

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 18, 2002 Session

**SHELBY COUNTY DEPUTY SHERIFF'S ASSOCIATION, ET AL. v.
SHERIFF A. C. GILLESS, JR.**

**Direct Appeal from the Chancery Court for Shelby County
No. CH-01-1148-3 D.J. Alissandratos, Chancellor**

No. W2001-02668-COA-R3-CV - Filed October 22, 2002

The plaintiff in this case alleges that the creation of the position of civilian process server as approved by the Shelby County Civil Service Merit Board and by the criminal court under a fee petition violates the Shelby County Charter and the statutory duties of the Sheriff. The trial court dismissed the cause as being rendered moot by the approval of the fee petition. We reverse and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; and
Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS and HOLLY K. LILLARD, J.J., joined.

Alan Bryant Chambers, Memphis, Tennessee, for the appellants, Shelby County Deputy Sheriff's Association and Sargent C.D. Booker, President.

Louis P. Britt and Fred E. Jones, Jr., Memphis, Tennessee, for the appellee, Sheriff A.C. Gilless, Jr.

OPINION

In May of 2001, the Shelby County Human Resources Department posted openings for the new job position of Process Server I. Duties of this position include: execution and return of process orders of the court; serving of all papers of the court, including writs of execution, writs of possession, summons, replevins, distress warrants. On June 1, The Deputy Sheriffs Association ("the Association") filed a declaratory judgment action against Shelby County Sheriff A.C. Gilless, Jr. ("the Sheriff") in chancery court, seeking an injunction and alleging: 1) the position violates the statutory duties of the sheriff's office pursuant to Tenn. Code Ann. § 8-8-201(1), (5); 2) the Sheriff has no authority to employ civilian process servers and to engage in competition with private process servers; 3) the position violates the Shelby County Charter; 4) the creation of the position is "repugnant to the existing classification of Deputy Sheriff." The Sheriff filed a motion to dismiss

on June 21. The trial court found that the employment of civil process servers by the Sheriff's Department was properly under the jurisdiction of the Shelby County Criminal Court and transferred the case accordingly.

The criminal court denied the Sheriff's motion to dismiss, finding "significant factual and legal questions as to whether the Defendant, Sheriff A.C. Gillless, Jr., acted legally, under Tenn. Code Ann. §§ 8-20-101 and 8-8-201, when he hired civilian process servers for the purpose of serving civil process on behalf of the courts of this County." The court therefore granted a preliminary injunction enjoining the Sheriff from training or compensating civil process servers pending a full hearing on the merits. Following a hearing, the criminal court sustained the petition of the Sheriff,¹ and "the number of employees, including Deputy Jailers, Deputy Sheriffs and Assistants." The court further ordered that "the Petitioner [Sheriff] may pay salaries in compliance with 2001-2002 Shelby County Salary Policy and Personnel Policy . . . as approved by the Civil Merit Service Board [sic] and the Board of Commissioners" The criminal court then remanded the cause back to chancery court. The remand order reads:

This cause came to be heard on August 28, 2001 before the Hon. W. Otis Higgs, Judge, upon testimony of Sheriff A.C. Gillless, Jr., statement of counsel for the parties, and the entire record of this cause. From all of which it appeared to the Court that the petition of the Sheriff seeking approval to hire process officers is reasonable and should be granted, and that the above-styled cause was transferred to this Court from Part III of the Chancery Court, the Hon. D. J. Alissandratos, Ch., to resolve the issue of approval under the Anti-Fee Statute, T.C.A. 8-20-101; and the issue being resolved in favor of the Sheriff, as reflected in a separate order, this case should now be remanded back to the Chancery Court for the resolution of the remaining issues raised in the complaint.

Upon remand, the chancellor found that the issues raised by the Association were subject to Tenn. Code Ann. § 8-20-101 and had been rendered moot by order of the criminal court approving the positions. The chancellor accordingly dismissed the action. This appeal followed.

Issue Presented

The dispositive issue of this appeal, as we perceive it, is whether the chancellor erred in dismissing the cause of action on the grounds of mootness.

¹It appears from the record that the cause in criminal court was in the form of a fee petition pursuant to Tenn. Code Ann. § 8-20-101.

Standard of Review

The issue presented in this case is an issue of law. Our review of the trial court's judgment on issues of law is *de novo*, with no presumption of correctness. Tenn. R. App. P. 13(d); *Bowden v. Ward*, 275 S.W.3d 913, 916 (Tenn. 2000).

Analysis

The Association's central argument on appeal is that this cause of action was dismissed without a resolution of the issues presented. It contends that the criminal court judgment did not address the issues of whether the creation of the position of process server violates the statutory duties of the Sheriff, is in violation of the Shelby County Charter, and is not in compliance with the provisions of the County's Civil Service Merit Act. The Association therefore submits that the resolution of the fee petition in criminal court did not render these issues moot, and that the criminal court accordingly remanded these issues back to the chancery court.

In order to be justiciable, a cause of action must present a genuine controversy for adjudication by the court. *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). When the issues have been resolved and the case no longer presents a controversy, the resolution of which will provide meaningful relief to one of the parties, it has become moot and is not justiciable. *Id.* A cause of action must maintain its justiciability throughout the course of litigation, including the course of appeal. *Id.* at n3.

Upon review of the record in this case, we are not are satisfied that the criminal court judgment resolved the issues regarding application of the County Charter, the County's Civil Service Merit Act, and the statutory duties of the Sheriff. While the Association's complaint acknowledges that the civilian position of process server was approved by the Civil Service Merit Board, the Association contends that approval of this position was in error since the duties of process server are those which must be carried out by Sheriff's deputies pursuant to Tenn. Code Ann. § 8-8-201. The Association further argues that the position violates the provision of the County Charter that "all duties [of the Sheriff], conferred or implied by law, shall expressly continue as they existed prior to the enactment of this Charter." The criminal court did not adjudicate these issues, but specifically remanded them for adjudication by the chancellor.

In light of the foregoing, the order of the trial court dismissing the cause for mootness is reversed. This case is remanded for further proceedings. Costs of this appeal are taxed to the Appellee, Sheriff A.C. Gilles, Jr.

DAVID R. FARMER, JUDGE