

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) 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.

The Council requests that applicants use 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 as detailed in the application instructions. Additionally, you must 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 original application, or the digital copy may be submitted via email to laura.blount@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I serve as Chancellor for the 12th Judicial District.

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

2003; BPR No. 022442.

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; BPR No. 022442; 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).

State of Tennessee

I was elected as Chancellor of the 12th Judicial District in 2018. I then ran unopposed in 2022 and was re-elected for an 8 year term.

Blevins & Blevins, PLLC/Melissa Thomas Blevins, PLLC

Jan. 2004 to August 31, 2017.

My focus was civil litigation with a concentration in domestic relations law. I also managed the firm, including but not limited to staff, billing and expenditures. Additional information will be provided in response to Question 8.

Southeast Community Services Agency (SECSA)

June 1997 - 2004

I worked full-time with at-risk children through my employment with SECSA while attending

law school. I began as a case manager investigating child abuse and neglect and advanced to various managerial positions over my seven years with the agency. I worked as court liaison between the Department of Children's Services and juvenile courts to address services available to families and placement of children in foster care or residential placement. I was then promoted and supervised the crisis intervention program. My final position with the agency was Resource Development Coordinator. As coordinator, I worked to explore grant opportunities and resources for our rural counties. I did have some overlap with SECSA and private practice as I was allowed to engage in limited practice while with SECSA. I left SECSA in 2004 to pursue full-time law practice.

Part-time Employment

I also ran my family's seasonal business, Big Shot Bubba's Fireworks, from 1994 until we closed in or about 2008. I had just turned 19 when we opened the business, which grew from a 40x60 tent to a permanent structure. I was responsible for researching inventory costs, calculating overhead, pricing items, scheduling staff and securing necessary business equipment.

While in undergraduate school, I secured employment with two local attorneys, Jerry Bible and Harvey Cameron. I had basic administrative duties such as transcription, filing and scheduling.

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.

I have always been employed.

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.

Pursuant to the Code of Judicial Conduct, Rule 3.10, as judge, I am precluded from practicing law. However, please see my response to Questions 5 and 8 for details of my former law practice.

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.

While in law school, I completed an internship with the 12th Judicial District Attorney General's office. I witnessed case preparation, staff meetings, one jury trial, numerous preliminary hearings and professional interactions with victims and/or their families. This was my first true opportunity to participate in the legal process and be in a courtroom.

Despite my experience with the assistant attorney general, my partner and I chose to divide responsibilities in our practice. As a result, unless there was an overlap with one of my clients, I had less opportunity to accept criminal cases. I focused on domestic litigation, orders of protection, juvenile court (retained and appointed) and mental health litigation through the involuntary committal process. I also maintained a successful mediation practice and aided in the resolution of hundreds of domestic cases. In the later part of my practice, I accepted social security disability cases and appeared many times for administrative hearings. My partner and I also shared responsibility for preparation of deeds, wills and personal injury cases.

My domestic practice required me to meet with clients, discuss Tennessee law with relation to assets, liabilities and parenting. After my initial meeting, I would file the appropriate complaint (or answer and counter complaint if my client had already been served with divorce documents), prepare written discovery, participate in depositions and have regular court appearances for temporary motions. Though not inclusive of all motions, examples of the types of issues raised at these hearings included possession of marital assets, division of financial responsibilities, temporary parenting, injunctive relief or to compel mediation. Although mediation was a strong tool in conflict resolution, not all cases settled. Therefore, I routinely prepared for lengthy trials, many all day or multi-day. Due to the complexities of some of the cases, I would often submit proposed findings of fact and conclusions of law relative to the evidence admitted at trial for the court to consider before ruling.

My goal was to be realistic with my clients and manage expectations. Though this is not easy with all clients, I was able to maintain many positive client relationships. If their expectations were unrealistic, I was candid and routinely took the time to explain the strengths and weaknesses of their case.

I served as special counsel for the Town of South Pittsburg shortly before I was elected. The majority of my experience in private practice was with the trial court, but I accepted two appellate cases and was solely responsible for briefing and arguments. In addition to the above case related work, I also managed all aspects of the firm, including but not limited to staff, finances, malpractice insurance and technology. It is difficult to say with specificity the percentages of my practice, but unequivocally domestic litigation was a significant majority.

Work Habits and Judicial Experience

The characteristics that made me a successful lawyer, have carried with me to the bench. I find comfort in being prepared. During my practice, I reviewed the applicable statute and formulated my proof to be consistent with the findings and analysis that was required of the court. I recall one of my judges telling me I was very "thorough."

I respect the time each attorney puts into his/her work and the cost associated with litigation. It is important for me to review the pleadings and/or briefs to assist me in understanding the issues. This not only helps me to be a better judge, but it also saves court resources and litigants' time and money. I have also found it important to review documents in advance of court due to various styles of attorney representation. The practice of law is complex and some attorneys are more proficient in writing versus oral argument.

Judicial Experience:

Prior to receiving my first judicial appointment, I sat by designation for Marion County juvenile and sessions judges, as needed. When I was appointed as judge for the Town of Kimball, I had never been to municipal court and had no municipal judge mentor. All I had was the law, a packed courtroom and me. Though it took time, I developed a routine and found realistic ways to hold litigants accountable while still finding reasonableness in my rulings involving traffic and ordinance violations. When I was appointed to my second municipal court, I was faced with an incredibly large recall docket for unpaid fees, as this was one of poorest cities in my county at the time. But, when I reviewed the citations, individuals were being assessed fines and cost for multiple charges on a single citation. After my review, I heard from the litigants and modified orders to reduce costs which paved the way for reasonable and prompt collection. Initially in this small city, court lasted in excess of two and a half to three hours. After I gained control of the docket, and established expectations regarding payment of costs and fines, court time was significantly reduced.

I carried the goal of efficiency forward when I was elected as Chancellor in 2018. My district consists of Marion, Grundy, Franklin, Rhea, Sequatchie and Bledsoe Counties. Chancery is a civil court where equitable theories are often asserted. As Chancellor, if no true remedy exists, I am able to take the facts and law related to a specific issue and craft a remedy to fit specific and unique circumstances.

From September, 2018 through October, 2025, there have been approximately 8315 new cases filed with me. In that same time period, I have disposed of 8243 cases. I have presided over approximately four jury trials, and thousands of bench trials and dispositive motions. I have a reputation of being firm and efficient. I find these to be necessary qualities to manage the volume of filings I have annually and take seriously the trust placed in me by the citizens in my district to move cases toward conclusion. I believe in the old saying that "actions speak louder than words." It is important for me to begin my docket on time as an acknowledgement to litigants and attorneys that their time is valuable.

Though this list is not exhaustive, I regularly hear cases ranging from adoptions, estates, administrative appeals, child support, contempt, conservatorship, domestic relations cases including but not limited to divorce, custody and modification, interstate support, judicial hospitalizations, name changes, orders of protection, damages, real estate and contractual disputes.

Like most all judges and attorneys, finalizing an adoption can be the silver lining in a tough week. I preside over an average of 8 adoptions a month. Because these are uncontested matters, they could take as little as five minutes. However, this is not an approach I have ever taken. No matter how heavy my docket may be, I ask the attorneys and litigants for their patience, clear the courtroom and make the day about that child and family. I allow the little ones to come to

my bench, use the gavel, take pictures and ensure they know the day is all about them and their future. Teenagers, while usually excited, are not ones to typically show emotion. I make most of my time with them talking about what they enjoy in an effort to make them feel special and routinely extend an offer to come back and learn about the court system if the young person is interested in the law.

Finality for children is important, and I work diligently to provide trial dates for termination and parenting cases. While in private practice, I represented a parent who was given nominal parenting contact for months. I worked with the other attorney and filed motions but was unsuccessful in forcing the parenting issue due to a judicial preference requiring parties to first mediate before parenting motions were heard. My client was young but died unexpectedly of natural causes. This remains with me and has shaped my drive for equal, prompt access to the courts.

As Chancellor, I strive to be prepared, efficient and available. However, my efforts have not been without challenges. When developing my judicial calendar in 2018, I did not reserve office days. I traveled and was scheduled to be in court daily. I would stop by my office for phone conferences or to review and approve orders. My solution to the lack of office time was to read all the cases for my docket, usually the night before unless it was a large motion or trial. This often resulted in my day starting between 4:30-5:00 a.m. I would finish preparing for court, get my daughter ready for school, drop her off and then travel to one of my six counties to begin my docket. After about a year, I realized my lack of office time was not sustainable. My next plan was to reserve at least two office days a month. But, in reality, that also had challenges. If an attorney needs a day, and I am available on my designated "office day", I hear the case. I have been Chancellor for approximately 7 years, and while the length of time I need for review has decreased, I do still require preparation time. I have more than a thousand new cases filed each year, with many that require comprehensive research and rulings. I know myself well enough to recognize that I am not willing to deviate from my commitment of accessibility to attorneys and litigants. Therefore, my solution to availability, coupled with efficiency, is that I often schedule and deliver my ruling from the bench, with a court reporter. I review orders daily. Many proposed orders are consistent with my rulings, but I regularly have orders sent to me in an editable format to allow me to make changes, when necessary.

Self-awareness and flexibility are two of my strengths. I know I am not perfect, and I cannot lose the ability to laugh at myself. I make mistakes, but I own my mistakes and most importantly, learn from them. I believe if I ever find myself in a space where I am not open to learning and growing, either personally or professionally, I am of no service to anyone. Therefore, I strive to learn, grow and improve every day.

I find my life experience as a whole, makes me who I am. I do not see my identity singularly. I am not only a lawyer, judge, daughter, sister, wife, mother, aunt or friend. I am all those things. And all those experiences make me the person I am and allows me to bring my own unique approach to the bench.

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

I recently heard a complex case involving county powers and zoning. Though the appellate court affirmed my ruling, the analysis was different. The Supreme Court granted permission to appeal. The parties have argued the case and are awaiting the Supreme Court's opinion.

Tinsley Properties, LLC, et al. v. Grundy County, Tennessee. Case No. 6846.

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.

Mediation:

In 2004, I became a Rule 31 listed mediator and received my domestic violence listing in 2014. I estimate conducting approximately 300 domestic mediations through 2018 addressing issues inclusive of grounds for divorce, division of assets and liabilities, alimony and co-parenting.

Judicial Settlement Conferences:

We have a number of skilled mediators and arbitrators in our district and the surrounding counties. They work hard to obtain their Rule 31 listing, so I only conduct these conferences if requested by my judicial colleagues. To date, I have held one judicial settlement conference, which was resolved through my facilitation and the work of extremely talented attorneys.

I am an advocate of the dispute resolution process and refer parties in almost every contested case to mediation. I believe each party has the right to have a say in his/her future. I often tell litigants they will "like" nothing about the process but my goal is that they find a resolution they can accept, which I hope enables them to move forward.

In specific response to cases of significance, every case we are involved with is significant for the parties. My responses to Questions 9 and 34 include examples.

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.

I regularly served as a guardian ad litem and attorney ad litem in juvenile and conservatorship actions from 2004-2018. I approached each appointment with respect for the parties and their circumstances and devoted significant time preparing for court appearances and regularly conducted home/facility visits. As a guardian, you are in a unique position to paint a picture for the court through your presentation of the proof regarding concerns, but you also have a duty to illuminate positive qualities. I am committed to adhere to established principles of law to protect our most vulnerable populations: the youth, mentally ill, disabled and elderly.

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

Recovery Court

I volunteered and served as the 12th Judicial District Recovery Court Judge from September, 2018 through December, 2022. I believe addiction touches every household in one form or another. No one chooses to become addicted and my work with this program has been meaningful to me. In or about 2022, issues arose which made it apparent that the program was in need of significant changes. Together with my colleagues, and in interviewing participants, we chose to grow the program in a new direction. I bring this to the Council's attention to underscore that though I truly found joy, and some heartache, in my work with the recovery court, when I witnessed issues that were concerning to me, I did not ignore those but rather worked with my colleagues for a solution. As mentioned above, the Court of Appeals sits as a panel. I believe that working as a team makes us stronger and helps develop more meaningful conversations and, in most circumstances, a better result.

Problem Solving

As Chancellor, I value the attorneys in my district, and surrounding counties, and well know the demands, especially of solo practitioners. Fortunately, the attorneys, while zealous advocates, are also collegial with one another and offer to help the courts with appointments, such as guardian ad litem and attorney ad litem, which is not unnoticed by the bench.

Generally, there are no issues with the attorney's work. However, I have been in the situation where, through additional questioning, I learned that the guardian had failed to adequately investigate the circumstances on behalf of the ward. Fortunately, I was able to cure the issue and allow the guardian to take the action needed. However, rather than openly chastising the attorney or ignoring the inaction, I chose to have a private conversation and explained that I appreciated the demands of private practice but emphasized the importance of the role of guardian ad litem. This approach not only assisted me in having confidence in the attorney, but more importantly, I hope it helped that attorney recognize the importance of his/her role.

Board of Professional Responsibility Committee Member

During my time as a hearing committee member for the Board of Professional Responsibility, I routinely reviewed complaints and recommendations consistent with the Tennessee Rules of Professional Conduct. I participated in one, 3 person panel hearing.

Education

I completed the National Judicial College's course on general jurisdiction in October, 2019.

District Specific Designation

I served as presiding judge of the 12th Judicial District from 2020-2022.

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.

None.

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.

Middle Tennessee State University

1993-1994. MTSU has much to offer students, but I made a decision to live off campus my first year. In hindsight, I think this was a mistake and isolating. I chose to return home to complete my studies at UTC. I commuted to/from school and was able to have part time employment in my hometown.

University of Tennessee at Chattanooga

1994-1997. Bachelor of Social Work, Cum Laude

Nashville School of Law

1998-2002. Doctor of Jurisprudence

PERSONAL INFORMATION

15. State your age and date of birth.

I am 50 years old and was born [REDACTED] 1975.

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

50 years.

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

I have lived in Marion County my entire life but as indicated above, I attended Middle Tennessee State University and lived there from August, 1993 to May, 1994.

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

Marion

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.

Non-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.

None to my knowledge.

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.

None.

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 divorced in 2014. I filed a non-contested divorce in 2013 in the 12th Judicial District Circuit Court of Franklin County, Tennessee. My ex-husband and I were law partners in Marion County and chose to waive venue to file out of county. The style of the case is *Melissa Thomas Blevins v. Ronnie JT Blevins, II*, Case No. 2013-CV-143.

In or about 2024, an action was initiated in the Eastern Division of the United States District Court styled as *Jeff Parker v. Chancellor Melissa Willis, in her official capacity only*. Case No. 1:24-CV-138. Mr. Parker is a self-represented litigant and has continually asserted that the court does not have jurisdiction over him. The case was dismissed.

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.

For the past 18 years, other than the various professional associations listed herein, my outside activities have been family focused. I regularly volunteered for school activities, including events that required overnight supervision. I also volunteered to coach and coordinated celebrations for my daughter's organizations.

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

In or about 1996, I became a member of the Alpha Delta Pi sorority but have not been involved with the sorority since approximately 1998.

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.

Marion County Bar Association. 2003-present

Brock-Cooper American Inn of Court. Masters of the Bench: 2021-present

Tennessee Judicial Conference Committees:

- Domestic Relations Committee Member (2020-present)
- Strategic Planning Committee Member (2020-present)
- Technology in the Courts Committee Member (2021-present)
- Jury Pattern Instructions (Civil) Committee Member (2019-2021)

Since joining the Tennessee Judicial Conference in 2018, I have benefitted from strong leadership and have learned the importance of contributing to the Tennessee “judicial family.” I am honored to have served as Executive Committee Member for East/Middle Divisions by appointment of various presidents for the following terms:

- 2023-2024
- 2022-2023
- 2021-2022

I have been a member of the Tennessee Trial Judges Association since 2018. I was named secretary for the 2025-2026 term. As secretary for the TTJA, I am responsible for accurately maintaining minutes for the executive committee and general association meetings. I then forward the same to our president for dissemination and approval by members.

Approximately 3 years ago, I was asked by the Tennessee Supreme Court to serve on the statewide E-Filing committee. The committee was required to review applications and approve, reject or seek clarification for applicants. Though the committee has not required activity recently, I worked heavily with the Clerk & Masters in the 12th Judicial District to implement e-filing. We presently have 2 of our counties fully capable of e-filing. The last four counties have been approved and are awaiting final procedural steps to take those offices live.

I was also honored when asked to serve as committee member for the Tennessee Bar Foundation Iolita Grant Review Committee in 2024. This is a three year appointment and requires a significant time commitment during the grant season. As a committee member, I work with other professionals across the state to ensure funding of programs that support civil legal aid for Tennesseans. The goal is to identify and fund projects in need of support to promote access and administration of justice. Applications are forwarded to committee members in advance of our annual meeting. We are required to review and score applications then appear for an in person meeting to discuss the applications and allocate funding, subject to approval of the board.

While serving as municipal judge, I was involved in the Municipal Judges Association and held various committee positions.

I have also held memberships with the ABA, TBA and TLAW. However, I do not have exact dates and my memberships are not currently active.

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.

Board of Professional Responsibility

Committee Member from 2014-2018

District Specific Recognition

- 12th Judicial District Bar President: 2017-2018
- July 2020, I was named “The Best Attorney” by the Marion County News.
- As noted above, I was involved with the Municipal Judges Conference and Trial Judges Conference in relation to the geographic area I serve.

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

None.

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.

I presented CLE’s on contempt and issues facing new judges at the TJC Academy and Mini Academy twice since 2019, most recently in 2024. I also presented a CLE on small estates to the chancellors approximately two years ago during the Tennessee Judicial Conference. I am presently working with a group to prepare a CLE to present to our local bar regarding availability of resources for incarcerated individuals but do not expect to submit a curriculum to the AOC until January for review.

Though it was more than five years ago, I was selected by Administrative Office of the Courts to travel across the state with a small group of attorneys to present CLE’s on the issue of child dependency and neglect law. I estimate presenting at least five (5) CLE’s prior to my election in 2018.

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.

2018: 12th Judicial District Chancellor. Elected. Contested.

2022: 12th Judicial District Chancellor. Elected. Unopposed.

2009-2018: Kimball Municipal Judge. Appointed.

2017 - 2018: South Pittsburg Municipal Judge. Appointed.

2017 - 2018: Jasper Municipal Judge. Appointed.

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.

I have attached 4 orders for review.

- *State of Tennessee Department of Children's Services v. Derrick, et al.* 23-AD-1278.
This is one of my most recent rulings in a termination of parental rights case. The Respondents have appealed. I was responsible for preparing, proof reading and finalizing this order.
- *State of Tennessee v. Whoriskey, Inc.* 2019-DT-3368; 2019-DT-3400
This is the final portion of a delinquent tax case that spanned several years. Though the order is not complex, it illustrates my ability to be concise in relation to the issues presented. This case was appealed, and the appellate court affirmed. The order reflects my ruling.
- *Foehring, et al. v. Monteagle Planning Commission, et al.* Case No. 8197 and 8204
This case is a declaratory judgment action by residents seeking to invalidate certain zoning ordinances and challenging the planning commission's decision. This case was appealed, and the appellate court affirmed. I scheduled an oral ruling, with the transcript to be attached to the order, and directed counsel to prepare the order subject to my review and editing. The cases were argued together but required two separate orders and analysis.
- *McCartney v. McCartney* Case No. 2420
This is a divorce without minor children that started almost four years *before* I was elected in 2018. This case was appealed and affirmed by the appellate court. Judge Armstrong and I earned the "2021 Judicial Patience" Award at our annual conference. Though this may not be what one would consider a "real award", and may not be my most elaborate legal writing, it does illustrate my ability to focus several days of proof into a concise ruling that complies with legal precedent. I scheduled an oral ruling, inclusive of property distribution, and directed counsel to prepare the order with the transcript attached. I then reviewed the order for approval.
- *Harley Wayne Brafford, et al. v. Monteagle Sunday School Assembly* Case No. 6847.
This case was multi-faceted and involved numerous witnesses and issues. The attached judgment reflects my analysis and work in this case.

ESSAYS/PERSONAL STATEMENTS

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

I was in private practice for fifteen (15) years before being honored to serve as Chancellor. I have been blessed with many opportunities to speak to young people throughout my life. I now have a greater platform. I focus my interaction on positivity, opportunity and choices. I believe God presents opportunities to us all, and it is the choices we make that shape our lives. When I chose to run for Chancellor, it was not a guarantee. All I could do is what my parents instilled in me. I had to work hard, be true to myself and have faith that it would work out the way it was meant to be. My success in the election has brought more to my life than I could ever give back. I met many wonderful people that had faith in my ability to serve my district. I knew if I was elected, I would live my life with gratitude and work hard for my district.

The opportunity to serve as one of twelve jurists in this state is no different. I will always make the choice to work hard, be true to myself and faithfully serve all Tennesseans with honesty and dignity.

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 regularly provided pro bono services, including mediations, during my fifteen year practice.

Upon reflection of my practice, and since being elected in 2018, I have seen an increase in self-represented litigants. Our courts work diligently through various publications, and with the access to justice initiative, to create user friendly guidance on parties' access to the courts. While this is helpful to self-represented litigants, equal justice under the law is sometimes challenging to jurists because we are not advocates.

Judges are on the "front-line" and are sometimes faced with difficult situations with deficient pleadings. I routinely direct litigants to other resources, such as our local rules, the Administrative Office of the Courts' website, or suggest they seek consultation with an attorney. While the on-line resources are helpful to litigants, the effect is sometimes a delay in justice. Many self-represented litigants do not understand the complexities associated with some cases. My most recent example involves litigants that did not understand that simply mailing a copy of a petition was not service. They were adamant that the other side "knew about it." I took approximately 10-15 minutes attempting to explain that there was no issue with self-representation but that the rules of procedure must be followed. All that to say, I am committed to making the court system accessible but understand we still have challenges to overcome.

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)*

I am seeking a judgeship on the Court of Appeals, Eastern Division. The court hears appeals in

civil cases from trial courts and certain state boards and commissions. The court consists of 12 members who sit in panels of three and hold court monthly. Travel to each grand division, East, Middle and West, is required.

I have experience as a litigator, mediator and jurist. I have grown in my analysis of cases while serving as Chancellor. The skills and knowledge are similar, but transitioning from litigator to judge is not without challenges. As a judge, I am not an advocate. You must respect litigants, attorneys and their choices in case presentation. I have worked diligently to take the facts as presented and to apply the law to those facts in my rulings. I will continue to work within the law and analyze cases consistent with established precedent to allow reliance on a uniform body of law for all Tennesseans.

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 average two organized speaking engagements per year to educate youth on the legal system and offer myself as a contact, should they be interested in the legal profession. However, this is not limited to formal speaking engagements. When I have an audience of youth in court, I always ask about their interests and invite them to come back to watch court. Sometimes I am met with eyes glazed over. But many times, young people light up. I want to do my part to exemplify that even though I am a judge, I am approachable, service-minded and kind.

I also began volunteering with “Life Maze”, a program sponsored by the Department of Health, in or about 2017. The “Life Maze” is held annually at local schools and targets children 14 and above. The purpose is to present youth with scenarios and demonstrate how choices impact their lives. I have been able to increase the base of involvement to include other judges, public officials and attorneys in my district. This allows us to share the experience and give the youth different perspectives.

Every story is different, and I enjoy telling young people that my background may look different than that of my colleagues. My parents were not attorneys, but they taught me to work hard and take chances. My message is one of encouragement, hard work and finding your authentic self. If appointed, I expect to grow my interactions with young people across the state and be a positive face of the judiciary.

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)*

I am the oldest of five children. My parents instilled the values of family and hard work. One of my earliest memories as a child is the smell of diesel. My father’s success began with an old dump truck and dozer. Before the sun would rise each morning, I would smell diesel creep into the house. It may sound odd, but it was comforting and still is to this day. I knew my dad was there. He, my brother and sisters have created a strong company. While the dump trucks and

dozers may start a little easier these days, one thing has remained the same. We all live by my father's example and work hard every day.

Saying I am the oldest of five should say the most about my mom. To say she is a "good woman" or "wonderful mom" is an understatement.

Strong mothers create strong daughters. I am blessed with one of the strongest, most selfless mothers one could have. My mom has led our family by example. Without question, her job was the hardest of all. She sacrificed and made my siblings and me who we are today. I will never forget her message to me as a young girl - "always be able to stand on your own two feet." This is the same message I convey to my daughter today. Live your life with purpose to create independence. I always share what my mother taught me when I talk to young people about life choices. A message of independence and self-sufficiency may sound simple but not every young person is raised to believe they are special, smart and deserving. When I am given the opportunity, I share my mother's words with the hope that I encourage them to create the life they deserve, just as my mom did for me.

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)*

As a jurist, my role is to apply the law. The first example that comes to mind is domestic litigation. Children should be allowed to be children, but they routinely testify in termination of parental rights and custody cases. It is difficult to hear what some of these young people have to say, but my job is to provide the environment to develop the testimony so that I may render a decision consistent with Tennessee law. If I am successful in doing this, as unpleasant as it may be, following established precedent helps provide finality to my decisions. I am always mindful that after the case is over, the child goes home to those parents, or in a termination, may lose that relationship. So while I provide the space for the testimony to be developed, I always convey to young people that at the end of the day, the decision is mine.

Precedent and consistency are stabilizing forces in the law. I routinely ask for authority during trials and strive to apply the facts and law to each ruling. I take seriously my responsibility to apply the law purposefully and accept the weight of my decisions.

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. *Congressman Scott Desjarlais, United States House of Representatives.	[REDACTED]
B. *Mr. John Barker, President, Citizens Tri-County Bank.	[REDACTED]
C. *Senator Janice Bowling, Tennessee General Assembly.	[REDACTED]
D. *Courtney Lynch, 12 th Judicial District Attorney General.	[REDACTED]
E. * J. Harvey Cameron, Esquire.	[REDACTED]

* Each reference asked that I advise any potential caller that it may be necessary to leave a message with the nature of the call. They do not answer calls from unknown sources.


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 of Appeals, Eastern Division, 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: December 1, 2025.



Melissa Thomas Willis
Signature

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

IN THE CHANCERY COURT OF BLEDSOE COUNTY, TENNESSEE

**THE STATE OF TENNESSEE on its own
behalf and for the use and benefit of BLEDSOE
COUNTY, TENNESSEE, and, THE CITY OF
PIKEVILLE, TENNESSEE**

Plaintiffs,

vs.

**WHORISKEY, INC.,
As Owners of 90 Ferro Street,
Pikeville, TN 37367.
(Formerly Owned by Textile Corp. Of America)**

**Delinquent Taxpayers as
Shown on the 2017 Real Property
Delinquent tax records of Bledsoe County,
Tennessee, and The City of Pikeville, TN as
More fully set out in Exhibits A and B. annexed
Hereto.**

Defendants.

Filed	3-30-23
Time	9 A m
Clerk	ASH
Debbie DeBord Clerk & Master Bledsoe County, TN	

**No. 2019-DT 3368,
2019 DT 3004 3400**

ORDER

This cause came to be heard on the 9th day of January, 2023 before the Honorable Melissa Willis, Chancellor of Bledsoe County, Tennessee as a final hearing on the Plaintiffs Complaint and Answer of Defendant, Whoriskey Inc.'s Answer and Motion to Dismiss the Plaintiffs' Complaint. Upon argument of the counsel and examination of exhibits and the record as a whole, the court finds that Tenn. Code Ann. 67-5-2102 and 2103 are the prevailing statutes and the Defendants argument are inapplicable because there was never a final order of forfeiture or evidence that the property in dispute was ever owned by or vested with a federal or government, which would bar the accrual of property taxes. Wherefore, based upon these findings, it is hereby:

*Ent Min BK 44
pgs 165-166*

ORDERED ADJUDGED AND DECREED that the Plaintiffs are awarded judgment against Whoriskey for property tax amounts specified in Exhibits A and B of the Plaintiffs' Complaint plus penalties and interest.

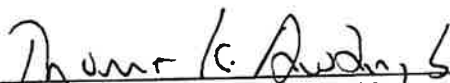
ORDERED ADJUDGED AND DECREED that the liens be declared in favor of the respective Plaintiffs upon the land set out in the Complaint and that this lien be to secure the Payment of taxes penalties interest subject to the equity of redemption.

IT IS SO ORDERED.

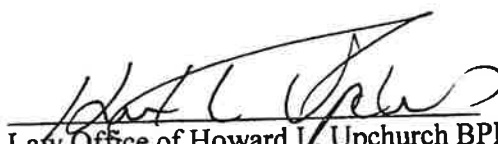

HONORABLE MELISSA T. BLEVINS-WILLIS
CHANCELLOR

APPROVED FOR ENTRY:

AUSTIN, DAVIS AND MITCHELL


Thomas K. Austin BPR#31009
Attorney for Whoriskey, Inc.
PO BOX 666
Dunlap, TN 37327
(423)949-4159
taustin@austindavismitchell.com

*Hand permission
3/29/23 Under preparation
by Thomas K. Austin*


Law Office of Howard L. Upchurch BPR# 10145
Delinquent Tax Attorney for Bledsoe
County, Tennessee and the City of Pikeville
P.O.Box 381
Pikeville, Tennessee 37367
(423) 447-2903

IN THE CHANCERY COURT FOR MARION COUNTY, TENNESSEE

WILLIAM FOEHRING AND WIFE, JANICE
FOEHRING, WILLIAM BEST AND WIFE,
MARY BETH BEST, RON TERRILL AND
WIFE, SANDRA TERRILL,

Petitioners,

v.

MONTEAGLE REGIONAL PLANNING
COMMISSION, AND RBT ENTERPRISES, LLC,

Respondents.

FILED
CHANCERY COURT

JUN 10 2022

MARION CO., TN

TIME

9:45 BY VL

No. 8204

FINAL ORDER

This cause came on to be heard on April 22, 2022. On the same day, the Court also heard argument in a declaratory judgment action filed by the same Petitioners in the case styled, William Foehring, et al v. Town of Monteagle, Tennessee and RBT Enterprises, LLC, Chancery Court for Marion County, Tennessee, Case No. 8197 (the “Declaratory Judgment Action”). After hearing oral argument in both cases, the Court took the cases under advisement and subsequently issued findings of fact and conclusions of law from the bench in both cases on May 12, 2022. The Court’s findings of fact and conclusions of law in both cases are reflected in the Transcript of Proceedings of the Court’s Ruling, a copy of which is attached hereto as Exhibit A and incorporated by reference. The Court’s findings of fact and conclusions of law in the instant case are contained at pages 14 – 24 of Exhibit A.

Based upon the pleadings, the record before the Court, the oral argument of counsel, and the Court’s findings of fact and conclusions of law, the Court holds as follows:

1. Petitioners seek review by common law writ of certiorari pursuant to T.C.A. §27-8-101, et seq. and T.C.A. §27-9-101, et seq. of a decision by the Monteagle Regional Planning Commission (the “Planning Commission”) conditionally approving a site plan (the “Site Plan”) for a proposed truck stop development (the “Truck Stop”) on land owned by Respondent RBT Enterprises, LLC (“RBT”). Petitioners own and reside on residential property adjacent to, across the street from, or otherwise near the vicinity of the proposed Truck Stop.

2. The Planning Commission met on July 6, 2021, to consider the Site Plan. At the conclusion hearing, the Planning Commission conditionally approved the Site Plan with conditions relating to screening, lighting, and a buffer reflected thereon.

3. Petitioners timely filed their Petition for Writ of Certiorari on August 19, 2021. On August 26, 2021, the Clerk issued the Writ of Certiorari to the Planning Commission. On September 27, 2021, the Planning Commission filed with the Court a Transcript of Proceedings. On November 1, 2021, the Petitioners and the Planning Commission filed a Joint Supplement to the Transcript. Pursuant to T.C.A. §27-9-111(b), Petitioners also contemporaneously filed Affidavits of Petitioners Mary Beth Best and Sandra Terrill with attached exhibits. Thereafter, the parties submitted briefs, and Petitioners submitted a reply brief.

4. In their Petition, written materials and at the hearing, Petitioners asserted that the Planning Commission’s decision should be reversed because (1) the Planning Commission acted illegally in approving the Truck Stop because a portion of the property that encompassed the Truck Stop (the “Disputed Parcel”) was not properly rezoned by amendments to the Monteagle Zoning Ordinance from High Density Residential (“R-3”) to Interstate Commercial (“C-3”), the zoning classification required for a truck stop; (2) the Planning Commission lacked material evidence that the Site Plan contains plans for collecting stormwater and methods of treatment and complies with

Section 1008(Q) and 205 of the Monteagle Zoning Ordinance; (3) the Planning Commission's decision was not supported by material evidence demonstrating adequate access control provisions; (4) the Planning Commission acted illegally, arbitrarily and capriciously and exceeded its jurisdiction by conducting private inaudible sidebar communications between Planning Commission members during their deliberations, in violation of the Tennessee Open Meetings Act, T.C.A. §8-44-101, et seq.; (5) the Planning Commission acted illegally, arbitrarily and capriciously in conducting the hearing and did not submit a complete transcript of its proceedings as required by T.C.A. §27-9-109(A) because of the overlapping speech between participants and the inaudible private side bars between Commissioners; and (6) Petitioners were denied even-handed treatment and a fair hearing before the Planning Commission.

The Court finds for the Respondents and against the Petitioners with respect to all of these assertions, each of which is addressed below.

5. Petitioners argue the Disputed Parcel is not properly zoned for a truck stop because amendments to the zoning ordinance rezoning the Disputed Parcel from R-3 to C-3 are invalid. In the Declaratory Judgment Action, the Court has found that the amendments to the zoning ordinance are valid. Accordingly, the Petitioners' argument fails based on the findings the Court has made in the Declaratory Judgment Action.

6. Petitioners argue that even if the zoning ordinances are valid, the Planning Commission acted illegally, arbitrarily, capriciously and exceeded its jurisdiction in approving the Site Plan. The primary issue raised by the Petitioners is that the Truck Stop will create public health and safety issues that were not adequately evaluated and addressed, which included environmental issues, increased traffic, water drainage, noise, exhaust, lighting, landscaping, and health risks for the residents.

Several documents were produced and made a part of the record for the Planning Commission's consideration, including the objections by the citizens along with a letter and exhibits, the review of the Site Plan by Mr. James Waller, and the supplement thereto. Additionally, evidence was presented regarding the size of the building, being almost 25,000 square feet, and evidence addressed issues of parking, with over 150 spots collectively for standard parking and parking for tractor trailers. Evidence was also presented regarding landscaping, detention ponds, wetland areas, buffer zones, a statement of conditional approval from the Tennessee Department of Transportation ("TDOT") and subsequent Planning Commission review.

The record also indicates that a traffic study was completed after this hearing that was consistent with a statement that TDOT would do the review after the Site Plan was approved.

The Commission received the documents and heard arguments on the issue. The Court's notes indicate those occurred in April, May and July, 2021. The vote was held on July 6, 2021, and conditional approval was granted following very lengthy debate.

Garrett Haynes of Southeast Tennessee Development District represented that he had reviewed the Site Plan and it did comply with the zoning ordinance.

7. An area of debate related to the issue of collection of stormwater and methods of treatment in compliance with the zoning ordinance. In essence, there was a dispute about whether or not the plans for the collection of stormwater and methods of treatment were supported by material evidence. Additionally, there was a dispute about whether or not the detention ponds, along with the wetland area and the buffers, would constitute treatment.

Mr. Waller is a civil engineer, Monteagle resident and very well-spoken gentleman. He opined that the drainage features would not capture and treat the runoff and would ultimately cause

the water to drain into the stream which feeds into Laurel Lake. The result as asserted by Mr. Waller and counsel for Petitioners is that pollution of the town's water supply will occur.

Counsel then argued that even if the plan is found to address collection of the water, it failed to address the treatment of the water or methods of treatment. And this is where review of the transcript as well as the video and the record is of critical importance. When you read the transcript of the hearing on July 6, 2021, the greater picture is received.

There was a great deal of argument related to the engineers. There was much discussion during oral argument and also in the briefs about a statement made by the engineer for RBT, Mr. Jamie Sain. At one time early in the meeting, Mr. Sain said that there was not a treatment method shown on the Site Plan. However, later as the debate moved forward, Mr. Sain clarified his statement at least two times. In addition, in listening to Mr. Waller's statement, the Court does not interpret Mr. Waller's statement to be that detention ponds were not a method of treatment, but rather that the method of treatment that Mr. Sain had set forth in terms of positioning of the pipes would not allow for treatment because there was not adequate retention of the water. There were competing statements and competing opinions about whether or not this was, in fact, treatment.

The Planning Commission weighed everything before it, and again, the competing statements of Mr. Waller against those of Mr. Sain, and accepted that the Site Plan contained wetland and buffer areas that would filter pollutants, and that for this project, the detention ponds were, in fact, the method of treatment.

The Planning Commission accepted Mr. Sain's testimony as true and referred to the Tennessee Department of Environment and Conversation's requirements that said the detention areas are forms of treatment. And again, the Planning Commission found those statements to be credible.

The Planning Commission appeared to accept Mr. Sain's statements as true and the assertion that the retention pond was in fact a treatment method. The Court finds that it is clear and it was not disputed that there are, in fact, other methods of treatment. As pointed out by the Petitioners in this case, Mr. Sain even said there were methods of treatment that were very expensive. However, in this case, the ordinance does not specify what type of treatment, only that there be treatment.

There were also statements made about a comparison between an existing truck stop near the proposed Truck Stop, and that the Site Plan presented provided more in terms of detention ponds than the present existing truck stop did.

So as to the issue of collection of stormwater and methods of treatment, based upon all of the foregoing, the Court finds that the Planning Commission did not act illegally, arbitrarily or capriciously.

8. With respect to the issue of whether the Planning Commission's decision was supported by material evidence demonstrating adequate access control provisions, the Court finds that TDOT was involved and found that the Site Plan was adequate in March of 2021, by granting conditional approval of the Site Plan regarding the layout and the access points. This would relate to the traffic study issue and lends support that the Commission did not act arbitrarily in concluding that there were adequate access control provisions.

9. With respect to the issue of whether the Planning Commission violated the Tennessee Open Meetings Act, the Court finds there was no violation. The Court does not find that the Commission attempted to act in secret. It was clear from review of the video that the meeting occurred in a small room, and all of the parties were at all times inside the room. There were times that conversations were inaudible, but some of that was due, in fact, to there being

times during the meeting that participants had heated exchanges and the parties were talking over each other. However, no one objected or made statements that they could not hear at any time.

There are no cases directly on point with this issue, and the cases that were cited are factually different. The Planning Commissioners in this case were all in plain view. They did not at any point in time tell anyone that they had to stay away, that they could not approach and, even though the parties insisted that the Court review the video, the Court finds the court reporter did an excellent job in taking down the statements and the transcript was very complete.

10. There was also an argument that Petitioners were denied even-handed and fair treatment during the hearing. The Court disagrees with that argument. The Court read volumes of documents. The citizens have been heard on this issue just as representatives of RBT were heard on the issue. In addition, both sides in this case are represented by competent counsel. At any time during this meeting, an objection could have been raised that there had been a breach of some type with regard to the time limits that were established at the onset of the meeting. However, no such objection was made. The Court finds it inappropriate for Petitioners to be represented by counsel, to be involved in a process, to sit and watch things go on that Petitioners did not agree on but then hold off until after the decision is made to make an objection.

There was a statement made and a count that individuals for RBT were allowed to address the Commission more than the private citizens were or that counsel was. But what the Court saw in addition to that was that the Planning Commission during their deliberations had additional questions. They were posing questions and the parties were coming back up from all sides to continue to address the Planning Commission.

With regard to the allegation that Planning Commission Chair Russell was biased, if there were concerns that she was biased, those issues should have been raised at the time of the meeting

so that she could abstain from voting. If those concerns had been raised and if she had insisted on participating in voting, then the Court thinks this argument may have merit. Because there was no objection, the Court finds that the issue had been waived.

11. With regard to the argument that the Planning Commission did not submit a complete transcript, the Court finds this argument is without merit. The Court finds there were times that the court reporter was not able to take down every word because of inaudible or overlapping speech; however, the Court does not conclude that those few portions of the transcript made the Court's ability to review the actions of the Planning Commission problematic.

CONCLUSION

In conclusion, the Court finds the Planning Commission weighed all of the evidence and found the same was sufficient for conditional approval of the Site Plan. The Court finds in review of the record that the Planning Commission had sufficient material evidence before them, coupled with oral clarifications that were made during the meetings, to reach the findings that they did. And that will be the order of the Court. Accordingly, the Petition is dismissed.

This constitutes a final order pursuant to Tenn. R. Civ. P. 54.02.


Costs are taxed against Petitioners.


This the 8 of June, 2022.


Chancellor Melissa Thomas-Willis


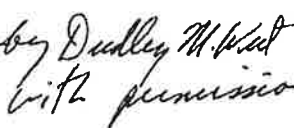
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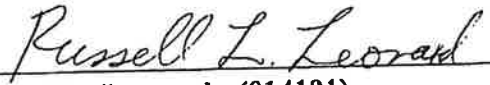
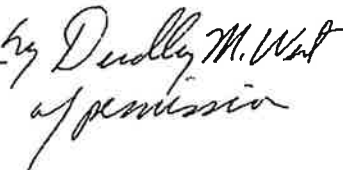
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Monteagle Regional Planning Commission

 by 
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(931) 924-0447
rleonardlegal@gmail.com
Attorney for Respondent,
RBT Enterprises, LLC

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing has been sent to the following persons by U.S. mail, postage prepaid, and electronic mail, this 7th day of June, 2022:

Phillip Aaron Wells
Ronald D. Wells
ROBINSON, SMITH & WELLS PLLC
Republic Centre
633 Chestnut Street, Suite 700
Chattanooga, Tennessee 37450
Attorneys for Defendant, Town of Monteagle

Russell L. Leonard
Attorney at Law
1016 W. Main Street, Suite 3
Monteagle, TN 37356
*Attorney for Defendant,
RBT Enterprises, LLC*



Dudley M. West

WILLIAM FOEHRING, et al.

VS

TOWN OF MONTEAGLE, et al.

May 12, 2022

H
HARPETH
COURT REPORTERS

(615) 933-6786
www.harpethcourtreporters.com

Exhibit A

IN THE CHANCERY COURT FOR MARION COUNTY, TENNESSEE
AT JASPER

WILLIAM FOEHRING and wife,
JANICE FOEHRING, WILLIAM
BEST and wife, MARY BETH
BEST, RON TERRILL and wife,
SANDRA TERRILL,

Plaintiffs,

vs.

THE TOWN OF MONTEAGLE,
TENNESSEE, and RBT
ENTERPRISES, LLC,

Defendants.

No. 8197 & 8204

TRANSCRIPT OF PROCEEDINGS
THE COURT'S RULING

May 12, 2022

BEFORE: THE HONORABLE MELISSA THOMAS WILLIS, JUDGE
Appearing via Zoom Videoconference

2:01 p.m.

Reported by:
Harpeth Court Reporters
Franklin, Tennessee
Lisa K. Henderson, LCR, CCR

<p style="text-align: right;">Page 2</p> <p>1 APPPEARANCE: 2 (ALL APPEARING VIA ZOOM VIDEOCONFERENCE) 3 FOR THE PLAINTIFFS: 4 Douglas Berry, Esq. 5 Dudley M. West, Esq. 6 MILLER & MARTIN, PLLC 7 401 Commerce Street 8 Suite 1010 9 Nashville, Tennessee 37219 10 (615) 744-8620 11 Doug.berry@millermartin.com 12 Dudley.West@millermartin.com 13 14 FOR THE TOWN OF MONTEAGLE: 15 Phillip Aaron Wells, Esq. 16 ROBINSON, SMITH & WELLS, PLLC 17 Republic Center 18 633 Chestnut Street 19 Suite 700 20 Chattanooga, Tennessee 37450 21 (423) 756-5051 22 Awwhlln@roviaw.com 23 24 FOR RBT ENTERPRISES, LLC: 25 Russell L. Leonard, Esq. 1016 West Main Street Suite 3 Monteagle, Tennessee 37356 (931) 924-0447 Rleonardl@aol.com</p>	<p style="text-align: right;">Page 4</p> <p>1 the Zoom proceeding. We've got our court reporter, 2 Ma. Henderson, here and she's going to take down the 3 provisions of the ruling today. 4 All right. You-all are here today in the 5 Marion Chancery Court case, Foehring and others versus 6 the Town of Monteagle and RBT Enterprises. We have 7 two docket numbers. Number 0197 which is the 8 declaratory judgment action. And then also Docket 9 No. 0204 which is the writ of certiorari action. 10 Present on the Zoom it looks like we've 11 got a number of -- we've got a number of attorneys. 12 And we may -- it looks like we have a few of the 13 parties also present. But why don't we for the 14 record, attorneys, those of you who are representing 15 parties in this action, why don't you go ahead and 16 announce yourself for the record, please. 17 MR. LEONARD: Russell Leonard. I 18 represent RBT. 19 MR. WELLS: Aaron Wells and I represent 20 the Town of Monteagle and the Monteagle Regional 21 Planning Commission. 22 MR. BERRY: Doug Berry and Dudley West 23 for the plaintiffs in the declaratory judgment action 24 and the petitioners in the certiorari action. 25 THE COURT: Very good. I think that</p>
<p style="text-align: right;">Page 3</p> <p>1 The above-styled cause came on for 2 hearing on May 12, 2022, via Zoom Videoconference, 3 when the following proceedings were had, to-wit: 4 P R O C E E D I N G S 5 THE COURT: How is everybody doing today? 6 MR. BERRY: Good. 7 MR. WELLS: Good afternoon. 8 THE COURT: Sorry about that. It took us 9 a minute. I'm in Rhea County today. I've had court 10 up here and we were trying to get the computer set up 11 and we couldn't see anything. So I think that we're 12 good. Can you-all hear me okay? 13 MR. WELLS: Yes. 14 MR. BERRY: Yes. 15 THE COURT: Perfect. Let's go ahead and 16 get started then. Do we have a court reporter? 17 COURT REPORTER: Yes, I'm here. 18 THE COURT: Good to see you. Thank you 19 for being here today. 20 COURT REPORTER: Thank you. 21 THE COURT: All right. I've got a 22 question about whether or not the parties could be on 23 the Zoom call and my assistant responded back to 24 you-all, but that absolutely is fine. I would just 25 ask and make it part of the order that no one record</p>	<p style="text-align: right;">Page 5</p> <p>1 covers everyone. Thank you. I'm going to begin 2 today's ruling with the complaint for declaratory 3 judgment. 4 As the attorneys are aware, but I will 5 state this for the record and also for the 6 non-attorneys who are present on the Zoom for the 7 ruling, my role in this proceeding differs from my 8 role, for example, in a boundary line dispute or a 9 divorce action. My role is not to impose my judgment 10 over those that have been appointed or elected to make 11 decisions for the communities in which the parties 12 live. My role is not to hear evidence or reweigh the 13 evidence that's been presented. 14 Everything that I base my decision on 15 today is in the record which contains, among other 16 things, stipulations of fact, which are the facts of 17 all of the parties involved in this case have agreed 18 to be true and correct for the purpose of my 19 evaluation for the ruling today. And, again, those 20 facts are all contained in the record that's been 21 presented to the Court. 22 Further, under Tennessee law, the 23 validity of ordinances must be upheld if they're 24 supported by a rational basis. And I say this with 25 all sincerity, the attorneys in this case, all of you</p>

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<p style="text-align: right;">Page 6</p> <p>1 are excellent, and I always enjoy whenever you appear 2 in front of me because you so artfully make your 3 arguments and do such a good job when you submit your 4 briefs and when you're ready to present your case. 5 And with that said, I think that further complicates 6 this case to a certain extent because both of you for 7 all sides have done research on the issues that are 8 specifically before the Court and have come back to me 9 to say that this is, in essence, a case of first 10 impression. There's nothing that's directly on point. 11 In short, the question posed is whether 12 or not the general plan is required before the city 13 has the power to zone. And while I would like to 14 think that this would be over today, because you-all 15 have told me this is a case of first impression, it's 16 very likely that either way this goes, there may be an 17 appeal following today. 18 Counsel, for the town has set forth a 19 number of cases outlining the Court's role and the 20 process as I've said above. And those cases further 21 affirm the statements that I just made in addition to 22 those statements that I made to the gallery when 23 you-all appeared in front of me on or about 24 April 22nd, I believe it was, whenever you offered 25 your oral argument.</p>	<p style="text-align: right;">Page 6</p> <p>1 town does not have to accept and approve what is 2 recommended by the planning commission. 3 In addition, I do not find that the intent of the 4 statute is to require a town to wait for a planning 5 commission to adopt a general plan before the town has 6 the authority to exercise its power to zone as 7 authorized by statute. 8 The language of the statute itself is that the zoning 9 plan may be part of the general plan; therefore, it is 10 clear that a general plan is different than a zoning 11 plan. 12 In this case in January of 2021 there's a 13 zoning plan from the commission, and you-all can 14 correct me if I'm incorrect on that date, but there's 15 a zoning plan from the commission that was adopted by 16 subsequent ordinance but there is no general plan. 17 Again, this is a stipulated fact. 18 The zoning plan attached to the ordinance 19 is specific in nature and establishes that it was 20 effective August 13, 2018, that the declaratory 21 judgment action focuses on the actions of the board. 22 I do want to make some additional 23 findings about the actions of the planning commission 24 because they were raised by the attorneys in this 25 case.</p>
<p style="text-align: right;">Page 7</p> <p>1 The appellate courts have established 2 that public policy and judicial policy favors 3 permitting community decision-makers closest to the 4 events to make zoning and land use decisions, so the 5 courts must refrain from substituting their judgment 6 for the broad, discretionary power of local 7 governmental bodies. 8 Additionally, counsel has also cited 9 other cases that further confirm that planning is 10 interested to the appointed municipal planning 11 commissioners, whereas the zoning power itself is 12 squarely within the hands of the legislative body. 13 You-all during your argument used the 14 term "general and comprehensive plans" 15 interchangeably, but when I refer to a plan, I'm 16 referring to the general plan, which is, again, at 17 issue right now. 18 The role of the planning commission is 19 administrative in that they make the recommendations, 20 whereas the role of the board is legislative, meaning 21 that they have the power to act. Pursuant to 22 T.C.A. 13-4-201 and 13-7-202, the town may adopt a 23 general plan that is certified by the planning 24 commission. From that it necessarily flows or follows 25 that a plan is not a requirement. Additionally, the</p>	<p style="text-align: right;">Page 8</p> <p>1 The planning commission did acknowledge 2 during their meeting in May of 2021, I believe it was 3 May the 10th, that a technical defect existed 4 regarding Ordinance 05-21. And that defect was that 5 they did not make specific findings when that 6 ordinance was first enacted. So in an effort to cure 7 their perception of this technical deficiency, a 8 motion was made to amend and the five factors that 9 must be considered were then announced on the record. 10 With regard to the findings that were 11 required to be made, the finding included that the 12 general plan portion was not applicable because they 13 did not have a general plan. That was the finding. 14 Ordinance 12-21 was recommended to the 15 board and this was, again, the ordinance that proposed 16 the amendment to Ordinance 05-21. The board had a 17 public hearing and considered significant evidence and 18 argument, and they went through each of the five 19 required findings necessary to rezone. Each of these 20 findings were supported by review of the record. 21 They, again, found that no general plan existed and 22 they summarized the basis of the findings and set 23 forth the basis they relied on to include 24 consideration of both sides. They discussed concerns 25 of the homeowners, pollution, the surrounding</p>

<p style="text-align: right;">Page 10</p> <p>1 commercial property. There was discussion that the 2 benefit to the town as the whole outweighed the 3 detrimental effect to the few. 4 Specifically related to that issue, the 5 statements were made and it's been established that 6 the town does not collect real estate tax and they 7 received much of the revenue from sales tax which is 8 expected to be substantially increased from the 9 implementation of this new business which would allow 10 the town as the whole to be served in a more broad 11 manner. 12 A board member who delivered the specific 13 findings, and I believe that was Alderman Parney, 14 articulated that it was not an easy decision to reach, 15 and they were aware of the effect that this decision 16 was going to have on the homeowners who were directly 17 beside the property. However, in the end, they made 18 the decision and they voted that the greater benefit 19 was to the town as the whole to move forward. 20 When the parties appeared in or about 21 June of 2021 there were about a dozen people who 22 addressed the board and that was from both sides. And 23 of those that addressed the board there were differing 24 opinions, obviously. The one, I think, comment that 25 stuck out to me the most, and it was something that I</p>	<p style="text-align: right;">Page 12</p> <p>1 the decisions of local government cannot conflict with 2 state law. Here they do not because there was no 3 requirement in state law for a general use plan. 4 Local government, again, obtains its power from the 5 state. So for those reasons Count 2 fails. 6 Moving forward to Count 3, and, again, I 7 discussed this above, that with regard to whether or 8 not the town as a legislative body acted appropriately 9 in a fairly debatable manner and rationally, I find 10 that they did. 11 With regard to the findings that I 12 previously made, I find that the basis for the 13 findings were articulated by the board and were 14 contained in the record supplied to the Court. There 15 was representation from Southeast Tennessee 16 Development District regarding rezoning. 17 The evidence was clear to the Court that 18 the opportunity to be heard on this issue has been 19 made. There were several times when the citizens and 20 attorneys alike were allowed to address the board. 21 They were allowed to address the commission. So there 22 certainly has been a clear opportunity for all people 23 to let their opinions be known. 24 Again, the considerations were given to 25 the revenue for the town and discussion was had</p>
<p style="text-align: right;">Page 11</p> <p>1 said, I think, whenever you-all were in front of me in 2 April, was by Ma. Clark, if I'm remembering the 3 correct person. But, in essence, what she said was, 4 You should be happy that there are this many people 5 that are concerned about the well-being and welfare of 6 the area in which you live. Not to, in essence, take 7 it as an insult. And I agree with that. And I am not 8 unwindful of how this is going to affect the people 9 that live near this project, but that is not a 10 consideration that I can make. Based on that, I find 11 that the board's passage of Ordinances 05-21 and 12-21 12 should be upheld. 13 Now, moving to Count 2. This count is 14 also dismissed. The town's power to zone is 15 established by Tennessee statute. The general plan 16 would not give the board the authority to act. The 17 board has the inherent authority through the state to 18 zone. 19 Counsel argued that the Family Golf 20 versus Metropolitan case cited by counsel for the town 21 only set forth dicta, but I would say in response to 22 that, many of the cases cited are in the same 23 position. The Family Golf case emphasized that the 24 board does not have to accept the recommendations by 25 the planning commission. The only requirement is that</p>	<p style="text-align: right;">Page 13</p> <p>1 regarding the lack of real estate tax for the town. 2 Of course, we all know that the county assesses its 3 tax, but they were talking specifically about the town 4 and how the reliance on the sales tax was expected to 5 increase services that the town could provide to 6 everyone as a whole. 7 So, again, with regard to the rational 8 and fairly debatable standard and whether it's 9 supported by material evidence, I, again, find that 10 these findings, already made above established that 11 there was sufficient material evidence that the board 12 relied on to make the decision and there was also 13 ample opportunity to be heard on all of the issues as 14 established in the record and that have been submitted 15 to the Court for review. 16 At the end of the day, the board did not 17 agree with the citizens that spoke out against the 18 rezoning. And they chose to zone the property as they 19 did based on the findings that have been made above. 20 Again, my job is not in this case to 21 place my judgment in place of the board's. Tennessee 22 law requires only that rezoning be rationally based. 23 And in this case whether I agree or I disagree with 24 the decision that the board made is immaterial. 25 Because the board came to their decision based on an</p>

<p style="text-align: right;">Page 14</p> <p>1 overwhelming amount of literature, statements from 2 citizens, consideration of surrounding properties, 3 consideration of surrounding businesses, and an 4 examination of the financial impact, and the approval 5 -- for the approval it would have on the town as a 6 whole. They weighed the statements that were made and 7 in their judgment they gave more weight in favor to 8 moving forward with the rezoning. And that concludes 9 the findings on the declaratory judgment action. 10 Moving now to the writ of certiorari. 11 The petitioners are seeking review of the decision of 12 the planning commission for approval of the site plan 13 for a truck stop. The argument in part is that the 14 amendments to the zoning ordinance are invalid. This 15 argument fails based on the findings I've just made in 16 the previous case. 17 Petitioners then argue that even if I 18 find the zoning ordinances are valid, that the 19 planning commission acted illegally, arbitrarily, 20 capriciously, and exceeded its jurisdiction. 21 The primary issue raised by the 22 petitioners is that the truck stop will create public 23 health and safety issues that were not adequately 24 evaluated and addressed which included environmental 25 issues, increased traffic, water drainage, noise,</p>	<p style="text-align: right;">Page 16</p> <p>1 approval was granted following a very, very lengthy -- 2 I won't even call it a conversation, I think debate 3 would be more appropriate. 4 Garrett Hayes of Southeast Tennessee 5 Development District represented that he'd reviewed 6 the site plan and it did comply with the zoning 7 ordinance. An incredibly contentious area that was 8 debated was as it relates to the collection of 9 stormwater and methods of treatment in compliance with 10 certain sections of the zoning ordinance. So, in 11 essence, there was a dispute about whether or not the 12 plans for the collection of stormwater and methods of 13 treatment were supported by material evidence. 14 Additionally, there was the dispute about 15 whether or not the detention ponds along with the 16 wetland area and the buffers would constitute 17 treatment. 18 Mr. Waller -- I read the transcript, but 19 I also reviewed the video as requested by both sides, 20 is a civil engineer and a resident and a very 21 well-spoken gentleman. He opined that the drainage 22 features would not capture and treat the runoff and 23 would ultimately cause the water to drain into the 24 stream which feeds into Laurel Lake. The result as 25 asserted by Mr. Waller and counsel for the petitioners</p>
<p style="text-align: right;">Page 15</p> <p>1 exhaust, lighting, landscaping, and health risks for 2 the residents. 3 Several documents were produced and made 4 part of the record for the planning commission's 5 consideration, including the objections by the 6 citizens along with a letter and exhibits, the Waller 7 review, and supplement that went with that from 8 Mr. Waller. 9 Additionally, evidence was presented 10 regarding the size of the building, being almost 11 25,000 square feet, addressed issues of parking, 12 being, I think, over 150 spots and that's collectively 13 with standard parking and parking for tractor 14 trailers, landscaping, detention ponds, wetland areas, 15 buffer zones, a statement of conditional approval from 16 TDOT and subsequent planning commission's review. 17 The record also indicates that a traffic 18 study was completed after this hearing but that was 19 consistent with a requirement or a statement that TDOT 20 would do the review after the site plans were 21 approved. 22 The commission received the documents and 23 heard arguments on the issue. My notes indicate that 24 those occurred in April, May, and July of 2021. The 25 vote was held on July 6th, 2021, and conditional</p>	<p style="text-align: right;">Page 17</p> <p>1 is that pollution of the town's water supply will 2 occur. 3 Counsel then argued that even if the plan 4 is found to address collection of the water, it failed 5 to address treatment of the water or methods of 6 treatment. And this is where review of the transcript 7 as well as the video and the record is of critical 8 importance. 9 On all sides, and, again, as I said, 10 you-all do an excellent job in what you do, but all 11 parties in this case went through the record and chose 12 the portions of the record that were most beneficial 13 to their argument. But when you read the transcript 14 as a whole the greater picture is revealed. 15 There's a great deal of argument that was 16 present about the engineers. And the engineer for 17 RBT, Mr. Sain, there was a lot of discussion during 18 oral argument and also in the briefs about a statement 19 that he made. At one time early on in the meeting he 20 said that there was not a treatment method shown on 21 the site plan. However, later as this conversation or 22 debate moved forward, he clarified this statement at 23 least two times. 24 In addition to that, in listening to 25 Mr. Waller's statement, I don't think that he said</p>

<p style="text-align: right;">Page 18</p> <p>1 that detention ponds were not a method of treatment 2 but rather the method of treatment that Mr. Sain had 3 set forth in terms of the positioning of the pipes 4 would not allow for treatment because there was not 5 adequate retention of the water. So, again, there was 6 competing statements and competing opinions about 7 whether or not this was, in fact, treatment. 8 The planning commission weighed 9 everything that was before it and, again, the 10 competing statements of Mr. Waller against those of 11 Mr. Sain and accepted that the site plan contained 12 wetland and buffer areas that would filter pollutants. 13 And for this project, that the detention ponds were, 14 in fact, the method of treatment. 15 The planning commission accepted 16 Mr. Sain's testimony as true and referred to the 17 TDEC's requirements that said that the detention areas 18 are forms of treatment. And, again, they found those 19 statements to be credible. 20 The planning commission again appeared 21 to accept Mr. Sain's statements are true and the 22 assertion that the retention pond was, in fact, a 23 treatment method. And I'll say for the record, I 24 think that it's clear and it was not disputed that 25 there are, in fact, other methods of treatment. And</p>	<p style="text-align: right;">Page 20</p> <p>1 in review of the video, I find that there is no 2 violation. I do not find that the commission 3 attempted to act in secret. It was clear from the 4 video that was -- and you-all did an excellent job 5 also in making a description of what this room looked 6 like, your description on the record mirrors what I 7 saw on the video, but this is a small room and all of 8 the parties were at all times inside the rooms. There 9 were times that conversations were inaudible, but some 10 of that is due, in fact, to there were times during 11 this meeting that the participants had heated 12 exchanges and the parties were talking over each 13 other. However, no one objected or made statements 14 that they couldn't hear at any time. 15 There are no cases directly on point 16 with this issue, and the cases that were cited I find 17 are factually different. The commission in -- the 18 planning commission in this case were all in plain 19 view. They did not at any point in time tell anyone 20 that they had to stay away, they couldn't approach, 21 and even though you-all insisted that I review the 22 video, I think the court reporter did an excellent job 23 in taking down the statements and the transcript was 24 very complete. 25 There's also an argument that there was</p>
<p style="text-align: right;">Page 19</p> <p>1 as pointed out by the petitioners in this case, 2 Mr. Sain even said there were methods of treatment 3 that were very expensive. However, in this case the 4 ordinance does not specify what type of treatment, 5 only that there be treatment. 6 There was also some statements made 7 about a comparison between an existing truck stop, I 8 believe, it's the Pilot that's near the current truck 9 stop and that the site plan that was presently 10 presented provided more safety features in terms of -- 11 I don't know if safety features is the right word, but 12 provided more in terms of the detention ponds than the 13 existing truck stop that's present did. So as to this 14 issue, based on all of the foregoing, the planning 15 commission did not act illegally, arbitrarily, or 16 capriciously. 17 And just, again, another statement for 18 the record. TDOT was involved and found that the site 19 plans were adequate in March of 2021 by granting 20 conditional approval of the site plan regarding the 21 layout and the access points and this would go some to 22 the traffic study issue which lends support again that 23 the commission did not act arbitrarily. 24 Now, moving forward to the Tennessee 25 Open Meetings Act. After reading the transcript and</p>	<p style="text-align: right;">Page 21</p> <p>1 a denial of even-handed and fair treatment. And with 2 respect to that position, I disagree with the 3 argument. I read volumes of documents. The citizens 4 have been heard on this issue just as representatives 5 of RBT were heard on the issue. 6 In addition to this, both sides in this 7 case are represented by competent counsel. At any 8 time during this meeting an objection could have been 9 raised that there had been a breach of some type with 10 regard to the time limits that were established at the 11 onset of the meeting. I don't know that that's on 12 official ruler, that's just the way they were going to 13 try to conduct the planning commission. There is 14 nothing really -- the meeting, rather. There's 15 nothing really on the record that talks about that. 16 But I don't think that it's appropriate to be 17 represented by counsel, to be involved in a process, 18 to sit and watch things go on that you don't agree on 19 but then hold off until after the decision is made to 20 make an objection. 21 And I find that the same is true -- and 22 let me say this. There was a statement made and I 23 think a count that individuals for RBT were allowed to 24 address the commission more than the private citizens 25 were or that counsel was. But what I saw in addition</p>

<p style="text-align: right;">Page 22</p> <p>1 to that was that the planning commission during their 2 deliberations had additional questions. And so they 3 were posing questions and the parties were coming back 4 up from all sides to continue to address the 5 commission. 6 7 With regard to the allegations against 8 the planning commission chair, Russell, there were 9 concerns about her bias that had been raised after the 10 meeting. If there were concerns that she was biased, 11 those issues should have been raised at the time of 12 the meeting so that she could abstain from voting. If 13 the concerns had been raised and if she insisted on 14 participating in voting, then I think this argument 15 may have merit. But that is, again, not what 16 happened. The issue was not raised in the moment and, 17 again, the parties had counsel and because there was 18 no objection, I find that the issue had been waived. 19 20 In addition to this, and I don't think 21 any of you cited it, and if you did, I apologize for 22 not recalling that, but there is also a case on point 23 dealing with bias that I think falls within this 24 category. 25 26 With regard to the transcript and the 27 overlapping speech, I find that the argument is 28 without merit. As I stated a moment ago, there were</p>	<p style="text-align: right;">Page 24</p> <p>1 apologize for the inconvenience about having to 2 reschedule yesterday. Thank you-all for working with 3 me. Okay. 4 5 MR. WELLS: Thank you, Your Honor. 6 THE COURT: All right. Y'all have a good 7 day. 8 9 MR. WELLS: You too. 10 11 [Proceedings concluded at 2:32 p.m.] 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 23</p> <p>1 times that the court reporter was not able to take 2 down every word because of inaudible or overlapping 3 speech; however, I don't think that those few portions 4 of the transcripts made the Court's ability to review 5 the actions of the commission problematic. 6 7 In conclusion, the commission weighed the 8 presentation of all the evidence and found that the 9 same was sufficient for conditional approval. I find 10 that in review of the record that the commission had 11 sufficient material evidence before them coupled with 12 the oral clarifications that were made during the 13 meetings to reach the findings that they did. And 14 that will be the order of the Court. 15 16 Mr. Wells, I'll ask you to prepare the 17 order, please, and circulate that. 18 19 MR. WELLS: I will do that, Your Honor. 20 Is it okay if I wait to get the transcript back? 21 22 THE COURT: Sure. Absolutely. All 23 right, Counsel. Is there anything else to take up on 24 this case today? 25 26 MR. WEST: No, Your Honor. 27 28 MR. BERRY: No, Your Honor. 29 30 MR. WELLS: I don't believe so, Your 31 Honor. 32 33 THE COURT: Thank you, again. And I</p>	<p style="text-align: right;">Page 26</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>1 2 I, Lisa K. Henderson, Certified Court 3 Reporter, do hereby certify that I recorded to the 4 best of my skill and ability by machine shorthand all 5 the proceedings in the foregoing transcript, and that 6 said transcript is a true, accurate, and complete 7 transcript to the best of my ability. 8 9 I further certify that I am not an attorney 10 or counsel of any of the parties, nor a relative or 11 employee of any attorney or counsel connected with the 12 action, nor financially interested in the action. 13 14 SIGNED this 19th day of May 2022. 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;"><i>Lisa K. Henderson</i></p> <p style="text-align: right;">Lisa K. Henderson, LCR, CCR Tennessee LCR No. 406 Expires: 6/30/2022</p>

IN THE CHANCERY COURT OF MARION COUNTY, TENNESSEE

William Foehring and wife, Janice
Foehring; William Best and wife,
Mary Beth Rest; Ron Terrill, and wife,
Sandra Terrill

Plaintiffs

v.

The Town of Monteagle, Tennessee; and
RBT Enterprises, LLC

Defendants

No. 8197

FILED
CHANCERY COURT

JUN 10 2022

MARION CO., TN
TIME 9:45 BY VL

FINAL ORDER

This case is a declaratory judgment action wherein the Plaintiffs, who are each full or part-time residents of the Town of Monteagle, Tennessee (the "Town"), seek to invalidate an amendment to the Town's zoning ordinance (Ordinances 05-21 and 12-21) which rezoned certain property located in the Town from a high density residential ("R-3") zone to an interchange commercial ("C-3") zone at the application of RBT Enterprises, LLC ("RBT"). The parties stipulated to many of the material facts and exhibits in the case. The matter came before the Court for a final hearing on April 22, 2022.

After the final hearing, the Court took the matter under advisement and subsequently issued findings of fact and conclusions of law from the bench on May 12, 2022. These findings of fact and conclusions of law are attached hereto as Exhibit A and incorporated herein by reference.

Based upon the pleadings, the stipulated facts, the agreed upon exhibits, the trial briefs, and statements and arguments of counsel, the Court holds as follows:

1. The Town was not required to maintain a general plan in order to exercise its zoning powers under Tennessee law.

The Court finds that the Town was not required to have a general plan, as that term is defined by T.C.A. §13-4-201, in order to exercise its zoning powers. The Town's power to zone is established by statute in Tennessee. See T.C.A. §13-7-201 *et seq.* In contrast, planning is an administrative function, and while a planning commission may make recommendations, zoning power is squarely a function of the local legislative body. *Id.* The Town may exercise its zoning powers so long as its zoning decisions do not conflict with Tennessee law.

The Court further finds that T.C.A. §13-4-201 did not require the Town to maintain a general plan or wait until one was adopted by the Planning Commission in order for the Town to exercise its zoning powers. This holding is dictated by the plain language of the T.C.A. §13-4-201, which provides generally that a general plan may consist of a zoning plan, among other things. Accordingly, a general plan is not a zoning plan, and vice versa.

Here, in January 2021, the Planning Commission, pursuant to T.C.A. §13-7-202, certified a zoning plan, which consisted of the text of an ordinance and maps, among other things, to the Town. The Town subsequently adopted the zoning plan, which became the Zoning Ordinance and Zoning Map. Accordingly, pursuant to T.C.A. §§13-7-201 and 202, the Town was vested with powers under Tennessee law to exercise its zoning power.

In sum, there was no requirement that the Town maintain a general plan, as that term is defined by T.C.A. §13-4-201. In addition, in accordance with T.C.A. §13-7-202 the Planning Commission certified a zoning plan in January 2021, which was subsequently passed by the Town and became the Zoning Ordinance and Zoning Map. Therefore, the passage of Ordinances 05-21 and 12-21 was in accordance with Tennessee law and was rationally-based.

2. The Town's conclusions in Ordinance 12-21 that it had no general plan was rationally-based and supported by material evidence.

The Court finds further the Town correctly concluded it had no general plan at the time Ordinances 05-21 and 12-21 were passed. In fact, the parties stipulated that the Town did not have a general plan, as that term is defined by T.C.A. §13-4-201, at the time Ordinances 05-21 and 12-21 were passed. Accordingly, there was a rational basis for the Town to find in Ordinance 12-21 that it had no general plan. Therefore, Count One is dismissed. For these reasons, Count Two is dismissed.

3. The Town's findings in Ordinance 12-21 were rationally-based and fairly debatable.


At the public hearing held prior to second and final reading on Ordinances 05-21 and 12-21, the Town Board of Mayor and Aldermen considered an overwhelming amount of evidence and arguments from those who supported the re-zoning and those who were opposed regarding the effect on surrounding property owners and the financial impact of the development, among other issues. Significantly, the Town considered evidence regarding the revenue the truck stop development would bring to the Town in the form of sales and other tax revenue. The Town does not assess a property tax and relies primarily upon sales tax for its operations and infrastructure which members of the Town council noted would benefit the Town and its residents as a whole. In addition, the Town found the issues raised by Plaintiffs and others opposed to the rezoning were not as significant as they were portrayed. The Town weighed the evidence, and decided the evidence weighed in favor of rezoning the disputed parcel.

In sum, the passage of Ordinances 05-21 and 12-21 was rationally-based, fairly debatable and not in conflict with Tennessee law. Therefore, each and every claim in the Complaint is hereby dismissed.

IT IS SO ORDERED.

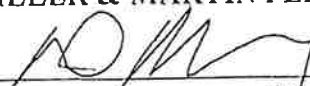
This shall constitute a final order pursuant to Tenn. R. Civ. P. 54.02.

Costs are taxed against the Plaintiffs.



Chancellor Melissa Thomas-Willis

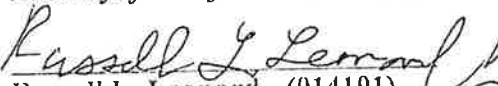
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CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing has been sent to the following persons by first-class mail, postage prepaid and electronic mail, this 7th day of June, 2022:

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Douglas Berry

WILLIAM FOEHRING, et al.

VS

TOWN OF MONTEAGLE, et al.

May 12, 2022

H

**HARPETH
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Exhibit A

IN THE CHANCERY COURT FOR MARION COUNTY, TENNESSEE
AT JASPER

WILLIAM FOEHRING and wife,
JANICE FOEHRING, WILLIAM
BEST and wife, MARY BETH
BEST, RON TERRILL and wife,
SANDRA TERRILL,

Plaintiffs,

vs.

THE TOWN OF MONTEAGLE,
TENNESSEE, and RBT
ENTERPRISES, LLC,

Defendants.

No. 8197 & 8204

TRANSCRIPT OF PROCEEDINGS
THE COURT'S RULING

May 12, 2022

BEFORE: THE HONORABLE MELISSA THOMAS WILLIS, JUDGE
Appearing via Zoom Videoconference

2:01 p.m.

Reported by:
Harpeth Court Reporters
Franklin, Tennessee
Lisa K. Henderson, LCR, CCR

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 (ALL APPEARING VIA ZOOM VIDEOCONFERENCE) 3 FOR THE PLAINTIFFS: 4 Douglas Berry, Esq. 5 Dudley M. West, Esq. 6 MILLER & MARTIN, PLLC 7 401 Commerce Street 8 Suite 1010 9 Nashville, Tennessee 37219 10 (615) 744-0620 11 doug.berry@millermartin.com 12 Dudley.West@millermartin.com 13 14 FOR THE TOWN OF MONTEAGLE: 15 Phillip Aaron Wells, Esq. 16 ROBINSON, SMITH & WELLS, PLLC 17 Republic Centre 18 633 Chestnut Street 19 Suite 700 20 Chattanooga, Tennessee 37450 21 (423) 756-5051 22 Awells@rswlaw.com 23 24 FOR RBT ENTERPRISES, LLC: 25 Russell L. Leonard, Esq. 1016 West Main Street Suite 3 Monteagle, Tennessee 37156 (931) 924-0447 rleonardlegal@gmail.com</p>	<p style="text-align: right;">Page 4</p> <p>1 the Zoom proceeding. We've got our court reporter, 2 Mr. Henderson, here and she's going to take down the 3 provisions of the ruling today. 4 All right. You-all are here today in the 5 Marion Chancery Court case, Foehring and others versus 6 the Town of Monteagle and RBT Enterprises. We have 7 two docket numbers. Number 0197 which is the 8 declaratory judgment action. And then also Docket 9 No. 8204 which is the writ of certiorari action. 10 Present on the Zoom it looks like we've 11 got a number of -- we've got a number of attorneys. 12 And we may -- it looks like we have a few of the 13 parties also present. But why don't we for the 14 record, attorneys, those of you who are representing 15 parties in this action, why don't you go ahead and 16 announce yourself for the record, please. 17 MR. LEONARD: Russell Leonard. I 18 represent RBT. 19 MR. WELLS: Aaron Wells and I represent 20 the Town of Monteagle and the Monteagle Regional 21 Planning Commission. 22 MR. BERRY: Doug Berry and Dudley West 23 for the plaintiffs in the declaratory judgment action 24 and the petitioners in the certiorari action. 25 THE COURT: Very good. I think that</p>
<p style="text-align: right;">Page 3</p> <p>1 The above-styled cause came on for 2 hearing on May 12, 2022, via Zoom Videoconference, 3 when the following proceedings were had, to-wit: 4 P R O C E E D I N G S 5 THE COURT: How is everybody doing today? 6 MR. BERRY: Good. 7 MR. WELLS: Good afternoon. 8 THE COURT: Sorry about that. It took us 9 a minute. I'm in Rhea County today. I've had court 10 up here and we were trying to get the computer set up 11 and we couldn't see anything. So I think that we're 12 good. Can you-all hear me okay? 13 MR. WELLS: Yes. 14 MR. BERRY: Yes. 15 THE COURT: Perfect. Let's go ahead and 16 get started then. Do we have a court reporter? 17 COURT REPORTER: Yes, I'm here. 18 THE COURT: Good to see you. Thank you 19 for being here today. 20 COURT REPORTER: Thank you. 21 THE COURT: All right. I've got a 22 question about whether or not the parties could be on 23 the Zoom call and my assistant responded back to 24 you-all, but that absolutely is fine. I would just 25 ask and make it part of the order that no one record</p>	<p style="text-align: right;">Page 5</p> <p>1 covers everyone. Thank you. I'm going to begin 2 today's ruling with the complaint for declaratory 3 judgment. 4 As the attorneys are aware, but I will 5 state this for the record and also for the 6 non-attorneys who are present on the Zoom for the 7 ruling, my role in this proceeding differs from my 8 role, for example, in a boundary line dispute or a 9 divorce action. My role is not to impose my judgment 10 over those that have been appointed or elected to make 11 decisions for the communities in which the parties 12 live. My role is not to hear evidence or weigh the 13 evidence that's been presented. 14 Everything that I base my decision on 15 today is in the record which contains, among other 16 things, stipulations of fact, which are the facts of 17 all of the parties involved in this case have agreed 18 to be true and correct for the purpose of my 19 evaluation for the ruling today. And, again, those 20 facts are all contained in the record that's been 21 presented to the Court. 22 Further, under Tennessee law, the 23 validity of ordinances must be upheld if they're 24 supported by a rational basis. And I say this with 25 all sincerity, the attorneys in this case, all of you</p>

<p style="text-align: right;">Page 6</p> <p>1 are excellent, and I always enjoy whenever you appear 2 in front of me because you so artfully make your 3 arguments and do such a good job when you submit your 4 briefs and when you're ready to present your case. 5 And with that said, I think that further complicates 6 this case to a certain extent because both of you for 7 all sides have done research on the issues that are 8 specifically before the Court and have come back to me 9 to say that this is, in essence, a case of first 10 impression. There's nothing that's directly on point. 11 In short, the question posed is whether 12 or not the general plan is required before the city 13 has the power to zone. And while I would like to 14 think that this would be over today, because you-all 15 have told me this is a case of first impression, it's 16 very likely that either way this goes, there may be an 17 appeal following today. 18 Counsel, for the town has set forth a 19 number of cases outlining the Court's role and the 20 process as I've said above. And those cases further 21 affirm the statements that I just made in addition to 22 those statements that I made to the gallery when 23 you-all appeared in front of me on or about 24 April 22nd, I believe it was, whenever you offered 25 your oral argument.</p>	<p style="text-align: right;">Page 6</p> <p>1 town does not have to accept and approve what is 2 recommended by the planning commission. 3 In addition, I do not find that the intent of the 4 statute is to require a town to wait for a planning 5 commission to adopt a general plan before the town has 6 the authority to exercise its power to zone as 7 authorized by statute. 8 The language of the statute itself is that the zoning 9 plan may be part of the general plan; therefore, it is 10 clear that a general plan is different than a zoning 11 plan. 12 In this case in January of 2021 there's a 13 zoning plan from the commission, and you-all can 14 correct me if I'm incorrect on that date, but there's 15 a zoning plan from the commission that was adopted by 16 subsequent ordinance but there is no general plan. 17 Again, this is a stipulated fact. 18 The zoning plan attached to the ordinance 19 is specific in nature and establishes that it was 20 effective August 13, 2018, that the declaratory 21 judgment action focuses on the actions of the board. 22 I do want to make some additional 23 findings about the actions of the planning commission 24 because they were raised by the attorneys in this 25 case.</p>
<p style="text-align: right;">Page 7</p> <p>1 The appellate courts have established 2 that public policy and judicial policy favors 3 permitting community decision-makers closest to the 4 events to make zoning and land use decisions, so the 5 courts must refrain from substituting their judgment 6 for the broad, discretionary power of local 7 governmental bodies. 8 Additionally, counsel has also cited 9 other cases that further confirm that planning is 10 interested to the appointed municipal planning 11 commissioners, whereas the zoning power itself is 12 squarely within the hands of the legislative body. 13 You-all during your argument used the 14 term "general and comprehensive plans" 15 interchangeably, but when I refer to a plan, I'm 16 referring to the general plan, which is, again, at 17 issue right now. 18 The role of the planning commission is 19 administrative in that they make the recommendations, 20 whereas the role of the board is legislative, meaning 21 that they have the power to act. Pursuant to 22 T.C.A. 11-4-201 and 11-7-202, the town may adopt a 23 general plan that is certified by the planning 24 commission. From that it necessarily flows or follows 25 that a plan is not a requirement. Additionally, the</p>	<p style="text-align: right;">Page 9</p> <p>1 The planning commission did acknowledge 2 during their meeting in May of 2021, I believe it was 3 May the 10th, that a technical defect existed 4 regarding Ordinance 05-21. And that defect was that 5 they did not make specific findings when that 6 ordinance was first enacted. So in an effort to cure 7 their perception of this technical deficiency, a 8 motion was made to amend and the five factors that 9 must be considered were then announced on the record. 10 With regard to the findings that were 11 required to be made, the finding included that the 12 general plan portion was not applicable because they 13 did not have a general plan. That was the finding. 14 Ordinance 12-21 was recommended to the 15 board and this was, again, the ordinance that proposed 16 the amendment to Ordinance 05-21. The board had a 17 public hearing and considered significant evidence and 18 argument, and they went through each of the five 19 required findings necessary to rezone. Each of these 20 findings were supported by review of the record. 21 They, again, found that no general plan existed and 22 they summarized the basis of the findings and set 23 forth the basis they relied on to include 24 consideration of both sides. They discussed concerns 25 of the homeowners, pollution, the surrounding</p>

<p style="text-align: right;">Page 10</p> <p>1 commercial property. There was discussion that the 2 benefit to the town as the whole outweighed the 3 detrimental effect to the few.</p> <p>4 Specifically related to that issue, the 5 statements were made and it's been established that 6 the town does not collect real estate tax and they 7 received much of the revenue from sales tax which is 8 expected to be substantially increased from the 9 implementation of this new business which would allow 10 the town as the whole to be served in a more broad 11 manner.</p> <p>12 A board member who delivered the specific 13 findings, and I believe that was Alderman Parnley, 14 articulated that it was not an easy decision to reach, 15 and they were aware of the effect that this decision 16 was going to have on the homeowners who were directly 17 beside the property. However, in the end, they made 18 the decision and they voted that the greater benefit 19 was to the town as the whole to move forward.</p> <p>20 When the parties appeared in or about 21 June of 2021 there were about a dozen people who 22 addressed the board and that was from both sides. And 23 of those that addressed the board there were differing 24 opinions, obviously. The one, I think, comment that 25 stuck out to me the most, and it was something that I</p>	<p style="text-align: right;">Page 12</p> <p>1 the decisions of local government cannot conflict with 2 state law. Here they do not because there was no 3 requirement in state law for a general use plan. 4 Local government, again, obtains its power from the 5 state. So for those reasons Count 2 fails.</p> <p>6 Moving forward to Count 3, and, again, I 7 discussed this above, that with regard to whether or 8 not the town as a legislative body acted appropriately 9 in a fairly debatable manner and rationally, I find 10 that they did.</p> <p>11 With regard to the findings that I 12 previously made, I find that the basis for the 13 findings were articulated by the board and were 14 contained in the record supplied to the Court. There 15 was representation from Southeast Tennessee 16 Development District regarding rezoning.</p> <p>17 The evidence was clear to the Court that 18 the opportunity to be heard on this issue has been 19 made. There were several times when the citizens and 20 attorneys alike were allowed to address the board. 21 They were allowed to address the commission. So there 22 certainly has been a clear opportunity for all people 23 to let their opinions be known.</p> <p>24 Again, the considerations were given to 25 the revenue for the town and discussion was had</p>
<p style="text-align: right;">Page 11</p> <p>1 said, I think, whenever you-all were in front of me in 2 April, was by Ms. Clark, if I'm remembering the 3 correct person. But, in essence, what she said was, 4 You should be happy that there are this many people 5 that are concerned about the well-being and welfare of 6 the area in which you live. Not to, in essence, take 7 it as an insult. And I agree with that. And I am not 8 unmindful of how this is going to affect the people 9 that live near this project, but that is not a 10 consideration that I can make. Based on that, I find 11 that the board's passage of Ordinances 05-21 and 12-21 12 should be upheld.</p> <p>13 Now, moving to Count 2. This count is 14 also dismissed. The town's power to zone is 15 established by Tennessee statute. The general plan 16 would not give the board the authority to act. The 17 board has the inherent authority through the state to 18 zone.</p> <p>19 Counsel argued that the Family Golf 20 versus Metropolitan case cited by counsel for the town 21 only set forth dicta, but I would say in response to 22 that, many of the cases cited are in the same 23 position. The Family Golf case emphasized that the 24 board does not have to accept the recommendations by 25 the planning commission. The only requirement is that</p>	<p style="text-align: right;">Page 13</p> <p>1 regarding the lack of real estate tax for the town. 2 Of course, we all know that the county assesses its 3 tax, but they were talking specifically about the town 4 and how the reliance on the sales tax was expected to 5 increase services that the town could provide to 6 everyone as a whole.</p> <p>7 So, again, with regard to the rational 8 and fairly debatable standard and whether it's 9 supported by material evidence, I, again, find that 10 these findings, already made above established that 11 there was sufficient material evidence that the board 12 relied on to make the decision and there was also 13 ample opportunity to be heard on all of the issues as 14 established in the record and that have been submitted 15 to the Court for review.</p> <p>16 At the end of the day, the board did not 17 agree with the citizens that spoke out against the 18 rezoning. And they chose to zone the property as they 19 did based on the findings that have been made above.</p> <p>20 Again, my job is not in this case to 21 place my judgment in place of the board's. Tennessee 22 law requires only that rezoning be rationally based. 23 And in this case whether I agree or I disagree with 24 the decision that the board made is immaterial. 25 Because the board came to their decision based on an</p>

<p style="text-align: right;">Page 14</p> <p>1 overwhelming amount of literature, statements from 2 citizens, consideration of surrounding properties, 3 consideration of surrounding businesses, and an 4 examination of the financial impact, and the approval 5 -- for the approval it would have on the town as a 6 whole. They weighed the statements that were made and 7 in their judgment they gave more weight in favor to 8 moving forward with the rezoning. And that concludes 9 the findings on the declaratory judgment action.</p> <p>10 Moving now to the writ of certiorari.</p> <p>11 The petitioners are seeking review of the decision of 12 the planning commission for approval of the site plan 13 for a truck stop. The argument in part is that the 14 amendments to the zoning ordinance are invalid. This 15 argument fails based on the findings I've just made in 16 the previous case.</p> <p>17 Petitioners then argue that even if I 18 find the zoning ordinances are valid, that the 19 planning commission acted illegally, arbitrarily, 20 capriciously, and exceeded its jurisdiction.</p> <p>21 The primary issue raised by the 22 petitioners is that the truck stop will create public 23 health and safety issues that were not adequately 24 evaluated and addressed which included environmental 25 issues, increased traffic, water drainage, noise,</p>	<p style="text-align: right;">Page 15</p> <p>1 approval was granted following a very, very lengthy -- 2 I won't even call it a conversation, I think debate 3 would be more appropriate.</p> <p>4 Garrett Hayes of Southeast Tennessee 5 Development District represented that he'd reviewed 6 the site plan and it did comply with the zoning 7 ordinance. An incredibly contentious area that was 8 debated was as it relates to the collection of 9 stormwater and methods of treatment in compliance with 10 certain sections of the zoning ordinance. So, in 11 essence, there was a dispute about whether or not the 12 plans for the collection of stormwater and methods of 13 treatment were supported by material evidence.</p> <p>14 Additionally, there was the dispute about 15 whether or not the detention ponds along with the 16 wetland area and the buffers would constitute 17 treatment.</p> <p>18 Mr. Waller -- I read the transcript, but 19 I also reviewed the video as requested by both sides, 20 is a civil engineer and a resident and a very 21 well-spoken gentleman. He opined that the drainage 22 features would not capture and treat the runoff and 23 would ultimately cause the water to drain into the 24 stream which feeds into Laurel Lake. The result as 25 asserted by Mr. Waller and counsel for the petitioners</p>
<p style="text-align: right;">Page 16</p> <p>1 exhaust, lighting, landscaping, and health risks for 2 the residents.</p> <p>3 Several documents were produced and made 4 part of the record for the planning commission's 5 consideration, including the objections by the 6 citizens along with a letter and exhibits, the Waller 7 review, and supplement that went with that from 8 Mr. Waller.</p> <p>9 Additionally, evidence was presented 10 regarding the size of the building, being almost 11 25,000 square feet, addressed issues of parking, 12 being, I think, over 150 spots and that's collectively 13 with standard parking and parking for tractor 14 trailers, landscaping, detention ponds, wetland areas, 15 buffer zones, a statement of conditional approval from 16 TDOT and subsequent planning commission's review.</p> <p>17 The record also indicates that a traffic 18 study was completed after this hearing but that was 19 consistent with a requirement or a statement that TDOT 20 would do the review after the site plans were 21 approved.</p> <p>22 The commission received the documents and 23 heard arguments on the issue. My notes indicate that 24 those occurred in April, May, and July of 2021. The 25 vote was held on July 6th, 2021, and conditional</p>	<p style="text-align: right;">Page 17</p> <p>1 is that pollution of the town's water supply will 2 occur.</p> <p>3 Counsel then argued that even if the plan 4 is found to address collection of the water, it failed 5 to address treatment of the water or methods of 6 treatment. And this is where review of the transcript 7 as well as the video and the record is of critical 8 importance.</p> <p>9 On all sides, and, again, as I said, 10 you-all do an excellent job in what you do, but all 11 parties in this case went through the record and chose 12 the portions of the record that were most beneficial 13 to their argument. But when you read the transcript 14 as a whole the greater picture is received.</p> <p>15 There's a great deal of argument that was 16 present about the engineers. And the engineer for 17 RWR, Mr. Sain, there was a lot of discussion during 18 oral argument and also in the briefs about a statement 19 that he made. At one time early on in the meeting he 20 said that there was not a treatment method shown on 21 the site plan. However, later as this conversation or 22 debate moved forward, he clarified this statement at 23 least two times.</p> <p>24 In addition to that, in listening to 25 Mr. Waller's statement, I don't think that he said</p>

<p style="text-align: right;">Page 10</p> <p>1 that detention ponds were not a method of treatment 2 but rather the method of treatment that Mr. Sain had 3 set forth in terms of the positioning of the pipes 4 would not allow for treatment because there was not 5 adequate retention of the water. So, again, there was 6 competing statements and competing opinions about 7 whether or not this was, in fact, treatment. 8 The planning commission weighed 9 everything that was before it and, again, the 10 competing statements of Mr. Waller against those of 11 Mr. Sain and accepted that the site plan contained 12 wetland and buffer areas that would filter pollutants. 13 And for this project, that the detention ponds were, 14 in fact, the method of treatment. 15 The planning commission accepted 16 Mr. Sain's testimony as true and referred to the 17 TDEC's requirements that said that the detention areas 18 are forms of treatment. And, again, they found those 19 statements to be credible. 20 The planning commission again appeared 21 to accept Mr. Sain's statements as true and the 22 assertion that the retention pond was, in fact, a 23 treatment method. And I'll say for the record, I 24 think that it's clear and it was not disputed that 25 there are, in fact, other methods of treatment. And</p>	<p style="text-align: right;">Page 20</p> <p>1 in review of the video, I find that there is no 2 violation. I do not find that the commission 3 attempted to act in secret. It was clear from the 4 video that was -- and you-all did an excellent job 5 also in making a description of what this room looked 6 like, your description on the record mirrors what I 7 saw on the video, but this is a small room and all of 8 the parties were at all times inside the rooms. There 9 were times that conversations were inaudible, but some 10 of that is due, in fact, to there were times during 11 this meeting that the participants had heated 12 exchanges and the parties were talking over each 13 other. However, no one objected or made statements 14 that they couldn't hear at any time. 15 There are no cases directly on point 16 with this issue, and the cases that were cited I find 17 are factually different. The commission in -- the 18 planning commission in this case were all in plain 19 view. They did not at any point in time tell anyone 20 that they had to stay away, they couldn't approach, 21 and even though you-all insisted that I review the 22 video, I think the court reporter did an excellent job 23 in taking down the statements and the transcript was 24 very complete. 25 There's also an argument that there was</p>
<p style="text-align: right;">Page 10</p> <p>1 as pointed out by the petitioners in this case, 2 Mr. Sain even said there were methods of treatment 3 that were very expensive. However, in this case the 4 ordinance does not specify what type of treatment, 5 only that there be treatment. 6 There was also some statements made 7 about a comparison between an existing truck stop, I 8 believe, it's the Pilot that's near the current truck 9 stop and that the site plan that was presently 10 presented provided more safety features in terms of -- 11 I don't know if safety features is the right word, but 12 provided more in terms of the detention ponds than the 13 existing truck stop that's present did. So as to this 14 issue, based on all of the foregoing, the planning 15 commission did not act illegally, arbitrarily, or 16 capriciously. 17 And just, again, another statement for 18 the record. TDOT was involved and found that the site 19 plans were adequate in March of 2021 by granting 20 conditional approval of the site plan regarding the 21 layout and the access points and this would go some to 22 the traffic study issue which lends support again that 23 the commission did not act arbitrarily. 24 Now, moving forward to the Tennessee 25 Open Meetings Act. After reading the transcript and</p>	<p style="text-align: right;">Page 21</p> <p>1 a denial of even-handed and fair treatment. And with 2 respect to that position, I disagree with the 3 argument. I read volumes of documents. The citizens 4 have been heard on this issue just as representatives 5 of RBT were heard on the issue. 6 In addition to this, both sides in this 7 case are represented by competent counsel. At any 8 time during this meeting an objection could have been 9 raised that there had been a breach of some type with 10 regard to the time limits that were established at the 11 onset of the meeting. I don't know that that's an 12 official ruler, that's just the way they were going to 13 try to conduct the planning commission. There is 14 nothing really -- the meeting, rather. There's 15 nothing really on the record that talks about that. 16 But I don't think that it's appropriate to be 17 represented by counsel, to be involved in a process, 18 to sit and watch things go on that you don't agree on 19 but then hold off until after the decision is made to 20 make an objection. 21 And I find that the same is true -- and 22 let me say this. There was a statement made and I 23 think a count that individuals for RBT were allowed to 24 address the commission more than the private citizens 25 were or that counsel was. But what I saw in addition</p>

<p style="text-align: right;">Page 22</p> <p>1 to that was that the planning commission during their 2 deliberations had additional questions. And so they 3 were posing questions and the parties were coming back 4 up from all sides to continue to address the 5 commission. 6 With regard to the allegations against 7 the planning commission chair, Russell, there were 8 concerns about her bias that had been raised after the 9 meeting. If there were concerns that she was biased, 10 those issues should have been raised at the time of 11 the meeting so that she could abstain from voting. If 12 the concerns had been raised and if she insisted on 13 participating in voting, then I think this argument 14 may have merit. But that is, again, not what 15 happened. The issue was not raised in the moment and, 16 again, the parties had counsel and because there was 17 no objection, I find that the issue had been waived. 18 In addition to this, and I don't think 19 any of you cited it, and if you did, I apologize for 20 not recalling that, but there is also a case on point 21 dealing with bias that I think falls within this 22 category. 23 With regard to the transcript and the 24 overlapping speech, I find that the argument is 25 without merit. As I stated a moment ago, there were</p>	<p style="text-align: right;">Page 24</p> <p>1 apologize for the inconvenience about having to 2 reschedule yesterday. Thank you-all for working with 3 me. Okay. 4 MR. WELLS: Thank you, Your Honor. 5 THE COURT: All right. Y'all have a good 6 day. 7 MR. WELLS: You too. 8 (Proceedings concluded at 2:32 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 23</p> <p>1 times that the court reporter was not able to take 2 down every word because of inaudible or overlapping 3 speech; however, I don't think that those few portions 4 of the transcripts made the Court's ability to review 5 the actions of the commission problematic. 6 In conclusion, the commission weighed the 7 presentation of all the evidence and found that the 8 same was sufficient for conditional approval. I find 9 that in review of the record that the commission had 10 sufficient material evidence before them coupled with 11 the oral clarifications that were made during the 12 meetings to reach the findings that they did. And 13 that will be the order of the Court. 14 Mr. Wells, I'll ask you to prepare the 15 order, please, and circulate that. 16 MR. WELLS: I will do that, Your Honor. 17 Is it okay if I wait to get the transcript back? 18 THE COURT: Sure. Absolutely. All 19 right, Counsel. Is there anything else to take up on 20 this case today? 21 MR. WEST: No, Your Honor. 22 MR. BERRY: No, Your Honor. 23 MR. WELLS: I don't believe so, Your 24 Honor. 25 THE COURT: Thank you, again. And I</p>	<p style="text-align: right;">Page 25</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>1 I, Lisa K. Henderson, Certified Court 2 Reporter, do hereby certify that I recorded to the 3 best of my skill and ability by machine shorthand all 4 the proceedings in the foregoing transcript, and that 5 said transcript is a true, accurate, and complete 6 transcript to the best of my ability. 7 I further certify that I am not an attorney 8 or counsel of any of the parties, nor a relative or 9 employee of any attorney or counsel connected with the 10 action, nor financially interested in the action. 11 SIGNED this 19th day of May 2022. 12 13 <i>Lisa K. Henderson</i> 14 15 16 Lisa K. Henderson, LCR, CCR 17 Tennessee LCR No. 406 18 Expires: 6/30/2022 19 20 21 22 23 24 25</p>

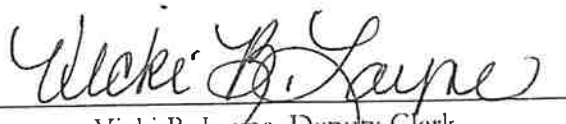
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing order entered on June 10, 2022 has been served upon all parties of or their counsel by placing a copy of said pleading in the United States mail, addressed to said counsel at his or her office, with sufficient postage thereupon to carry the same to its destination or by hand delivering same at the following address:

Douglas Berry, Esq.
Dudley M. West, Esq.
MILLER & MARTIN, PLLC
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Phillip Aaron Wells, Esq.
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Chattanooga, TN 37450

Russell L. Leonard, Esq.
1016 West Main Street, Suite 3
Monteagle, TN 37356

A handwritten signature in cursive script, reading "Vicki B. Layne", written over a horizontal line.

Vicki B. Layne, Deputy Clerk
Marion County Chancery Court

**IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE
CHANCERY COURT OF SEQUATCHIE COUNTY**

CHRISTINA LYNN MCCARTNEY,)

Plaintiff,)

vs.)

No. 2420)

LESTER DALE MCCARTNEY,)

Defendant,)

and)

RONALD LEE MCCARTNEY,)

Defendant.)

FILED

DATE March 25 2020
Chancery Court, Sequatchie Co., TN
Minute Book A-13 Page 145
J: 20 PM Jared French
Time () Clerk () Deputy Clerk

ORDER

This cause came to be heard on the 9th and 10th of January and 24th of February, 2020 before the Honorable Melissa Thomas Blevins-Willis, Chancellor of Sequatchie County, Tennessee, upon the Complaint for Divorce filed herein; Answer by the Defendant; Order entered on April 15, 2019 declaring the parties divorced and bifurcating the issue regarding equitable division of marital assets and debts; testimony of the parties and various witnesses; Findings of Fact and Conclusions of Law by the Court which is attached hereto as the Ruling of the Court (Exhibit "A"); and for good cause shown, it is therefore

ORDERED, ADJUDGED AND DECREED that the Court finds the property at 393 New Hope Loop, Whitwell, Tennessee was transferred to Ronald Lee McCartney on November 20, 2008 in book 253, page 557 Register's Office of Sequatchie County, Tennessee and the Court finds that real estate was not a fraudulent transfer and remains the property of Ronald Lee McCartney and dismisses him from the action. It is further

ORDERED, ADJUDGED AND DECREED that the Court finds the modular home

located on the property at 393 New Hope Loop was marital property and the Wife contributed \$52,000.00 of her separate property and the Wife is hereby awarded \$52,000.00 from Husband for her payment. It is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff, Christina Lynn McCartney, is awarded the 2009 PT Cruiser and 2000 GMC Truck 2500 as her property. It is further

ORDERED, ADJUDGED AND DECREED that the Defendant, Lester Dale McCartney, is awarded the 2015 GMC Sierra and 2007 Nissan Frontier. It is further

ORDERED, ADJUDGED AND DECREED that Lester Dale McCartney is awarded the miscellaneous equipment referenced on Exhibit "108" as number 64. It is further

ORDERED, ADJUDGED AND DECREED that the parties agree that the red Kawasaki 4-wheeler is the sole and separate property of the Husband, as established as number 16 on Exhibit "108". It is further

ORDERED, ADJUDGED AND DECREED that the remaining items numbers 14 - 63 on attached Exhibit "108" shall be auctioned at public auction within ninety (90) days. The parties shall agree on an auctioneer by Wednesday, March 4, 2020 or schedule a conference call for the Court to decide. It is further

ORDERED, ADJUDGED AND DECREED that the Court finds as marital property the Defendant's Fidelity IRA, shown as number 2 on Exhibit "108"; the JP Morgan Smart Retirement Plan as shown on number 3 on Exhibit "108"; the Vanguard Individual Brokerage Account as shown on number 4 on Exhibit "108"; the Vanguard Roth IRA Account shown as number 5 on Exhibit "108"; and the Citizens Tri-County Bank IRA which is shown as number 7 on Exhibit "108" as marital property and Wife shall be awarded one-half of said amounts through April 15, 2019. It is further

ORDERED, ADJUDGED AND DECREED that the Court finds that Wife removed approximately \$90,000.00 during the course of the litigation from her marital Fidelity retirement

account and Husband shall be entitled to an offset of one-half the \$90,000.00 amount, or \$45,000.00 from the value of the marital assets awarded to Wife. It is further

ORDERED, ADJUDGED AND DECREED that the Court finds the Husband's social security disability benefits that he received during the marriage are marital property and Wife is awarded thirty-five percent (35%) as her equitable share of said benefits. It is further

ORDERED, ADJUDGED AND DECREED that Husband's separate property as shown on Exhibit "108" is awarded to the Husband. It is further

ORDERED, ADJUDGED AND DECREED that the Court finds that the property listed under Wife's separate property on Exhibit "108" is Wife's separate property that she is awarded. It is further

ORDERED, ADJUDGED AND DECREED that each party is awarded their separate property which was shown as a joint stipulation on Exhibit "112".

ENTER this 23 day of March, 2020.



HONORABLE MELISSA T. BLEVINS-WILLIS
CHANCELLOR

-Signatures on the following page-

Approved for Entry:

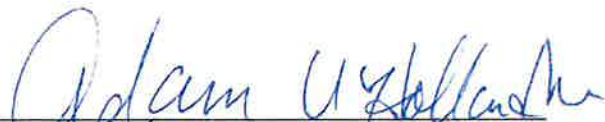

AUSTIN, DAVIS & MITCHELL

By:


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DUNCAN, HATCHER, HOLLAND, & FLEENOR, P.C.

By:


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Chattanooga, TN 37404
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IN THE CHANCERY COURT FOR
SEQUATCHIE COUNTY, TENNESSEE

CHRISTINA LYNN MCCARTNEY,

Plaintiff,

-vs-

NO. 2420

LESTER DALE MCCARTNEY AND
RONALD LEE MCCARTNEY,

Defendants.

FEBRUARY 26, 2020

RULING OF THE COURT

APPEARING FOR THE PLAINTIFF:

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to say this to both of the attorneys. Neither of you came into this case from the beginning, and both of you did an excellent job in trying to bring together the issues as narrowly as you could for the Court to consider and have advocated for your clients and the positions that they've taken in the litigation.

With that said, Dr. McCartney, you were so entrenched in your beliefs in the way that you thought the divorce should be fashioned that you lost sight of what the Court has to consider under Tennessee law, specifically, the cases and the statutory authority. And as the opening statements were made and as testimony progressed, I specifically posed questions to you and your counsel about the law in the State of Tennessee and was provided nothing to support your contention that 36-4-121, which contains the definition of marital property, should not be applicable in this case. There was argument about some form of, for lack of a better way to put it, oral prenup, but there's no foundation and law to support that.

Ms McCartney, you filed this action

BE IT REMEMBERED, that the above-styled cause came on for hearing on the 26th day of February, 2020, before the Honorable Melissa Blevins-Willis, in the Chancery Court of Sequatchie County, Tennessee, and the following Ruling of the Court was had, to wit:

THE COURT: Good morning, everyone. Just one second, Counsel.

We are here today for the ruling in the case of Christina L. McCartney v. Lester D. McCartney, Sequatchie Chancery Court, Number 2420.

This is a case where the parties were married in or about August of 2000, and the parties were divorced by the Court based on stipulated grounds on April 15, 2019. The action was bifurcated to allow the parties' divorce to be entered and then to have a final resolution of the property division this year.

The divorce action was filed by Ms. McCartney on January 20 of 2015.

And I want to start in this case by making just a couple observations about the parties and about the litigation. And I want

originally in 2015. And then at the end of 16, you amended your complaint and brought in Dr. McCartney's father on the allegations that there was some type of fraudulent transfer of real estate that was purchased by your ex-husband prior to you-all being married. I believe the purchase date of that real estate in the record was in 1997, so about three years before you-all got married. And of the transfer that was made from Dr. McCartney to his father, there was no consideration for that. But at that time, you had also not asserted any type of interest in the property, and there was no divorce action pending.

So, in looking at the fraudulent transfer as related to division in a divorce action, the Court does have the ability to bring the asset back in, but it has to be shown that that conveyance occurred at or near the time of filing and that it was done in an effort to deprive one party of their interest. And, again, the facts, based on what I've just stated, just simply do not show that in this case.

The testimony reflected that you

EXHIBIT

A

1 learned about the land being transferred not
2 later than 2009. You testified that at the
3 time that you filed the original divorce action
4 in or about January of 2015, you simply didn't
5 remember or didn't think about adding in that
6 piece of property. You said, as time went on,
7 you suffered a concussion -- and I believe that
8 was in or about June of 2015 -- and that your
9 memory -- you had had some issues with your
10 memory and just simply didn't remember to tell
11 your attorney. And that, just based on the
12 testimony, did not make sense and was not
13 proven by the facts that were asserted.

14 In essence, you had the conversation
15 in 2009, but you took no action to end your
16 marriage, and you stayed married until the
17 latter part of 2014; so, roughly, six years
18 after you learned about this, and then you
19 wanted to bring it up as it being an issue.

20 And despite conversations with your
21 husband, even after you learned about it, he --
22 based on the testimony that was offered, he
23 didn't deny that he had transferred the
24 property. But based on your testimony, he made
25 a statement to the effect of he would fix it in

1 some way. But you never took any steps or had
2 any additional conversations to follow up to
3 see if that actually occurred. So, for those
4 reasons, I do not find that a fraudulent
5 transfer occurred in this case.

6 Specifically as it relates to
7 Dr. McCartney's father, there was some
8 testimony about the reasons that he took action
9 or why he accepted the property. I don't find
10 that Dr. McCartney's father took any actions to
11 try to defraud Ms. McCartney. I simply think
12 he was doing what his son asked him to do in
13 that case. And I further find that his
14 testimony -- "his," being Dr. McCartney's
15 father, Dr. Ron McCartney -- was credible with
16 relation to those issues.

17 One thing I will point out, though,
18 that was peculiar about Dr. McCartney's
19 testimony -- Dr. Dale McCartney's testimony,
20 the spouse in this case, was that he provided
21 testimony that he took steps with regard to the
22 real estate because he was fearful because he
23 had had some medical conditions which I'll
24 address a little later, he didn't trust his
25 wife, and that she had allegedly urged him to

1 do a will. He prepared a will, and he was
2 concerned that she wanted to kill him. And I
3 just simply don't find that those concerns have
4 any basis.

5 If you are with a person that you
6 truly believe wants to cause harm to you and
7 then you offer testimony that, in or about
8 2003, you filed this complaint for separation
9 or divorce, you never serve it on the other
10 party, and you stay married to them until they
11 file for divorce in 2015, those things just
12 don't make sense. But that's what the Court
13 had before it today on that particular issue.

14 Now, with that said, even though
15 there was no claim at the time of the transfer
16 by Ms. McCartney and that it was premarital
17 property, she did establish proof that the
18 modular home itself remains in the name of her
19 ex-husband, Dr. McCartney. And the proof also
20 established that Ms. McCartney could trace the
21 sum of, I believe it was \$52,000. And it's
22 Exhibit 8, if I'm not mistaken, Check
23 Number 1429, which evidenced the amount of
24 money that she paid toward paying off that
25 modular home. And so I will make a finding

1 that that sum of money be returned to her.

2 Now, in looking at the factors under
3 36-4-121 relative to division of property, this
4 was approximately a 19-year marriage, but the
5 parties only lived together for about 14 years
6 due to their filing for the divorce in 2015 --
7 early 2015 and separation in or about October
8 of 2014. The action was pending for about six
9 years. And as I set forth in my opening, both
10 parties on both sides have changed attorneys
11 and have brought in other parties, which has
12 prolonged the litigation. But it also -- they
13 also had no -- there was no evidence of any
14 reconciliation of the parties during that time.
15 The testimony was, at the time they separated
16 in October, they continued to stay apart. And
17 that's relative to Factor Number 1.

18 Factor Number 2: Ms. McCartney's
19 testified that she's 55 years old, she's in
20 good health, and takes no medication at this
21 time. There were some allegations that she had
22 some issues in 2016 with regard to her health
23 resulting from an automobile accident, but
24 nothing that it really is persisting to the
25 point that she's unable to work at this time.

1 There was also issue of substance abuse that
2 you-all went through at length, and I'll
3 address that later in my ruling. I won't
4 reiterate that. But at this point in time,
5 there was no evidence that she continues to
6 suffer from any type of addiction issues.

7 She has a bachelor in pharmacy, and
8 she had that in 1993. And there's been no
9 testimony that she's disabled or, as I said,
10 unable to work in any way, and enjoys certain
11 extracurricular activities such as cycling and
12 being outdoors.

13 With regard to Mr. McCartney,
14 testimony was, at the time that I heard it,
15 that he was 61 years old and a retired
16 physician, and he suffered a plane crash during
17 the marriage in or about 2004 and was out of
18 work for about five months, and then, in or
19 about 2006, was diagnosed with a pituitary
20 tumor and ultimately had surgery and went
21 through some issues with that as well,
22 ultimately resulting in his approval for social
23 security disability benefits.

24 With regard to the employability
25 aspect of that factor, you know, the testimony

1 Mr. McCartney had to pick that up when she lost
2 it for a period of time. And then they
3 ultimately separated.

4 With regard to Factor Number 3, this
5 one's not really applicable. Both parties are
6 well educated and supported -- and, again, have
7 both supported each other during challenging
8 times during the marriage, as I touched on.

9 Ms. McCartney became addicted to
10 prescription medications and went to a
11 rehabilitation program. And she, based on her
12 testimony, began taking those in or about 2004,
13 which ultimately resulted in the loss of her
14 license in 2009. He had the plane crash
15 causing serious injury in late 2004 and was
16 off, again, for approximately five months. And
17 despite all these challenging times, these two
18 chose to stay together.

19 In looking at Factor Number 4, at
20 this point in time, both parties' incomes are
21 somewhat limited. Husband receives social
22 security disability and long-term disability.
23 Again, it's unlikely that he'll work again, but
24 he has relatively stable income necessary to
25 meet his needs.

1 was clear that Ms. McCartney -- both parties
2 worked during the marriage, and both parties
3 had times in which they weren't working, for
4 one reason or the other -- his, with his
5 medical issues; hers with her recovery from
6 addiction issues -- and wife's ability to make
7 the same thing never recovered after she lost
8 that job with, I believe it was Walgreens or
9 Bi-Lo in or about 2009. And there was no
10 testimony that Mr. McCartney, after 2006,
11 really had any type of gainful employment for
12 any -- anything relative to what he had enjoyed
13 in the past. And, again, I think that is a
14 result of the injuries that he sustained and
15 being out of work.

16 And the fact, candidly, that they
17 were in a position at that point in time that
18 they could explore other avenues -- I know
19 there was a lot of testimony about him enjoying
20 his work on the farm and working on the hay and
21 things like that, and he was able to do those
22 things, too. And during the course of the
23 marriage, up until she lost her job in 2009,
24 Ms. McCartney, during the marriage, provided
25 all the health insurance, and it was later that

1 With regard to Ms. McCartney, I
2 think, in the most recent years, her earnings
3 have been -- it's been more challenging for her
4 to recoup those funds due to the loss of her
5 license and circumstances surrounding that, but
6 she is again working. You know, is it likely
7 that she'll ever regain her status that she had
8 prior to losing the license? I don't think the
9 proof established that it would. But she is at
10 least able to support herself.

11 With regard to Item Number -- I'm
12 sorry -- Number 5, husband purchased the New
13 Hope Loop property in 1997, again, three years
14 before the marriage. There was a great deal of
15 testimony offered with regard to how the
16 parties handled their financial affairs. In
17 essence, they divided most of the household
18 costs equally, and both parties contributed
19 financially. But, again, both of you suffered
20 financial setbacks during the marriage as well,
21 but you still continued to stay together. So
22 that one, also, I give neutral weight to.

23 All right. There was also an
24 argument made regarding the dissipation of
25 assets by husband -- I'm sorry -- by wife.

1 Husband was asserting the argument.
 2 Dr. McCartney vehemently argued that his wife
 3 dissipated her marital assets -- dissipated
 4 marital assets due to addiction. So the
 5 argument he's making to the Court is, in
 6 essence, that if she had not become addicted to
 7 prescription meds, then she would not have lost
 8 her job and ultimately her license, and that
 9 even though she had her license reinstated,
 10 that she was never able to enjoy the same type
 11 of employment, thereby causing a dissipation of
 12 marital assets.

13 Counsel for wife then posed questions
 14 to Dr. McCartney based on his life choices.
 15 She said, "would you also not agree that issues
 16 such as flying were risky, which resulted in
 17 your crash and caused you the inability to
 18 work?"

19 I, again, find both of these things
 20 to be extreme for both parties. I don't
 21 believe that Ms. McCartney chose to be an
 22 addict any more than I believe that
 23 Dr. McCartney chose to crash. And those life
 24 changes -- and even though all these things
 25 happened within the mid-2000s up through 2009,

1 they, again, stayed together until 2014. So,
 2 again, I just find that argument to purely be
 3 based on speculation. And had the parties
 4 chose to separate immediately at the time of
 5 these actions, I think it would be a different
 6 case before the Court today. But that's just
 7 simply not the facts and not the choices that
 8 they made.

9 With regard to the separate property,
 10 this is given equal weight as well. Both
 11 parties have assets to include real estate
 12 other than the New Hope Loop property. Both
 13 have separate sums of money from retirement
 14 accounts. And wife has already received a
 15 partial inheritance which she has invested in
 16 other ways. And it's likely that
 17 Dr. McCartney, being an only child, will have
 18 the same. So that really is not given weight
 19 for the Court's consideration.

20 On Number 7, at the time the parties
 21 married, they testified that there was no debt
 22 with the exception -- that husband had no debt
 23 with the exception of the modular home, which
 24 was later paid off by Ms. McCartney. And she
 25 also had a home, but she sold that, and she

1 invested the money from the sale of that house
 2 into the satisfaction of this -- to the modular
 3 home on New Hope Loop Road. Neither party had
 4 significant debt at the time they married, much
 5 to speak of, and the situation's not that
 6 different today as it was then. The parties
 7 are basically in the same position except that
 8 they've had some changes in employment and also
 9 changes in health in a certain way.

10 As I stated previously, on Number 8,
 11 the economic circumstances, in this case it
 12 appears the parties are on relatively
 13 close-to-equal footing and have been
 14 maintaining their households independently
 15 since they separated in 2014.

16 Item Number 9, there was no proof on
 17 the issue of tax consequences to either party.

18 Number 10, the amount of social
 19 benefits. You-all made those -- the benefits
 20 that they'll both ultimately be eligible for --
 21 exhibits. I believe they're -- 110 may have
 22 been the number of that one. But their social
 23 security earnings are within just a couple
 24 hundred dollars of one another.

25 And then other factors the Court has

1 to consider in looking at the equities between
 2 the parties -- and, again, this goes back to
 3 something that I've said before, but I think
 4 it's important to point it out, because these
 5 are the things that I continue to go back to.
 6 Husband testified that he filed for divorce or
 7 a separation in or about 2003 to try to, quote,
 8 get her attention. I think the testimony was
 9 even, at that point in time, that maybe4 she
 10 was drinking too much caffeine. But it was for
 11 that purpose, to get her attention. And even
 12 though he filed the documents, the parties
 13 never separated nor did they live apart until
 14 2014, when the divorce was filed, and then the
 15 reconciliation order was entered in or about
 16 2004.

17 Dr. McCartney asked for this court to
 18 give credit to him based on his submitted
 19 itemization of some things that he had tendered
 20 money to his spouse for during the marriage and
 21 said that should be a credit to him, and I just
 22 respectfully disagree with that position.

23 When parties are married and if
 24 there's no agreement in writing otherwise that
 25 sets forth how funds are going to be handled

1 and how things are going to be treated --
 2 you-all, during that period of time, were
 3 acting as a team. Those funds were marital.
 4 Her earnings were marital. Your earnings were
 5 marital. And you-all chose to make purchases
 6 with the funds you had, and you enjoyed the
 7 lifestyle that you had during your marriage
 8 based on the joint efforts that you both had.

9 So, in looking and taking those
 10 factors into consideration and looking at the
 11 classification of marital property and separate
 12 property in terms of division, Trial Exhibit 1
 13 and 108 were introduced setting forth the items
 14 of personal property, real property, and
 15 separate property. Trial Exhibit 108 was
 16 introduced, and it specifically redacted the
 17 items of personal property that wife stipulated
 18 were the separate assets of husband.

19 And Dr. McCartney has argued
 20 throughout that anything that he, quote, bought
 21 with his money should not be considered marital
 22 property, because, again, there was some type
 23 of agreement under Tennessee law that -- he was
 24 asserting there was some type of agreement that
 25 should be enforced under Tennessee law, that

1 again, I'm not faulting the attorneys for that.
 2 I think that they were faced with what you-all
 3 had given them.

4 Based on that, husband also, after
 5 they -- you-all did submit one exhibit -- it
 6 was Exhibit 109, and it consists of items
 7 acquired during the marriage that he assessed a
 8 value of \$573 for -- and this was, again,
 9 related to Item Number 64 -- and I think wife
 10 said it was worth \$25,000. But be that as it
 11 may, looking at Exhibit 108 and beginning at
 12 Item 4 -- I'm sorry -- Item 14, it begins with
 13 a Kawasaki KLX, through Item 63. All of those
 14 items are marital property, and, in addition,
 15 the items listed on Exhibit 109 are marital
 16 property.

17 These items will be sold by auction
 18 within 90 days. All advertising costs and
 19 commissions from the sale will be taken from
 20 the gross with the net equally divided between
 21 Mr. McCartney and Ms. McCartney.

22 All right. Now, with regard to --
 23 I'll come back to this one.

24 All right. With regard to some of
 25 the separate property that each of you have,

1 the definition of marital property would not be
 2 applicable to him. And, again, I just find
 3 that argument to be without merit.

4 So, with that said, unless I find
 5 otherwise in the ruling as I'm about to go
 6 through it -- unless I set forth otherwise,
 7 anything that I'm going to refer to will be
 8 deemed marital property and will be divided as
 9 such.

10 First off, both parties will receive
 11 their primary automobiles and if there's any
 12 debt associated with it at this time will be
 13 responsible for it.

14 Item Number 64 was identified as
 15 miscellaneous equipment on Exhibit 1 and 108.
 16 The values provided by the parties were starkly
 17 different. There were some, I guess, changes
 18 during the testimony, "well, I'll stipulate to
 19 this" or "I'll stipulate to that." The time
 20 that you-all should have stipulated was before
 21 you got to court on some of this stuff, because
 22 you made the Court's job incredibly difficult
 23 in presenting a laundry list of items and
 24 making no stipulation as to values before you
 25 came in and filing a joint stipulation. And,

1 Ms. McCartney's argument with regard to the
 2 Fidelity account, which was set forth on
 3 Exhibit 1 -- and I believe the trial exhibits
 4 that correlate with that are 66 and 67 -- the
 5 testimony established and was not refuted that
 6 this was her premarital account, and she made
 7 no contributions at all during the marriage.
 8 The entirety of all the increases to that
 9 account were solely market-driven. Therefore,
 10 pursuant to 36-4-121, that will be considered
 11 wife's separate property.

12 There was a stipulation, I believe,
 13 that wife also -- in that exhibit, there were
 14 some assets listed with regard to personal
 15 property. One that was disputed initially was
 16 some prints. But later, I believe Exhibit 86
 17 was supplied, and it supported that that was
 18 her separate property as well. So, those
 19 listed on Exhibit 1 and Exhibit 86.

20 All right, with regard to husband's
 21 separate property, Trial Exhibit 88 set forth
 22 the value of the husband's retirement accounts
 23 prior to marriage, which were, my records
 24 reflect, 187,861.70. And that sum is
 25 designated as his separate property. The

1 testimony supported that husband continued,
2 however, to contribute to these accounts during
3 the marriage. And the only source of those
4 funds, based on the testimony offered, in terms
5 of the contributions, were from his earnings.
6 Therefore, those were marital funds; so any
7 excess over the \$187,000 amount shown in
8 Exhibit 88 will be divided equally.

9 However, testimony was established,
10 and it was corrected during wife's direct
11 testimony, and I believe there were also
12 questions posed on cross, about the removal --
13 there was a marital account that she had. It
14 was a Fidelity account, that she had removed
15 approximately \$90,000 during the course of
16 litigation; so husband will receive a credit
17 and offset of one-half of that. So 44 -- I'm
18 sorry -- 45,000 from the amount that she
19 withdrew.

20 Again, going to look at the
21 definition set forth in marital property
22 relative to the social security disability
23 fund. Marital property is defined to include
24 those funds from a disability action due to the
25 lost wages during the marriage. Proof

1 established that husband filed for divorce --
2 I'm sorry -- filed for the social security
3 disability benefits and received the same
4 during the marriage. And, therefore, the Court
5 does have to make some type of allocation in
6 terms of how those funds should be divided.

7 With regard to that particular
8 situation, I don't find that they should be
9 divided equally. I think an equitable division
10 of that would be wife receiving 35 percent of
11 those funds, with a balance of that going to
12 the husband. And in part what I base this on
13 is that the reason that he receives such a
14 large sum of money is, in large part, due -- in
15 terms of his back pay, is in large part due to
16 the actions he had prior to the parties being
17 married, in that he did pursue a type of
18 education which resulted in higher-paying jobs,
19 which increased his disability benefits
20 ultimately.

21 Trial Exhibit 1 also shows some of
22 husband's separate property, beginning with the
23 United of Omaha and going through printers.
24 And there's no dispute that those are husband's
25 separate items.

1 Testimony was that he had one
2 four-wheeler before they married. Before
3 you-all leave today, I want you-all to have a
4 discussion about which four-wheeler that is.
5 He'll be awarded that four-wheeler. The
6 testimony was not clear, and there were a
7 couple that were named.

8 There was an exhibit offered -- and
9 I'll make a finding on this issue as well, with
10 regard to Exhibit 105. Husband testified that
11 he had certain items prior to the marriage
12 which he sold and acquired other items during
13 the marriage. I don't have any reason to
14 believe that that did not happen. However, the
15 evidence was not sufficient for the Court to
16 sufficiently pinpoint those items and the
17 actual amounts of those purchases or the sales
18 of the premarital items toward the purchases of
19 the boat. So the Court does not have the
20 ability to trace those items back to provide a
21 credit for that. So the boat will remain as
22 marital property, as I previously set forth in
23 my ruling.

24 With regard to wife's home, wife will
25 be responsible for the debt associated with the

1 house. I do find this to be her separate
2 property for several reasons, but, first and
3 foremost, she did obtain leave of court before
4 making the purchase. There was no stipulation
5 or finding that it would be her separate
6 property or it would not. But this occurred
7 several years into this divorce, and she used
8 her separate property in order to do it. She's
9 paid for it in its entirety since they
10 separated and lived apart, and so she'll be
11 awarded that property. There were no debts or
12 outstanding bills other than the mortgage on
13 the home set forth by the wife. But if she has
14 any of those, she'll be responsible for those.

15 Exhibit 86 of husband's shows that he
16 had a few nominal debts -- a dental bill,
17 anesthesia bill, and a lab bill -- and he will
18 be responsible for those debts and any other
19 debts that he has in his individual name.

20 Give me one moment to check one last
21 thing.

22 And I don't believe that I said this,
23 but Exhibit 112 is a joint stipulation of
24 premarital assets that you-all filed the last
25 day of trial. And that joint stipulation will

1 be confirmed by the Court.
 2 Counsel, based on my notes, that
 3 covers all the issues that were before the
 4 Court. Are there any issues that have not been
 5 covered?
 6 MS. MITCHELL: Not that I'm aware of.
 7 MR. HOLLAND: Just one moment.
 8 THE COURT: Sure.
 9 MR. HOLLAND: Nothing from our side,
 10 Your Honor.
 11 THE COURT: Thank you.
 12 MS. MITCHELL: Your Honor, how do you
 13 want us to go about determining who the
 14 auctioneer will be?
 15 THE COURT: Thank you. I think that
 16 before you-all came today, I asked you-all if
 17 you'd been giving some consideration to who an
 18 auctioneer would be. I did pose that before we
 19 left. Have y'all had the chance to have any
 20 discussion about that?
 21 MS. MITCHELL: To be honest, I
 22 haven't even thought about it.
 23 THE COURT: Okay.
 24 MR. HOLLAND: I haven't either, Your
 25 Honor.

1 THE COURT: Okay. All right.
 2 MR. HOLLAND: I mean, we've got
 3 90 days. I think that's sufficient time to see
 4 what we can do to work through it. I don't
 5 anticipate a problem coming up with somebody.
 6 THE COURT: Okay. I want you-all by
 7 Wednesday to have designated an auctioneer,
 8 someone that you can mutually agree to. If you
 9 can't do that, schedule a phone conference with
 10 me. You can both submit your arguments in
 11 terms of which person you're asserting should
 12 be the one to conduct the auction, and then
 13 I'll make a ruling so we can keep the case
 14 moving forward. Okay?
 15 MR. HOLLAND: Fair enough, Your
 16 Honor.
 17 MS. MITCHELL: Thank you.
 18 THE COURT: Thank y'all. Good luck
 19 to you both.
 20 (End of proceedings.)
 21
 22
 23
 24
 25

1 REPORTER'S CERTIFICATE
 2
 3 STATE OF TENNESSEE :
 4 COUNTY OF SEQUATCHIE:
 5
 6 I, Janet P. Tilley, Licensed Court
 7 Reporter, do hereby certify that the foregoing
 8 ruling of the Court was stenographically recorded by
 9 me as stated in the caption; that pages 1 to 27,
 10 inclusive, were reduced to typewriting under my
 11 direction and supervision; and the transcript is a
 12 true and correct record, to the best of my ability,
 13 of said proceedings.
 14 I further certify that I am not a relative
 15 or employee or attorney or counsel of any of the
 16 parties, nor am I a relative or employee of such
 17 attorney or counsel, nor am I financially interested
 18 in the action. All rates charged are usual and
 19 customary.
 20 This the 2nd day of March, 2020.
 21
 22 Janet P. Tilley, LCR
 23 and Notary Public.
 24 My Commission Expires: 3/7/2021
 25 Tennessee LCR Number: 020

ASSETS AND LIABILITY

Christina L. McCartney v. Lester D. McCartney *Wife's Value*
Exhibit A

	Assets	Value	Debt	Equity	To Husband	To Wife	Division
1	Interest in Home/buildings (\$485,000 - \$200,000)	\$285,000.00	\$0.00	\$285,000.00	\$285,000.00	\$0.00	Husband
2	Fidelity IRA (\$401,344.66 - \$187,861.70)	\$213,482.96	\$0.00	\$213,482.96	\$106,741.48	\$106,741.48	Divide
3	JPMorgan SmartRetirement Blend 2025 (12-31-19)	\$18,068.96	\$0.00	\$18,068.03	\$9,034.02	\$9,034.02	Divide
4	Vanguard Individual Brokerage account	\$232,433.90	\$0.00	\$232,433.90	\$116,216.95	\$116,216.95	Divide
5	Vanguard Roth IRA Account	\$4,435.00	\$0.00	\$4,435.00	\$2,217.50	\$2,217.50	Divide
6	Fidelity (Wife) Bilo (removed)	\$65,811.82	\$0.00	\$65,811.82	\$0.00	\$65,811.82	Wife
7	CTCB IRA (Husband)	\$19,548.71	\$0.00	\$19,548.71	\$9,774.35	\$9,774.36	Divide
8	CTCB Bank Account Husband	\$22,000.00	\$0.00	\$22,000.00	\$11,000.00	\$11,000.00	Divide
9	First Volunteer Bank account	\$78,000.00	\$0.00	\$99,029.52	\$49,514.76	\$49,514.76	Divide
10	2009 PT Cruiser Limited	\$4,000.00	\$0.00	\$3,700.00	\$0.00	\$3,700.00	Wife
11	2000 GMC Truck 2500 4x4	\$4,276.00	\$0.00	\$4,276.00	\$0.00	\$4,276.00	Wife
12	2007 Nissan Frontier	\$4,125.00	\$0.00	\$6,000.00	\$6,000.00	\$0.00	Husband
13	2015 GMC Sierra	\$17,660.00	\$0.00	\$32,435.00	\$32,435.00	\$0.00	Husband
14	Kawasaki KXL 250s	\$3,000.00	\$0.00	\$1,595.00	\$1,595.00	\$0.00	Husband
15	1999 Honda Foreman 4-wheeler	\$600.00	\$0.00	\$1,300.00	\$1,300.00	\$0.00	Husband
16	1999 Kawasaki 300 4-wheeler	\$750.00	\$0.00	\$800.00	\$800.00	\$0.00	Husband
17	StarCraft 19 foot deck boat	\$8,000.00	\$0.00	\$13,660.00	\$13,660.00	\$0.00	Husband
18	Bush hog Batwing	\$4,000.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	Husband
19	Zero Turn Husqvarna	\$400.00	\$0.00	\$400.00	\$400.00	\$0.00	Husband
20							
21	Taylor Way reverse-tine tiller	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	\$0.00	Husband
22	Hay Rake	\$1,000.00	\$0.00	\$1,000.00	\$1,000.00	\$0.00	Husband
23	Hay Tedder	\$2,000.00	\$0.00	\$2,000.00	\$2,000.00	\$0.00	Husband
24	Long brand square hay baler	\$1,500.00	\$0.00	\$3,000.00	\$3,000.00	\$0.00	Husband
25							
26	Fort-DMD 9 foot high speed rotary hay cutter	\$1,000.00	\$0.00	\$1,500.00	\$1,500.00	\$0.00	Husband
27	2010 Polaris Ranger 800	\$4,000.00	\$0.00	\$5,000.00	\$5,000.00	\$0.00	Husband
28	Land Pride 1690 Power Rake 8 foot	\$1,500.00	\$0.00	\$2,100.00	\$2,100.00	\$0.00	Husband
29	Garden rototiller	\$200.00	\$0.00	\$200.00	\$200.00	\$0.00	Husband
30							
31	Two hay forks	\$50.00	\$0.00	\$50.00	\$50.00	\$0.00	Husband
32	AG-Spray 50 gallon field sprayer unit	\$250.00	\$0.00	\$250.00	\$250.00	\$0.00	Husband
33	John Deere 6420 90hp cab tractor	\$14,000.00	\$0.00	\$25,000.00	\$25,000.00	\$0.00	Husband
34	Woodburning stove	\$700.00	\$0.00	\$700.00	\$700.00	\$0.00	Husband
35	Small refrigerator - garage	\$250.00	\$0.00	\$250.00	\$250.00	\$0.00	Husband
36	Roller drum	\$2,500.00	\$0.00	\$2,500.00	\$2,500.00	\$0.00	Husband
37	Horse mats (30)	\$100.00	\$0.00	\$100.00	\$100.00	\$0.00	Husband

EXHIBIT

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PENCAD 800-631-6988

38	Small spreader	\$100.00			\$100.00	\$100.00	\$0.00	
39	Root rake	\$300.00			\$300.00	\$300.00	\$0.00	
40	Greenhouse	\$3,000.00			\$3,000.00	\$3,000.00	\$0.00	
41	Wood brand scraper blade (3 point)	\$100.00			\$100.00	\$100.00	\$0.00	
42	8' box-scraper (3 point)	\$150.00			\$150.00	\$150.00	\$0.00	
43	5' x 10' utility trailer	\$160.00			\$100.00	\$100.00	\$0.00	
44	4 chain saws	\$310.00			\$310.00	\$310.00	\$0.00	
45	Kuhn Hay grabber	\$3,500.00			\$3,500.00	\$3,500.00	\$0.00	
46	Hay spear for loader	\$150.00			\$150.00	\$150.00	\$0.00	
47	Welder	\$200.00			\$200.00	\$200.00	\$0.00	
48	Timbers (4 @ \$50/each)	\$200.00			\$200.00	\$200.00	\$0.00	
49	Floor jack	\$100.00			\$100.00	\$100.00	\$0.00	
50	Pump	\$200.00			\$200.00	\$200.00	\$0.00	
51	Chopsaw	\$300.00			\$300.00	\$300.00	\$0.00	
52	Tiller	\$300.00			\$300.00	\$300.00	\$0.00	
53	Fence Post	\$100.00			\$100.00	\$100.00	\$0.00	
54	Ariator (yellow)	\$3,500.00			\$3,500.00	\$3,500.00	\$0.00	
55	Miter saw	\$200.00			\$200.00	\$200.00	\$0.00	
56	Shop tool/metal & woodworking	\$5,000.00			\$5,000.00	\$5,000.00	\$0.00	
57	Electric piano, guitar	\$700.00			\$700.00	\$700.00	\$0.00	
58	.22 Cal Pistol & Rifle	\$250.00			\$250.00	\$250.00	\$0.00	
59	Beretta .22 Pistol	\$200.00			\$200.00	\$200.00	\$0.00	
60	.223 Rifle	\$300.00			\$300.00	\$300.00	\$0.00	
61	Antique coins and silver	\$1,400.00			\$1,400.00	\$1,400.00	\$0.00	
62	Miscellaneous Equipment	\$2,500.00			\$2,500.00	\$2,500.00	\$0.00	
63	TOTAL	\$1,031,382.35	\$0.00		\$1,119,285.94	\$740,999.06	\$378,286.89	Husband
64	Husband to pay Wife \$-1st Vol. Bank/QDRO					-\$181,356.09	\$181,356.09	
						\$559,642.97	\$559,642.98	
	Husband's Separate Property							
	United Omaha	\$11,077.48				\$11,077.48	\$0.00	
	37 acres land in Warren County, PA	\$20,000.00				\$20,000.00		
	1994 Gulf Stream Motorhome	\$6,000.00				\$6,000.00		
	Deutz-Allis farm tractor	\$6,000.00				\$6,000.00		
	1972 Case 850 dozer	\$6,000.00				\$6,000.00		
	King Kutter 6' bush hog	\$200.00				\$200.00		

Kolb Firestar Ultralight	\$4,000.00				\$4,000.00		
Various yard/garden & tractor related hand tools	\$500.00				\$500.00		
Other hobby/entertainment related items	\$200.00				\$200.00		
Hydrolic Aerator/Finish PR 1690	\$3,000.00				\$3,000.00		
4 kayaks	\$100.00				\$100.00		
Concrete mixer	\$20.00				\$20.00		
Laptop computer	\$50.00				\$50.00		
Printers	\$80.00				\$80.00		
Separate interest in retirement	\$187,861.70				\$187,861.70		
Separate interest in home & buildings	\$200,000.00				\$200,000.00		
Total Husband Separate Property	\$445,089.18				\$445,089.18		
Wife's Separate Property							
Fidelity Account #5343	\$205,043.63					\$205,043.63	
510 N. Jefferson Street, Athens, Al	\$155,000.00				\$146,000.00		\$9,000.00
Prints from uncle at house	priceless						priceless
Horse saddles/tacks	\$600.00						\$600.00
Two kayaks and associated gear (gift)	\$200.00						\$200.00

SEE
EMB 89, pg. 246
FILED et. seq.

DATE June 5, 2023
Patricia Campbell
PATRICIA CAMPBELL
GRUNDY CO CLERK & MASTER

DOCKET NO. 6847

**MONTEAGLE SUNDAY SCHOOL
ASSEMBLY, a Tennessee not-for-profit
corporation,**

JUDGMENT

~~Blaine~~ Willis, Chancellor of
Utw

1

Violation of the Monteagle Sound Ordinance Claim

The Plaintiffs assert a claim for violation of the Monteagle sound ordinance located in Title 11, Section 11-102 of the Monteagle Municipal code. The Plaintiffs alleged that the noise produced from the play of pickleball routinely exceeds the Monteagle sound ordinance at the location of their cottage, Number 131.

Both parties retained the services of experts to testify as to the noise created by pickleball, and the measurements of the same. Both experts testified about the Monteagle sound ordinance and their opinion about the appropriate form of measurement to be used based on their interpretation and review of industry standards. The sound ordinance provided no specific direction regarding the method to be used to measure sound. The Court determines that Plaintiffs' sound expert was more credible regarding the mechanism he used for the measure of pickleball noise. However, the Court additionally determines that the Monteagle sound ordinance does not create a private cause of action which would allow Plaintiffs to assert such a claim.

Accordingly, Plaintiffs' claim lacks merit and should be dismissed with prejudice.

Breach of Contract Claim

The Plaintiffs assert a claim for breach of contract involving their Lease agreement for Cottage Number 131. The Lease provides that "Lessor hereby covenants and agrees that Lessee upon performing fully the covenants and agreements herein contained, on Lessee's part to be kept and performed, may at all times during the term hereby granted, peaceably and quietly have, hold, and enjoy the Demised Premises, subject to the Charter, Bylaws, Code of Regulations of Lessor."

In analyzing this claim the Court rejects the Plaintiffs' position that "peaceably" and "quietly" are to be given their literal definitions. The Court instead determines that such terms

have to be examined in the context of legal use and real estate transactions and leases. The Court determines that the covenant of peaceable and quiet enjoyment refers to the Plaintiffs' ability to possess their cottage without being subject to the claims of others and that it will only be broken by actual or constructive eviction.

The Court notes that there was no actual eviction of the Plaintiffs. The Court next considers whether they were constructively evicted. The Plaintiffs testified that they did not return to the Monteagle Sunday School Assembly ("MSSA") for the 2022 Season, and that the reason for this was because of pickleball noise. The Court determines that the Plaintiffs testimony on this issue lacks credibility. The Court additionally determines that at least in part the Plaintiffs failed to return for the 2022 Season because of this ongoing litigation. The Court further determines that Plaintiff Donelson felt pressure and controversy with other MSSA members which played into her choice not to return for the 2022 Season. The Court concludes that Plaintiffs were not constructively evicted from Cottage Number 131 because of pickleball noise.

Accordingly, the Court determines that Plaintiffs' breach of contract claim lacks merit, and that it should be dismissed with prejudice.

Misrepresentation Claim

The Plaintiffs assert a misrepresentation claim. They contend that the "Defendant DID NOT inform the Plaintiffs of the fact that the tennis court was being used as a dual pickleball court, that loud, obnoxious, and offensive noise was emanating and coming from the use of the tennis court being a dual pickle ball court and that complaints from Members and the community were being made about the same prior to Plaintiffs' Lease and purchase of the Cottage."

The Court notes that there was no evidence of any direct false representation made to the Plaintiffs by the MSSA, and that the allegations are that the MSSA failed to disclose that pickleball was being played on what was known as the youth tennis court. Despite the Plaintiffs' testimony to the contrary, Scott Parrish, the Executive Director of the MSSA testified that he disclosed the pickleball play and the noise that it created to Plaintiffs in connection with their tour of Cottage Number 131 prior to their acquisition of a leasehold interest in the cottage; this was while they were considering whether to lease Cottage Number 131. Additionally, Plaintiff Donelson's sister, Ms. Curry testified by deposition that she discussed the pickleball noise with the Plaintiffs prior to the time that they acquired their leasehold interest in Cottage Number 131. The Court weighs the testimony of Mr. Parrish and Ms. Curry, and Plaintiffs' testimony and determines that disclosures about the noise made by pickleball play were made to Plaintiffs prior to their acquisition of a leasehold interest in Cottage Number 131.

Further, the Court notes that the testimony was that the pickleball courts were in open view and obvious. The Court determines that Plaintiffs had the time, opportunity and ability prior to their acquisition of their leasehold interest in Cottage Number 131 to examine the nearby recreation area carefully and to make additional inquiries prior to signing the lease for Cottage Number 131. Even though they had a duty to investigate, they chose not to do so.

Accordingly, the Court determines that Plaintiffs' misrepresentation claim lacks merit, and that it should be dismissed with prejudice.

Nuisance Claim

The Plaintiffs assert a claim that “ Defendant's ongoing, and continuing use of the tennis court across from the Plaintiffs' property as a dual pickleball court and the associated unreasonably loud and obnoxious noise from such usage prevents the Plaintiffs from remaining in the peaceable and quiet enjoyment of the Cottage and accordingly constitutes a nuisance that must be immediately abated by this Court to prevent further irreparable harm to Plaintiffs.”

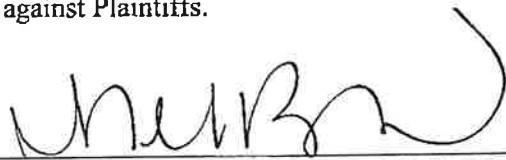
There were very different perspectives at the MSSA regarding the perception of pickleball noise as reflected by witness testimony at trial. Some of the MSSA members who could hear the pickleball noise described it as a sound of assembly life while others found it difficult to concentrate and stated it was not their idea of assembly life. The testimony from several witnesses during the trial was that pickleball noise bothered some, some found it annoying, and some were not bothered by it at all. The Court determines that the perception of the noise is subjective. There was additional testimony from various witnesses that the perception of the pickleball noise depended largely on the structure of the cottage itself as some of the cottages had different windows, some had air conditioning units that diluted the sound on the interior of the cottages, and some had better insulation.

The Court notes that pickleball is not the only noise in the Westside neighborhood where Cottage Number 131 is located. The recreational area there has a pool, indoor and outdoor basketball courts and additional outdoor activities. The Court determines that Plaintiffs chose to acquire a leasehold interest in Cottage Number 131 in the Westside neighborhood. In weighing the testimony of Plaintiff Donelson, Ms. Curry, and Mr. Parrish, the Court determines that disclosures were made to Plaintiffs about pickleball noise prior to their acquisition of Cottage Number 131. In acquiring their leasehold interest in cottage Number 131, Plaintiffs chose to “come to the nuisance.”

Accordingly, the Court determines that Plaintiffs' nuisance claim lacks merit and that it should be dismissed with prejudice.

It is therefore hereby **ORDERED, ADJUDGED AND DECREED** that all of Plaintiffs' claims set forth their First Amended Verified Complaint for Declaratory Judgment, Breach of Contract, Misrepresentation and Abatement of Nuisance are dismissed with prejudice. The transcript of the Court's decision is attached hereto and incorporated herein by this reference.

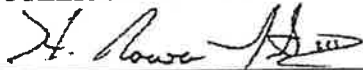
The court costs for this action are assessed against Plaintiffs.



The Honorable Melissa Thomas ~~Willis~~ Willis
Chancellor of the 12th Judicial District

Approved for Entry:

BUTLER SNOW LLP




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(615) 651-6728
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Attorneys for Defendant Monteagle Sunday School Assembly

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Judgment has been served upon the following via electronic mail and/or U.S. Mail, first-class, postage prepaid, this May 19, 2023:

Phillip E. Fleenor, BPR No. 012075
Adam U. Holland, BPR No. 28083
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H. Rowan Leathers III

68852219.v2

I, Patricia Campbell, the undersigned Clerk and Master of the Grundy County Chancery Court, do hereby certify that a true and exact copy of this Judgment was placed in the U.S. Mail to _____ on _____, 20____ with sufficient postage to carry same to its destination.

Patricia Campbell, Clerk & Master

ATTACHMENT

IN THE CHANCERY COURT FOR GRUNDY COUNTY, TENNESSEE
AT ALTAMONT

HARLEY WAYNE BRAFFORD AND)
HELEN JOHNSON DONELSON,)
HUSBAND AND WIFE,)

Plaintiffs,)

NO. 6847

- versus -)

MONTEAGLE SUNDAY SCHOOL)
ASSEMBLY, A TENNESSEE)
NOT-FOR-PROFIT)
CORPORATION,)

Defendant.)

APRIL 17, 2023

BEFORE THE HONORABLE MELISSA BLEVINS WILLIS

VIA ZOOM PROCEEDING

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17 BE IT REMEMBERED that the above-styled
18 cause came on to be heard via Zoom proceeding on
19 the 17th day of April, 2023; the Honorable Melissa
20 Blevins Willis, Chancellor of said Court, when all
21 parties announced ready to proceed, and the
22 following evidence was introduced, to-wit:

23 PROCEEDINGS

24 THE COURT: For those of you, the
25 attorneys know this. We've got a court reporter
that will be taking down the ruling today. Please
know that you all are restrained from utilizing
any other recording devices. There will be one
official transcript of this proceeding, and that
will be the one that Ms. Carpenter is taking down

1 today. Please be mindful of that.

2 Counsel, if you all for any specific
3 reason need to record the ruling yourselves, then
4 you may do that, but no other parties can. Okay,
5 thanks.

6 We'll go ahead and get started then.
7 We are here this afternoon for the ruling on the
8 Brafford, et al versus Monteagle Sunday School
9 Assembly, Grundy County, Case No. 6847; following
10 three days of trial that began on February 27th,
11 2023.

12 At my request, each attorney submitted
13 a closing argument in writing on March 17th, 2023.
14 In addition, just for clarification of the record,
15 originally there was a jury demand that was made
16 in this case; but it was rescinded prior to trial.
17 We proceeded as a bench trial.

18 During the three-day trial, there were
19 a total of nineteen witnesses, ten for the
20 plaintiffs and nine for the defendants. Millie
21 and Gary Huffman and Virginia Curry, who are
22 Plaintiff Donelson's sisters, and brother-in-law
23 testified by deposition. As none of the witnesses
24 were full-time residents of Grundy County, a
25 number of witnesses for the defendants appeared

1 via Zoom without objection.

2 Both parties retained in this case
3 retained the services of experts to testify as to
4 the noise created by pickleball, the measurements
5 of the same. Will Thornton was retained by the
6 plaintiffs as their sound expert in the Spring of
7 2022. He first became familiar with pickleball
8 approximately 12 years ago and performed a
9 computerized study for this case in the Spring of
10 2022 and another site study Labor Day Weekend of
11 2022.

12 He measured the sound on the exterior
13 of the cabin from Friday evening to Sunday evening
14 for 24-hour increments each day. He prepared an
15 initial report and thereafter amended a report to
16 include the Monteagle noise ordinance. He was
17 retained specifically to measure the impact of
18 pickleball noise on Cottage 131, and
19 professionally, much of his work centers around
20 community noise evaluations.

21 The defendants retained Jeff Pratt.
22 Mr. Pratt is a civil engineer. I should say this
23 for the record as well. The CV's of each of these
24 gentlemen were also introduced as exhibits. So I
25 didn't go into great detail about their

1 educational background.

2 Mr. Pratt is a civil engineer and
3 holds a master's degree from Vanderbilt. This was
4 his first experience with pickleball noise, as his
5 focus is primarily on transportation and highway
6 noise, but he does have experience in other types
7 of noise analysis.

8 Mr. Pratt conducted a site visit in
9 2022 during a pickleball tournament and set up his
10 measuring devices near Cottage 131. He measured
11 the sounds of that noise over the course of that
12 day.

13 Both experts testified about the
14 Monteagle ordinance. Mr. Thornton testified that
15 the verbiage was antiquated, and Mr. Pratt
16 testified that the ordinance was unclear and that
17 his interpretation of the unit to measure would be
18 through IMAX (phonetic). Given that there was no
19 specific direction provided in the ordinance,
20 neither expert used the same measure of sound but
21 based their opinion on the appropriate form of
22 measurement from their interpretation and review
23 of industry standards.

24 Plaintiffs' argument, and this is
25 reduced to its most simple form, was that the

1 defendant's report should be disregarded because
2 averaging the sound readings would by nature be
3 lower just by the fact that they had been averaged
4 and over a continuous period of time.

5 Additional argument was made by the
6 plaintiffs that we as humans do not hear sounds on
7 an average; rather by impact. The example that
8 was used and illustrated at least half a dozen
9 times during the trial was the clapping the hands
10 together by Mr. Fleenor and Mr. Thornton. It is
11 undisputed by the experts and the witnesses in
12 this case that pickleball makes noise.

13 The Court finds that both experts are
14 knowledgeable in their fields, but I find the
15 Plaintiffs' expert to be more credible in terms of
16 the mechanism he used for the measurement of
17 pickleball being IPIX (phonetic). However, I find
18 that the municipal ordinance does not create a
19 private cause of action for the plaintiffs.
20 Therefore, that claim fails.

21 In this case, the existence of a valid
22 contract is also not in dispute. The dispute
23 rather involves interpretation in the language of
24 quiet enjoyment. I disagree with the plaintiffs'
25 position that peaceably and quietly are given

1 their literal definitions. Those terms have to be
2 examined in context of legal use and real estate
3 transactions and leases.

4 The covenant of quiet enjoyment refers
5 to the ability to possess the property without
6 claims of others. I will go through additional
7 facts in support of this finding as my ruling
8 moves forward, but I do not find that Montéagle
9 Sunday School Assembly is in breach of contract.

10 In this case Plaintiff Helen Donelson
11 testified to being 71 years of age and coming to
12 the assembly most all of her life. She came less
13 in/or about 2006 due to some changes in her life
14 that required her to work more often, but she
15 still managed to come and stay usually a week or
16 two in the months of August with her sister
17 Millie.

18 It was clear to the Court that finding
19 a property in the assembly is appealing to her,
20 and as soon as she learned of the availability of
21 Cottage 131 from her sister Millie, she and her
22 husband were very interested. Cottage 131 is the
23 leasehold that was purchased by the plaintiffs,
24 and it's on the west side of the assembly grounds
25 near both or her sisters, and that this is the

1 same area she had come to most all of her life
2 beginning with her visits as a child to her
3 grandparents' cottage.

4 Plaintiffs immediately began inquiring
5 about the cottage after Ms. Huffman advised her of
6 the same being available. They drove in their
7 home in Memphis to meet with Mr. Scott Parrish
8 late in the afternoon of September 15th, 2020 to
9 view the cottage. They went back the following
10 day after staying the night on the grounds to
11 visit the cottage and to take measurements and to
12 look at the basement.

13 Plaintiff Wayne Brafford became
14 familiar with the assembly due to his relationship
15 with Ms. Donelson. He first went to the assembly
16 in/or about 2019. Mr. Brafford holds a master's
17 in business and was very articulate in his
18 testimony and clearly an intelligent individual.
19 In fact, several times during the trial and during
20 Mr. Brafford's testimony, he corrected the
21 attorneys when he was being questioned. Not only
22 did he correct Mr. Leathers, but he likewise
23 corrected Mr. Fleenor.

24 Prior to purchasing the leasehold, he
25 was less familiar with the assembly and had only

1 been there a couple of times with his wife to stay
2 with his in-laws, the Huffmans, for a vacation or
3 to visit. His testimony established that he
4 relied more on his wife's positive experiences
5 during her life for the basis of his knowledge
6 along with the inquiries that he made in/or about
7 September 2020 prior to purchasing the leasehold.

8 Mr. Brafford also seemed to be drawn
9 to the perception of the intellectual and
10 spiritual environment that the assembly provided.
11 It's uncontested that pickleball play began in
12 2017 at the assembly and has grown in popularity.
13 As with many things in life, the pandemic impacted
14 the popularity of the sport at the assembly.
15 Specifically the assembly canceled its summer
16 program in 2020 to opt and allow players to engage
17 in more outside activities to be in compliance
18 with CDC guidelines.

19 Following the 2020 season, pickleball
20 only continued to grow at the assembly. The
21 plaintiffs were present in 2019 but denied
22 noticing or hearing any of the pickleball noise.
23 In fact, both of the plaintiffs denied ever
24 hearing pickleball noise during any of their
25 visits to the assembly prior to purchasing the

1 leasehold in Cottage 131.

2 Plaintiff Donelson testified to a
3 minimum of annual visits but never noticed
4 pickleball play or noise despite it being an
5 active sport at the assembly three years before
6 she purchased Cottage 131.

7 I am not going to go through the
8 testimony of each of the other witnesses regarding
9 the pickleball controversy, as they labeled it
10 there, as you all have labeled it as you've gone
11 through the trial.

12 In summary, the testimony that was
13 elicited from various witnesses and others of
14 cottages or leaseholds was that the pickleball
15 noise bothered some of them, some of them found it
16 annoying, and some were not bothered by it at all.

17 The testimony was elicited that some
18 of the noise in some of the cottages depended
19 largely on the structure of the cottage itself.
20 Some of the cottages had different windows. Some
21 could not hear the noise inside their own cottage
22 because the air conditioning units would cause the
23 sound to be diluted on the interior of the
24 cottages. Some of the cottages had better
25 insulation.

1 With regard to the noise, and again,
2 some of the owners could hear the pickleball noise
3 and didn't find it annoying but rather described
4 it as a sound of assembly life. Others, on the
5 other hand, found it difficult to concentrate and
6 stated it was not their idea of assembly life. So
7 two very different positions in the assembly.

8 Cottage 131, the cottage in question,
9 is in the recreational area of the assembly
10 grounds. Testimony established that pickleball is
11 not the only noise on the west side. The
12 recreational area has the pool and/or indoor and
13 outdoor basketball courts and additional outdoor
14 activities.

15 Plaintiff Donelson classified those
16 recreational noises as happy noises, as did some
17 of the other witnesses that testified. Pleasant
18 and unpleasant noises are subjective. The
19 testimony established that the court has been used
20 for other activities, not only youth tennis courts
21 as time has passed at the assembly.

22 In this case the plaintiffs chose to
23 purchase a cottage in the heart of the
24 recreational area for the assembly. General
25 Manager Scott Parrish testified and has worked for

1 the assembly since 2010 and holds a bachelor of
2 science from Vanderbilt. His testimony was
3 unrefuted that the area that contains the historic
4 youth tennis courts has not been used for youth
5 tennis since or about 2010 when he was hired. He
6 testified that at that time in 2010 there was also
7 volleyball, badminton, a 9-Square area, and other
8 different activities that were being played at the
9 area designated as the youth tennis court.

10 There was also a lot of testimony
11 about the maps and how the map that was introduced
12 in exhibit had the property labeled -- the court
13 labeled as the youth tennis court. However, there
14 was no testimony that the plaintiffs relied on
15 that map in making their decision.

16 Regardless, all parties to this action
17 signed a leased on November 7th, that's Trial
18 Exhibit 4, wherein the assembly reserved the right
19 to alter, modify, or change at pleasure any plan,
20 map, or plat of the assembly grounds as to any
21 portion thereof; and they also retained the right
22 to alter or change at will the location of any
23 public buildings, parks, or streets.

24 The plaintiffs voluntarily signed this
25 agreement and were under no duress to do so.

1 Exhibit 3 established that approximately 15 days
2 had passed between the plaintiffs' first visit to
3 the property and their execution of the document
4 to transfer the leasehold with the lease itself
5 ultimately being signed about a month and a half
6 after their first visit.

7 The lease also sets forth the lessor's
8 obligation to provide the lessee of the ability to
9 peaceably and quietly have, hold, and enjoy the
10 premises subject to the charter, bylaws, code of
11 regulations to the lessor. Tennessee case law
12 supports the covenant of quiet enjoyment is an
13 assurance to the purchaser of a permanent
14 undisturbed possession of the premises conveyed
15 and will only be broken by actual or constructive
16 eviction. In this case there was no actual
17 eviction.

18 The argument of the plaintiffs that
19 there was perhaps a constructive eviction because
20 they did not return to the assembly during the
21 2022 season is misplaced. Both plaintiffs
22 testified that they did not return because of the
23 pickleball noise despite the testimony that the
24 hours of play had been reduced from when they were
25 there the year prior when the litigation began.

1 While I find that that may be true in part as to
2 the decision not to come back in 2022, I also find
3 that credibility is lacking on this issue.

4 The litigation started, as I said, in
5 2022, and the parties have been in court at least
6 one other time. They've had mediation and
7 multiple depositions. The testimony elicited at
8 trial is that the assembly is a tight-woven
9 community and likes to address issues internally
10 versus through litigation. This has been an
11 extremely divisive action, and testimony by a
12 number of witnesses established the same and has
13 not been disputed by anyone.

14 I find that at least part of the
15 decision not to return for the season by the
16 plaintiffs also relates to the ongoing litigation.
17 The plaintiffs were present during the 2021
18 season, and Plaintiff Donelson testified that she
19 was invited to play with a third party that she
20 held in high regard, and for that reason, she
21 chose to play in an effort to build a friendship.

22 However, afterwards she testified she
23 felt a sense of betrayal to her neighbors that
24 were not in support of pickleball. So she chose
25 at that time to quit playing. This supports a

1 finding that Plaintiff Donelson felt pressure and
2 controversy with other assembly members, which I
3 find also played into her choice not to return for
4 the 2022 season.

5 In this case, the plaintiffs are
6 asserting the defendants failed to disclose
7 information regarding what, again, has been called
8 the pickleball controversy during the trial.
9 There was no evidence of any direct false
10 representation made by the assembly, rather
11 allegations of misleading information and about
12 the location and how a plaque was placed on the
13 area outside what was known as the youth tennis
14 court.

15 Also testimony about a map, as I said,
16 was given, but neither plaintiff alleged any
17 reliance on that map specifically. It's
18 undisputed that Mr. Parrish is the agent for the
19 assembly and is responsible for showing vacant
20 properties and that he receives no financial
21 incentive such as a commission when the leaseholds
22 transfer.

23 The plaintiffs testified that Mr.
24 Parrish failed to disclose or make any comments
25 about the noise associated with the pickleball

1 court. Mr. Parrish testified that his pattern of
2 behavior was to disclose the pickleball activity
3 to prospective buyers near the courts as he took
4 them on a tour of the respective properties. He
5 further testified that he had the same
6 conversation with the plaintiffs as he went
7 through the cottage in his typical approach and
8 gave the same speech, so to speak, with regard to
9 his showings of the property. He testified
10 specifically in terms of where he would enter the
11 residence and how he would take each prospective
12 purchaser on a tour through the home.

13 Plaintiff Donelson's sister, Virginia
14 Curry, testified by deposition regarding her
15 conversation with her sister about the pickleball
16 noise. Weighing the testimony of Ms. Donelson and
17 her regular visits to the assembly in the past and
18 the testimony of Ms. Curry and Mr. Parrish, I find
19 that there were disclosures about pickleball prior
20 to the purchase of Cottage 131.

21 In addition, the pickleball courts
22 were open and obvious. Though the nets were
23 portable, the courts were aligned differently for
24 pickleball play. The plaintiffs had the time,
25 opportunity, and ability to examine the

1 recreational area carefully and to make additional
2 inquiries prior to signing the lease for the
3 property and prior to the purchase, but they chose
4 not to.

5 The use of the courts for pickleball
6 was not hidden or concealed at any time during the
7 plaintiff's visit or at any other time as shown by
8 the record at trial. The testimony established
9 also that these leaseholds were being sold
10 quickly, often resulting in bid wars. This
11 includes specifically the property purchased by
12 the plaintiffs, Cottage 131.

13 Mr. Parrish on behalf of the assembly
14 was under no pressure to induce the parties to buy
15 or under pressure to sell these cottages based on
16 the testimony of the sales history in the assembly
17 and the announcement at trial as to the
18 stipulation that though the plaintiffs sought
19 monetary damages, the same could not be proven.

20 The proof established that these units
21 were moving quickly, that the plaintiffs had
22 visited the property at least two times before
23 purchasing Cottage 131, and then again that
24 Plaintiff Donelson has visited the property in
25 essence her entire life.

1 The plaintiffs saw the property during
2 the week, during the workweek, and also during the
3 off season. It's reasonable for them to
4 understand and for Plaintiff Donelson to know that
5 there are fewer people using the facilities' during
6 this time. Therefore, the property is not as
7 active or was not as active when they viewed the
8 property in September. This should not have been
9 a surprise at minimum to Plaintiff Donelson,
10 again, because she has been coming there her
11 entire life. She is also familiar with the
12 activities on the property during the off season
13 versus what the assembly refers to as the season
14 in the summer, that eight-week period.

15 The plaintiffs in this case chose to
16 move to the assembly and to purchase Cottage 131
17 in the recreational center on the west side, so
18 they chose to come to the nuisance. They chose to
19 enter into a lease where the assembly retained the
20 option to change or alter among other things the
21 location of any public building. Therefore, the
22 claimant nuisance fails.

23 I further find that there was no
24 misrepresentation or hidden agenda of the
25 assembly. There was no actual representation

1 made. The proof established that this community
2 has been in existence for more than a hundred
3 years and that over time things have been labeled.

4 The example that was given by one of
5 the witnesses during trial was the reference to an
6 old troll bridge. This is a name used by the
7 members to identify the location of an area, not
8 an activity or what was actually present at the
9 bridge.

10 The testimony further established that
11 the youth tennis courts had not been used for
12 youth tennis since/or about 2010 when Mr. Parrish
13 became the general manager. So I find that the
14 plaintiffs' perception was based on wife's prior
15 knowledge. Based in part on her knowledge of the
16 grounds, she made certain assumption, and her
17 husband likewise made those assumptions.

18 The purchasers have a duty to
19 investigate the area as well. The proof clearly
20 established that these cottages sell themselves.
21 The plaintiffs were bidding against other
22 potential buyers for Cottage 131. The reliance
23 that the plaque that was labeled youth tennis
24 court resulted in a false or negligent
25 misrepresentation by the assembly is misplaced.

1 So in conclusion, I find that the plaintiffs
2 failed to prove the necessary to prevail on claims
3 of misrepresentation.

4 Counsel, that concludes my ruling. If
5 I'm not mistaken, I've hit every element in every
6 claim that you all have asserted. Both of you --
7 and I will say this. I know that both of you have
8 clients that you all put 110 percent into
9 preparation for this litigation and did an
10 excellent job in presentation of the case.

11 You all have a lot of people who are
12 interested in the community and at the assembly
13 which made it, I'm sure, more challenging in some
14 ways in terms of reaching a compromise on any of
15 these issues. Again, I don't think this case
16 could have been tried any better.

17 Mr. Fleenor, you did an excellent job
18 in your representation of your clients and put
19 forth the best case I think that was possible.

20 So that's everything that I have. Do
21 you all have anything else that you need me to
22 clarify for the record?

23 MR. FLEENOR: Not from our side.
24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Fleenor.

1 Mr. Leathers?

2 MR. LEATHERS: Your Honor, obviously
3 we'll have a transcript of your ruling. Would you
4 like for me to draft an order that incorporates
5 the transcript for your signature?

6 THE COURT: I think that will be the
7 easiest thing to do, Counsel. Thank you. Good
8 luck to all of you. Wish you all the best. Thank
9 you.

10 MR. FLEENOR: Thank you, Your Honor.
11 (Court was adjourned in this matter.)
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REPORTER'S CERTIFICATION

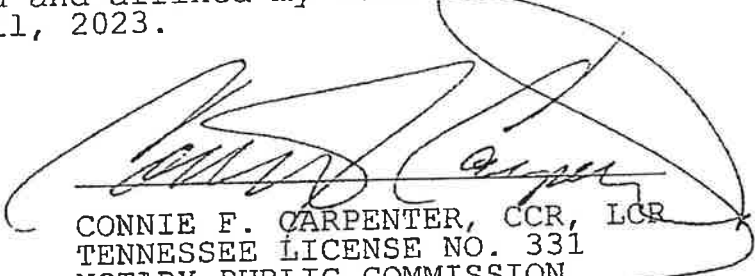
STATE OF TENNESSEE)
COUNTY OF GRUNDY)

I, Connie F. Carpenter, Certified and Licensed Court Reporter and Notary Public in and for the State of Tennessee, do hereby certify that the above Zoom proceeding was reported by me and that the foregoing pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 20th day of April, 2023.


CONNIE F. CARPENTER, CCR, LCR
TENNESSEE LICENSE NO. 331
NOTARY PUBLIC COMMISSION
EXPIRES APRIL 25, 2025.



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