

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 23, 2026 Session¹

FILED

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Clerk of the
Appellate Courts

SCOTT PATRICK WERNER, ET AL. v. DE'ANTHONY MELTON

Appeal from the Circuit Court for Shelby County
No. CT-2234-22 Rhynette N. Hurd, Judge

No. W2025-00779-COA-R3-CV

This appeal arises from claims of negligence and negligence per se stemming from a dog bite. The trial court granted summary judgment in favor of the plaintiff after the defendant failed to respond to the lawsuit. Nine months after the entry of the final order, the defendant filed a motion to set aside the judgment pursuant to Tennessee Rule of Civil Procedure 60.02. The defendant claimed that he had not been served, had not been aware of the lawsuit, and the facts upon which summary judgment had been granted were false. The trial court denied the motion to set aside. The defendant appeals. We affirm.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and VALERIE L. SMITH, J., joined.

Larry H. Montgomery, Aubrey B. Greer, and Samuel T. Rayburn, Memphis, Tennessee, for the appellant, De'Anthony Melton.

L. Clayton Culpepper, III, and Logan A. Klauss, Memphis, Tennessee, for the appellees, Scott Patrick Werner and Kelly Lynn Werner Beck in their capacities as the personal representatives of Dr. Stanley Werner's estate.

OPINION

I. FACTS & PROCEDURAL HISTORY

¹ Oral argument for this case was heard at the University of Memphis Law School.

On January 23, 2022, Dr. Stanley Werner was bitten by a dog owned by De'Anthony Melton. Mr. Melton is a professional basketball player who competes in the National Basketball Association and was a member of the Memphis Grizzlies at the time of the incident. The dog was in the care of Mr. Melton's uncle, Steve Eushery, at Mr. Melton's home in Eads, Tennessee, on the day in question. The dog freed itself from a chain restraining it to Mr. Melton's yard, and it proceeded to a rental property owned by Dr. Werner. Dr. Werner and the property's tenant found the dog and placed it in the rental home's garage. Later, Dr. Werner went into the garage to feed the dog and was bitten. Dr. Werner was taken to the emergency room where he received treatment for lacerations and puncture wounds. He later underwent plastic surgery. The Shelby County Sheriff's Department was notified of the incident and completed a report. Meanwhile, Mr. Eushery learned that the dog had been located. He came to the rental property and took possession of the dog. He was cited for two legal violations, "allowing dogs to run at large" and "animal bite." Mr. Eushery was summoned to appear before the Shelby County Environmental Court for a hearing on the violations. Subsequently, he entered "a plea/was found guilty of" the violation for allowing the dog to run at large charge. The court's order required him to pay court costs and to not permit the dog to run at large in the future. It appears that the animal bite violation was dismissed without an assessment of court costs.

Dr. Werner filed a complaint in the Shelby County Circuit Court on June 3, 2022, in which he asserted claims based on negligence and negligence per se. Dr. Werner sought an award of \$250,000 in damages. A summons was issued for Mr. Melton the same day. Dr. Werner hired a private process server who attempted to serve Mr. Melton at his Eads residence several times, but service was not completed. At some point, it was determined that Mr. Melton moved to a residence located in New Jersey. Shortly after the lawsuit was filed, Mr. Melton was traded to the Philadelphia 76ers and moved to the New Jersey residence. Subsequently, an alias summons was issued to Mr. Melton. Dr. Werner hired a process server to attempt service at the 76ers' practice facility located in New Jersey. Three attempts were made between September and October 2022. During the third attempt, the process server met with the team's Director of Executive Protection who purported to accept service on Mr. Melton's behalf.

Subsequently, Dr. Werner attempted to serve Mr. Melton by mail. He sent copies of the complaint and summons to the practice facility by registered and first-class mail. A return receipt was signed by an employee of the team. Dr. Werner later sent additional copies by the same methods to the 76ers' basketball arena located in Philadelphia, Pennsylvania, as an alternative place of employment. A return receipt was signed by another 76ers employee.

Dr. Werner filed a motion to deem service complete or to permit service by publication on November 18, 2022. The trial court entered an order permitting service by publication on December 12, 2022. Subsequently, notices were run for four consecutive weeks in newspapers published in Memphis, Philadelphia, and New Jersey. Additionally,

Dr. Werner hired another private process server to attempt to serve Mr. Melton at his New Jersey residence. On March 29, 2023, the process server went to the home and encountered Mr. Eushery, whom he served with the complaint and summons. Nonetheless, Mr. Melton did not file an answer or otherwise respond to the lawsuit. Later, Dr. Werner filed a set of requests for admissions. We have summarized the requested admissions as follows: (1) Mr. Melton owned a dog that was a dangerous animal, (2) the dog was away from Mr. Melton's home on January 23, 2022, and wandered onto Dr. Werner's property, (3) the dog attacked Dr. Werner and caused him serious injuries, (4) Mr. Melton was negligent, (5) Dr. Werner was not negligent, (6) Dr. Werner's injuries were caused by Mr. Melton's negligence, and (7) Dr. Werner suffered damages totaling \$758,325.72. Dr. Werner mailed a copy of the requests for admissions to Mr. Melton at three addresses.

More than 30 days passed, and Mr. Melton did not respond. Dr. Werner filed a motion for the requests to be deemed admitted. The trial court entered an order on June 30, 2023, in which it stated that the requests would be deemed admitted if Mr. Melton did not respond within 20 days of the entry of the order. Mr. Melton did not respond within 20 days, and the requests were deemed admitted on July 20, 2023. Accordingly, Dr. Werner filed a motion for summary judgment on September 8, 2023. He also filed a supporting set of undisputed material facts based on the admissions. Dr. Werner argued that Mr. Melton "admitted all facts necessary to support a judgment against him by failing to respond to the Requests for Admissions in a timely manner[.]" The trial court entered an order granting the motion for summary judgment on October 31, 2023. The trial court found that the admitted facts demonstrated Dr. Werner was entitled to summary judgment. The trial court awarded Dr. Werner \$758,325.72 in damages. Subsequently, large amounts of money were garnished from Mr. Melton's wages. His wages were garnished approximately fifteen times over the course of seven months in an amount totaling more than \$250,000.

On July 23, 2024, Mr. Melton filed a motion to set aside the judgment pursuant to Tennessee Rule of Civil Procedure 60.02. Mr. Melton claimed that good cause to set aside the judgment existed because he had never been served with process, the damages awarded exceeded those requested in the complaint, and the motion for summary judgment was "based on false statements of fact." Mr. Melton submitted written declarations signed by himself and Mr. Eushery to support his position. *See* Tenn. R. Civ. P. 72. Mr. Melton stated in his declaration that he was not aware of "ever personally receiving any papers pertaining to this case prior to learning of the judgment taken against [him.]" He also noted that he had not given anyone, including 76ers personnel, authority to accept service of process on his behalf. He acknowledged that Mr. Eushery "periodically visits [him] and assists [him] with various things because of [his] hectic schedule." He maintained that he had been in Los Angeles, California, for offseason training when the incident occurred and the lawsuit was filed. He stated that he was then traded to the 76ers and moved to a residence in New Jersey.

In his declaration, Mr. Eushery acknowledged that he had been visiting Mr. Melton's home on January 23, 2022, and let Mr. Melton's dog outside to be fed. He acknowledged that he later learned the dog had been picked up by a neighbor. He stated that he was informed the dog was being kept in the neighbor's garage. Later, he went to retrieve the dog and learned that it had bitten Dr. Werner. He stated that the neighbor told him Dr. Werner had "reached toward [the dog] while it was eating." He acknowledged that he appeared in the Shelby County Environmental Court to answer for the violations with which he had been cited. Mr. Eushery claimed that Dr. Werner appeared at environmental court and "admitted . . . that the dog bite was his fault." He claimed that the charges were then "dismissed," but he was required to pay court costs for the animal running at large charge. He also acknowledged that he received the service of process while at Mr. Melton's New Jersey residence in March 2023. However, he maintained that he "did not reside there" and did not tell the process server he was Mr. Melton's roommate.

A hearing was held on the motion to set aside on December 6, 2024. At the conclusion of the hearing, the trial court announced from the bench that it intended to grant the motion based on Mr. Eushery's statements regarding the environmental court proceedings. However, an order granting the motion was never entered. Rather, Dr. Werner filed a motion to reinstate the judgment or for rehearing pursuant to Tennessee Rule of Civil Procedure 54.02. Dr. Werner alleged that Mr. Melton and Mr. Eushery had made "false and misleading statements" upon which the trial court relied when it decided to grant the motion to set aside. Dr. Werner submitted a declaration in which he stated that he had not appeared at the environmental court hearing and never admitted to being at fault for the bite. Additional declarations were submitted by members of Dr. Werner's family stating that they had never taken him to or heard him refer to a visit to environmental court. Likewise, the tenant of Dr. Werner's rental property submitted a declaration in which he stated that he had not been present when Dr. Werner was bitten. The order entered by the environmental court was submitted and stated that Mr. Eushery "did enter a plea/was found guilty of" the animal running at large offense. Subsequently, Mr. Melton filed a notice of correction regarding the previously filed declarations. Mr. Melton's notice of correction stated that "[u]pon investigating the matter, Mr. Eushery's statement that [Dr. Werner] was present for the Environmental Court proceeding on February 16, 2022, was in error." Mr. Eushery's corrected declaration stated that a "Code Enforcement officer" appeared in environmental court and stated the dog bite had occurred when Dr. Werner reached toward the dog while it was eating. The trial court granted the motion for rehearing.

The second hearing took place on April 25, 2025. Counsel for Mr. Melton acknowledged that the declaration contained errors but claimed the errors had been his instead of Mr. Eushery's. He stated that he "misunderstood" what Mr. Eushery told him concerning the environmental court proceedings. Nevertheless, the trial court entered an order denying the motion to set aside on May 1, 2025. The trial court found "Mr. Eushery's testimony lacking any credibility." Likewise, it found that Mr. Melton had been properly served with process under both the Tennessee Rules of Civil Procedure and the New Jersey

Rules of Court. It also found that he had actual notice of the proceedings. Further, the court found that Mr. Melton's motion was not brought within a reasonable time. The court noted that he had been properly served, and Dr. Werner continued to mail him all documents filed throughout the proceedings at three addresses. Yet, he still failed to submit any response until nine months after the judgment was entered. It also noted that Mr. Melton's wages had been garnished fifteen times over the course of seven months before he filed the motion to set aside. Accordingly, it denied Mr. Melton's motion to set aside. Mr. Melton filed this appeal. After the appeal was filed, but before briefing or oral argument were conducted, Dr. Werner died. Dr. Werner's son and daughter were substituted as parties in their capacities as the personal representatives of his estate.

II. ISSUES PRESENTED

The appellant has presented a single issue on appeal, which we have restated as two distinct issues:

1. Whether the circuit court erred when it denied the motion to set aside the judgment as void pursuant to Tennessee Rule of Civil Procedure 60.02(3).
2. Whether the circuit court erred when it determined that Mr. Melton's motion to set aside brought pursuant to Tennessee Rule of Civil Procedure 60.02 for reasons (1), (2), and (5) was not filed within a reasonable time after entry of the judgment.

For the following reasons, the judgment of the circuit court is affirmed.

III. DISCUSSION

A. Standard of Review

This case concerns the disposition of a motion to set aside a judgment brought pursuant to Tennessee Rule of Civil Procedure 60.02. Our Tennessee Supreme Court has described Rule 60.02 as “an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules.” *Thompson v. Firemen's Fund Ins. Co.*, 798 S.W.2d 235, 238 (Tenn. 1990). “This escape valve ‘should not be easily opened.’” *Hussey v. Woods*, 538 S.W.3d 476, 483 (Tenn. 2017) (quoting *Furlough v. Spherion Atl. Workforce, LLC*, 397 S.W.3d 114, 127 (Tenn. 2013)). Accordingly, “[i]n general, [appellate courts] review a trial court's ruling on a request for relief from a final judgment under Rule 60.02 . . . pursuant to the abuse of discretion standard.” *Turner v. Turner*, 473 S.W.3d 257, 268 (Tenn. 2015). “This deferential standard ‘reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives,’ and thus ‘envision[s] a less rigorous review of the lower court's decision and a decreased likelihood that the decision will be reversed on appeal.’” *Henderson v. SAILA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010) (quoting *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). “A trial court abuses its

discretion only when it ‘applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.’” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)) (alterations present in original). However, appellate courts “apply *de novo* review, with no presumption of correctness, when reviewing a trial court’s ruling on a Tennessee Rule 60.02(3) motion to set aside a judgment as void.” *Turner*, 473 S.W.3d at 269. Nevertheless, “[a]ny factual findings a trial court makes shall be reviewed *de novo*, with a presumption of correctness, unless the evidence preponderates otherwise.” *Id.* (citing Tenn. R. App. P. 13(d)).²

B. Rule 60.02

Mr. Melton claims that the trial court erred when it did not grant his motion to set aside the judgment pursuant to Rule 60.02. Rule 60.02 states, in relevant part, that:

the court may relieve a party or the party’s legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; . . . or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken.

Tenn. R. Civ. P. 60.02. Mr. Melton raised arguments pursuant to reasons (1), (2), (3), and (5) of this rule. The trial court determined that Mr. Melton was not entitled to relief for reason three because he had been properly served. However, the court did not address the merits of the remaining reasons because it determined that Mr. Melton did not file the motion within a reasonable time. Mr. Melton claims that the trial court erred when it did not grant his motion pursuant to part (3) of Rule 60.02 because the trial court lacked personal jurisdiction as he was not properly served. Accordingly, he claims that the judgment was void. Additionally, he argues that his motion was filed within a reasonable time and the trial court should have addressed the merits of his additional arguments. We address both issues in turn.

² We acknowledge that Mr. Melton seeks the more liberal treatment applied to motions to set aside default judgments. See *Yoree v. Recovery House of E. Tennessee, LLC*, 705 S.W.3d 193, 203 (Tenn. 2025) (explaining that “default judgments are not favored under Tennessee law” and therefore courts construe motions to set aside default judgments more liberally and exercise their discretion in favor of allowing a case to be heard on its merits). He claims that “what is before the Court is essentially a default judgment.” However, this appeal does not arise from a default judgment, but a grant of a motion for summary judgment. While we acknowledge that Mr. Melton did not respond to any pleadings or filings prior to the grant of summary judgment, he has not put forth any case law indicating that the more liberal treatment extended to cases involving default judgments is applicable. Accordingly, we do not extend this more liberal treatment.

(1) Personal Jurisdiction

Mr. Melton argues that the motion to set aside should have been granted because he was never effectively served, and the trial court therefore lacked personal jurisdiction over him. As noted above, where a Rule 60 motion is made pursuant to reason (3) for voidness, we “apply *de novo* review, with no presumption of correctness” instead of the typical abuse of discretion standard of review. *Turner*, 473 S.W.3d at 269. Nevertheless, “[a]ny factual findings a trial court makes shall be reviewed *de novo*, with a presumption of correctness, unless the evidence preponderates otherwise.” *Id.* (citing Tenn. R. App. P. 13(d)). Rule 60.02 motions predicated on voidness are not subject to the “reasonable time” requirement and may be brought at any time. *Id.* at 279.

“Initially, a void judgment is one that is invalid on its face because the issuing court either lacked subject matter or personal jurisdiction over the proceedings, or the judgment itself was outside of the pleadings.” *Hood v. Jenkins*, 432 S.W.3d 814, 825 (Tenn. 2013). In the present appeal, the only issue pertains to whether the trial court had personal jurisdiction. “Personal jurisdiction refers to the power of a court over the parties to the controversy to render a binding judgment.” *Turner*, 473 S.W.3d at 269. “A court acquires personal jurisdiction over a defendant when the defendant is served with process.” *West v. Vought Aircraft Indus., Inc.*, 256 S.W.3d 618, 624 (Tenn. 2008). Importantly, “[t]he record must establish that the plaintiff complied with the requisite procedural rules, and the fact that the defendant had actual knowledge of attempted service does not render the service effectual if the plaintiff did not serve process in accordance with the rules.” *Ramsay v. Custer*, 387 S.W.3d 566, 568 (Tenn. Ct. App. 2012). The trial court held that Dr. Werner effectively served Mr. Melton through several methods set forth in the Tennessee Rules of Civil Procedure, including service by publication, service by mail, and service on an out-of-state defendant.³ Mr. Melton argues that each of these methods was ineffective.

First, we consider whether Dr. Werner’s attempts at service on an out-of-state defendant were successful. The trial court determined that service by this method had been completed because a “private process server served Mr. Melton’s uncle and roommate, Steven Eushery, with a copy of the lawsuit” at Mr. Melton’s New Jersey residence. Tennessee Rule of Civil Procedure 4.05 permits service upon defendants outside of the state of Tennessee “[w]henver the law of this state authorizes service outside this state[.]” Tenn. R. Civ. P. 4.05(1). Mr. Melton does not dispute that service on a defendant outside of the state of Tennessee was authorized in this case. *See* Tenn. Code Ann. § 20-2-214(a)(2). Notably, where out of state service is to be performed, it may be made “in any manner prescribed by the law of the state in which service is to be effected for an action in any of the courts of general jurisdiction in that state.” Tenn. R. Civ. P. 4.05(1)(b). Here,

³ The trial court did not deem the service attempted at Mr. Melton’s Eads residence or the service accepted by 76ers personnel to have been effective.

out-of-state service was attempted in the state of New Jersey. The New Jersey Rules of Court provide that service may be made:

(1) Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf;

N.J. Ct. R. 4:4-4(a)(1).⁴ The use of the term “household” includes “all competent persons over fourteen years who make their home with the person to be served [and] was intended to eliminate questions as to the validity of service particularly where household units do not follow conventional family patterns.” *Resol. Tr. Corp. v. Associated Gulf Contractors, Inc.*, 622 A.2d 1324, 1329 (N.J. Super. Ct. App. Div. 1993) (additional citation and internal quotation marks omitted). It is undisputed that Dr. Werner hired a private process server who delivered copies of the summons and complaint to Mr. Melton's New Jersey residence. It is also undisputed that Mr. Eushery was at the residence and accepted service. The process server later signed an affidavit in which he stated that service of process was completed by leaving the service with “Steve Eushery, identified as [r]oommate of the defendant.” On appeal, Mr. Melton acknowledges that Mr. Eushery accepted service and was “at least fourteen years old and competent[.]” However, he claims that Mr. Eushery was not a “member of the household” and, therefore, was not authorized to accept service on his behalf.

The trial court found that Mr. Eushery was Mr. Melton's “uncle and roommate” and accordingly was authorized to accept service on his behalf. That is a factual finding and, therefore, is entitled to a presumption of correctness. *Turner*, 473 S.W.3d 269. This finding is supported by the evidence. The process server signed an affidavit in which he stated that Mr. Eushery was “identified as [the] [r]oommate of the defendant.” Importantly, the only countervailing evidence cited is Mr. Eushery's corrected declaration in which he maintained that he was not Mr. Melton's roommate and a copy of his California driver's license.

First, we consider Mr. Eushery's declaration. The trial court determined that Mr. Eushery was not credible. Typically, “appellate courts should afford trial courts considerable deference when reviewing issues that hinge on the witnesses' credibility

⁴ Notably, Tennessee Rule of Civil Procedure 4.04(1) permits substitute service of process on a competent person of suitable age residing in the home only where the individual being served “evades or attempts to evade service[.]” Tenn. R. Civ. P. 4.04(1). The New Jersey version of the rule contains no such requirement. N.J. Ct. R. 4:4-4(a)(1). Accordingly, whether Mr. Melton evaded or attempted to evade service is not relevant to our analysis.

because the trial courts are ‘uniquely positioned to observe the demeanor and conduct of witnesses.’” *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (quoting *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000)). However, this level of deference is not given “to a trial court’s findings of fact [that are] based on documentary evidence such as depositions, transcripts, or video recordings.” *Id.* at 693 (citing *Mitchell v. Fayetteville Pub. Utils.*, 368 S.W.3d 442, 448 (Tenn. 2012); *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Binette*, 33 S.W.3d at 217)). Rather, “when factual findings are based on documentary evidence, an appellate court may draw its own conclusions with regard to the weight and credibility to be afforded that documentary evidence.” *Id.* (citing *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 271 (Tenn. 2009); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004)).

Mr. Eushery’s statements were presented in the form of a written declaration rather than as live testimony. Therefore, the trial court’s assessment of his credibility is not afforded the high level of deference typically afforded to such findings. Nevertheless, we agree with the trial court’s determination that Mr. Eushery’s statements were not credible. The trial court based this determination on the fact that Mr. Eushery’s original declaration contained statements “later determined to be false.” Those statements were very clearly material, as he alleged that Dr. Werner himself appeared in environmental court and blamed the incident on his own conduct. Once the veracity of those statements was challenged, Mr. Melton quickly filed a notice of correction and Mr. Eushery’s corrected declaration to omit this statement and instead included a claim that an unidentified code enforcement officer blamed Dr. Werner for the incident. In our view, Mr. Eushery’s false statements detract from the credibility of his remaining statements. We certainly cannot say his claim that he was not Mr. Melton’s roommate outweighs the evidence upon which the trial court relied. Likewise, we agree with the trial court’s decision to assign little weight to Mr. Eushery’s driver’s license. Mr. Eushery claims that his driver’s license proves he was a resident of California. However, New Jersey case law has explained that “[w]hile a person may have only one true domicile, he may have more than one residence.” *Miller v. U. S. Fid. & Guar. Co.*, 316 A.2d 51, 54-55 (N.J. Super. Ct. App. Div. 1974). Mr. Melton has not pointed to any New Jersey or Tennessee case law demonstrating that a driver’s license serves as prima facie evidence of residency in a specific state or that such residency is exclusive of residency in other states. *See Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) (explaining that failure to cite relevant authority constitutes waiver of an argument). Rather, he cites the driver’s license one time in a footnote of his brief as support for the conclusory statement that it “establishes [Mr. Eushery’s] California residency during the period of time at issue.”

Likewise, having reviewed New Jersey case law, we agree that this service is of the type contemplated by New Jersey Rule of Court 4:4-4(a)(1). *See M & D Assocs. v. Mandara*, 841 A.2d 441, 450 (N.J. Super. Ct. App. Div. 2004) (holding that service on the defendant’s seventeen-year-old stepdaughter was proper); *Resol. Trust Corp.*, 622 A.2d at 1329-30 (holding that service made on the defendant’s resident housekeeper was

effective).⁵ Therefore, having determined that the evidence did not preponderate against the trial court's factual finding that Mr. Eushery was member of Mr. Melton's New Jersey household, we affirm its determination that service of process was made pursuant to New Jersey Rule of Court 4:4-4(a)(1).⁶

Having affirmed the trial court's holding that Mr. Melton was properly served, we likewise affirm its determination that the portion of Mr. Melton's motion to set aside the judgment due to voidness is without merit. Accordingly, the remainder of Mr. Melton's arguments regarding insufficient service of process are pretermitted.

(2) Timeliness

Next, we consider Mr. Melton's argument that the motion to set aside was brought within a reasonable time, and the trial court erred when it did not consider his remaining arguments on their merits. Rule 60.02 states that a motion to set aside a judgment "shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken." Tenn. R. Civ. P. 60.02. Notably, motions brought for reasons (1) or (2) "must be filed both within a reasonable time and within one year after the judgment or order was entered." *Rogers v. Est. of Russell*, 50 S.W.3d 441, 445 (Tenn. Ct. App. 2001) (additional citations omitted). "Whether a Rule 60.02 motion is filed within a reasonable time is a question of fact . . . [and the] determination is made on a case-by-case basis." *Hussey*, 538 S.W.3d at 486. We review the trial court's determination that a Rule 60.02 motion was not brought within a reasonable time pursuant to the abuse of discretion standard of review. *Rogers*, 50 S.W.3d at 445. As noted above, "[a] trial court abuses its discretion only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" *Eldridge*, 42 S.W.3d at 85 (quoting *Shirley*, 6 S.W.3d at 247) (alterations present in original).

Mr. Melton has not identified any abuse of discretion committed by the trial court. Mr. Melton first argues that "[a]ny delay was reasonable simply because [he] was never served with process and was unaware of the lawsuit." However, as we have affirmed the

⁵ Notably, both parties have cited unpublished New Jersey caselaw to support their interpretations of Rule 4:4-4(a)(1). Pursuant to the New Jersey Rules of Court, these opinions do not "constitute precedent" and are not "binding upon any court." N.J. Ct. R. 1:36-3. We understand this rule to mean that we may not rely on these cases or any other unpublished New Jersey case in our analysis. See *Lakeway Real Estate2, LLC v. ERA Franchise Sys., LLC*, No. E2023-00764-COA-R3-CV, 2024 WL 4564153, at *3 n.4 (Tenn. Ct. App. Oct. 24, 2024). Similarly, Mr. Melton cites a memorandum opinion of a New Jersey federal district court. To the extent that the federal opinion relies on state law, it relies on an unpublished New Jersey opinion. Therefore, we will not consider it in our analysis.

⁶ We acknowledge that Mr. Melton briefly asserts in a footnote that service was ineffective under New Jersey law because the complaint was not amended to contain his New Jersey address. This argument was not raised before the trial court and is therefore waived on appeal. See *Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983).

trial court's determination that Mr. Melton was properly served with the lawsuit, this argument is without merit. Next, Mr. Melton argues that he filed his motion within a reasonable time because he "is a professional basketball player." He explained that, during the NBA season, his focus is "on his profession as a basketball player, and almost nothing else." He notes that he is "rarely ever at home during the [NBA] season" due to frequent travel and training sessions. Mr. Melton also points to his own affidavit in which he attests that he did not have actual knowledge of the lawsuit having been filed. Likewise, he claims that the large amounts of money garnished from his paychecks were not "noticeable sums for someone of [his] net worth and income."

Frankly, these arguments are unconvincing. Mr. Melton has cited no authority demonstrating that his busy schedule justified his failure to respond to the lawsuit or to bring a Rule 60.02 motion promptly. We do not believe that his schedule absolves him of his responsibility to respond to a lawsuit with which he was effectively served. We find instructive our Tennessee Supreme Court's statement that "[p]arties are not justified in neglecting their cases merely because of the stress or importance of their own private business and such neglect is ordinarily not excusable." *Food Lion, Inc. v. Washington Cnty. Beer Bd.*, 700 S.W.2d 893, 896 (Tenn. 1985) (quoting 46 Am. Jur. 2d 874-875 *Judgments* § 718 (1969)). In that case, a Rule 60.02 motion was denied because counsel representing the moving party had been "busy and overlooked the date relief had to be sought from the judgment." *Id.* at 895. Nevertheless, we find the Court's reasoning instructive and hold that Mr. Melton's busy schedule and status as a professional basketball player did not justify the delay in filing the motion to set aside. There is certainly nothing illogical about the trial court's determination that Mr. Melton's proffered excuses did not justify his decision to wait nine months after the judgment was entered to file the motion.

Mr. Melton also argues that the trial court acted illogically by ignoring his sworn declaration in which he claimed he did know of the lawsuit's existence. He claims that his declaration constitutes substantial uncontradicted evidence. *See Gooding v. Gooding* 477 S.W.3d 774, 779 (Tenn. Ct. App. 2015). We disagree. As explained above, the declarations of Mr. Melton and Mr. Eushery were contradicted by the affidavit of the New Jersey process server that demonstrates effective service occurred. Likewise, we affirmed the trial court's determination that Mr. Melton was effectively served with the lawsuit. Accordingly, the trial court did not act illogically when assessing the evidence presented and did not apply an improper legal standard. Therefore, the trial court did not abuse its discretion, and we affirm.

IV. CONCLUSION

For the foregoing reasons, the ruling of the circuit court is affirmed. Costs of this appeal are taxed to the appellant, De'Anthony Melton, for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE