

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 17, 2025 Session

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Clerk of the
Appellate Courts

BRADLEY DYER v. HUDSON HAVEN

Appeal from the Circuit Court for Rutherford County
No. 79804 Terry A. Fann, Judge

No. M2024-01364-COA-R9-CV

Following an automobile accident, the plaintiff sued the other driver and the plaintiff's own uninsured motorist carrier. The plaintiff, however, failed to properly serve the other driver. After learning of this failure to serve the other driver, the uninsured motorist carrier sought dismissal. In response to the motion to dismiss, the plaintiff requested an enlargement of time in which to serve the other driver under Tennessee Rule of Civil Procedure 6.02. The trial court, finding the failure to serve constituted excusable neglect, granted the enlargement of time and consequently denied the motion to dismiss. The trial court and this court, however, granted the uninsured motorist carrier's application for permission to appeal under Tennessee Rule of Appellate Procedure 9. We conclude the trial court misapplied the four-factor excusable neglect test and, accordingly, erred in granting the enlargement of time and denying the motion to dismiss.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed

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

Allan J. Parker, Nashville, Tennessee, for the appellant, State Farm Mutual Automobile Insurance Company.

John D. Drake, Murfreesboro, Tennessee, for the appellee, Bradley Dyer.

OPINION

I.

The origins of this litigation trace back to an automobile collision that took place in

Smyrna, Tennessee in June 2021. In his complaint, Appellee Bradley Dyer alleged that a woman named Haven Hudson rear-ended his vehicle. Significantly, Ms. Hudson received a citation in connection with this accident from the Smyrna Police Department indicating that she failed to present proof of insurance to the responding officer.¹ Mr. Dyer sued Ms. Hudson in Rutherford County Circuit Court in June 2022, alleging that he sustained personal injuries. Mr. Dyer also sued State Farm Mutual Insurance Company “as uninsured/underinsured motorist carrier.”

Mr. Dyer perfected timely service upon State Farm through the Tennessee Commissioner of Insurance’s office. State Farm answered his lawsuit, raising several affirmative defenses. In its filing, State Farm asserted that it had a statutory right to seek subrogation from Ms. Hudson if Mr. Dyer secured a judgment in his favor against State Farm.² Specifically, State Farm cited Tennessee Code Annotated section 56-7-1204, which provides in relevant part as follows:

(a) In the event of payment to any person under the coverage required by this part, and subject to the terms and conditions of the coverage, the insurer making payment shall, to the extent of the coverage, be subrogated to all of the rights of the person to whom payment has been made, and shall be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of the person against any person or organization legally responsible for the bodily injury or property damage for which payment is made, including the proceeds recoverable from the assets of an insolvent insurer.

Tenn. Code Ann. § 56-7-1204(a). State Farm also simultaneously propounded discovery requests upon Mr. Dyer. State Farm, proceeding under an understanding that Ms. Hudson had been served properly, defended against Mr. Dyer’s suit on the merits for a year and a half.

However, Mr. Dyer had never actually successfully perfected service upon Ms. Hudson. He attempted to do so twice but failed both times. The record includes an

¹ At the time of the accident, Tennessee Code Annotated section 55-12-139 provided that, upon request, the driver of a motor vehicle must “show an officer evidence of financial responsibility, or provide[] the officer with evidence of a motor vehicle liability policy as evidence of financial responsibility.” See Tenn. Code Ann. § 55-12-139(b)(1)(C). A driver who fails to provide the required information commits a misdemeanor offense and is subject to being fined, which occurred in this case. See Tenn. Code Ann. § 55-12-139(c).

² The term “subrogation” in the context of insurance refers to “[t]he principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.” *Subrogation*, Black’s Law Dictionary (12th ed. 2024).

affidavit from Kellie Finney, the personal assistant of Mr. Dyer's counsel, that provides more details about the attempted service of Ms. Hudson. According to Ms. Finney,

On or about June 3, 2022, I mailed service of process via certified mail to the Defendant Haven Hudson at the address listed in the Tennessee Crash Report: [****] George Buchanan Drive, LaVergne, Tennessee. A copy of the original envelope is attached hereto. This mailing was returned to the office on or about June 25, 2022, as "Return to Sender Unclaimed Unable to Forward." I then ran a search for an updated address and mailed service to [***] Avery Valley Drive, Smyrna, Tennessee. This mailing was returned to the office on or about August 17, 2022, indicating "Return to Sender Not Deliverable as Addressed Attempted Not Known[.]" A history report from Stamps.com, our mailing system, is attached hereto for reference indicating the dates of mailings to the Defendant.

Ms. Finney further explained that she neglected to actually file the return of service related to Ms. Hudson with the trial court because her office was engaged in active discovery with State Farm. Ms. Finney eventually returned "[t]he summons and second certified mailing . . . [to] the Court on December 7, 2023." State Farm, accordingly, first received notice that Mr. Dyer had failed to properly serve Ms. Hudson on that date.

State Farm promptly filed a motion to dismiss. Therein, it argued that because Mr. Dyer failed to effectuate proper service on Ms. Hudson, either physically or via an alias summons, within ninety days, Tennessee Rule of Civil Procedure 3 did not toll the one-year statute of limitations for his personal injury lawsuit.³ State Farm argued Mr. Dyer's claims against Ms. Hudson had already become time-barred, which was of significance not only to Mr. Dyer but also to State Farm. State Farm observed that under Tennessee law a plaintiff cannot maintain a lawsuit against an uninsured motorist carrier if the court dismisses all claims against the allegedly uninsured motorist. Accordingly, State Farm argued that Mr. Dyer's suit against it should be dismissed.

Mr. Dyer filed a request for an enlargement of time. While conceding that he had failed to properly serve Ms. Hudson, he asserted that this failure constituted excusable neglect, that State Farm had not itself suffered prejudice with regard to his suit against it, and that he had acted in good faith.

³ Tennessee Code Annotated section 28-3-104(a)(1)(A) requires plaintiffs to file actions concerning "injuries to the person" "within one (1) year after the cause of action accrued." Tennessee Rule of Civil Procedure 3 states that an action is commenced at the time of the filing of the complaint "whether process be returned served or unserved," but that if process is not served within 90 days of issuance, "the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process" within a specified time period.

State Farm agreed Mr. Dyer had not acted in bad faith but disagreed with his contention that his actions constituted excusable neglect. In addition to noting the prejudice that it had suffered, State Farm argued that Mr. Dyer had sole control over the process of service, emphasizing that it was not even aware that Mr. Dyer had failed to serve Ms. Hudson properly until approximately a year and a half after the initial filing of the lawsuit. State Farm also asserted that Mr. Dyer's failure to properly serve Ms. Hudson had extinguished State Farm's ability to seek subrogation in the event of an adverse judgment, because Mr. Dyer's claims against Ms. Hudson had become time-barred. Finally, State Farm highlighted that Mr. Dyer's neglect took place over a long period of time (approximately eighteen months) and asserted that such a significant delay should not be considered excusable neglect.

The trial court held a hearing on Mr. Dyer's enlargement motion. During that hearing, Mr. Dyer conceded that the delay in this case was within his control. Specifically, Mr. Dyer's counsel stated:

I understand it . . . was under my control and my office. I understand that. All I can say [is] that it was an inadvertent lapse on our part.

. . .

. . . [T]he reason why the filing was late and reason – and whether the reasons were within the filer's reasonable control. I believe that factor does weigh against the plaintiff.

Following the hearing, the trial court granted Mr. Dyer's request for an enlargement of time. In its order, the trial court analyzed four factors for assessing whether excusable neglect exists: (1) the prejudice to the opposing party, (2) the length of the delay and its impact on the proceedings, (3) the reasons for the delay and whether those reasons were in the filer's control, and (4) the good or bad faith of the filer. While the trial court accepted State Farm's concession that the fourth factor regarding good faith weighed in favor of Mr. Dyer, the trial court, without explanation, declined to credit Mr. Dyer's concession that the third factor weighed in State Farm's favor. Instead, regarding that factor, the trial court reasoned that Mr. Dyer's "failure to return the original Summons or reissue process" should not be held against him when considering the third factor because his error "was neither intentional nor deliberate." While the trial court accepted State Farm's argument that it suffered prejudice under the first factor, the trial court concluded that the second factor did not favor State Farm because Mr. Dyer and State Farm had continued to exchange discovery materials and pursue their desired outcomes without regard for Mr. Dyer's failure to properly serve Ms. Hudson.

State Farm sought permission to file an interlocutory appeal to this court, which the trial court and this court granted. State Farm's application presented two questions for

review:

- I. Whether the trial court abused its discretion in granting Plaintiff's Motion for Enlargement of Time pursuant to Rule 6.02 based upon Plaintiff's mistake of law in the application of the excusable neglect standard.
- II. Whether the trial court abused its discretion in denying Unnamed Defendant's Motion to Dismiss pursuant to Rule 3 when Plaintiff failed to properly serve the Defendant and subsequently failed to issue an alias summons within one year, as required to toll the statute of limitations pursuant to Tenn. Code Ann. § 28-3-104(a)(1)(A).

II.

The decision of whether to grant an extension of time is reviewed under an abuse of discretion standard. *Williams v. Baptist Mem'l Hosp.*, 193 S.W.3d 545, 551 (Tenn. 2006). A trial court in general abuses its discretion when it applies "incorrect legal standards, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party." *West v. Schofield*, 460 S.W.3d 113, 120 (Tenn. 2015).

As for the motion to dismiss, a Rule 12.02(6) motion to dismiss challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof. *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). "A motion to dismiss should be granted only if it appears 'the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'" *Ellithorpe v. Weismark*, 479 S.W.3d 818, 824 (Tenn. 2015) (quoting *Webb*, 346 S.W.3d at 426). In reviewing a trial court's decision on a motion to dismiss, we must construe the complaint liberally in the plaintiff's favor by taking all factual allegations in the complaint as true and drawing all reasonable inferences to the plaintiff's benefit. *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31 (Tenn. 2007); see *SNPCO, Inc. v. City of Jefferson City*, 363 S.W.3d 467, 472 (Tenn. 2012). We review de novo a dismissal pursuant to Rule 12.02(6), affording no presumption of correctness to the ruling of the trial court. *Haynes v. Formac Stables, Inc.*, 463 S.W.3d 34, 36 (Tenn. 2015).

III.

While underlying this case are a myriad of potential complex issues, the parties' arguments have significantly narrowed the scope of what is actually before this court in this interlocutory appeal. Notably, State Farm acknowledged at oral argument that this court had been asked to assess whether the trial court erred in finding excusable neglect, not whether the ninety-day period in Tennessee Rule of Civil Procedure 3 is subject to

enlargement in the first place.⁴ Additionally, Mr. Dyer has not presented any argument in his appellate briefing concerning the propriety of dismissing his lawsuit in the absence of an enlargement of time. In other words, the parties' arguments in this Rule 9 appeal are addressed to whether the trial court erred by determining that Mr. Dyer's actions constituted excusable neglect and by consequently enlarging the time after Mr. Dyer missed the deadline. The parties' arguments are advanced with an understanding that if the enlargement was in error, then the denial of the motion to dismiss was also error. With this focused inquiry, we turn to ground that is contested by the parties in this appeal – considering whether the trial court erred in granting an enlargement of time.

Tennessee Rule of Civil Procedure 3 requires a plaintiff to effectuate service upon a defendant within ninety days of filing suit to toll the statute of limitations, and “[i]f process is not served within ninety days of issuance, a plaintiff cannot rely upon the original commencement [of his suit] to toll the statute of limitations *unless* the plaintiff obtains issuance of new process within one year of issuance of the previous process.” *Fair v. Cochran*, 418 S.W.3d 542, 545 (Tenn. 2013); *see* Tenn. R. Civ. P. 3. It is undisputed that Mr. Dyer did not meet these requirements. The failure to meet these requirements is precisely why he filed his motion seeking an enlargement of time to effectuate service upon Ms. Hudson.

Tennessee Rule of Civil Procedure 6.02 allows a trial court, under certain circumstances, to enlarge the time in which “an act is required or allowed to be done.” The rule contains different standards for assessing whether to grant an enlargement that is requested before the expiration of the specified period or, as occurred in this case, an enlargement that is requested after the expiration of the specified period. *See* Tenn. R. Civ. P. 6.02. Regarding the latter, a trial court may only grant enlargement under Rule 6.02 for certain types of deadlines and “where the failure to act was the result of excusable neglect.”

⁴ During oral argument, the following exchange occurred between the court and counsel for State Farm:

The Court: Counsel, this is before us on interlocutory appeal so I want to make sure that I understand appropriately the scope of our review here.

Counsel for State Farm: Yes, sir.

The Court: The question we're looking at solely is an issue of excusable neglect, correct? We're not concerning ourselves with whether or not Rule 6 actually permits extension of the deadline under Rule 3. We are just worried about, assuming for the sake of argument that it does, whether or not excusable neglect was shown here?

Counsel for State Farm: Yes, your honor. And the excusable neglect analysis would apply to both the motion for extension and the motion to dismiss and the crux of everything with this appeal is whether or not there has been any showing by the Plaintiff . . . as to reasons that would qualify . . .

Id. As noted above, State Farm has assumed for the purposes of this appeal that Rule 6.02 can extend the deadline for effectuating service of process found in Rule 3, so the central question for this court to answer is whether the trial court erred in concluding that Mr. Dyer's actions constituted excusable neglect.

In determining whether failure to adhere to a deadline is excusable neglect, the Tennessee Supreme Court has embraced a four-factor test:

(1) the risk of prejudice to parties opposing the late filing, (2) the delay and its potential impact on proceedings, (3) the reasons why the filings were late and whether the reasons were within the filer's reasonable control, and (4) the good or bad faith of the filer.

Williams, 193 S.W.3d at 551; *see also, e.g., Joshlin v. Halford*, 680 S.W.3d 187, 200 (Tenn. Ct. App. 2023). There is no dispute that the trial court considered the proper factors; rather, the dispute centers upon the trial court's application of these factors to the circumstances of the present case.

At the center of this appeal is the parties' dispute over the third factor. Mr. Dyer's counsel conceded in the hearing before the trial court that adhering to the proper rules as to handling service of process "was under my control and my office" and that the third factor "does weigh against the plaintiff." In addition to Mr. Dyer's counsel conceding the third factor, the trial court also expressly found that "[s]ervice on Defendant Hudson was within Plaintiff's reasonable control." Furthermore, addressing the failure to return the original summons or reissue process, the trial court also expressly found that this matter "was always within the Plaintiff's reasonable control." Despite Mr. Dyer's concession and these findings, the trial court, nevertheless, determined that this factor weighed in favor of Mr. Dyer because the error was "neither intentional nor deliberate." Ultimately, the trial court concluded that the third factor "weighs in favor of a finding of excusable neglect."

On appeal before this court, State Farm argues that the trial court's analysis reflects an errant understanding of the third factor. In contrast, Mr. Dyer supports the trial court's ruling by noting that the missed deadline was not a willful mistake.

In assessing the third factor, the trial court conflated the third and fourth factors. While both factors look to the reasons for the filer's actions, the third factor weighs against excusable neglect when the neglect is within the "filer's reasonable control," even if the filer acted with good faith. *See, e.g., Ferguson v. Brown*, 291 S.W.3d 381, 390 (Tenn. Ct. App. 2008) (concluding that, despite the filer's action being undisputedly in good faith, the third factor weighed against excusable neglect because it was within the filer's reasonable control); *State ex rel. Sizemore v. United Physicians Ins. Risk Retention Grp.*, 56 S.W.3d 557, 568, 570 (Tenn. Ct. App. 2001) (concluding that, despite the filer's good faith, the third factor did not favor a finding of excusable neglect because filing by the

deadline was within the filer’s reasonable control). In this case, Mr. Dyer conceded and the trial court found that the service of process error was within his reasonable control, and yet the trial court found that this factor favored Mr. Dyer rather than State Farm. That analysis reflected an errant legal understanding of the operation of the third factor.

The trial court’s error in understanding of the third factor, which this court has repeatedly observed “may be the single most important of the four factors,” is extremely problematic for Mr. Dyer’s position. *See, e.g., Dubis v. Loyd*, 540 S.W.3d 4, 13 (Tenn. Ct. App. 2016); *Kenyon v. Handal*, 122 S.W.3d 743, 756-57 (Tenn. Ct. App. 2003); *see also, e.g., Hollis ex rel. Nicole N. v. Sanchez*, No. M2022-01190-COA-R3-CV, 2023 WL 5920145, at *3 (Tenn. Ct. App. Sept. 12, 2023) (noting that “[t]he ‘reason for failing to meet the deadline’ is perhaps ‘the single most important of the four factors’”). Mr. Dyer’s failure to handle the service of the other driver properly in the present case was ultimately predicated upon a misunderstanding of law; specifically, he incorrectly believed that it was unnecessary to do so because State Farm was already participating in the case.⁵ Unlike some other courts, Tennessee courts have not embraced an absolute rule that a misinterpretation, misapplication, or misunderstanding of the law cannot constitute excusable neglect. *Joshlin*, 680 S.W.3d at 206 n.5. Nevertheless, as noted by the United States Supreme Court in delineating the test adopted by the Tennessee Supreme Court and as Tennessee courts have observed, “ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect.” *Id.* (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 392 (1993)).

The first factor is also problematic for Mr. Dyer’s position. In analyzing the first factor, the trial court determined that, as a result of Mr. Dyer’s failure to properly handle service of the other driver, “the danger of prejudice to [State Farm] is significant as it is facing potential liability and possible payment of damages.” State Farm argued before the trial court that Mr. Dyer’s service error deprived State Farm of its ability to pursue subrogation against the other driver should Mr. Dyer prevail in its action against State Farm. In its briefing before this court, State Farm again emphasizes the loss of its subrogation rights as prejudice that it has suffered. In contrast, Mr. Dyer in his briefing does not address at all State Farm’s subrogation argument and instead emphasizes a lack of harm as to the proceedings in which he is bringing suit against State Farm, ignoring entirely the subrogation harm, which is central to State Farm’s argument. Additionally, Mr. Dyer has not offered any argument or directed the court to any evidence mitigating the harm caused by the extinguishment of State Farm’s subrogation right, such as a showing that the other driver is judgment proof. In other words, Mr. Dyer in his briefing does not dispute State Farm’s understanding of the trial court’s order — that the significant prejudice being referenced is a loss subrogation rights — or that State Farm actually lost its subrogation rights as a result of Mr. Dyer’s error. “It is not the role of the courts, trial

⁵ State Farm asserts the mistake was an error of law in its briefing, emphasizing the point; Mr. Dyer does not dispute the contention.

or appellate, to research or construct a litigant's case or arguments for him or her” *Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). Rather, “[i]n our adversarial system, the judicial role is . . . to serve as arbiters of legal questions presented and argued by the parties before them.” *State v. Bristol*, 654 S.W.3d 917, 924 (Tenn. 2022) (internal quotation omitted). Accordingly, for purposes of this appeal, we proceed with assuming for purposes of argument that the trial court determined that State Farm lost its subrogation rights and that State Farm actually lost its subrogation rights as a result of Mr. Dyer's error.

In the context of assessing excusable neglect, “prejudice connotes unmerited, substantive harm to the opposing litigant.” *Ferguson*, 291 S.W.3d at 389 (quoting *State ex rel. Sizemore*, 56 S.W.3d at 568). In relation to insurance, “subrogation allows the insurer to ‘stand in the shoes’ of the insured and assert the rights the insured had *against a third party*.” *York v. Sevier Cnty. Ambulance Auth.*, 8 S.W.3d 616, 618-19 (Tenn. 1999). This serves one of the underlying foundational purposes of insurance-related subrogation by creating a legal right in the insurer to be compensated by the tortfeasor for the insurer's payments to the insured. *Old Republic Life Ins. Co. v. Woody*, 652 S.W.3d 418, 429 (Tenn. Ct. App. 2022); *Hamrick's, Inc. v. Roy*, 115 S.W.3d 468, 476 (Tenn. Ct. App. 2002). As noted above, given the arguments presented to us, this court is proceeding with the understanding that State Farm has wholly lost its subrogation right to proceed against the other driver. Furthermore, we are confronted by a case in which Mr. Dyer has offered neither argument nor evidence suggesting that this right was not of actual value, for example by showing that the driver was judgment proof. Under these circumstances, the loss is a substantive harm to State Farm and a substantial harm at that. As noted above, this is problematic for Mr. Dyer's position, in part, because the Tennessee Supreme Court has indicated that “[w]here an enlargement of time is requested after the original time has elapsed, Rule 6.02(2) requires the party requesting the enlargement to show that its failure was due to excusable neglect and that the opposing party has not been prejudiced.” *Williams*, 193 S.W.3d at 550.

In sum, Mr. Dyer's failure to properly serve Ms. Hudson did not delay the proceedings and was not an error born of bad faith. However, the avoidance of error was fully and entirely within the Plaintiff's reasonable control, which is generally the most important consideration in assessing excusable neglect. Additionally, Mr. Dyer's error arose from an errant understanding of law, which while not per se excluded from constituting excusable neglect will generally not provide a basis for such a finding. Additionally, for purposes of argument, we presume that this error prejudiced State Farm by extinguishing its right to subrogation against the actual tortfeasor. This left State Farm without recourse to recoup any monetary judgment entered against it in this case from the actual tortfeasor.⁶ Under these circumstances, the trial court's decision to find excusable

⁶ Additionally, Mr. Dyer has not asserted, much less supported, that this harm is illusory or that there should be a reduction in the weight of this harm by showing the actual tortfeasor to be judgment proof.

neglect and enlarge the time after the deadline had passed was error.

As noted above, in accordance with the trial court's order granting permission to appeal pursuant to Rule 9, the parties presume that if the enlargement of time was in error, then denial of the motion to dismiss was also error. As noted above, "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her" *Sneed*, 301 S.W.3d at 615. Rather, "[i]n our adversarial system, the judicial role is . . . to serve as arbiters of legal questions presented and argued by the parties before them." *Bristol*, 654 S.W.3d at 924 (internal quotation omitted). Accordingly, we consider the case as presented to us. Assessed in that light, the trial court erred in granting Mr. Dyer's request for an enlargement of time and by denying State Farm's motion to dismiss.

IV.

In considering the arguments advanced on appeal and for the reasons discussed above, we reverse and remand this case for further proceedings consistent with this opinion. The costs of the appeal are taxed to the appellee, Bradley Dyer, for which execution may issue if necessary.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE