

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

DARREN MARION LITTLE,)	
)	
Petitioner,)	
)	
v.)	No. 21-0843-II
)	Chancellor Anne C. Martin
WILLIAM LEE, in his official capacity)	Judge Barry A. Steelman
as Governor of the State of Tennessee,)	Judge J. Robert Carter, Jr.
and DAVID RAUSCH, in his official)	
capacity as Director of the Tennessee)	
Bureau of Investigation,)	
)	
Respondents.)	

ORDER AND MEMORANDUM

Before the Court are the Motion to Dismiss of Respondent William Lee, in his official capacity as Governor of the State of Tennessee, and the Motion for Default Judgment of Petitioner Darren Marion Little. Pursuant to Local Rule 28.04 and Tenn. Code Ann. § 41-21-304, these motions were decided on the papers rather than by oral argument. For the reasons that follow, Governor Lee’s Motion to Dismiss is **GRANTED**, and Mr. Little’s Motion for Default Judgment is **DENIED**. The Clerk and Master is **DIRECTED** to issue summons for Director Rausch and mail that summons as well as a copy of the petition to Mr. Little. Mr. Little is then **ORDERED** to achieve proper service upon Director Rausch by mailing those documents within 45 days “by registered return receipt or certified return receipt mail” to Director Rausch through the Attorney General’s Office. Upon the timely filing of a responsive pleading or Rule 12 motion, the Court will enter a scheduling order.

BACKGROUND

The following allegations made by Mr. Little are presumed to be true at this stage of the proceedings. Mr. Little was convicted of possession of obscene material on January 5, 2004, in

Madison County, Alabama. Inmate Affidavit, at 3, Sep. 22, 2021. He has been registered with the Tennessee Bureau of Investigation's sex offender registry since 2005. Inmate Affidavit, at 3. His sentence for possession of obscene material expired in January 2007. Inmate Affidavit, at 3. In July 2020, Mr. Little sent a request to the TBI, asking to be removed from its registry. Inmate Affidavit, at 3. In February 2021, Mr. Little received the TBI's response, which was a denial of his request because Mr. Little's victim was under the age of 12. Inmate Affidavit, at 3. But the record makes no indication of a particular victim or the victim's age. Inmate Affidavit, at 3.

Mr. Little initiated the present action in August 2021, which appears to be both an appeal in the form of a judicial review of the TBI's refusal to remove him from its sex offender registry and a declaratory action¹ against the TBI asserting that its application of the amended sex offender registration statutory scheme to deny his request for removal violates the Ex Post Facto Clause of the United States Constitution. *See generally* Untitled Pet., Aug. 23, 2021; Inmate Affidavit, at 3–4 (unpaginated). In February, he attempted to serve both Governor Lee and Respondent David B. Rausch, in his official capacity as Director of the TBI. *See generally* Summons for Governor Lee, Feb. 2, 2022; Summons for Director Rausch, Feb. 2, 2022. Mr. Little again tried to serve Director Rausch in April. *See* Resp't Director Rausch's Resp. in Opp'n to Pet'r's Mot. for Default J., Ex. 1, at 2 (unpaginated), June 23, 2022. Mr. Little only perfected service, however, on Governor Lee.² *See* Resp't's Req. for Special Three-Judge Panel, at 1 n.2, Mar. 9, 2022. The parties then filed the instant motions.

¹ It is unclear to the Court whether Mr. Little's declaratory action is based upon Tenn. Code Ann. § 29-14-101, *et seq.*, as Governor Lee assumes, or 42 U.S.C. § 1983.

² The Court explains the deficiency in service below in its discussion of Mr. Little's Motion for Default Judgment.

STANDARDS OF LAW

Governor Lee moves the Court to dismiss the claims against him under Tennessee Rule of Civil Procedure 12.02(1), invoking a “lack of jurisdiction over the subject matter.” Subject matter jurisdiction concerns a court’s very authority to resolve the case before it. *Minyard v. Lucas*, 576 S.W.3d 351, 355 (Tenn. 2019) (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712–13 (Tenn. 2012)). Such authority may “only be conferred upon a court by a constitutional or legislative act.” *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000) (citing *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977); *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 734 (Tenn. Ct. App. 1989)); *Minyard*, 576 S.W.3d at 355 (citing *Chapman*, 380 S.W.3d at 712–13) (“Subject matter jurisdiction is conferred and defined by the Tennessee Constitution and statutes.”). A determination on the particular nature of a case is essential to whether a court may properly assert subject matter jurisdiction over it. *See Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870); *Turpin v. Conner Bros. Excavating Co.*, 761 S.W.2d 296, 297 (Tenn. 1988)); *State ex rel. Comm’r of Dep’t of Transp. v. Thomas*, 336 S.W.3d 588, 602 (Tenn. Ct. App. 2010) (quoting *Northland Ins. Co.*, 33 S.W.3d at 729). A court must ascertain what a plaintiff is seeking, on what basis or bases the plaintiff is seeking it, and whether state law authorizes the court to give the plaintiff what he seeks. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012) (citing *Northland Ins. Co.*, 33 S.W.3d at 729; *Landers*, 872 S.W.2d at 675) (“Determining whether subject matter jurisdiction exists in a particular case requires the courts to examine (1) the nature or gravamen of the cause of action, (2) the nature of the relief being sought, and (3) the constitutional or statutory provisions relied upon by the plaintiff.”).

Mr. Little moves the Court for entry of a default judgment against Director Rausch. The entry of default judgment is appropriate “[w]hen a party against whom a judgment for affirmative

relief is sought has failed to plead or otherwise defend” the action against him. Tenn. R. Civ. P. 55.01. “A judgment by default is a final order disposing of a case on its merits, like any other judgment. A judgment by default is generally considered an admission of all the properly pleaded material allegations of fact in the complaint, except the amount of unliquidated damages.” *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 194 (Tenn. Ct. App. 2000) (citing *Patterson v. Rockwell Int’l*, 665 S.W.2d 96, 101 (Tenn. 1984)). Generally speaking, “[w]hen a defendant fails to answer a complaint, the plaintiff may obtain a default judgment without a hearing on the merits.” *Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003) (discussing a dismissal for failure to prosecute). But in instances of suits “against the State of Tennessee or any officer or agency thereof,” as in this case, “[n]o judgment by default shall be entered . . . unless the claimant establishes the claim or right to relief by evidence satisfactory to the court.” Tenn. R. Civ. P. 55.04.

ANALYSIS

I. Governor Lee’s Motion to Dismiss

A. *Sovereign Immunity Precludes the Court from Exercising Subject Matter Jurisdiction over Mr. Little’s Claims Against Governor Lee*

Governor Lee argues that the State’s sovereign immunity precludes the Court from exercising subject matter jurisdiction over Mr. Little’s claims against him. Mem. of Law in Supp. of Resp.’s Mot. to Dismiss, at 4–7, Apr. 14, 2022. Mr. Little does not respond directly to this argument. *See generally* Untitled Resp. to Mot. to Dismiss, May 16, 2022. For the reasons that follow, the Court must agree with Governor Lee’s position.

“Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” Tenn. Const. art. 1, § 17. Our Supreme Court has interpreted this clause as prohibiting suits “against the State unless explicitly authorized by statute” and thereby “upholding

the doctrine of sovereign immunity.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 849 (Tenn. 2008) (citing *N. British & Mercantile Co. v. Craig*, 62 S.W. 155, 157 (Tenn. 1900); *State v. Bank of Tenn.*, 62 Tenn. (3 Baxt.) 395, 403 (1874)). Put another way, “[t]he sovereign State of Tennessee is immune from lawsuits ‘except as it consents to be sued.’” *Smith v. Tenn. Nat’l Guard*, 551 S.W.3d 702, 708 (Tenn. 2018) (quoting *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000)). The Court of Appeals has explained the relation between this doctrine and that of subject matter jurisdiction:

Subject matter jurisdiction and sovereign immunity are two different legal concepts. However, courts may lack subject matter jurisdiction because of the doctrine of sovereign immunity. Sovereign immunity is jurisdictional immunity from suit, which acts as a jurisdictional bar to an action against the state by precluding a court from exercising subject-matter jurisdiction. The doctrine of sovereign immunity divests the courts of subject matter jurisdiction.

Mobley v. State, No. W2017-02356-COA-R3-CV, 2019 WL 117585, at *3 (Tenn. Ct. App. Jan. 7, 2019) (quoting *Colonial Pipeline Co.*, 263 S.W.3d at 851; *White v. State ex rel. Armstrong*, No. M1999-00713-COA-R3-CV, 2001 WL 134601, at *3 (Tenn. Ct. App. Feb. 16, 2001)) (alterations and internal quotation marks omitted). Thus, if Governor Lee enjoys sovereign immunity from Mr. Little’s claims, this Court lacks any authority over those claims and must dismiss them.

Mr. Little is suing Governor Lee in his official capacity. *Untitled Pet.*, at 1 (unpaginated). A lawsuit against an officer of the State of Tennessee in his official capacity is a suit against the State. *Cox v. State*, 399 S.W.2d 776, 778 (Tenn. 1965) (quoting *Kornman Co. v. Moulton*, 360 S.W.3d 30 (Tenn. 1962); *Brooksbank v. Leech*, 332 S.W.2d 210 (Tenn. 1959)); see *Williams v. Nicely*, 230 S.W.3d 385, 389 (Tenn. Ct. App. 2007) (relying on *Cox* for the same proposition). Mr. Little’s claims presumably arise under Tenn. Code Ann. § 40-39-207 and Tenn. Code Ann. § 29-14-103 or 42 U.S.C. § 1983. See *Untitled Pet.*, at 1 (unpaginated), Aug. 23, 2021; *Inmate Affidavit*, at 3–4 (unpaginated), Sep. 22, 2021. Governor Lee argues that none of these statutes

waives the State's sovereign immunity. *See* Mem. of Law in Supp. of Resp.'s Mot. to Dismiss, at 5–6. The first statute permits a sex offender to file a petition with the chancery court for review of a denial of his request for removal from the sex offender registry:

An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request.

Tenn. Code. Ann. § 40-39-207(g)(1). Governor Lee correctly points out that this provision does not create a separate cause of action or authorize relief in the form of damages; it merely allows for judicial review of the TBI's decision. *See* Mem. of Law in Supp. of Resp.'s Mot. to Dismiss, at 5.

The latter statutes, in this context, permit an aggrieved party to sue a state official who has violated that individual's constitutional rights by enforcing an allegedly unconstitutional statute. *See* 42 U.S.C. § 1983; Tenn. Code Ann. § 29-14-103; *Colonial Pipeline Co.*, 263 S.W.3d at 848–50 (“An important issue is whether a declaratory judgment may be issued against individual state officers. . . . This concept of sovereign immunity generally extends to state agencies and state officers acting in their official capacity. In *Stockton v. Morris & Pierce*, 172 Tenn. 197, 110 S.W.2d 480 (1937), however, we held that the doctrine of sovereign immunity does not bar suits against state officers to prevent them from enforcing an allegedly unconstitutional statute.”). This applies, however, only to state officers with a *direct* role in the enforcement of the allegedly unconstitutional statute; neither an officer's status as a representative of the state nor mere supervisory role will suffice. *See Ex Parte Young*, 209 U.S. 123, 157 (1908) (“In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of

the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party.”); *Dunn v. Tennessee*, 697 F.2d 121, 128 (6th Cir. 1982) (citing *Rizzo v. Goode*, 423 U.S. 326, 373–77 (1976)) (“The United States Supreme Court has held that a 1983 action cannot lie against a police supervisor for failure to prevent police misconduct, absent a showing of direct responsibility for that improper action. What is required is a causal connection between the misconduct complained of and the official sued.”). Mr. Little makes no such allegation as to Governor Lee. See *Untitled Pet.*, at 1 (unpaginated); *Inmate Affidavit*, at 3–4 (unpaginated). Nor does Governor Lee’s role as head of the State’s executive branch satisfy this requirement. See *Woods v. Rausch*, No. 21-0018-II, at 8 (Tenn. Ch. Ct. Nov. 30, 2021).

Accordingly, the Court holds that the State of Tennessee’s sovereign immunity precludes it from exercising jurisdiction over Mr. Little’s claims against Governor Lee. The motion before the Court is therefore **GRANTED**, and all claims brought against Governor Lee are hereby **DISMISSED**.

B. *Governor Lee’s Additional Arguments Are Now Moot*

Because the Court has granted Governor Lee’s motion on the basis of sovereign immunity, Governor Lee’s other arguments are now moot. Accordingly, the Court declines to address any further issues raised by Governor Lee.

II. Mr. Little’s Motion for Default Judgment

A. *Mr. Little Has Not Properly Served Director Rausch*

Mr. Little asserts he is entitled to the entry of judgment by default against Director Rausch. Mr. Little states that Director Rausch was properly served on April 14, 2022, and that on May 16, 2022, Director Rausch was given notice of his failure to respond by Mr. Little’s filing of that date.³

³ Mr. Little’s notice states that Director Rausch was served on April 4, 2022. *Untitled Document*, at 1, May 16, 2022.

Mot. for J. by Default, at 1 (unpaginated), June 16, 2022. Thus, argues Mr. Little, Director Rausch has failed to respond and under, Tenn. R. Civ. 55.01, and is subject to the entry of default judgment against him. *See* Mot. for J. by Default, at 1–2 (unpaginated).

In response, Director Rausch first points to Tenn. R. Civ. P. 12.01, which provides that he must “serve an answer within 30 days after the service of the summons and complaint upon the defendant.” Resp’t Director Rausch’s Resp. in Opp’n to Pet’r’s Mot. for Default J., at 2. Director Rausch then highlights some of the requirements for service to be perfected. Resp’t Director Rausch’s Resp. in Opp’n to Pet’r’s Mot. for Default J., at 2–3. First, proper service requires the claimant to “send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant.” Tenn. R. Civ. P. 4.04(10). Second, “[t]he summons shall be issued in the name of the State of Tennessee, be dated and signed by the clerk, contain the name of the court and county, the title of the action, and the file number.” Tenn. R. Civ. P. 4.02. And third, when service is being attempted “[u]pon the state of Tennessee or any agency thereof,” it is perfected “by delivering a copy of the summons and of the complaint to the attorney general of the state or to any assistant attorney general.” Tenn. R. Civ. P. 4.04(6). As already stated above, a suit against a state officer in his official capacity is effectively a suit against the State. *See Cox*, 399 S.W.2d at 778; *Williams*, 230 S.W.3d at 389. Therefore, Director Rausch must be served in this case through the Attorney General’s Office. Director Rausch argues that he has not been properly served because Mr. Little failed to comply with these requirements and, therefore, Director Rausch’s time to respond to the petition has not begun to run. Resp’t Director Rausch’s Resp. in Opp’n to Pet’r’s Mot. for Default J., at 3.

Mr. Little previously attempted to serve Director Rausch in February 2022 at the TBI Headquarters. *See* Summons for Director Rausch, at 1 (unpaginated). Presumably, Director

Rausch considered the first summons deficient because it was sent to the TBI Headquarters rather than the Attorney General's Office. *See* Resp't's Req. for Special Three-Judge Panel, at 1 n.2. Director Rausch has attached the second summons he received, evidently on April 21, 2022. Resp't Director Rausch's Resp. in Opp'n to Pet'r's Mot. for Default J., Ex. 1, at 2 (unpaginated). Unlike the first summons, the second summons lacks signature of the clerk. *See Compare* Resp't Director Rausch's Resp. in Opp'n to Pet'r's Mot. for Default J., Ex. 1, at 2 (unpaginated), *with* Summons for Director Rausch, at 1 (unpaginated). Mr. Little also appears to have sent a different version of the petition than the documents he filed with the Court. *Compare* Resp't Director Rausch's Resp. in Opp'n to Pet'r's Mot. for Default J., Ex. 1, at 3–4 (unpaginated), *with* Untitled Pet., at 1 (unpaginated); Inmate Affidavit, at 3–4 (unpaginated). Further, the summons, while correctly addressed to Attorney General's Office, was sent through the regular mail. Resp't Director Rausch's Resp. in Opp'n to Pet'r's Mot. for Default J., Ex. 1, at 10 (unpaginated). These deficiencies in service preclude an entry of default judgment against Director Rausch. Accordingly, Mr. Little's motion is hereby **DENIED**.

While the bases for denial of Mr. Little's motion may seem to be trivial technicalities, particularly in light of the obvious actual knowledge of this matter on the part of the attorneys who will be representing Director Rausch, proper service of process is far from trivial. As Director Rausch points, out “[s]ervice of process is an essential part of a legal proceeding because the trial court’s jurisdiction of the parties is acquired by service of process.” *Ramsay v. Custer*, 387 S.W.3d 566, 568 (Tenn. Ct. App. 2012) (citing *Watson v. Garza*, 316 S.W.3d 589, 593 (Tenn. Ct. App. 2008)). And without jurisdiction over Director Rausch, the Court is powerless to preside over Mr. Little's claims against him. Absent proof of proper service, this matter may not proceed.

B. *Perfecting Service on Director Rausch*

The Clerk is hereby **DIRECTED** to issue summons for Director Rausch at the Attorney General's Office and to mail that summons, as well as a copy of Mr. Little's petition (which the Court will consider to be both the untitled document filed on August 23, 2021, marked on the docket as Complaint/Petition and the Inmate Affidavit filed on September 22, 2021), to Mr. Little. Upon receipt of the summons and petition, Mr. Little is **ORDERED** to mail those documents within 45 days "by registered return receipt or certified return receipt mail" to Director Rausch through the Attorney General's Office. Upon the perfection of service and the timely filing of a responsive pleading or Rule 12 motion, the Court will issue a scheduling order.

CONCLUSION

For the foregoing reasons, Governor Lee's Motion to Dismiss is **GRANTED**, and Mr. Little's Motion for Default Judgment is **DENIED**. The Clerk and Master is **DIRECTED** to issue summons for Director Rausch and mail that summons as well as a copy of the petition to Mr. Little. Mr. Little is then **ORDERED** to achieve proper service upon Director Rausch by mailing those documents within 45 days "by registered return receipt or certified return receipt mail" to Director Rausch through the Attorney General's Office. Upon the timely filing of a responsive pleading or Rule 12 motion, the Court will enter a scheduling order.

It is so ORDERED.

s/Anne C. Martin

CHANCELLOR ANNE C. MARTIN, Chief Judge

s/ Barry A. Steelman

JUDGE BARRY A. STEELMAN

s/ J. Robert Carter, Jr.

JUDGE J. ROBERT CARTER, JR.

cc by U.S. Mail, fax, or e-filing as applicable to:

Darren Marion Little
Lincoln County Jail
4151 Thorton Taylor Pkwy
Fayetteville, TN 37334

Cody N. Brandon, Assistant Attorney General
Miranda Jones, Assistant Attorney General
Law Enforcement and Special Prosecutions Division
Office of the Tennessee Attorney General
P.O. Box 20207, Nashville, TN 37202-0207
cody.brandon@ag.tn.gov
miranda.jones@ag.tn.gov