Civil Law Update

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Topics:

- Designations: Policy, Procedure, *de facto* judges
- Detainer Warrants
- Default by Mail
- Quirky procedure cases
- TN Supreme Court cases: Dependency and Neglect, Termination of Parental Rights

Designations
T.C.A. §§ 16-15-209, 17-2-107, 17-2-208

- If the judge of a court of general sessions or juvenile court finds it necessary to be absent from holding court, the judge may seek a special judge. (T.C.A. § 16-15-209)
- The provisions of Chapter 2, Title 17 apply equally to the judges of the courts of general sessions. (T.C.A. § 17-2-107)
- Judges of courts of general sessions and juvenile courts may interchange with each other whenever causes exist making an interchange necessary or for mutual convenience. (T.C.A. § 17-2-208)

Designations
AOC Policy

- On the AOC website is the Designation Policy approved by then-Chief Justice Page and AOC Director Long (effective 9/01/22).

- https://tncourts.gov/administration/human-resources/policy-manual/04-judicial-policies

- 4.02 Interchange, designation and substitution of judges of general sessions and juvenile courts

Designations
AOC Policy

- Judges of courts of general sessions and juvenile courts may generally interchange with each other whenever causes exist making an interchange necessary or for mutual convenience. (Ex – congestion or delay in disposition)
- If a judge is disqualified by reason of a conflict of interest, OR where a judge's impartiality in choosing another judge could be questioned, the judge should follow the steps set forth in Section VI(A) of the AOC Policy

Designations
Procedure – Conflict of Interest

- **With the agreement of all parties to the case,** the judge may seek interchange under T.C.A. § 17-2-201.
- If the recusing judge is the only general sessions or juvenile court judge in that county, the judge shall request designation of a judge by the Chief Justice.
- Email: designationrequests@tncourts.gov

Designations
Standing Orders

- General Sessions judges may also seek a Standing Order which allows a predetermined set of general sessions/juvenile court judges to sit in when a judge will be absent and/or unable to hold court.
- For example, upcoming vacations, conferences, extended medical absences, etc.
- Only effective for up to one (1) year or less depending on the need/circumstances
- Email: designationrequests@tncourts.gov to request a Standing Order

Designations

Stooksbury v. Varney, 2023 WL 2642616

- This was an appeal regarding a father's failure to remit payments towards his monthly child support obligation.

- The matter was originally heard by the Knox County Juvenile Court Judge in 2017 and a PPP was entered.

- In early 2018, a show cause motion was filed, and Union County Juvenile Judge Darryl W. Edmondson was designated to hear the post-trial matter.

Designations
Stooksbury v. Varney, 2023 WL 2642616

- Mother subsequently filed a contempt petition, and it was given both a Knox County and a Union County docket number. There was a dispute as to whether it was filed in Knox County or Union County; however, the filings were erroneously transmitted to the Union County Juvenile Court.

- Father filed answers to both the show cause motion and contempt petition reflecting a Union County caption.

- The matter came before Judge Edmondson who acknowledged that he was sitting by interchange. After discovering that the previous filings and orders erroneously meshed Union and Knox County captions, he entered an order that all previous filings shall contain the Knox County Juvenile Court caption, and that all pleadings filed in Union County shall be forwarded to the Knox County Juvenile Court. He also put down an order finding Father in contempt but reserving other matters.

Designations

Stooksbury v. Varney, 2023 WL 2642616

- Father subsequently filed a motion to dismiss Mother's 2018 contempt petition arguing that "the Juvenile Court for Union County, TN does not have jurisdiction" and that the Knox County Juvenile Court never relinquished jurisdiction.

- Father also argued that while Judge Edmondson had heard this matter through interchange, at no time was he sitting as the Judge for Union County Juvenile Court.

- Judge Edmondson denied the motions, and Father appealed; however, the orders were not final, so the Father's initial appeal was dismissed.

Designations

Stooksbury v. Varney, 2023 WL 2642616

- Mother then filed a second contempt petition in Knox County Juvenile Court, but the petition bore a Union County caption.
- General Sessions Judge Steven Wolfenbarger, Grainger County with Juvenile Court jurisdiction, was assigned to replace Judge Edmondson.
- Judge Wolfenbarger heard the matter and entered a final order from which Father appealed.

Designations

Stooksbury v. Varney, 2023 WL 2642616

- Issue: Whether the trial court had subject matter jurisdiction to consider the 2018 petition?

- Father argued that the trial court lacked subject matter jurisdiction because Mother's first contempt petition was filed in Union County and Knox County never relinquished exclusive jurisdiction – the trial court's orders were therefore void.

- Father elected not to transmit the entire record – including the 2018 contempt petition that he alleges was filed in the wrong county/court.

Designations

Stooksbury v. Varney, 2023 WL 2642616

- Nevertheless, the COA noted that on April 16, 2018, the Chief Justice appointed Judge Edmondson to hear the post-trial matters under Tenn R. Sup. Ct. Rule 11.

- When a judge is sitting by interchange, "the judge or chancellor holding court in the circuit or division of another, shall have the same power and jurisdiction as the judge or chancellor in whose place the judge or chancellor is acting." (17-2-206)

- A judge sitting by interchange is not required to be a resident of the county of the judge for whom such judge is sitting, but must possess the same qualifications. (17-2-208)

Designations

Stooksbury v. Varney, 2023 WL 2642616

- Held: Judge Edmonson, at the time he presided over this matter, was a Juvenile Judge for Union County. He possessed the same qualifications as the Knox County Juvenile Court Judge. He was designated to hear this matter by the Chief Justice.

- Just because he is a Juvenile Judge for Union County does NOT mean that he heard the matter in the Union County Court – he sat by INTERCHANGE.

- Judge Edmonson therefore acted with the *same* power and jurisdiction as a Knox County Juvenile Court judge.

Designations
***Stooksbury v. Varney*, 2023 WL 2642616**

- Father essentially argued that the clerical errors in the captioning and filing of the pleadings and orders deprived the trial court of subject matter jurisdiction.

- Not so – Judge Edmondson (and Judge Wolfenbarger) continuously acknowledged that they were sitting by interchange, and Judge Edmondson entered an order clarifying the record regarding the clerical error.

- Although the errors may have caused some confusion, they do not deprive the trial court of subject matter jurisdiction.

Designations
State of TN v. Anthony T. Brown, 2023 WL 4573910

- Issue: What is the effect of a procedural error in the process of designating a judge?

- A Robertson County Grand Jury indicted the defendant. The matter was originally assigned to Judge Ayers.

- After the arraignment, the Presiding Judge entered an order stating that all the Judges of the 19th Judicial District have recused. Rather than send the matter to the Chief Justice, however, the order designated Judge Gay of the 18th Judicial District to hear the matter "by interchange."

Designations
State of TN v. Anthony T. Brown, 2023 WL 4573910

- The Defendant, through counsel, filed a motion objecting to the "interchange process" – specifically that because all of the judges recused, the only method remaining was to apply to the Chief Justice to designate a judge

- Judge Gay denied the motion, but noted Defendant's objection.

- On appeal, the Defendant contended there was reversible error in the designation of Judge Gay by the recusal/interchange order – the Presiding Judge should have requested the Chief Justice to designate another judge rather than the Presiding Judge choosing the successor judge.

Designations
State of TN v. Anthony T. Brown, 2023 WL 4573910

- The State argued that even if procedural errors exist, Judge Gay's presiding over the matter was proper because he was serving as a *de facto* judge acting under good faith and there was no evidence in the record that the Defendant did not receive a fair trial before a fair and impartial judge.

- Held: Tennessee's appellate courts have recognized that a procedural error in the appointment of a judge "is not necessarily fatal."

- "If a judge is acting under the color of law absent bad faith, the special judge may serve as a *de facto* judge, and his or her acts will be binding on the parties."

<u>Designations</u>

<u>*State of TN v. Anthony T. Brown*, 2023 WL 4573910</u>

- " A judge *de facto* is one acting with color of right and who is regarded as, and has the reputation of, exercising the judicial function he assumes."
- <u>Pivotal question</u>: What material impact did the alleged procedural errors have on the Defendant?
- None. There was nothing in the record to suggest that Defendant did not receive full and fair proceedings in the trial court. Judge Gay acted as a *de facto* judge in this case. He was a duly elected criminal court judge in an adjoining district. At the time of the trial, he had been a criminal court judge for approximately fifteen years.
- He agreed with the presiding judge in the 19th Judicial District to hear the case, which was confirmed by the presiding judge's written order. Clearly, Judge Gay was "acting with color of right and who is regarded as, and [had] the reputation of, exercising the judicial function he assumes.' Judge Gay did not seek to insert himself into the matter – he was assisting.

Designations

State of TN v. Anthony T. Brown, 2023 WL 4573910

- Importantly, Defendant made no allegation that Judge Gay was prejudiced against him or that the judge would have faced disqualification on grounds separate from the procedural issues.

- Defendant could not show how the outcome of his case would have been different if another judge had presided over his trial.

- Judge Gay applied the only legal sentence for Defendant's conviction.

- Consent by all the parties is not a prerequisite for the existence of a *de facto* judge.

- Any error was therefore harmless.

Designations
Final Thoughts

- Interchange

vs

- Designation

vs

- Transfer

Should any questions come up in the future, please email us at designationrequests@tncourts.gov.

Detainer Warrant

Hardin v. Warf, No. 2023 WL 5165414

- This is an appeal from the filing of a detainer warrant in general sessions court. The facts in the case are undisputed.
- Mr. Hardin and Ms. Warf were in a romantic relationship. At some point, they agreed to move Ms. Warf's double-wide mobile home to Mr. Hardin's real property and remove Mr. Hardin's single-wide mobile home.
- Eventually, the relationship soured, and the parties separated. Mr. Hardin then requested that Ms. Warf remove her mobile home from his real property.
- She refused.

Detainer Warrant
***Hardin v. Warf,* No. 2023 WL 5165414**

- As a result of Ms. Warf's refusal to remove her mobile home, Mr. Hardin filed a detainer warrant against Ms. Warf in general sessions court seeking to remove the mobile home.
- Mr. Hardin alleged that their current arrangement was based on an oral agreement allowing her to move her mobile home onto his property so they could reside together. Now that the relationship was over, however, he wanted Ms. Warf to remove herself, her mobile home, and all of her possessions from his property.
- Mr. Hardin claimed no ownership interest in the mobile home or in any of Ms. Warf's possessions.
- The General Sessions Court granted Mr. Hardin possession of the real property, but ordered him to pay for the removal of Ms. Warf's mobile home.
- Ms. Warf appealed the matter to circuit court.

Detainer Warrant

***Hardin v. Warf,* No. 2023 WL 5165414**

- The parties appeared for a trial in the circuit court, and the court heard arguments as to whether a detainer action filed under *Tennessee Code Annotated* Title 29, Chapter 18 was the proper vehicle to resolve the matter.
- The circuit court entered an order concluding that Mr. Hardin properly filed his action under *Tennessee Code Annotated* Title 29 Chapter 18.
- The parties waived a trial and agreed for the circuit court to rule on the pleadings. Shortly thereafter, the circuit court entered an order concluding that Mr. Hardin was entitled to the relief requested and awarded him possession of his real property finding that Mr. Hardin was "both landlord and tenant."
- The circuit court also ordered Ms. Warf to remove her mobile home at her expense.

Detainer Warrant
Hardin v. Warf, No. 2023 WL 5165414

- Issues:

- Whether the circuit court erred in finding that *Tennessee Code Annotated* § 29-18-109 did not apply.

- Whether Mr. Hardin was permitted to use a detainer warrant for this type of matter to remove a structure that was jointly occupied and jointly maintained.

Detainer Warrant

***Hardin v. Warf,* No. 2023 WL 5165414**

- "Unlawful detainer arises when the tenant enters by contract, either as 'tenant or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant, and, in either case, willfully or without force, holds over possession from the landlord, or the assignee of the remainder or reversion.'"
- Although unlawful detainer actions existed at common law, they were not formally codified until 1821.
- "If it were left to be struggled for between the parties by force and violence, the peace of the community would not only be destroyed, but in very many instances bloodshed would be the consequence[.]"

Detainer Warrant

Hardin v. Warf, No. 2023 WL 5165414

- Ms. Warf requested the action be dismissed as barred by T.C.A. § 29-18-109 because she peacefully enjoyed uninterrupted occupation and quiet possession of the property from October 2015 until April 2020.

- “The uninterrupted occupation or quiet possession of the premises in controversy by the defendant, for the space of three (3) entire years together, immediately preceding the commencement of the action, is, if the estate of the defendant has not [been] determined within that time, a bar to any proceeding under this chapter.” (T.C.A. § 29-18-109)

- “There is a veritable dearth of case law on this statute.”

Detainer Warrant

***Hardin v. Warf,* No. 2023 WL 5165414**

- The COA then reviewed decisions from other courts that construed a similar version of their own statute. *See* ***Lee Med., Inc. v. Beecher***, 312 S.W.3d 515, 535 (Tenn. 2010).
- The COA looked to Missouri which has similar version of the statute:

The provisions of this chapter shall not extend to any person who has had the uninterrupted occupation or been in quiet possession of any lands or tenements for the space of three whole years together, immediately preceding the filing of the complaint, or who has continued three whole years in the peaceable possession after the time for which the premises were demised or let to him, or those under whom he claims, shall have expired. (Mo. Ann. Stat. § 534.300)

Detainer Warrant

***Hardin v. Warf,* No. 2023 WL 5165414**

- The COA found a MO case based on this statute in which the defendants made a similar argument to that of Ms. Warf. The MO COA explained that the SOL clock did not run during a tenancy because such possession was not adverse to the owner:

"At the expiration of a lease, it is the tenant's duty to surrender the premises, and when his time expires, he becomes an unlawful detainer. The tenant's uninterrupted possession is "by and with the consent" of the landlord. At the point the landlord-tenant relationship terminates, the tenant's possession thereafter is adverse, which triggers the running of the three-year period described in § 534.300."

Detainer Warrant

***Hardin v. Warf,* No. 2023 WL 5165414**

- "Section 534.300 is a statute of limitations that does not commence to run until there is an unlawful detainer." Thus, it was held that the three-year statute of limitations was not triggered until the defendants refused to vacate and surrender the property. *Id.*
- Here, the parties separated sometime between late 2018 and early 2019. Mr. Hardin then requested that Ms. Warf remove her mobile home from his real property, but she refused.
- At that point, Ms. Warf's possession became adverse, which triggered the running of the three-year period described in T.C.A. § 29-18-109. Mr. Hardin filed his detainer warrant in general sessions court in April 2020, which fell within the three-year period that commenced sometime in 2018 or 2019.
- Therefore, we conclude that this matter was not barred by T.C.A. § 29-18-109.

Detainer Warrant – Wrongful Foreclosure

***JCR, LLC v. Hance,* No. 2023 WL 5528597**

- This matter is an appeal from a detainer action following a foreclosure sale of real property in which a purchaser of real property brought an unlawful detainer action against the original homeowners when they refused to vacate after the sale.
- Vicki and Ernest Hance (the Hances) purchased a home in 2007 and financed the purchase by executing a Deed of Trust securing their obligations under a promissory note.
- Eventually, the mortgage was owed to U.S. Bank National Association and was serviced by Nationstar.
- The Hances defaulted on their payments under the promissory note in 2017, and as a result, their property was scheduled for a foreclosure sale in August of 2017.

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- The Hances received notice of the sale from the Trustee approximately one month prior to the sale.

- Section 19 of the Deed of Trust stated: If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument[.]

- The Hances subsequently communicated with Nationstar agents between July 10 and August 7, which involved attempts to obtain a letter from Nationstar that would allow the Hances to make a withdrawal from Mr. Hance's 401(k) to cure the default and exercise the right of reinstatement under Section 19 of the Deed of Trust.

- The Hances eventually wired $6,771.16 to Nationstar on August 7, 2017. There was nothing in the record, however, that the Hances ever notified the Trustee, or attempted to notify the Trustee.

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- The foreclosure sale occurred the next day as scheduled, and the property was purchased by JCR, LLC.
- The Hances refused to vacate, so JCR filed a detainer action in general sessions court.
- A few months later, the day before the detainer action hearing, the Hances filed a Lawsuit against Nationstar and JCR in the circuit court alleging, *inter alia*, wrongful foreclosure.
- The Hances did not dispute that they were in default nor that they had notice of the foreclosure sale; rather, they alleged Nationstar intentionally hampered their efforts to reinstate under Section 19 of the Deed of Trust.
- Nationstar and JCR each filed motions to dismiss under TRCP 12.02(6). JCR argued it was a bona fide purchaser.

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- The circuit court **denied** Nationstar's motion to dismiss.
- The circuit court **granted** JCR's motion to dismiss finding that JCR was a bona fide purchaser of the property, and thus dismissed the Hance's Lawsuit against JCR with prejudice.
- The detainer action in general sessions court was then removed to the trial court under T.C.A. § 16-15-732 by agreed order.
- JCR then filed a "Motion for Judgment Based on Res Judicata" and in the alternative for summary judgment in its detainer action.
- The portion of the motion pertaining to res judicata was based on the court's prior order granting its motion to dismiss by finding that JCR was a bona fide purchaser.
- JCR's motion for summary judgment was largely premised on the same theory – the property was purchased at a foreclosure sale, JCR was a bona fide purchaser, and title to the property now vested in JCR.

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- The Hances filed a response again arguing that the order granting JCR’s motion to dismiss was not “final” for purposes of res judicata and that they were thwarted and defrauded out of their right to cure the default in accordance with the Deed of Trust.
- While JCR’s motion was pending, the detainer action and the Hances’ Lawsuit were consolidated.
- The trial court granted the motion for summary judgment finding that (1) JCR purchased the property at a publicly conducted foreclosure sale, (2) the Hances did not appear at the sale or put any buyers on notice they had a claim against the property, (3) JCR was a bona fide purchaser, and (4) nothing in the public record gave notice to anyone of a claim on behalf of the Hances.
- The trial court then granted JCR possession of the property.

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- The Hances then filed a motion requesting that the trial court expand its summary judgment findings to include finding that the Hances' defense of wrongful foreclosure "is not applicable to a detainer action filed by JCR, LLC because it is a Bona Fide Purchaser for Value."

- The trial court denied their motion, and the Hances appealed.

Detainer Warrant – Wrongful Foreclosure
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- Issues:

  1) Whether the trial court erred in dismissing JCR from the Hances' Lawsuit in which the Hances asserted wrongful foreclosure against Nationstar.

  2)Whether the trial court erred in granting summary judgment and possession of the real property to JCR when the Hances asserted wrongful foreclosure as an affirmative defense to JCR's detainer action.

- Thus, there are essentially two (2) components to this appeal as a result of the court's order to consolidate: (1) the Hances'Wrongful Foreclosure Lawsuit (Issue #1) and (2) JCR's Detainer Action (Issue #2).

Detainer Warrant – Wrongful Foreclosure
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- Issue #1 (Wrongful Foreclosure Lawsuit):
- In the conclusion portion of their appellate brief, the Hances requested that the COA reverse the trial court's dismissal of JCR from their Wrongful Foreclosure Lawsuit they filed against against both Nationstar and JCR.
- However, the COA observed that the Hances' Complaint which formed the basis of their Wrongful Foreclosure Lawsuit **only** asserted claims against Nationstar. It asserted no causes of action against JCR despite JCR being named as defendant - it contained only a request to divest JCR of its right in the property.
- Thus, because the Hances alleged no causes of action against JCR, the COA affirmed that the Hances failed to state a claim against JCR.
- Dismissal under TRCP 12.02(6) was therefore proper.

Detainer Warrant – Wrongful Foreclosure

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- Issue #2 (JCR's Detainer Action):
- The Hances argued that "[t]he fact that the Hances were both defrauded and wrongfully foreclosed upon is and should be a defense to a detainer [action] in Tennessee."
- The Hances conceded, however, that the only material fact in dispute with regard to their Wrongful Foreclosure Lawsuit against Nationstar is what was said in the final telephone conversation between a Nationstar employee and Mrs. Hance approximately 18 hours prior to the foreclosure sale.

Detainer Warrant – Wrongful Foreclosure

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- The Hances also contended that the only fact in dispute regarding JCR as a bona fide purchaser was whether JCR was required to investigate whether the foreclosure was properly conducted.

- As to this particular issue, the COA found it was question of law and not of fact, and because it was not properly developed on appeal, it was deemed to be waived.

Detainer Warrant – Wrongful Foreclosure

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- "When a detainer action is 'brought against the maker of a deed of trust who, after default and foreclosure, refused to surrender possession of the property,' the party seeking to gain possession by way of a summary detainer proceeding must rely on the action of 'unlawful detainer.' "
- To prevail in a post-foreclosure detainer action, the plaintiff must "establish (1) its constructive possession of the property and (2) its loss of possession by [the defendant's] act of unlawful detainer."
- "[Detainer] actions concern only the right to possession, and in such proceedings, [t]he estate, or merits of the title, shall not be inquired into."

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- "When a deed of trust establishes that, in the event of a foreclosure, a landlord/tenant relationship is created between the foreclosure sale purchaser and the mortgagor in possession of the property, constructive possession is conferred on the foreclosure sale purchaser upon the passing of title; that constructive possession provides the basis for maintaining the unlawful detainer."

- "In the unique situation of foreclosures conducted under a power of sale, the requisite landlord/tenant relationship may not arise when the trustee has exercised the power of sale in violation of the deed of trust."

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- The Hances could not, on appeal, dispute that the Trustee strictly complied with the terms of the Deed of Trust.
- The Hances could not, on appeal, dispute that they did not timely exercise their right under Section 19 of the Deed of Trust.
- The Hances instead relied only on the affirmative defense of Wrongful Foreclosure alleging, without citation to the record, that they were "defrauded and wrongfully foreclosed upon," and argued only that Nationstar interfered with their right to reinstate.
- "The burden to show the failure of any condition precedent under the Deed of Trust, … falls to [the party alleging the wrongful foreclosure]."

Detainer Warrant – Wrongful Foreclosure

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- "Because it is undisputed that the Trustee provided the notice to the Hances required by Section 22 of the Deed of Trust and had the power to sell the property, we conclude that the foreclosure sale was effective to transfer constructive possession to JCR."
- "This constructive possession by JCR was then sufficient to maintain the Detainer Action. Furthermore, JCR was not able to exercise its right of possession of the property because the Hances refused to vacate the property following the foreclosure sale, an act of unlawful detainer satisfying the second element of JCR's claim."
- "In summary, JCR has established its right to possession, and the Hances have failed to establish the existence of any genuine issues of material fact."
- Grant of summary judgment to JCR in its Detainer Action affirmed.

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- Judge Michael Swiney dissented.

- "There is absolutely no doubt that wrongful foreclosure can be raised as an affirmative defense to an unlawful detainer action brought by the purchaser of property in foreclosure." *Davis v. Williams*, 2011 WL 335069, at *3; *CitiFancial Mortg. Co., Inc. v. Beasley*, 2007 WL 772289, at *6-7

- "The reasoning behind this defense is evident—to protect those who are wrongfully foreclosed upon from losing their home."

- The Hances availed themselves of the defense of wrongful foreclosure, just as Tennessee law provides. The Hances' wrongful foreclosure lawsuit against Nationstar was still pending at the time this appeal was decided.

- While the Hances could theoretically still prevail against Nationstar, their home would be lost despite their win. "[R]eal property is unique, and more often than not, an award of damages is simply not an adequate remedy." *GRW Enterprises, Inc. v. Davis*, 797 S.W.2d 606, 614 (Tenn. Ct. App. 1990)

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- "That JCR is a bona fide purchaser for value is still subject to the Hances' wrongful foreclosure defense. To hold otherwise would create an exception for certain purchasers who are not the mortgage lender, an exception that does not currently exist in Tennessee law."
- "Tennessee law is clear that wrongful foreclosure is a defense to a detainer action. Allowing a bona fide purchaser to end-run the affirmative defense of wrongful foreclosure would eviscerate that defense."
- Under the majority opinion, those whose homes are wrongfully foreclosed upon—no matter how blatantly wrongful or even outright fraudulent the foreclosure process—would face certain ejection from their homes provided the purchaser was bona fide. I do not believe Tennessee law requires or even allows such an unjust result."

Sanders v. AM Used Auto Parts, LLC

2023 WL 1816360 - Default via Service by Mail

- This appeal concerns service of process on an out-of-state defendant's registered agent by mail and a default judgment entered by the general sessions court.
- Mr. Sanders filed a civil summons against AM Used Auto Parts in general sessions court alleging damages from breach of contract, fraud, and violation of the TN Consumer Protection Act. He requested $24,999.99 in damages.
- Mr. Sanders sent the summons to AM Used Auto Parts via certified mail properly addressed to the registered agent for AM Used Auto Parts in Florida.
- Mr. Sanders then filed an affidavit of service of process.

Sanders v. AM Used Auto Parts, LLC

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- Attached to the affidavit was a U.S. Postal Service Certified Mail Receipt showing the date of delivery.

- In addition, in the section with the heading "COMPLETE THIS SECTION ON DELIVERY" there is an unintelligible handwritten marking in section "A. Signature" that appears to be "DS17" with the box "Agent" circled or marked with a handwritten "X." In section "B. Received by (Printed Name)" there is another unintelligible handwritten marking that appears to be "C-19."

- The general sessions court granted Mr. Sanders a default judgment for $25,000.00 plus interest at the rate of 5.25 percent against AM Used Auto Parts.

Sanders v. AM Used Auto Parts, LLC
2023 WL 1816360 - Default via Service by Mail

- Mr. Sanders then served AM Used Auto Parts with a subpoena requesting "most recent financial statement for each bank account associated with AM Used Auto Parts, LLC." Attached to the subpoena was a U.S. Postal Service Certified Mail Receipt which is nearly identical to the return receipt attached to the affidavit of service of process.

- Again, the signature is handwritten and appears to be "DS17" with a handwritten notation of "C19" in the section for "Received by (Printed Name)."

- Defendant did not respond to the subpoena, and Mr. Sanders filed a motion for an order to show cause, which the trial court entered, requiring AM Used Auto Parts to appear in court and show cause why it should not be punished for contempt.

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- AM Used Auto Parts subsequently filed a "Petition for Writ of Error Coram Nobis" asserting that service of process was deficient and that the judgment is "illegal in that the suit asks for … $24,999.99 … and the judgment was for more than that." Mr. Sanders filed a response in opposition and motion to dismiss on October 21, 2021.
- The next day, AM Used Auto Parts filed a Motion under TCRP 60.02 with the same assertions of error.
- The General Sessions Court heard and denied the Rule 60 motion.

Sanders v. AM Used Auto Parts, LLC
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- AM Used Auto Parts appealed to circuit court. The circuit court held that Mr. Sanders properly served AM Used Auto Parts, AM Used Auto Parts has not presented any evidence to challenge the authenticity of the signature, and the judgment of $25,000 is not void.

- Defendant appealed.

Sanders v. AM Used Auto Parts, LLC
2023 WL 1816360 - Default via Service by Mail

Issues:

1) AM Used Auto Parts asserted that there was "no signature" on the return receipt and the service was therefore insufficient.

2) AM Used Auto Parts asserted that the default judgment was invalid because it was entered for one cent more than the amount sued for in the civil summons.

Sanders v. AM Used Auto Parts, LLC
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- "When a party seeks relief under Rule 60.02, the burden of proof is on the moving party, and it is that party's duty to prove by a preponderance of the evidence that one of the Rule 60.02 grounds for relief exists."
- The exercise of personal jurisdiction over a party is predicated on effective service of process.
- "The general rule is that notice by service of process or in some other manner provided by law is essential to give the court jurisdiction of the parties; and a judgment rendered without such jurisdiction is void and subject to attack from any angle."

Sanders v. AM Used Auto Parts, LLC

2023 WL 1816360 - Default via Service by Mail

- T.C.A. §§ 16-15-901 to -905 sets forth the service of process requirements for a civil warrant filed in general sessions court.

- Service by mail upon a partnership or unincorporated association, includ[ing] a limited liability company, that is named defendant upon a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association. (T.C.A. § 16-15-904(d) – Service upon defendants outside of state)

- Service is complete upon mailing. (T.C.A. § 16-15-904(e))

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- However, service by mail cannot serve as the basis for default judgment unless certain conditions are met:

(1) A return receipt showing personal acceptance by the defendant or by persons designated by statute; or

(2) A return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to this subsection (e). (T.C.A. § 16-15-904(e)(1)-(2))

- At issue was whether subsection (1) was met.

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- Mr. Sanders served the summons by sending it via certified mail to AM Used Auto Parts' registered agent—Alexandria Metallo—in Florida.

- AM Used Auto Parts did not argue that Alexandria Metallo was the incorrect person to receive service, nor did it argue that the wrong address was used. The return receipt was returned "signed" by "an agent."

- COA: We recognize that the return receipt was not "signed" in the traditional way, as it does not include a cursive signature of Alexandria Metallo. However, as described above, the letters and numerals "DS17" appear on the "Signature" line, and the letters and numerals "C-19" appear on the "Received by" line.

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- "It has been held that a cross mark is a good signature; also initials; *even numerals*, when used with the intention of constituting a signature; and a typewritten name or imprint made by a rubber stamp has the same effect; and this is equally true, though the typewriting or stamp impression be made by another, if the person to be charged has directed it." ***Waddle v. Elrod***, 367 S.W.3d 217, 227 (Tenn. 2012).

- "We hold that the markings on the signature line constitute a valid signature…In light of the fact that the return receipt was properly addressed to Defendant's registered agent, was marked received by the agent, and was 'signed,' we agree with the trial court that the record contains 'a return receipt showing personal acceptance by the defendant or by persons designated by statute.'

- The default judgment stands.

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- AM Used Auto Parts did get a “win” though.

- “[A] judgment by default is limited to the relief demanded in the complaint. The theory of this provision is that once the defending party receives the original pleading he should be able to decide on the basis of the relief requested whether he wants to expend the time, effort, and money necessary to defend the action.” ***Qualls v. Qualls***, 5890 S.W.2d 906, 909 (Tenn. 1979)

- Judgment reduced by $0.01 from $25,000 to $24,999.99 – the amount requested in Mr. Sanders’ summons.

Dodgson v. Williams, 2022 WL 3581854 TCRP 12.02(6) Motion to Dismiss a General Sessions Appeal

- This case involves an rather interesting strategy on a general sessions appeal to circuit court.

- Detainer Action: Dodgson sued Williams in general sessions court concerning real property that Williams lived on, which Dodgson had purchased via foreclosure.

- Dodgson won in the general sessions court, and Williams appealed to the circuit court.

- Dodgson then filed a TRCP 12.02(6) motion for failure to state a claim upon which relief can be granted.

***Dodgson v. Williams*, 2022 WL 3581854**

- Dodgson argued that the foreclosure sale was proper and that he was a bona fide purchaser.

- The circuit court granted the motion to dismiss.

- Williams appealed.

- Threshold Issue: Whether a Tenn. R. Civ. P. 12.02(6) motion to dismiss was available to Dodgson as the plaintiff in this lawsuit.

***Dodgson v. Williams*, 2022 WL 3581854**

- "A Rule 12.02(6) motion challenges only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence."

- "The resolution of a 12.02(6) motion to dismiss is determined by an examination of the pleadings alone."

- Williams appealed the judgment of the general sessions court to the circuit court for a trial *de novo.* "As authorized by T.C.A. § 16-15-729, *de novo* appeals to circuit courts from general sessions courts entail 'an entirely new trial as if no other trial had occurred and as if the case had originated in the circuit court.'"

- "While the Rules of Civil Procedure are applicable where pertinent to cases appealed from the general sessions court to the circuit court, '*the Rules do not require* the filing of written pleadings, issuance of new process, or *any* other *steps which have been completed prior to the appealing of the case to the circuit court.*'"

***Dodgson v. Williams*, 2022 WL 3581854**

- A TRCP 12.02(6) motion to dismiss for failure to state a claim was unavailable to Dodgson. Dodgson initiated this case with a detainer warrant. He was the plaintiff, and there was no counterclaim at issue – Dodgson's claim was the only claim pending in the circuit court.

- Williams' appeal from the general sessions court to the circuit court was not a "claim" subject to dismissal for failure to state a claim.

- By proceeding under a Rule 12.02(6) motion to dismiss, Dodgson technically moved to dismiss his own action, which of course is not what he intended to do. Nothing in TRCP 12.02(6) or the jurisprudence concerning it suggests the rule can be used by Dodgson in this manner.

- A plaintiff may not, for instance, offensively employ a presumption of truth for his or her own complaint. That would be an inversion of the rule's purpose.

- A defendant, however, could move for dismissal of a plaintiff's case under TRCP 12.02(6).

Walker v. Shelby County Sheriff Dep't
2023 WL 3000875

- This case involves an appeal of a voluntary dismissal in general sessions court to circuit court.

- Walker initiated an action in general sessions court regarding alleged misconduct by the Sheriff's Department and its officers.

- Walker then took two (2) actions:

1. Walker filed a notice of nonsuit/voluntary dismissal of his general sessions action.

2. Walker then filed a notice of appeal of the general sessions matter to circuit court.

Walker v. Shelby County Sheriff Dep't

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- Walker then filed an amended complaint against the appellees.
- The appellees responded with a motion to dismiss stating that the trial court lacked subject matter jurisdiction – a plaintiff cannot appeal his own nonsuit.
- Walker then filed a second amended complaint for various claims, including alleging for the first time a claim under T.C.A. § 8-8-302, and sought $6 million in compensatory and punitive damages.
- Appellees filed another motion to dismiss stating that the trial court lacked subject matter jurisdiction and that Walker's claims were time-barred.

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- The trial court entered an order granting the motions to dismiss, finding that Walker could not appeal from a voluntary dismissal, that Walker could not rely on the savings statute to refile his action, and that Walker's claims were barred by the statute of limitations.

- Walker appealed.

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- Issues:

1) Did the circuit court err in dismissing plaintiff's claims and ruling that a plaintiff cannot appeal a voluntary nonsuit from general sessions court to circuit court pursuant to the "broad right" to appeal under the amended and broadened T.C.A. § 27-5-108(a)(1) that allows appeals "with unusual indulgence and with great liberality"?

2) Were Walker's claims under T.C.A. § 8-8-302 time barred?

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- T.C.A. § 27-5-108(a)(1) provides that "[a]ny party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with this chapter."

- Walker relied on a 2008 amendment to the statute which removed the requirement that any appealed order be adverse to the appellant

- The question came down to whether a nonsuit is a "decision."

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- COA looked to federal authority:

- "[A]lthough a voluntary nonsuit is a final termination of the action, it has been entered at the request of plaintiff, and he may not, after causing the order to be entered, complain of it on appeal. For this reason, it is well settled in the federal courts that no appeal lies from a judgment of voluntary nonsuit." ***Kelly v. Great Atlantic & Pacific Tea Co***., 86 F.2d 296-97 (4th Cir. 1936)

- The effect of this type of dismissal, a voluntary nonsuit, is to put the plaintiff in a legal position as if he had never brought the first suit.

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- TN law is nearly identical:

"When a voluntary nonsuit is taken, the rights of the parties are not adjudicated, and *the parties are placed in their original positions prior to the filing of the suit.*" ***Himmelfarb v. Allain***, 380 S.W.3d 35, 40 (Tenn. 2012)

- A plaintiff's right to nonsuit in general sessions court is controlled by statute rather than the TRCP. *See* generally T.C.A. § 28-1-105.

- However, the COA has held that cases interpreting Rule 41 are persuasive in considering nonsuits taken in general sessions court. *See* ***Stewart v. Cottrell***, 255 S.W.3d 582, 585 (Tenn. Ct. App. 2007)

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- The COA then turned to the dictionary definition of "decision."
- *Black's Law Dictionary* defines the term "decision" as follows: "[a] judicial or agency determination after consideration of the facts and the law; esp[ecially], a ruling, order, or judgment pronounced by a court when considering or disposing of a case." Decision, *Black's Law Dictionary* (9th ed. 2009).
- Thus, the general definition for the term "decision" implies some decision-making on the part of the tribunal.

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- Giving the term "decision" its ordinary meaning, we must conclude that the General Assembly intended that appeals under T.C.A. § 27-5-108(a)(1) would only lie from a judgment resulting from a general sessions court's decision-making.
- Because Walker voluntary dismissed his action, there was no "decision" needed from the trial court.
- Action under T.C.A § 8-8-302 were dismissed as they were filed "well outside" the statute of limitations.

Two important TN Supreme Court cases for those with Juvenile Jurisdiction

1) ***In re Neveah M.*, 614 S.W.3d 659 (Tenn. 2020)**

- For years, there was a split of authority on T.C.A. § 36-1-113(g)(14):

[A legal] parent or guardian has failed to manifest, by act or omission, an ability ***and*** *willingness to personally assume legal and physical custody or financial responsibility of the child*, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

- Does the "and" in the above statute mean "and" or does it mean "or"?

- "[W]e conclude that section 36-1-113(g)(14) places a conjunctive obligation on a parent or guardian to manifest both an ability and willingness to personally assume legal and physical custody or financial responsibility for the child. If a person seeking to terminate parental rights proves by clear and convincing proof that a parent or guardian has failed to manifest either ability or willingness, then the first prong of the statute is satisfied.

Two important TN Supreme Court cases for those with Juvenile Jurisdiction

- ***In re Markus E.***, 671 S.W.3d 437 (Tenn. 2023)
- In the context of severe child abuse, a person's conduct is considered "knowing," and a person is deemed to "knowingly" act or fail to act, when "he or she has actual knowledge of the relevant facts and circumstances or when he or she is either in deliberate ignorance of such facts.
- Under this standard, the relevant facts, circumstances, or information would alert a reasonable parent to take affirmative action to protect the child. For deliberate ignorance, persons can be found to have acted knowingly "when they have specific reason to know" the relevant facts, circumstances, or information "but deliberately ignore them." For reckless disregard, if the parent has been presented with the relevant facts, circumstances, or information and recklessly disregards them, the parent's failure to protect can be considered "knowing."
- Evidence did not clearly and convincingly show that failure of the mother and father to protect the child from non-accidental rib fractures was "knowing," as required under statute defining severe child abuse.

THE END