

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 13, 2002 Session

**KAILA B. WILLIAMS SANDERS, Individually and as Next of Kin to
CATHI D. WILLIAMS, Deceased, v. TRACIE A. TRAVER, M.D., ALL
WOMEN'S CARE, P.C., SHELBY B. SHIVERS, M.D., MARYVILLE
ANESTHESIOLOGISTS, P.C., d/b/a MARYVILLE ANESTHESIA GROUP,
and BLOUNT MEMORIAL HOSPITAL INCORPORATED**

**Direct Appeal from the Circuit Court for Blount County
No. L-12401 Hon. W. Dale Young, Circuit Judge**

FILED JUNE 12, 2002

No. E2001-02926-COA-R3-CV

The Trial Judge dismissed the action filed pursuant to the Governmental Tort Liability Act on the ground the statute of limitations had run, and Tenn. R. Civ. P. 6.01 did not apply to governmental entities. On appeal, we reverse.

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

HERSCHEL PICKENS FRANKS, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and NORMA MCGEE OGLE, Sp.J., joined.

Sidney Gilreath, Dianne E. Lashmit, and Timothy A. Housholder, Knoxville, Tennessee, for Appellant, Kaila B. Williams Sanders.

Carl P. McDonald, Maryville, Tennessee, for Appellee, Blount Memorial Hospital, Incorporated.

OPINION

In this wrongful death action filed pursuant to the Governmental Tort Liability Act against Blount Memorial Hospital, Incorporated, the Trial Court dismissed the action, holding that it was not filed within twelve months, as required by the statute.

The issue on appeal, simply stated, is when the statute of limitations runs on a Sunday and the following Monday is a holiday, is the cause of action timely filed under the Governmental Tort Liability Act when filed on Tuesday?

The facts are basically not in dispute. Decedent was admitted to Blount Memorial Hospital on May 26, 1999 for surgery. It is stipulated that the hospital is a governmental entity within the meaning of the GTLA. Decedent's death occurred in the hospital on May 28, 1999, and the one-year anniversary of Decedent's death fell on Sunday, May 28, 2000. Monday, May 29, 2000, was Memorial Day, a state and federal holiday, and the Courts were closed. This wrongful death action was filed on Tuesday, May 30, 2000.

Defendant, in its answer, raised the statute of limitations defense, citing both Tenn. Code Ann. §29-20-305(b) and 28-3-104(a). The Trial Court concluded that the GTLA supercedes and takes precedence over all other statutory provisions and that no special computation of time for the statute of limitations is set forth in the Act, and the case was dismissed.

Issues of statutory interpretation and construction are questions of law, thus appellate review proceeds *de novo* without any presumptions of correctness of the trial court's determinations. *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000); *Wells v. Tennessee Bd. Of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999); *Lavin v. Jordon*, 16 S.W.3d 362, 364 (Tenn. 2000).

On appeal, plaintiff's position is that because the statute of limitations ran on Sunday and the following Monday was Memorial Day¹, her suit was timely filed on Tuesday, May 30, pursuant to Tenn. R. Civ. P. 6.01. Defendant contends that because the case is subject to the GTLA, strict compliance with Tenn. Code Ann. §29-20-305(b), which states: "The action must be commenced within twelve (12) months after the cause of action arises." is required. Since the plaintiff did not file within twelve months, the "untimely filing" on May 30 effects an impermissible "enlarging" of the statute of limitations.

Under the doctrine of sovereign immunity, governmental entities waive their immunity when sued, only upon the terms to which they consent, including to what extent, when, in what forum and in what manner suit may be brought. *Cruse v. City of Columbia*, 922 S.W.2d 492,

¹Tenn. Code Ann. §15-1-101 provides that Memorial Day is a state holiday and that the public offices of the state shall be closed.

495 (Tenn. 1995). However, the legislature has the authority to waive this protection, as derived from the Tennessee Constitution, Art. I, §17 which states that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” The constitutional provision carries with it a “positive implication that [suits] shall not be brought otherwise or at all unless legislative authority therefor be affirmatively given.” *Insurance Co. v. Craig*, 62 S.W. 155, 156 (Tenn. 1901).

The most basic principle of statutory construction is to ascertain and give effect to the intention and purpose of the Legislation. *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997); *Carson Creek Vacation Resorts, Inc., v. State Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1998).

The Rules of Civil Procedure were promulgated by the Supreme Court under authority delegated to it by the General Assembly. *Mid-South Pavers v. Arncos Const., Inc.*, 771 S.W.2d 420, 422 (Tenn. Ct. App. 1989). They have the force and effect of law. *Crosslin v. Alsup*, 594 S.W.2d 379, 380 (Tenn. 1980). Further, the Legislature is presumed to have knowledge of its prior enactments. *O.H. Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994); *Lavin v. Jordon*, 16 S.W.3d 362, 364 (Tenn. 2000).

Defendant contends that, as a governmental entity, it is not subject to the procedural rules or general statutes unless it expressly consents. A well-established rule of construction holds that the sovereign or a political subdivision is not subject to a statute unless specifically mentioned in it or the legislature has plainly expressed that intent or it is necessarily implied. *Davidson County v. Harmon*, 292 S.W.2d 777, 780 (Tenn. 1956). The Legislature’s intent is clearly manifest in the Tennessee Rules of Civil Procedure which contain explicit provisions for proper service of process upon the state of Tennessee and other governmental entities which are identified. *See*, Rules 4.04(6)(7)(8)(9). Accordingly, the rules are expressly applied to governmental entities. Any doubt that the Rules of Civil Procedure are applicable to governmental entities has been resolved by the Supreme Court:

The GTLA provides that suits under its provisions may be instituted, as was done in this case, in circuit court, [footnote omitted] and the Tennessee Rules of Civil Procedure “govern the procedure in the circuit and chancery court of Tennessee.” Tenn. R. Civ. P. 1.

Doyle v. Frost, 49 S.W.3d 853, 858 (Tenn. 2001). To hold otherwise, would invite chaos among litigants. Moreover, it is significant that the GTLA itself states: “Wherein immunity from suit is removed by this chapter, consent to be sued is granted and liability of the governmental entity shall be determined as if the governmental entity were a private person.” Tenn. Code Ann. §29-20-206. Nowhere in the language of the statute, or otherwise, has the Legislature indicated that it intended any different rules to apply to the GTLA than apply to private persons for purposes of determining statute of limitations and timely filing requirements.

This Court has consistently applied Rule 6.01 for purposes of determining whether a case is timely filed under the statute of limitations when the statute runs on a weekend or holiday. *McCleary v. Morgan*, 449 S.W.2d 440, 443 (Tenn. Ct. App. 1968); *Smith v. Hose*, 1995 WL 371675, (Tenn. Ct. App. No. 03A01-9501-CV0006); *Coleman v. Dooley*, 1991 Tenn. App. Lexis 29 (Jan. 18, 1991); *Selvy v. Vinsant*, 1999 WL 894435 (No. 03A01-9903-CV-00081). *Also see State v. Cutshaw*, 967 S.W.2d 332 (Tenn. Crim. App. 1997) and *Merriweather v. City of Memphis*, 107 F.3d 396 (6th Cir. 1997).

Defendant raises a novel argument, that Rule 6.01 does not apply pre-litigation, for which no supporting authority is cited (or located).²

Tennessee Rules Civil Procedure 3 explicitly governs how to commence a lawsuit:

All civil actions are commenced with the filing of a complaint with the Clerk of the Court. An action is commenced within the meaning of any statute of limitations upon the filing of the complaint. . . .

The proper way to determine whether a complaint is timely filed is to calculate when the statute of limitations runs which yields the critical deadline date; in the instant case, May 28, 2000. Rule 6.01 then provides how to deal with various contingencies surrounding that date:

In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the date of the act . . . is not to be included. The last day of the period as computed is to be included unless it is a Saturday, a Sunday, a legal holiday, or a day when the clerk's office for filing is closed in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or a day when the clerk's office for filing is closed. . . .

Thus, Tenn. R. Civ. P. 3 references statutes of limitations, and Tenn. R. Civ. 6.01 references any applicable statutes, whereas there is nothing in the GTLA exempting it from either. We have aptly observed "We think that where the day for doing an act required by Statute falls on a legal holiday, on which the Clerk's office is closed, the performance of the act on the next succeeding business day meets the requirements of the Statute, . . ."

Arp v. Wolfe, 354 S.W.2d 799, 804 (Tenn. Ct. App. 1956).

We hold that because of the rules of computation of time are not inconsistent with the GTLA (it is silent on the matter), the general rules are applicable. *Accord: Lucius v. City of Memphis*, 925 S.W.2d 522 (Tenn. 1996); *Doyle v. Frost*, 49 S.W.3d 853 (Tenn. 2001). *Also see*,

²This is a specious argument because you cannot ascertain whether an action is timely commenced without referring to the Rules.

Evans v. Perkins, 647 S.W.2d 636 (Tenn. Ct. App. 1982).

We reverse the Judgment of the Circuit Court and remand for further proceedings consistent with this Opinion. The costs of the appeal are assessed to defendant, Blount County Memorial Hospital, Inc.

HERSCHEL PICKENS FRANKS, J.