

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: Kyle Carter Atkins

Office Address: 515 S. Liberty St.
(including county) Ste 320
Jackson, TN 38301

Office Phone: 731-988-3040 Facsimile: 731-988-3086

Email Address: [REDACTED]

Home Address: [REDACTED]
(including county) Jackson, TN 38305
Madison County, TN

Home Phone: [REDACTED] Cellular Phone: [REDACTED]

INTRODUCTION

The State of Tennessee Executive Order No. 54 (May 19, 2016) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or

the digital copy may be submitted via email to ceesha.lofton@tncourts.gov. See section 2(g) of the application instructions for additional information related to hand-delivery of application packages due to COVID-19 health and safety measures

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Circuit Court Judge, 26th Judicial District, Division III

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1996

BPR Number 017861

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee, 1996

BPR No. 017861 - active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

August 1996 - January 31, 1998 - Spragins, Barnett, Cobb & Butler – Jackson, TN – Associate Attorney – practice area of insurance defense, workers' compensation, defense and criminal law.

February 1, 1998 – June 30, 2002 - Adams, Ryal & Flippin – Humboldt, TN – Associate

attorney – practice area included insurance defense, workers’ compensation defense, plaintiff personal injury, and criminal law

July 1, 2002 - December 31, 2008 - Flippin & Atkins – Humboldt, TN – Attorney – practice area included insurance defense, workers’ compensation defense, plaintiff personal injury, criminal law, and county and city government work.

January 1, 2009 – August 31, 2014 – Flippin, Atkins & Crider – Humboldt, TN – Attorney - practice area included insurance defense, workers compensation defense, plaintiff personal injury, criminal law, and county and city government work.

September 1, 2014 - present – Circuit Court Judge – 26th Judicial District, Division III – criminal and civil jurisdiction.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not Applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am presently serving as a Circuit Court Judge for the 26th Judicial District, Division III. The district is comprised of three counties – Madison, Henderson, and Chester. I handle both a criminal and a civil docket. However, the majority of my time is spent on criminal matters. The criminal docket consists of everything from driving on a revoked license to capital murder. I conduct arraignments, hear motions, hear probation violations, accept guilty pleas, sentence defendants, and preside over trials. I also oversee a Veterans Recovery Court and a Drug Court. The criminal docket also includes post-conviction matters, habeas corpus, and corum nobis petitions.

The civil docket consists mainly of vehicle accidents, premises liability, and healthcare liability actions. For civil cases I hold scheduling conferences, hear motions, approve settlements, and conduct trials.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information

about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

My practice area primarily consisted of insurance defense work and criminal defense work. I also handled some work for local governments. I practiced primarily in Circuit Courts throughout West Tennessee. The majority of the cases I handled were vehicle accidents, premises liability, and some construction litigation. I also did a good bit of workers' compensation defense work throughout West Tennessee. I tried over 50 civil jury trials while in private practice. My involvement in these cases was to completely handle the file. I answered the complaint, prepared and answered discovery, interviewed witnesses, prepared witnesses for depositions, took the discovery depositions, interviewed and deposed experts, attended mediation and tried the case. If there was an appeal, I handled the appeal. Our law firm was either a two- or three-person firm. Therefore, when I obtained a case, I conducted each aspect of the case from start to finish.

I also handled criminal cases; again, managing the case from start to finish. I tried several criminal jury trials as a private attorney. I also handled some appeals in criminal cases, as well as post-conviction cases when appointed by the court.

Another area of practice was plaintiff personal injury. Although a very small part of my practice, I usually had one or two plaintiff cases as part of my caseload. Again, I would handle the case from start to finish.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I was either fortunate or unfortunate, depending on perspective, never to be involved in a case that received widespread media attention. I did not have a case that dealt with a novel issue of law. However, most every case I handled was for an individual to whom the case was the most important case in the world. I would like to think that I conducted myself in a fashion to give them confidence that I understood their concern and approached the case as if it was the most important case in my office.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a

judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I was certified as a Rule 31 Mediator in November 2007, while still in private practice. I conducted five to ten mediations from 2007 until elected to Circuit Court Judge in 2014 . All of the mediations involved personal injury claims arising from vehicle accidents.

Since being elected Circuit Court Judge, I have mediated two civil suits. One involved a boundary line dispute and the amount in controversy was very small. The lawyers asked me to mediate in order to avoid the cost of paying a private mediator. The other case involved a contract dispute.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Not applicable.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

When I was elected in 2014, there was a Drug Court Program in Division II of our judicial district. I teamed with Judge Don Allen in Division II and expanded the Drug Court Program into my division, Division III. This has allowed us to expand the number of people were are serving and help defendants transition from the justice system to being productive members of society.

I have started a separate Veterans Recovery Court in Division III. For the last several years, our team has been able to help many veterans with both addiction and co-occurring illnesses, such as PTSD or depression. Working with the Veterans Administration services, our participants are obtaining both drug addiction treatment and mental health treatment, again allowing them to transition from the justice system to productive members of society.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Not applicable

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

1986-1990 Lambuth College in Jackson, TN – graduated with a Bachelor of Business Administration degree
1992-1993 Nashville School of Law in Nashville, TN – left to enroll at Cumberland School of Law
1993-1996 Cumberland School of Law at Samford University in Birmingham, AL, graduated with a Juris Doctorate degree

PERSONAL INFORMATION

15. State your age and date of birth.

I am 53 years old and was born [REDACTED] 1968.

16. How long have you lived continuously in the State of Tennessee?

I have lived continuously in the State of Tennessee since birth except for attending law school for three years in Birmingham, Alabama.

17. How long have you lived continuously in the county where you are now living?

Since May 1996

18. State the county in which you are registered to vote.

Madison County

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not Applicable

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

Not applicable

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you

were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

I was named as a third party defendant in a lawsuit concerning the sale of property. I did the title search for the seller in 1998 and missed a Deed of Trust that had been filed against the property. My malpractice carrier paid the claim once the error was brought to my attention. A lawsuit was filed in Gibson County Circuit Court at Humboldt on November 3, 1999. The docket number was H 3215. The defendant/seller filed a third party complaint against me. My carrier defended the suit and filed a subrogation claim to recover their payment. My carrier was awarded a judgment for the amount they paid less a credit for the seller in the amount Seller paid over the sales price to satisfy the lien.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

I have been a lifelong member of the United Methodist Church. I have been a member at First United Methodist Church in Jackson, Tennessee, since 1996. I have taught Sunday School, served on the financial committee, missions committee, Staff-Parish relations committee (serving as chair for one year in 2014), and the Trustees committee.

My wife and I were members of Humboldt Golf & Country Club.

My wife and I are members of Jackson Country Club.

I am a member of the Howell-Edmunds Inn of Court in Jackson.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

a. If so, list such organizations and describe the basis of the membership limitation.

b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

Not Applicable

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you

have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Gibson County Bar Association - 1998-2014

Madison County Bar Association - 1996-1998

Howell Edmonds Inns of Court - 2015 to present

The Tennessee Bar Foundation

Tennessee Trial Judges Association 2014-present

Tennessee Judicial Conference 2014-present

I was a hearing committee member for the Tennessee Board of Professional Responsibility
March 17, 2012 - August 31, 2014

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

I was recognized for Pro Bono Service by West Tennessee Legal Services.

30. List the citations of any legal articles or books you have published.

Not applicable

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Not applicable

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I was a candidate for Circuit Court Division III of the 26th Judicial District in 2012.

I was a candidate for Circuit Court Division III of the 26th Judicial District in 2014 and was elected.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

The writings attached are 100 percent my work.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I enjoy reading cases and researching issues. I think my time as both a trial judge and as a trial lawyer gives me perspective on how to develop an opinion in a fashion that will make it easier for both judges and lawyers to grasp the holding of the case and the essential rationale for the ruling. The issues before the Court of Criminal Appeals deal with people's liberty and interpretation of the Constitution. Those are the matters that led me to become a lawyer. It would be fulfilling to be part of a body entrusted to protect those rights for our state.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

I served on the SCALES committee that did the preparation for the Supreme Court to hear arguments at Lane College.

I also have spoken to a class at Lane College regarding expungement and how that process works.

Pro Bono service is not only good for the legal profession but also for the community. While in private practice, I always accepted pro bono cases when called upon by West Tennessee Legal Services. Some of these cases included fraud, identity theft, writing wills, and landlord/tenant issues.

I am currently working with the Pro Bono Coordinator for the AOC to set up an expungement clinic for Madison County.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

The Court of Criminal Appeals consists of twelve judges. There are four judges for each Grand Division and the judges rotate between each Grand Division throughout the year. The court

hears appeals in criminal matters.

Practicing law in predominately rural areas and being a trial judge in three rural counties gives me a base of life experience and perspective that can only add to the balance of the Court. Further, my experience handling and trying criminal cases while in private practice combined with my experience as a Circuit Court judge handling all types of criminal matters gives me an understanding of the need for clear and concise rulings. This allows attorneys to clearly advise their clients and allows trial judges to have more confidence in their rulings. This can only help our entire justice system operate more efficiently.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I was a member of Humboldt Rotary Club while I was practicing law in Humboldt from 1998 until 2014. I have been active in my Church, chairing the missions committee and working on various mission activities through the Church.

I was chair of the Super Boosters Club at my kids school for several years and on the Super Booster board for several years.

I coached my kids in soccer, softball, baseball and basketball for 10 years or so.

I have been a judge for the State Mock trial competition on several occasions. While working in Humboldt, I coached the Mock Trial team at Humboldt High School for several years.

I plan to continue participating with my Church. Assuming the schedule allows, I would likely join a local Rotary Club or other civic organization.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

My parents taught my brothers and me the value of hard work. From the time I was fourteen years old, I held full-time summer jobs while in high school and college – some of which included mowing yards, bagging groceries and mopping floors at the local grocery store, slinging a sledgehammer on a road project, and being a veterinarian's assistant helping cattle give birth.

My parents also taught me to treat people the way you would want to be treated – with kindness and respect. As a lawyer in private practice, I treated every case as if it was the most important case in my office - because it was the most important case to that individual client.

Since being a trial judge, I would like to think that I have treated lawyers, parties, defendants, witnesses, bailiffs, and court personnel with respect and fairness. When lawyers send me briefs, I read them and am prepared to rule from the bench. I try to treat the courtroom as belonging to the parties, and I am there to help them complete their case in an efficient manner.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes. Upholding the law is required under the Code of Judicial Conduct unless there is a constitutional issue that requires addressing. One example involves the minimum punishment imposed for certain crimes. For instance, Simple Possession of Methamphetamine, a class A misdemeanor, requires a 30 day minimum jail sentence to serve. On the other hand, Possession of Cocaine with Intent to Sell/Deliver, a Class B Felony, does not carry a minimum jail sentence to serve. I don't necessarily agree with that result. However, minimum sentencing is within the purview of the legislature, and there isn't anything unconstitutional about the respective punishments. Therefore, I impose sentences regularly according to the statutory requirements.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Dave Bratcher, President, The Star Center, [REDACTED] Jackson, TN 38305 [REDACTED]
B. Ben Mayo, Assistant District Attorney, 28 th Judicial District, [REDACTED] Trenton, TN 38382-0145 [REDACTED]
C. Joe H. Byrd, Jr., Attorney, Byrd & Byrd Attorneys at Law, [REDACTED] Jackson, TN 38301 [REDACTED]
D. Dr. H. Lee Butler, Veterinarian, Huntingdon Animal Clinic, [REDACTED] Huntingdon, TN 38344 [REDACTED]
E. Marty Phillips, Attorney, Rainey, Kizer, Reviere & Bell PLC, [REDACTED] Jackson, TN 38302-1147 [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Court of Criminal Appeals, Western Section of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: 10/11, 2021.


Signature

When completed, return this application to Ceesha Lofton, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Kyle Atkins

Type or Print Name

[Signature]

Signature

10/11/2021

Date

017861

BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

IN THE CIRCUIT COURT FOR MADISON COUNTY, TENNESSEE

Melinda Duncan and
Jeff Duncan,
Plaintiffs

vs.

Docket No.: C-11-08

Cheryl L. Ledford, M.D., Jackson
Clinic, P.C. and Jackson-Madison
County General Hospital,
Defendants

FILED
NOV 10 2015
KATHY BLOUNT, CIRCUIT COURT CLERK
1:00 P.M.

**ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on the Defendants' motion for summary judgment. After reviewing the submissions of the parties and the record as a whole, the Court finds as follows:

To sustain a claim for medical malpractice in Tennessee, the Plaintiff must comply with TCA 29-26-115 of the medical malpractice practice statute. TCA 29-26-115(a) requires that the Plaintiff prove the following: 1) the recognized standard of care for professional practice in the profession and the specialty of the Defendant; and 2) the Defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard; and 3) as a proximate result of the Defendants' negligent act or omission, the Plaintiff suffered injuries which would not otherwise have occurred. The Defendants assert that Plaintiff has failed to meet their burden under all three sections of TCA 29-26-115(a).

The parties have agreed that the allegation of medical negligence is limited only to the care and treatment by Dr. Ledford on the initial emergency room visit of September 7, 2009.

With regard to 29-26-115(a)(1), the Court finds that Plaintiffs' expert testified sufficiently that he is familiar with the recognized standard of practice in Jackson, Madison County Tennessee.


With regard to TCA Section 29-26-115(a)(2) the Court finds that the Plaintiff has failed to establish that the Defendant deviated from the standard of care for an orthopedic surgeon in Jackson- Madison County, Tennessee to reasonable degree of medical certainty for two reasons. First, the Court finds that Dr. Myers testified in his discovery deposition that Dr. Ledford complied with the standard of care during the emergency room visit of September 7, 2009. Dr. Myers testified during the deposition, at several different times and in response to several different questions, that Dr. Ledford complied with the standard of care. Later, in his evidentiary deposition, Dr. Myers testified that Dr. Ledford complied with the standard of care. However, in the same evidentiary deposition, Dr. Myers testified that Dr. Ledford did not comply with the standard of care. These contradictory sworn statements regarding the same fact cancel each other out and are of no probative value. See Lockard v Bratton No. W2007-02820-COA-R3-CV, 2009 WL 275783. Second, Dr. Myers testified in his evidentiary deposition that his opinions were based on whether the wound was a superficial wound or a deeper wound. There is no proof in the record to support the wound being anything other than a superficial wound on September 7, 2009. Therefore, looking at Dr. Myers' testimony as a whole, he is equivocal at best as to the deviation from the standard of care and definitely not able to give an opinion to a reasonable degree of medical certainty.

Finally, with regard to TCA 29-26-115 (a)(3), Dr. Myers' testimony did not prove that the Plaintiff suffered an injury which would not otherwise have occurred absent the care of Dr. Ledford complying with the applicable standard of care. Dr. Myers was asked questions on multiple occasions throughout both his discovery deposition and the evidentiary deposition, and he testified that different care from Dr. Ledford would not have changed the outcome. The Plaintiff has argued that the "outcome" Dr. Myers was testifying about was the ultimate injury to Mrs. Duncan's arm that was treated at Vanderbilt and not the hospital stay in Jackson for cellulitis. However, it is clear from a reading of both the evidentiary and the discovery deposition that Dr. Myers was testifying about the outcome of the treatment given on September 7, 2009.

Based upon the reasons listed above, the Plaintiff has failed to demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find that Dr. Ledford deviated from the standard of care. Plaintiff has also failed to demonstrate that as a result of Dr. Ledford's treatment the Plaintiff suffered injuries which would not otherwise have occurred. Therefore, the Court finds there are no genuine issues for trial, and summary judgment is granted in favor of the Defendants for Mrs. Duncan's medical negligence claim. Because Mr. Duncan's loss of consortium claim is derivative of Mrs. Duncan's claim, summary judgment is also granted in favor of the Defendants for Mr. Duncan's loss of consortium claim.

The Court further finds that the Plaintiff has failed to put any proof in the record as it relates to the direct action against the Defendant, The Jackson Clinic, P.A., and therefore summary judgment is granted in favor of Defendant, The Jackson Clinic, P.A..

All of which is so ORDERED, ADJUDGED, and DECREED this the 10th day of November, 2015.



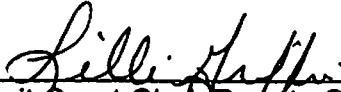
JUDGE KYLE ATKINS
CIRCUIT JUDGE, DIVISION III

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been mailed to the party listed below on this the 10 day of November, 2015 addressed as follows:

Marty Phillips
105 S. Highland Ave.
PO Box 1147
Jackson, TN 38301

Richard Glassman
26 N. 2nd Street Bldg.
Memphis, TN 38103



Circuit Court Clerk Deputy Clerk

FILED

IN THE CIRCUIT COURT FOR MADISON COUNTY, TENNESSEE

SEP 09 2015

KATHY BLOUNT, CIRCUIT COURT CLERK

11:40 DEPUTY CLERK A.M. P.M.

Ameale Hudson

VS.

DOCKET NO.: 13-267

State of Tennessee

C-13-267

ORDER DENYING PETITION FOR POST CONVICTION RELIEF

This matter came before the Court on the post conviction petition filed by the defendant, Ameale Hudson, and after reviewing the petition, hearing the testimony of the witnesses, and from the record as a whole, the Court finds as follows:

Mr. Hudson filed a petition for post conviction relief alleging ineffective assistance of counsel. Mr. Hudson states several issues. First, petitioner states his counsel was deficient in failing to exclude a Juror who knew the victim through church. Second, petitioner states his counsel was deficient in failing to preserve three issues for appeal by excluding them from the motion for new trial.

The defendant has the burden of proving by clear and convincing evidence that the Juror who was left on the jury was prejudicial to this case. There was no testimony or proof that this Juror, by being left on the jury panel, had any prejudicial effect on the defendant's case. From a review of the transcript, this Juror did not know the victim. The Juror had never spoken to the victim. The juror stated she merely saw the victim and his family at church. There was no evidence at the trial or the post conviction hearing to show how not excluding this Juror prejudiced the petitioner's right to a fair trial.

The other ground for relief claimed by petitioner was that his attorney failed to preserve three issues for appeal when filing the Motion for New Trial. First, the defendant states that his attorney should have included in the motion for new trial that the Trial Court incorrectly denied petitioner's Motion for Change of Venue. However, there was no proof showing that the petitioner was prejudiced in any way by the trial being held in Madison County. Reviewing the jury selection transcript, only a handful of jurors even indicated they knew something about the case. None of those jurors indicated they had formed any opinion based on what little they had read. Therefore, there's no showing of prejudice to the defendant with regard to this issue.

Second, the petitioner said his lawyer should have included in the Motion for New Trial the denial, by the Trial Court, of his Motion to Prevent the District Attorney from referring to petitioner by his nickname "Pistol". The state contends that the use of the nickname Pistol was merely to identify the Defendant. In reviewing the transcript, the Court notes that every witness


who testified referred to Defendant by his nickname, Pistol. In fact, most of the witnesses did not know his correct legal name. According to his Mother, petitioner has been called Pistol his entire life. Further, all of those witnesses could only identify the petitioner by his nickname "Pistol". The name "Pistol" was not used to in a derogatory manner. It was merely used to identify the Defendant. Therefore, the petitioner has not shown any prejudice from the use of the nickname Pistol.

The final issue the petitioner raised was the Trial Court allowing the use of photographs of the deceased victim. The pictures introduced at trial were very clinical in nature. They showed the defendant on a gurney. The pictures were not gruesome or inflammatory. The defendant entered no proof to show that the pictures had a prejudicial effect on his case.

Finally, the petitioner argues that his lawyer was deficient in his performance by failing to include the above issues in the Motion for New Trial. Trial counsel, ██████████, testified that he chose to leave those issues out of the motion for new trial because he did not want to clutter the issues on appeal. Mr. ██████████ testified he did not feel those issues would be overturned on appeal. Therefore, Counsel wanted to focus the appeal on the lack of corroborating testimony from someone other than a co-conspirator. Mr. ██████████ testified that this was a strategy decision. Mr. ██████████ testified that he only has a small window to argue at the Court of Appeals. Counsel testified he did not want to spend time addressing issues that he felt the Court would find harmless error. Therefore, Counsel's strategy was to focus the appeal only on the issue of the uncorroborated testimony from the co-conspirators. The Court finds Mr. ██████████ to be a credible witness. Mr. ██████████ had a very good grasp of the facts of the case and the issues in the trial despite the trial having been conducted almost three years before this hearing. The Court finds that his strategy of focusing the appeal on the insufficiency of the evidence was within the standard of reasonableness under the prevailing professional norms and was not deficient. Further, the court finds that the petitioner did not prove by clear and convincing evidence that there was any prejudice as a result of the alleged deficient performance.

Therefore, the petitioners claim for post conviction relief is denied.

All of which is so ORDERED, ADJUDGED, and DECREED this the 9th of June, 2015.



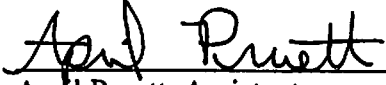
KYLE ATKINS
CIRCUIT JUDGE, DIVISION III

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been mailed to the parties listed below by depositing same in the United States Mail, postage fully prepaid, at Jackson, Tennessee on this the 23rd day of April, 2015 addressed as follows:

Mr. Josh Dougan
200 East Main
Jackson, TN 38301

Mr. Jim Thompson
225 Martin Luther King Drive
Jackson, TN 38301



April Pruett, Assistant
515 S. Liberty Street, Suite 320
Jackson, TN 38301