The defendants moved for summary judgment based on the plaintiff’s failure to produce any expert proof to support her health care liability claims. *Id.* at *1. Ms. Bennett responded with an affidavit from Dr. Dean DeLuke, DDS. *Id.* Among other things, Dr. DeLuke opined that Dr. Straughn deviated from the standard of care by failing to adequately inform Ms. Vickers about the material risks of her dental procedure. *Id.*

With the court’s permission, Ms. Bennett filed an amended complaint that “add[ed] a claim for lack of informed consent and restate[d] all negligence claims against each defendant.” *Id.* at *2. She did not file a new certificate of good faith. *Id.* Instead, the amended pleading “incorporated by reference the certificate attached to the original complaint.” *Id.*

The defendants moved to dismiss the amended complaint for failure to satisfy the good faith requirement. *See* Tenn. Code Ann. § 29-26-122(c) (stating a plaintiff’s failure to satisfy the good faith requirement “shall, upon motion, make the action subject to dismissal with prejudice”). In response, Ms. Bennett argued that the Health Care Liability Act did not require her to file a new certificate under these circumstances. *Est. of Vickers*, 2022 WL 2111850, at *2. But if it did, she insisted that she had substantially complied. *Id.* Alternatively, she moved for an extension of time to file a new certificate. Tenn. Code Ann. § 29-26-122(c) (allowing a court to grant an extension).

The trial court rejected Ms. Bennett’s arguments. *Est. of Vickers*, 2022 WL 2111850, at *2. It held that Ms. Bennett was required to file a new certificate because the

¹ Under the rules of this Court, as a memorandum opinion, this opinion may not be published, “cited[,] or relied on for any reason in any unrelated case.” TENN. CT. APP. R. 10.

amended complaint added a new “cause of action.” *Id.* Strict compliance with the good faith requirement was mandatory. *Id.* Finding Ms. Bennett failed to demonstrate extraordinary cause, it denied the motion for additional time and dismissed the amended complaint with prejudice. *Id.*

In the first appeal, we affirmed the trial court’s decision in part, vacated in part, and remanded the case “for further proceedings consistent with [our] opinion.” *Id.* at *12. As a matter of first impression, we affirmed “the trial court’s determination that [Tennessee Code Annotated] § 29-26-122 required [Ms. Bennett] to file a new certificate of good faith with her amended complaint.” *Id.* at *9. But we vacated the denial of the motion for an extension of time to file a new certificate because the trial court applied the wrong legal standard. *Id.* at *12. We remanded for reconsideration of the motion under the correct standard. *Id.* As a result, we also vacated the order of dismissal. *Id.* Noting that Ms. Bennett challenged the court’s decision to dismiss the “entire amended complaint” instead of just the new claim, we also remanded that issue for “further consideration by the trial court.” *Id.*

After remand, Ms. Bennett renewed her motion for an extension of time to file a good faith certificate. Given the unsettled legal landscape when she filed her amended complaint, she argued that her counsel’s honest belief that a new certificate was unnecessary was reasonable. Based on prior Tennessee case law, the trial court determined that the statutory requirement to file a new certificate of good faith was clearly established when Ms. Bennett filed her amended complaint. It also found that her counsel did not actually misunderstand the governing law. Concluding that Ms. Bennett failed to demonstrate good cause warranting additional time to file a new certificate, the trial court denied the renewed motion and dismissed the amended complaint with prejudice.

II.

Trial courts have discretion to grant litigants additional time to file a certificate of good faith upon a showing of “good cause.” Tenn. Code Ann. § 29-26-122(c). We review these decisions under the abuse of discretion standard. *Est. of Blankenship v. Bradley Healthcare & Rehab. Ctr.*, 653 S.W.3d 709, 718 (Tenn. Ct. App. 2022). This standard of review, while less rigorous, does not preclude appellate scrutiny. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). We will reverse trial court decisions that “cause[] an injustice by applying an incorrect legal standard, reaching an illogical decision, or by resolving the case ‘on a clearly erroneous assessment of the evidence.’” *Henderson v. SAILA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010) (citation omitted). In reviewing discretionary decisions, we consider “(1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the lower court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the lower court’s decision was within the range of acceptable alternative dispositions.” *Lee Med., Inc.*, 312 S.W.3d at 524.

In our previous opinion, we explained that “a party’s misunderstanding of the law may constitute ‘good cause’ or even ‘extraordinary cause’ when the law is unsettled, unclear, or potentially confusing.” *Est. of Vickers*, 2022 WL 2111850, at *11. A professed misunderstanding of clear statutory language, however, does not meet this standard. *Id.* On remand, the trial court determined that the statutory requirement to file a good faith certificate with the amended complaint was clearly established when Ms. Bennett filed her amended complaint. We review this legal determination de novo. *Lee Med., Inc.*, 312 S.W.3d at 525.

The trial court cited our decision in *Groves v. Colburn*, No. M2012-01834-COA-R3-CV, 2013 WL 3964758, (Tenn. Ct. App. July 30, 2013), as an example of previous legal authority holding that a new certificate of good faith was necessary when an amended complaint added a new health care liability claim against existing defendants. The trial court’s reliance on the cited decision was misplaced. *State v. Lancaster*, 105 S.W. 858, 862 (Tenn. 1907) (stating that previous decisions “must be construed in the light of the question with which the court is dealing, and of the facts before the court”). The issue we faced in *Groves* was whether the statute required a new certificate when a plaintiff “amended her complaint to add a defendant.” *Groves*, 2013 WL 3964758, at *2. Like Ms. Bennett, the plaintiff in *Groves* filed a certificate of good faith with the original complaint. *Id.* at *1. But it was based on allegations against the original defendant’s nursing staff. *Id.* at *3. Because the amended complaint added new health care liability claims against a new defendant, we held that a new certificate was required. *Id.* We never considered whether the statutory requirement also applied to an amended pleading that added a new claim against an existing defendant.

We conclude that the governing law was “unsettled, unclear, or potentially confusing” when Ms. Bennett filed her amended complaint. *Est. of Vickers*, 2022 WL 2111850, at *11. There was no legal authority addressing whether a new certificate was required when a plaintiff filed an amended complaint asserting “new health care liability claims against existing defendants in an existing health care liability action.” *Id.* at *6. On its face, the statute only required Ms. Bennett to file a certificate of good faith “with the complaint,” which she had done. *See* Tenn. Code Ann. § 29-26-122(a). Before we issued our previous opinion in this case, Tennessee courts had only addressed whether a new certificate was required when an amended complaint asserted a new health care liability claim against a new defendant. *See Sirbaugh v. Vanderbilt Univ.*, 469 S.W.3d 46, 53 (Tenn. Ct. App. 2014); *Groves*, 2013 WL 3964758, at *2-3. Lacking clear precedential authority, we turned to “[s]everal well-established canons” of statutory construction to resolve this issue. *Est. of Vickers*, 2022 WL 2111850, at *7. While we ultimately “agree[d] with Defendants’ interpretation of the statute,” *id.* at *9, we recognized that both sides had “offered a reasonable interpretation” of the statutory language. *Id.* at *8.

Nor does the evidence in the record support the trial court's finding that counsel did not actually misunderstand the statutory requirement. *Lee Med., Inc.*, 312 S.W.3d at 525; TENN. R. APP. P. 13(d). The court pointed to the filing of Dr. DeLuke's affidavit in response to the defendants' motion for summary judgment as proof that counsel "was clearly aware a certificate of good faith would be required to be filed with her Amended Complaint." But that filing evidenced nothing about Ms. Bennett's or her counsel's understanding of unsettled law. At best, it showed that they recognized the need to come forward at the summary judgment stage with expert proof to support the health care liability claims in the original complaint. *See* Tenn. Code Ann. § 29-26-115 (2024); *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993) (explaining that a plaintiff faced with a properly supported motion for summary judgment must come forward with "specific facts, not legal conclusions, by using affidavits or the discovery materials listed in Rule 56.03," showing that a trial was warranted).

We conclude that the court misapplied the applicable legal standard to the relevant facts. According to Ms. Bennett's counsel, he did not file a new certificate of good faith with the amended complaint because, based on then-existing law, he did not believe that it was statutorily required. As it turned out, he was wrong. Still, because the law was unclear or unsettled, his reasonable misinterpretation of the statutory requirement demonstrated good cause for an extension of time to file a new certificate. *Est. of Vickers*, 2022 WL 2111850, at *11. This conclusion makes it unnecessary to address Ms. Bennett's remaining issue on appeal.

III.

The trial court erred in denying the motion for additional time to file a certificate of good faith. So we reverse trial court's decision.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE