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ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-22-242

JONATHAN TINNEY

APPELLANT

V.

CHRISTOPHER CHILDS AND
GEORGIA SNODGRASS

APPELLEES

Opinion Delivered May 3, 2023

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CV-20-1262]

HONORABLE LYNN WILLIAMS,
JUDGE

AFFIRMED

STEPHANIE POTTER BARRETT, Judge

Appellant Johnathan Tinney appeals the Garland County Circuit Court’s dismissal of his complaint with prejudice against appellees Christopher Childs and Georgia Snodgrass. He argues that the circuit court “abused its discretion by granting Appellees’ motion to dismiss because of a minor procedural defect.” We affirm.

On June 5, 2016, Tinney was a passenger in a vehicle involved in an accident with a vehicle driven by appellee Christopher Childs. On June 5, 2019, Tinney and the others involved in the motor-vehicle accident filed a complaint against Childs and appellee Georgia Snodgrass, alleging that they had suffered personal injuries as a result of Childs’s negligent operation of the vehicle and that Snodgrass, the owner of the vehicle Childs was operating at the time of the accident, negligently entrusted her vehicle to Childs. The circuit court dismissed the complaint on November 25, 2019, pursuant to Arkansas Rule of Civil

Procedure 4(i) “for failure . . . to obtain service of process within the 120 days allowed, or obtain a timely extension of time with leave of the Court.”

Tinney refiled suit against Childs and Snodgrass on November 25, 2020,¹ again alleging negligence against Childs in the motor-vehicle accident and negligent entrustment against Snodgrass for allowing Childs to operate her vehicle. After two unsuccessful attempts to serve Childs by certified, restricted mail delivery—one of which was returned “unclaimed” and the second of which was returned “not deliverable as addressed”—Tinney filed a motion requesting to be allowed to serve Childs by warning order, asserting that he had been unable to locate Childs after the two attempts to serve him by mail.² The circuit court granted this motion as well as a motion for extension of time to perfect service, and Tinney served notice to Childs by warning order.

On December 7, appellees moved to dismiss Tinney’s complaint, alleging that the second complaint was untimely because the statute of limitations had expired and that Tinney was not entitled to the benefit of the savings statute because he had failed to achieve service in the original action. Tinney asserted that he was entitled to the benefit of the savings statute because it is intended to protect persons who filed an action in good faith and in a timely manner who would suffer a loss of relief on the merits due to a procedural

¹Tinney was the only party from the original complaint to refile.

²The circuit court record shows that on January 28, 2021, Tinney mailed Snodgrass the complaint, summons, and Rule 4 letter via certified, restricted mail. The return-receipt card was signed by Snodgrass on January 30, 2021, a copy of which was attached to the affidavit of service for Snodgrass.

defect by extending the time to correct a dismissal without prejudice when the statute of limitations would otherwise bar the suit. In response, the appellees argued that because there was no evidence of any attempted service in the original action, Tinney was not entitled to avail himself of the protection of the savings statute, and the second complaint must be dismissed with prejudice as untimely filed. The circuit court dismissed Tinney's complaint in an order filed on February 15, 2022, and Tinney appealed that dismissal to this court.

Arkansas appellate courts review a circuit court's factual conclusions regarding service of process under a clearly erroneous standard, but when a complaint is dismissed on a question of law, we conduct a de novo review. *City of Tontitown v. First Security Bank*, 2017 Ark. App. 326, 525 S.W.3d 18. Service of valid process is necessary to give a court jurisdiction over a defendant. *Id.* Service requirements, being in derogation of common-law rights, must be strictly construed, and compliance with them must be exact. *Id.* Court rules are construed in the same manner. *Rettig v. Ballard*, 2009 Ark. 629, 362 S.W.3d 260.

Negligence claims have a three-year statute of limitations. The motor-vehicle accident occurred on June 5, 2016; Tinney timely filed his first complaint on June 5, 2019. Rule 4(i) of the Arkansas Rules of Civil Procedure provides, in pertinent part, "If service of process is not made on a defendant within 120 days after the filing of the complaint or within the time period established by an extension granted pursuant to paragraph (2), the action shall be dismissed as to that defendant without prejudice on motion or on the court's initiative." Under these circumstances, dismissal of the action is mandatory. *City of Tontitown, supra.* There was no evidence Tinney attempted to serve the appellees within 120 days nor did he

seek an extension of time to do so, and the circuit court dismissed the first action in an order filed on November 25, 2019.

In Tinney's response to appellees' motion to dismiss, he admitted that his first action was mandatorily dismissed without prejudice for failure to obtain service. However, he asserted that he was entitled to avail himself of the one-year period set forth in the savings statute because, "although he did not perfect service, he clearly had the intent and purpose of prosecuting a valid claim on its merits." We disagree.

The savings statute, Arkansas Code Annotated section 16-56-126 (Repl. 2005), provides in pertinent part that if any action is timely commenced within the statute of limitations and the plaintiff suffers a nonsuit, the plaintiff may commence a new action within one year after the nonsuit. For purposes of the savings statute, a dismissal is the same as a nonsuit. *Carton v. Mo. Pac. R.R. Co.*, 295 Ark. 126, 747 S.W.2d 93 (1988). "The savings statute extends the time for a plaintiff to correct a dismissal without prejudice when the statute of limitations would otherwise bar the suit." *Oxford v. Perry*, 340 Ark. 577, 582, 13 S.W.3d 567, 570 (2000). For purposes of the savings statute, a suit is commenced when the complaint is timely filed and service of the complaint and summons (effective or defective) is completed within the 120-day period required by Rule 4(i). *Rettig, supra*. However, Rule 4(i) must be read in conjunction with other procedural rules, such as the statute of limitations; the dismissal-without-prejudice language in Rule 4(i) does not apply if the plaintiff's actions are otherwise barred by the running of the statute of limitations. *McCoy v. Montgomery*, 370 Ark. 333, 259 S.W.3d 430 (2007). Because service was never completed

in Tinney's first cause of action, not even defective service, the lawsuit was never commenced; the three-year statute of limitations ran before the second complaint was filed; and because service was never completed in the first lawsuit, Tinney was not entitled to the benefit of the savings statute. The circuit court properly dismissed Tinney's second complaint as untimely filed.

Affirmed.

KLAPPENBACH and BROWN, JJ., agree.

Josh Q. Hurst, for appellant.

Barber Law Firm, PLLC, by: *James D. Robertson* and *Adam D. Franks*, for appellees.