

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
June 24, 2026 Session

FILED

09/29/2026

Clerk of the
Appellate Courts

DELESTER QUARLES v. JOHN DOE A ET AL.

Appeal from the Circuit Court for Shelby County
No. CT-0768-25 Rhynette N. Hurd, Judge

No. W2025-01252-COA-R3-CV

This appeal requires us to determine whether the Plaintiff/Appellant commenced an action against the John Doe defendants within the applicable statute of limitations such that he may recover under the uninsured motorist provision of his policy. The trial court granted the Defendant/Appellee's motion to dismiss, holding that the applicable statute of limitations was one year and that Appellant's claims expired due to his failure to serve the John Doe Defendants. Discerning no error, we affirm.

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

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

Tiffany Lauren Webber Carpenter and Leila H. Watson, Memphis, Tennessee, for the appellant, Delester Quarles.

Elijah Thomas Settlemyre, Ryan Lewis Sarr, and Terrill Lee Adkins, Knoxville, Tennessee, for the appellees, Southern Trust Insurance Company, John Doe A, and John Doe B.

OPINION

I. Background

On March 28, 2022, Appellant Delester Quarles was involved in a hit-and-run accident at the intersection of Mill Branch Road and Raines Road in Memphis.¹ Appellant

¹ "Mill Branch Road" is the name identified in the record, so we use that label rather than "Millbranch Road," as the road is commonly known.

claims he was stopped at a traffic light when a Nissan Altima rear-ended his vehicle and then fled the scene. To date, Appellant has been unable to identify the driver of the Nissan Altima. Appellant subsequently sought medical treatment for injuries to his “back, neck, hip, shoulders, and knee.” It is undisputed that, at the time of the accident, Appellant had uninsured motorist coverage through Appellee Southern Trust Insurance Company (“Southern Trust”).

On March 27, 2023, Appellant filed his initial lawsuit for negligence, negligence per se, and negligent entrustment (“2023 lawsuit”) against John Doe A and John Doe B in the Shelby County Circuit Court (“trial court”). Appellant sought damages for medical expenses, physical pain, mental anguish, permanent injury, and economic damages. On April 24, 2023, Appellant served Southern Trust, as the uninsured motorist carrier under Tennessee Code Annotated section 56-7-1206. However, it is undisputed that Appellant failed to issue service on the John Doe defendants. On June 23, 2023, Southern Trust filed its answer, and the parties proceeded with litigation

Almost two years after filing the 2023 lawsuit, Appellant avers that “following a file review on February 6, 2025,” he was “unable to find a record that summonses for the John Doe defendants had been issued by the Shelby County Clerk’s Office and filed a Notice of Voluntary Dismissal.” On February 7, 2025, the trial court entered an order of voluntary dismissal.

Relying on the Tennessee Savings Statute, Tennessee Code Annotated section 28-1-105, on February 25, 2025, Appellant re-filed his lawsuit (“2025 lawsuit”), asserting the same claims raised in his 2023 lawsuit. However, with the filing of the 2025 lawsuit, the clerk issued summonses for all defendants, including the John Does and Southern Trust. On March 6, 2025, Appellant served Southern Trust through the Tennessee Commissioner of Insurance; on April 14, 2025, Southern Trust filed an answer.

On June 6, 2025, Southern Trust filed a Tennessee Rule of Civil Procedure 12.02 motion to dismiss, arguing that the one-year statute of limitations against the John Doe defendants had run prior to the filing of Appellant’s 2025 lawsuit. Specifically, Southern Trust argued that, to proceed against his insurance carrier for recovery under the uninsured motorist provision of his policy, Appellant was required to comply with Tennessee Code Annotated section 56-7-1206. Subsection (b) of that statute provides that “the insured *shall* issue a John Doe warrant against the unknown owner or operator” (emphasis added). Tenn. Code Ann. § 56-7-1206(b). It is undisputed that Appellant failed to serve the John Doe defendants with the 2023 lawsuit.

Southern Trust further argued that Appellant merely naming the John Doe defendants in the 2023 lawsuit was insufficient to toll the statute of limitations. Rather, Southern Trust asserted that, for Appellant’s claims to survive, he was required, under Tennessee Rules of Civil Procedure 3 and 4, not only to file the complaint within the

applicable statute of limitations, but also to issue summonses to all defendants within one year of filing the complaint. Because Appellant failed to have process issued for the John Doe defendants with the 2023 lawsuit, Southern Trust asserted that Appellant's issuance of summonses for the John Does in connection with his 2025 lawsuit was ineffective because the statute of limitations had run.

Finally, Southern Trust argued that the Tennessee Savings Statute was not applicable. Although that statute would otherwise allow a plaintiff to "commence a new action within one (1) year" of a "judgment or decree . . . against the plaintiff upon any ground not concluding his right of action," Tenn. Code Ann. § 28-1-105, Southern Trust argued that the statute of limitations had already expired, and, as such, there was no cause of action to save.

In short, according to Southern Trust's motion to dismiss, Appellant failed to comply with the uninsured motorist statute that required he issue summonses against the John Doe defendants. By failing to do so within one year of filing the 2023 lawsuit, his claims expired under Tennessee Rules of Civil Procedure 3 and 4, and the savings statute could not resurrect a claim that had already lapsed.

On July 8, 2025, Appellant filed a motion to strike the motion to dismiss and a response to the motion to dismiss. The motion to strike requested that the trial court strike the motion to dismiss, or the portions of it that Appellant alleged were plagiarized from court opinions without proper citation.

In his response to Southern Trust's motion to dismiss, Appellant argued that because he was seeking recovery under a provision of his insurance policy, the six-year statute of limitations for contract claims, as opposed to the one-year statute of limitations for personal injury claims, applied. Appellant also argued that his failure to issue summonses against the John Does in the 2023 lawsuit was unintentional and not done for tactical reasons. As such, he argued that the statute of limitations should have been tolled. Alternatively, Appellant argued that the "savings statute . . . cure[d] the procedural requirement" concerning the John Doe summonses. Because he filed the 2025 lawsuit within one year of the voluntary dismissal of the 2023 lawsuit and issued summonses against the John Doe defendants in the 2025 lawsuit, Appellant asserted that the procedural requirements of Tennessee Code Annotated section 56-7-1206 were met. Appellant also noted that "there [was] no prejudice to [Southern Trust] in failing to have had the John Doe summonses issued in the initial action because [Southern Trust] was on notice and had actively participated in the initial action."

On July 18, 2025, the trial court held a hearing on Southern Trust's motion to dismiss, as well as Appellant's motion to strike (and two motions not relevant to this appeal). On July 22, 2025, the trial court entered an order holding that,

[w]ith [Appellant's] failure to issue a "John Doe" Summons in [the 2023 lawsuit]; failure to issue the "John Doe" Summons within ninety (90) days, regardless of the reason; and failure to issue "John Doe" Summons within one (1) year of filing the Complaint (March 27, 2024), [Appellant] cannot rely upon the original filing of the Complaint on March 27, 2023, to toll the statute of limitations.

The trial court went on to hold that the savings statute would not apply in the 2025 lawsuit because the "statute of limitations . . . had already expired." The trial court denied the motion to strike and dismissed the case with prejudice.

II. Issues

Appellant raises the following issues as set out in his brief:

1. First, whether the trial court erred in granting [Southern Trust's] Motion to Dismiss under the theory that the statute of limitations had run. . . .
2. Second, whether the trial court abused its discretion by denying [Appellant's] Motion to Strike [Southern Trust's] Motion to Dismiss for impertinence grounds and failing to sanction the [Southern Trust]. . . .²

Southern Trust states the issue as follows:

Whether [Appellant] Delester Quarles' personal injury claims against [John Does] are time-barred by the one-year statute of limitation because [Appellant] failed to issue summons to John Doe A and John Doe B within one year of filing his complaint as required by T.C.A. § 56-7-1206(b) and Tenn. R. Civ. P. 3.

III. Standard of Review

We start by observing that the Southern Trust styled its motion below as a motion to dismiss. However, in its order, the trial court noted that it reached its decision "[b]ased on the arguments of counsel," a review of the record in the 2025 lawsuit, and a review of the record in the 2023 lawsuit.

When a court considers matters outside the pleadings, it converts a motion to dismiss into a motion for summary judgment. Tenn. R. Civ. P. 12.02(6); *Belton v. City of Memphis*, No. W2015-01785-COA-R3-CV, 2016 WL 2754407, at *3 (Tenn. Ct. App. May

² Based on our conclusion that the trial court did not err in granting Appellee's motion to dismiss based on the expiration of the applicable statute of limitations due to Appellant's failure to serve the John Doe Defendants, we pretermitted this issue.

10, 2016). Ordinarily, the court is required to give notice to the parties that it will make such a conversion. This affords the parties “a reasonable opportunity to present evidence either in support of or in opposition to the summary judgment motion.” **Laidlaw Env. Serv. Of South Carolina, Inv. V. Metro. Gov’t of Nashville and Davidson County**, No. 01A01-9610-CH-00479, 1997 WL 706614, at *4 (Tenn. Ct. App. Nov. 14, 1997) (citing 2A James W. Moore et al., *Moore’s Federal Practice and Procedure*, ¶ 12.09[3] (2d ed. 1995); 5A *Federal Practice and Procedure*, § 1366, at 501). However, as we have noted, “failure to give this notice is not reversible error if the parties had actual notice of the conversion of the motion and were not otherwise prejudiced by the lack of formal notice.” **Laidlaw**, 1997 WL 706614, at *4.

Here, the relevant fact is undisputed. Summonses were not issued to the John Doe defendants in the 2023 lawsuit. Accordingly, whether Southern Trust’s motion was treated as a motion to dismiss or a motion for summary judgment, the sole question is one of law—whether Appellant’s failure to issue summonses to the John Does in 2023 is fatal to his 2025 lawsuit.

This Court has explained:

[I]t is not necessary for us to reach the issue of whether the Tennessee rules require that the parties be given 30 days notice after a motion to dismiss is converted to a motion for summary judgment before a hearing is held on the motion since the trial court’s decision in this case involved only a question of law. . . . [I]t would be useless to reverse the trial court for failure to give adequate notice after a motion to dismiss is converted to a motion for summary judgment if only a question of law is involved because the party losing in the court below would be unable to show how the opportunity to submit additional evidence would have any effect on the trial court’s analysis. **Nuclear Transport and Storage, Inc. v. U.S.**, 890 F.2d 1348, 1351 (6th Cir.1989); **Oppenheimer v. Morton Hotel Corp.**, 324 F.2d 766, 768 (6th Cir.1963). We . . . hold that it is not necessary in this case for us to decide whether the Tennessee Rules of Civil Procedure require that the courts give any notice to the parties after converting a motion to dismiss to a motion for summary judgment. We hold that since the trial court decided the summary judgment motion solely as a question of law it could not have committed reversible error by granting summary judgment without giving any additional notice to the parties.

McClain v. Illinois Central Gulf R.R., No. 02A01-9103-CV-00041, 1991 WL 193845, at *3 (Tenn. Ct. App. Oct. 2, 1991). The same is true here. Because only a question of law is involved, we proceed with our de novo review.

Concerning the trial court’s denial of Appellant’s motion to strike, we review that

ruling under an abuse of discretion standard. *Madkins v. State*, M2009-01580-COA-R3-CV, 2010 WL 204028, at *3 (Tenn. Ct. App. Jan. 21, 2010) (citing *Pelts v. Int'l Med. Servs. Corp.*, No. W2002-0038-COA-R3-CV, 2003 WL 22071462, at *8 (Tenn. Ct. App. Aug. 28, 2003)). We will only set aside the trial court's decision "if we find the trial court applied an incorrect legal standard or misconstrued or misapplied the controlling legal principles." *Conley v. Life Care Centers of America, Inc.*, 236 S.W.3d 713, 723 (Tenn. Ct. App. Jan 4, 2007) (internal citations omitted).

IV. Analysis

Here, as we have previously noted, there are no disputes of material fact. The parties agree that: (1) Appellant was in a motor vehicle accident on March 28, 2022, involving unknown parties, who were at fault; (2) Appellant filed the 2023 lawsuit on March 27, 2023; (3) Appellant did not issue summonses for John Doe A and John Doe B; (4) service of process was never attempted against John Doe A or John Doe B; (5) Southern Trust was served in the 2023 lawsuit and participated in litigation; (6) Appellant voluntarily dismissed the 2023 lawsuit; and (7) Appellant re-filed the lawsuit on February 25, 2025.

A. Uninsured Motorist Litigation Requirements

The gravamen of this case is whether Appellant commenced a lawsuit under the John Doe provision of the uninsured motorist statute within the applicable statute of limitations such that he may recover under the uninsured motorist provision of his insurance policy with Southern Trust. A review of the procedural requirements to "commence" a John Doe action is helpful.

Importantly, the uninsured motorist statute, Tennessee Code Annotated section 56-7-1201, et seq., does not create a stand-alone, direct cause of action by a driver against his or her insurance carrier. *Brewer v. Richardson*, 893 S.W.2d 935, 937 (Tenn. 1995) ("[A] plaintiff may not, absent a specific authorization in the policy, bring suit directly against the uninsured motorist carrier.") Instead, the legislature, in passing the statute, intended to "provide an efficient procedure whereby the [p]laintiffs could obtain complete relief" pursuant to their insurance policy "when injured by an uninsured"—or in this case, unknown—motorist. *Lady v. Kregger*, 747 S.W.2d 342, 345 (Tenn. Ct. App. Nov. 13, 1987).

Tennessee Code Annotated section 56-7-1206 outlines the procedures required to maintain an action against an insurance carrier "as if it is the only defendant in the case." Tenn. Code Ann. § 56-7-1206(d). The statute affords plaintiffs the opportunity "to file a 'John Doe' action in order to recover damages from his or her uninsured motorist policy for injuries caused by an 'unknown' owner or operator of another motor vehicle." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000). To pursue a John Doe action, a plaintiff must comply with the following statutory requirements.

First, Tennessee Code Annotated section 56-7-1206(b) states that:

[i]f the owner or operator of any motor vehicle that causes bodily injury or property damage to a person insured . . . is unknown . . . the insured *shall* issue a John Doe warrant against the unknown owner or operator in order to come within the coverage of the owner's uninsured motorist policy.

Tenn. Code Ann. § 56-7-1206(b) (emphasis added). The statute further requires: (1) “service of process against the uninsured motorist . . . [be] issued to the motorist’s last known address”; (2) service of process be “returned by the sheriff or other process server marked, ‘Not to be found in my county,’ or words to that effect”; and (3) the plaintiff serve process “against the uninsured motorist carrier[.]” Tenn. Code Ann. § 56-7-1206(d).

As we have previously noted, there is “overlap among the service of process requirements under Rule 3 of the Tennessee Rules of Civil Procedure” and the service of process requirements to proceed under the uninsured motorist statute. *Davis v. Grange*, No. M2016-02239-COA-R3-CV, 2017 WL 4331041, at * 3 (Tenn. Ct. App. Sept. 28, 2017). Appellant would like this Court to read the uninsured motorist statute’s service requirements as exceptions to the usual Tennessee Rules of Civil Procedure service requirements. However, that is not what the statute requires, nor what our case law illustrates.

Tennessee Rule of Civil Procedure 3 states:

All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, 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 one year from issuance of the previous process or, if no process is issued, within one year of filing of the complaint.

Tenn. R. Civ. P. 3.

Tennessee Rule of Civil Procedure 4 goes on to state:

Upon the filing of the complaint, the clerk of the court shall promptly issue the required summons and cause it . . . to be delivered for service to any person authorized to serve process. . . . If a summons is not served within 90 days after its issuance, it shall be returned stating the reasons for failure to

serve. The plaintiff may obtain new summonses from time to time, as provided in Rule 3, if any prior summons has been returned unserved or if any prior summons has not been served within 90 days of issuance.

Tenn. R. Civ. P. 4.01(1); 4.03(1).

As we have previously stated, the filing of a lawsuit, “alone . . . is not sufficient to toll the statute of limitations” in any given case. **Davis**, 2017 WL 4331041, at *4. In order to toll the running of the statute of limitations, a plaintiff must file the complaint *and* issue process:

Rules 3 and 4 of the Tennessee Rules of Civil Procedure[] should be read together because “[s]tanding alone [] Rule . . . 3 could be construed to mean that filing a complaint alone is sufficient to commence an action.” **McNeary [v. Baptist Mem’l Hosp.]**, 360 S.W.3d [429, 439 (Tenn. Ct. App. Mar. 14, 2011).] Instead, the “Tennessee Rules of Civil Procedure 3 and 4 . . . also require[] service of process.” [**McNeary**, 360 S.W.3d] at 439. . . . Thus, pursuant to Rule 3, “a plaintiff can rely on the initial filing of a complaint to toll the statute of limitations so long as process is issued within one year of the filing of the complaint.” [**Stempa v. Walgreen Co.**, 70 S.W.3d 39,] 44 [(Tenn. Ct. App. May 4, 2001).]

Davis, 2017 WL 4331041, at *4.

When reading Tennessee Rules of Civil Procedure 3 and 4 in light of the uninsured motorist statute, we have observed that the procedure outlined in “T.C.A. § 56-7-1206€ allows plaintiffs to by-pass the T.R.C.P. Rule 3 requirement that new process be issued [within the time set forth in Rule 3] or the action be refiled yearly.” **Lady**, 747 S.W.2d at 345. However, the statute alone does not *eliminate* the requirements of Rule 3 and 4 as Appellant suggests.

We have previously noted “that in certain instances the Uninsured Motorist Statute *relaxes* the stringent requirements for service of process on uninsured motorists,” but only where two conditions are met. **Davis**, 2017 WL 4331041, at *6 (emphasis added). First, service of process on the unknown motorist must be returned as “not to be found” or words to that effect. **Id.** Second, the insurance carrier must have been properly served. **Id.** What the uninsured motorist statute relaxes is the Tennessee Rule of Civil Procedure 3 requirement that a plaintiff continue to reissue a summons to keep the claim alive. We have never held that the uninsured motorist statute subrogates or replaces the requirements of Tennessee Rules of Civil Procedure 3 and 4 to issue a summons initially, and we decline to do so now. **Id.** (“Indeed, while this Court has repeatedly held that compliance with section 56-7-1206(d) relieves the plaintiff of the requirement to seek reissuance of a summons, we have never held that the direct action procedure eliminates the requirement

that the plaintiff at least cause an initial summons to be issued within one year of the filing of the complaint.”).

Simply put, to commence an action sufficient to toll the statute of limitations pursuant to the uninsured motorist statute, Appellant needed to: (1) file a complaint against both John Does within one year of the incident; (2) issue summonses to both John Does within one year of filing the complaint; (3) attempt to serve both John Does within 90 days of summonses being issued; (4) obtain a return of service indicating both John Does were not to be found; and (5) properly serve his insurance carrier.

Regarding the applicable statute of limitations, we have previously explained that there is a one-year statute of limitations to commence an action against a John Doe driver, and a six-year statute of limitations to commence an action against an insurance carrier to recover pursuant to an uninsured driver policy provision:

Under Tennessee law, a personal injury action must be commenced within one year of the date the plaintiff’s cause of action accrued. Tenn. Code Ann. § 28-3-104(a)(1)(A). However, actions on contracts that have not been expressly provided for are afforded a six-year statute of limitations. *See* Tenn. Code Ann. § 28-3-109(a)(3); ***Bates v. Greene***, No. W2016-01868-COA-R3-CV, 2017 WL 3206599, at *2 (Tenn. Ct. App. July 27, 2017). In ***Bates***, this Court reaffirmed the holding that a suit against an uninsured motorist insurance carrier is ultimately an action in contract, giving rise to a six-year statute of limitations rather than the one-year statute applicable to the claims for personal injury against the tortfeasor.

Davis, 2017 WL 4331041, at *3.

However, we consistently have held that “there can be no legal liability established against an uninsured motorist carrier without first properly commencing a claim against the tortfeasor.” *Id.* It naturally follows that “if the statute of limitations ha[s] run against the uninsured *motorist*, a direct action c[annot] [be] maintained against the uninsured motorist *carrier*.” ***Bates***, 544 S.W.3d at 352 (emphases added). As such, to “avail itself of the less stringent six-year statute of limitations provided to uninsured motorist insurance carriers, a plaintiff must first meet the requirement of properly commencing a suit against the tortfeasor.” ***Davis***, 2017 WL 4331041, at *3.

We would be remiss if we did not take a moment to note that the foregoing requirements are not meant to create a labyrinth of procedures so complicated that an injured motorist is practically barred from recovering under their uninsured motorist policy. We have noted that the statute imposes a requirement that the plaintiff “exercise due diligence to locate and serve the defendant tortfeasor” and that such requirement is not an “empty formality.” *Id.* at *7; ***Webb v. Werner***, 163 S.W.3d 716, 720 (Tenn. Ct. App.

Oct. 28, 2004) (quoting *Winters v. Jones*, 932 S.W.2d 464, 465-66 (Tenn. Ct. App. May 22, 1996)). As we have previously explained:

[W]e believe the statute requires a more diligent effort on the plaintiff's part to preserve [his] rights, and the rights of [his] insurer, against the tortfeasor . . . [T]he requirement of service upon the tortfeasor is not imposed on the plaintiff as an empty formality, but as a practical means of maintaining the insurer's right to recover from the responsible party, once it has paid the policyholder

Webb, 163 S.W.3d at 720.

In short, while the uninsured motorist statute

allows a plaintiff to proceed directly against an insurance motorist carrier under certain circumstances even if the uninsured motorist is never successfully served with process . . . , a plaintiff is still required to make a duly diligent effort to serve process on the uninsured motorist, and when this diligent effort is lacking and an unreasonable amount of time has passed, a plaintiff cannot use the uninsured motorist statute to avoid the requirements of Tenn. R. Civ. P. 3.

Id. at 720-21.

In summary, the procedural requirements of Tennessee Code Annotated section 56-7-1206 and the Tennessee Rules of Civil Procedure work *together* to allow a plaintiff to recover damages directly from his or her uninsured motorist carrier for the tortious conduct of a John Doe driver so long as the plaintiff: (1) files a complaint against the John Doe driver within one year of the incident; (2) issues summons against the John Doe within one year of filing the complaint; (3) attempts to serve John Doe within 90 days of summons being issued; (4) obtains a return of service indicating John Doe was not to be found; and (5) properly serves his or her insurance carrier. The statute of limitations as to the John Doe driver is one year; the statute of limitations as to the insurance carrier is six years.

B. The 2023 Lawsuit

Here, the record clearly reflects that summonses were never issued for John Doe A or John Doe B in the 2023 lawsuit. Because summonses were never issued, there was no return indicating that John Doe A and John Doe B were not located.

Although Appellant filed his claims against the John Doe defendants within the one-year statute of limitations, his failure to comply with the statutory requirements of the uninsured motorist statute, as well as the Tennessee Rules of Civil Procedure, caused his

claims to lapse one year from the date of the accident.

The statute plainly requires that “the insured *shall* issue a John Doe warrant against the unknown owner or operator in order to come within the coverage of the owner’s uninsured motorist policy.” Tenn. Code Ann. § 56-7-1206(b) (emphasis added). The statute also plainly requires plaintiffs to obtain a return of service indicating the John Doe drivers were not to be found. Tenn. Code Ann. § 56-7-1206(b). In the instant case, summonses were never issued and, thus, were not returned.

As discussed *supra*, to toll the one-year statute of limitations as to the John Does, Appellant needed to file the complaint, issue summons, attempt service, and have process returned against the John Does as not located (or words to that effect). Appellant completed only one of these requirements: filing the complaint. As such, the statute of limitations against the John Doe defendants expired one year after the accident, i.e., March 28, 2023.

C. The 2025 Lawsuit

Appellant now argues that the 2025 re-filing of the lawsuit against the John Does and Southern Trust may proceed because: (1) the savings statute allows him to rely on the original filing date of the 2023 lawsuit (which was within the one-year statute of limitations); and (2) by participating in litigation for over two years, Southern Trust is estopped from now claiming that the statute of limitations has run. We are not persuaded by Appellant’s arguments.

Commonly referred to as the savings statute, Tennessee Code Annotated section 28-1-105(a) states:

If the action is commenced within the time limited by a . . . statute of limitation, but the judgment or decreed is rendered against the plaintiff upon any ground not concluding the plaintiff’s right of action . . . the plaintiff . . . may, from time to time, commence a new action within one (1) year after the reversal or arrest.

Tenn. Code Ann. § 28-1-105(a). As we have explained, “[t]he savings statute provides a diligent plaintiff with an opportunity to renew its suit if its complaint is dismissed by any judgment or decree that does not conclude its right of action.” *Gregory v. McCulley*, 912 S.W.2d 175, 176 (Tenn. Ct. App. Aug. 4, 1995).

However, “[t]he savings statute, by its own terms, tolls the running of the statute of limitations only if the action was commenced within the original limitations window.” *Gregory*, 912 S.W.2d at 177. The question of whether the first action was properly “commenced within the initial statute of limitations period is determined by Tenn. R. Civ. P. 3.” *Id.* Simply put, the savings statute cannot save a claim that has already expired.

Here, as discussed above, Appellant failed to comply with the applicable statutory and procedural rules in the 2023 lawsuit. Therefore, his claims expired on March 28, 2023. Thus, the savings statute could not save the 2025 lawsuit.

In the alternative, Appellant argues that Southern Trust is estopped from raising the expiration of the statute of limitations as a defense. He argues that Southern Trust's issues with the John Doe summonses in the 2023 lawsuit constitute "sufficiency of service" arguments, which were made "out of time and should be considered waived." Appellant misreads Southern Trust's argument. Contrary to Appellant's assertion, Southern Trust did not argue that Appellant's attempts at service on the John Doe defendants was improper or insufficient; rather, Southern Trust argued that there was no attempt at service. Regardless, we agree with Southern Trust's observation that Appellant failed to raise this argument below, and so it is waived on appeal. *Moses v. Dirghangi*, 430 S.W.3d 371, 381 (Tenn. Ct. App. Oct. 3, 2013) ("It is well settled that issues not raised at the trial level are considered waived on appeal.").

V. Conclusion

For the foregoing reasons, the trial court's order is affirmed. The case is remanded for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, Delester Quarles. Execution for costs may issue if necessary.

s/ Steven W. Maroney
STEVEN W. MARONEY, JUDGE