

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

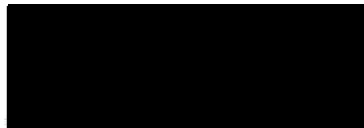
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Cellular Phone:



**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 [john.jefferson@tncourts.gov](mailto:john.jefferson@tncourts.gov).

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Chancellor of the Chancery Court of Tennessee sitting in the 29<sup>th</sup> Judicial District.

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

1998: **BPR number:** 019330

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**

**Bar number:** 019330 **Date of Licensure:** December 14, 1998 **License status:** Active

**Arizona**

**Bar Number:** 19426 **Date of Licensure:** November 29, 2002 **License status:** Inactive: "Resigned in good standing." I resigned from the Arizona Bar in 2015 because I knew I would never practice in Arizona.

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).

I have never been denied admission, been suspended, or placed on inactive status by the Bar of any state. My Arizona Bar license is inactive, because I voluntarily resigned.

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).

**Since completion of legal education in 1998:**

September 1, 2008 to present: **Chancellor of the Chancery Court of Tennessee sitting in the 29<sup>th</sup> Judicial District. District presiding judge since 2009.**

September 1, 2006–August 28, 2008: **General Sessions, Juvenile, and Probate Judge for Dyer County, Tennessee.**

August 2000-August 31, 2006: **Staff Attorney, Western Section, Tennessee Court of Appeals.**

Fall 1999-August 2000: **Assistant Public Defender in the 26<sup>th</sup> Judicial District.**

2004-2005: **adjunct professor at Lambuth University, Jackson, Tennessee (course taught: business law).**

September 1, 2004-August 31, 2006: **Dyer County Board of Education, District D Representative.**

1995-present: **Farmer: I operate a small row crop farming operation. I am a fourth-generation farmer.**

**Other occupations, businesses, and professions prior to completion of legal education:**

I grew up in rural Dyer County, Tennessee, and, to varying degrees, I have worked on farms for as long as I can remember. After high school, I worked my way through college and law school, gaining many life skills while working with Tennesseans from diverse backgrounds and communities. I gained valuable experience working for a variety of employers. I worked at a local Tennessee Farmer's Co-op; a factory that manufactured rubber and rubber hoses (DANA); a plant that assembled and shipped gasoline pumps and parts (TOKHEIM); and a book distributor (PENGUIN USA). I also worked as a roofer and as part of a crew that laid asphalt. I umpired local baseball games, and served as a precinct captain for the Dyer County Election Commission. From 1989 until graduating law school in 1998, I worked as a Rural Letter Carrier Associate with the United States Postal Service. During law school, I worked as a research assistant for Professor Amanda Esquibel.

These employment experiences gave me more than just monetary compensation. They gave me valuable skills, and more importantly, life experiences with Tennesseans from many backgrounds and walks of life. These skills and experiences have been invaluable to me as a judge.

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 no six month or longer periods of unemployment since completing my legal education.

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

I have been a judge in rural West Tennessee since 2006 and, therefore, am currently not engaged in the practice of law. As a state trial court judge from a rural area, I am called upon to preside over all types of cases. As chancellor, I hear primarily civil and domestic matters but have also presided over a number of criminal cases including attempted murder, assault, rape, drug, theft, burglary, and probation violations. I have reviewed hundreds of applications for search warrants. Most of my caseload consists of civil and domestic cases. I hear medical malpractice, contract, tort, real estate, workers' compensation, probate, guardianship/conservatorship, trust, contempt and domestic (divorce, child support, adoption, paternity, legitimation, termination of parental rights, orders of protection) cases. I also hear administrative appeals and appeals from juvenile and general sessions courts. Additionally, I have served on a number of the Tennessee Supreme Court's special workers' compensation appeals panels. My docket recently has been approximately 90% civil and 10% criminal, and it encompasses virtually every area of the law.

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.

**Trial Court Experience:**

From 1999 through August 2000, I worked as an assistant public defender in the 26th Judicial District. During that time, I represented adults in the general sessions and circuit courts, and I represented juveniles in juvenile courts. The adults whom I represented were charged with crimes ranging from misdemeanors to the highest classifications of felonies. The juveniles were charged with what are referred to in juvenile court as delinquent acts. Delinquent acts are actions that would be called crimes if they had been committed by an adult. I also represented clients on appeal to the Tennessee Court of Criminal Appeals.

As an assistant public defender, I was responsible for handling every aspect of these cases. At the beginning of my involvement with a case, I first would meet with my clients, which often occurred in a jail or prison. I would then try to locate and interview witnesses and investigate the circumstances of the charge. As the case progressed, I would file appropriate motions, and I would engage in plea negotiations with prosecutors. The results of these negotiations would

always be relayed to my clients. If a client decided to accept an offer in exchange for a guilty plea, I would fully advise my client of the ramifications of that decision before the plea was finalized. If a negotiated conclusion to the case could not be agreed upon, I would develop a trial strategy and prepare the case for trial. I would always contact the prosecutor before the trial date to see if the prosecutor had any last-minute plea offers that needed to be relayed to my clients. I would fully advise my clients of the results of these communications. Cases would proceed to trial if they did not settle. If a client was found guilty, I would fully advise them of their right to appeal their case to the Tennessee Court of Criminal Appeals. I informed them that right would be lost if it were not exercised within thirty (30) days of the entering of the final judgment, and I informed them I would initiate the appellate process if they decided to appeal. I was responsible for preparing briefs and appearing before the Court of Criminal Appeals if a client appealed their case.

**Appellate Experience:**

From September 2000 until being elected judge in 2006, I served as staff attorney for the Western Section of the Tennessee Court of Appeals, where I served Presiding Judge Frank Crawford, and Judges Alan Highers, David Farmer, and current Chief Justice (then judge) Holly Kirby. In that position, I had the unique opportunity to observe the inner workings of our appellate court. I reviewed all motions and applications filed with that section of the Court, including applications for interlocutory and extraordinary appeal. I drafted memorandums regarding each application, discussed motions and applications with the judges, and drafted the relevant orders.

Unless interlocutory permission to appeal has been granted, appellate courts only have jurisdiction to hear cases in which an appeal has been taken from a final judgment or order. As the staff attorney, I reviewed each record to determine whether the trial court had rendered a final judgment that disposed of all the issues and all the parties. I also worked closely with the appellate court clerk with respect to docketing, court orders, and court records. I acted as an informal liaison between the trial court clerks and the appellate court. I also worked closely with the judges' law clerks to resolve matters relating to the Tennessee Rules of Appellate Procedure, the Rules of the Appellate Court, the Rules of Civil Procedure, the Rules of Evidence, and the local rules of Tennessee trial courts.

As part of the Appeals Court staff, I worked closely with four judges who had different judicial styles and preferences. I worked as part of a relatively small system in which each role was important to the other. As staff attorney, I witnessed all of the small, essential, but often unnoticed things that must happen in the appellate process before an opinion can be rendered. I learned many valuable lessons while working in that position, but the most important were: (1) the value of careful, thorough, and timely opinions; (2) the importance of being diligent and attending to detail; (3) the significant, but unique and limited role that appellate courts play in our judicial system; (4) the fact that, except in the most limited of circumstances, it is not the role of appellate courts to raise issues; and (5) the rules matter and often determine the resolution of a case on appeal (I heard more than once, "they're called T.R.A.P. for a reason"). Most importantly, I learned that every case is the most important case to the parties involved, so every case must be treated with attention, timeliness, and care.

**Judicial Experience:**

I have been a judge for the last 17 years, and to be complete, I will list here the roles in which I have served in that capacity. They are:

- **Courts of Limited Jurisdiction Judge;**
- **State Court Trial Judge;**
- **Three Judge Panel Judge;**
- **Appellate Panel Special Judge; and**
- **Tennessee Board of Judicial Conduct**

For the sake of brevity, I will discuss these roles in detail in my response to section 10.

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

My time as a practicing attorney was limited to the time I spent as an assistant public defender. Every single one of those cases were important, but I had no matters of special note before the trial courts, appellate courts, or administrative bodies during that time.

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.

**Judicial Experience:**

- **Courts of Limited Jurisdiction Judge:**

In August 2006, I was elected General Sessions Judge of Dyer County after winning a contested election, and on September 1, 2006, I began my first day as the General Sessions Judge of Dyer County. The General Sessions Court of Dyer County is vested with criminal, civil, probate and juvenile jurisdictions, so I became the Juvenile Court and Probate Judge for Dyer County on that day as well. The criminal cases I presided over ranged from crimes as simple as speeding tickets to handling parts of felonies, such as murder. On the civil side, I presided over cases in which the monetary amount in dispute was no more than \$25,000.00 and over real estate matters such as detainer actions. As juvenile judge, I presided over cases that involved issues ranging from truancy to children who were charged with murder. On the domestic side of juvenile court, I presided over child support, visitation, custody, dependency and neglect, and termination of parental rights cases. Many people involved in these cases represented themselves. I knew the only interaction most people would ever have with a court would occur in that court of limited jurisdiction, and their experience would form their perception and understanding of the judiciary as a whole. My goal was to always be patient and respectful, and I worked hard to ensure everyone received a fair and speedy decision.

It did not take long to realize that many people whom I assessed a small fine and court cost to did not have the funds to pay that fine and cost on the day they were assessed. They were not bad people who had committed horrible crimes. Instead, like many people in my area, they were usually just living paycheck to paycheck. To collect those fines and costs while allowing people time to come up with the funds, I implemented a process in which I would reset their case for a period of time, usually two to four weeks, to see if they could get their fine and cost paid. I did not want a person living paycheck to paycheck to miss another day of work to come to court, so I would tell them they did not have to come to court on the next court date if they paid the fine and cost in full before that date. However, I also told them they must come to court if the fine and cost were not fully paid before the court date. As long as a person was making a reasonable effort to pay their fine and cost, I was willing to work with them. This process not only resulted in the collection of thousands of dollars of fines and costs, it also let people know that there were real consequences, both positive and negative, for their actions.

- **State Court Trial Judge:**

In August 2008, I was elected Chancellor for the 29th Judicial District after winning a contested election, and I have been the Presiding Judge of the 29th Judicial District since 2009. The role of presiding judge carries with it many administrative functions such as equalizing caseloads to assigning cases when a judge must recuse themselves. The presiding judge is also involved in courthouse safety and seeking funding to enhance the safety of the district's courthouses. Recently, Dyer County was awarded a grant of over \$130,000.00 to enhance safety at its courthouse. As a state trial court judge, I have presided over hundreds of trials, both bench and jury, and disposed of 16,000-170,000 cases. These cases span the full range of criminal, civil and domestic law. While every one of those cases is noteworthy to me and the people involved, I have selected two of those cases to bring to the Council's attention.

1) *Dr. Pepper Pepsi-Cola Bottling Company of Dyersburg, LLC v. Reagan Farr, Commissioner of Tennessee Department of Revenue*. This case was affirmed on appeal and is reported at 393 S.W.3d 201 (Tenn.Ct.App.2011). This case required the courts to determine whether the tax imposed by "the bottler's tax statute" (Tenn. Code Ann. § 67-4-402 et seq.) is properly imposed on an in-state soft drink manufacturer or upon that manufacturer's in-state distributor. It also required the court to determine whether the statute is constitutional. The issue had not been addressed by the courts previously, and I concluded that the bottler's tax statute imposed the tax on in-state soft drink manufacturers rather than on the manufacturers' in-state distributors. I also concluded that this taxing scheme did not violate the Constitution's equal protection clause. This was a challenging case with statewide ramifications.

2) *Wortman v. Jackson et al.* (docket number 16CV558). This tort case was filed in the Circuit Court of Tennessee sitting in Lake County and was decided by a jury in December 2019. This case stemmed from a warrantless non-consensual search of the Plaintiffs' home by law enforcement agents. The Defendants asserted that exigent circumstances justified the search and argued they were clothed with qualified immunity. This case was particularly interesting because it required the court to determine, as a matter of law, which party carried the burden of proof on the exigent circumstances question. I found no Tennessee case on point, and after extensive research, I concluded the Defendants had the burden of proving that exigent circumstances justified their search of the Plaintiffs' home. Since there was not a pattern jury

instruction addressing this situation, I had to create a special instruction for the case. This was one of those rare tort cases in which both parties had a burden of proof, making the presentment of evidence and closing arguments sequences somewhat unusual.

- **Three-Judge Panel:**

In 2021, the General Assembly created a three-judge panel process to decide cases that challenged the constitutionality of state statutes and other state actions. These panels consist of one judge from the judicial district in which the case is filed and one judge each from the State's other two Grand Divisions who are appointed by the Chief Justice of the Supreme Court. I was appointed by the Chief Justice to serve on a panel involving a case filed in Davidson County: *Hillside Winery, Inc. et al., v. Commissioner of Revenue, et al.* (docket number 21-0071-III). The panel decided the case on March 4, 2022. The Plaintiffs in that case challenged the constitutionality of the Wine Gallonage Tax and argued that it burdened interstate commerce in violation of the Dormant Commerce Clause of the United States Constitution. This case is noteworthy because it presented a direct facial challenge to a tax that had been in place since 1939. It arose from the recent development of interstate sales of wine by in-state wineries. The Department of Revenue had been assessing the tax on interstate sales of wine by in-state wineries, but reversed its policy of those assessments after the lawsuit had been filed. Both parties filed motions for summary judgement. The doctrine of mootness was raised in the Department's motion. Therefore, the panel had to address that doctrine before addressing the constitutional challenge. The panel first determined that the issue was moot because the actions of the Department made it "not likely" that the change in policy would "be abandoned" once this litigation had passed. The panel granted the Department summary judgment on the ground of mootness. As an alternative ground for granting the Department summary judgment, the panel applied the rules of statutory construction and concluded that the statute is not facially unconstitutional. This too was a challenging case with statewide ramifications.

- **Appellate Court Special Judge:**

The Tennessee Supreme Court has designated me numerous times to serve as a special appellate judge on its Special Workers' Compensation Appeals Panels. Although these panels are limited to hearing appeals of trial court decisions in workers' compensation cases, they function as an appellate court and exercise a duty of the Supreme Court when they are in session. I have authored approximately 30 opinions while serving on these panels. Most opinions were majority opinions, but at least two were dissenting opinions, and I concurred on many other opinions. I authored these opinions while simultaneously maintaining my duties as a state court trial judge, and I would like to bring three of those opinions to the Council's attention.

1) *Brooks v. Corr. Med. Servs.*, No. W2010-00266-WC-RR3-WC, 2011WL684600, (Tenn. Workers Comp. Panel Feb. 25, 2011) and *Smith v. Elec. Research & Mfg. Coop. Inc.*, No. W2012-006560-WC-R3-WC, 2013WL683192 (Tenn. Workers Comp. Panel Jan. 30, 2013) were appeals from trial court decisions finding that an employee had rebutted the statutory presumption of correctness enjoyed by an anatomical impairment rating given by a physician selected through the Medical Impairment Rating (MIR) process. These opinions were some of the first court decisions to address the issue of what evidence courts should focus on when determining if this statutory presumption of correctness had been rebutted. Both opinions were



cited and quoted several times by the Supreme Court in *Mansell v. Bridgestone Firestone North America Tire, LLC.*, 417 S.W.3d 393 (Tenn. 2013).

2) *Watson v. Parent Co.*, No.M2012-01147-WC-R3-WC, 2013WL1920870 (Tenn. Workers Comp. Panel May 8, 2013) is not significant because it made the legal headlines or decided a new or novel issue of law. Instead, this case explains which cases appellate courts have jurisdiction to hear, which they do not, and the process by which a case comes before an appellate court. Significantly, neither party raised the issue of the Panel's subject matter jurisdiction. A court without subject matter jurisdiction has no authority to decide a case, so one of the first things a court must do is determine if it has subject matter jurisdiction. As I reviewed the appellate record, I realized that the Panel did not have jurisdiction to decide the case because the parties had appealed a judgment that was not final. The judgment was not final because the trial court had not adjudicated all the issues presented by the parties. Any action taken by a court acting without subject matter jurisdiction is "a nullity." Accordingly, the Panel dismissed the appeal.

• **Tennessee Board of Judicial Conduct:**

In 2023, I was appointed to a three-year term on the 15-member Tennessee Board of Judicial Conduct (BJC). My term will end on June 30, 2026. As stated on the Tennessee Administrative Office of the Courts' website, "the (BJC) is charged with: providing an orderly and efficient method for making inquiry into the physical, mental and moral fitness of any Tennessee judge; the manner of performance of duty; and the judge's commission of any act that reflects unfavorably upon the judiciary or brings the judiciary into disrepute or that may adversely affect the administration of justice." The BJC consists of three-member investigative panels and five-member hearing panels. The investigative panels are the first step in the process, and, as their name implies, they investigate complaints against judges. Hearing panels act as trial courts to adjudicate the case if the complaint makes it to that step. I have served on many investigative panels, and I believe the BJC plays a vital role in maintaining the integrity of the judiciary in the eyes of all Tennesseans.

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 served as Co-Administrator/Executor of my father's estate.

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

I had an experience my first year as juvenile court judge that I would like to share with the council. Although perhaps not technically a "legal experience," it is an experience in law that illustrates the important role a judge can play in an individual life.

This experience involved a young girl in middle school who had missed many days of school. Her absences were unexcused, so she was a chronic truant. She first appeared before me about a month before the end of the school year. While reviewing her record, I noticed that she had appeared before the juvenile court on the same issue during the prior two or three school years. I also noticed that all of her prior cases had begun about a month before the school year ended. The records showed she would have good attendance from the time a case was filed until the end of the school year. The case would then get dismissed when the school year ended, and the absences would resume the beginning of the next school year. This pattern would repeat itself year after year. Two things quickly became apparent. First, this young girl would never get an education unless this pattern was broken. Second, the adults in her life were not adequately monitoring her school attendance. I decided to reset her case for the week after the school year ended. As I expected, she had perfect attendance that last month. When the school year ended, the truancy officer proposed dismissing the case. I wanted to continue monitoring the student's attendance during the beginning of the next school, so I reset the hearing to a date after the first six weeks of the next school year. The next time she appeared in court, I was informed she had perfect attendance. I reset the case for the end of the second six weeks, and when she appeared in court, I was informed that she still had perfect attendance. I felt I had done all I could do, so I dismissed the case.

The guidance counselor at the school this girl attended is a friend, and I asked her to tell the girl that I asked about her and hoped she was doing well. Months passed, and I received a call from the middle school inviting me to present an award at the end of the school year. Of course, I accepted. When I arrived at the event, I was informed I would be presenting a perfect attendance award to that very same girl who had been chronically truant year after year. I got a lump in my throat and a little misty-eyed as I presented that award and this girl thanked me for caring about her.

That was a good day to be a judge.

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.

Justice on Tennessee Supreme Court: January 4, 2024: My name was not submitted to the Governor as a nominee

**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.

**Dyersburg State Community College**

Fall of 1985 to the Fall of 1989. **No Degree Awarded:** Transferred to the University of Tennessee at Martin

**University of Tennessee at Martin**

Briefly, 1988-1989; 1990 to December 1992. **Degree Awarded:** Bachelor of Science **Major:** Education

**University of Memphis Cecil C. Humphreys School of Law**

August 1995-May 1998. **Degree Awarded:** Juris Doctor **Recognitions:** I received recognition in the classes of Debtor/Creditor, Secured Transactions, and Commercial Paper.

**Other Aspects of My Education:** I was the first person in my family to be awarded a college degree.

**PERSONAL INFORMATION**

15. State your age and date of birth.

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

Tennessee has been my state of residence my entire life. Other than an extended stay in Arizona for a few months in late 1998/early 1999, I have lived continuously in Tennessee since 1967.

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

I have lived continuously in Dyer County, Tennessee, since 1967, except for a few months I spent in Arizona in late 1998/early 1999 and several months I lived in Madison County, Tennessee between 2000-2001.

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

Dyer County, Tennessee

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.

I have never served in the military.

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.

I have never been required to respond to a formal complaint.

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

No

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

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes.

***In Re Syngenta AG MIR 162 Corn Litigation:*** This was a class action lawsuit filed by corn producers and others against the agricultural chemical company Syngenta. As I understand it, the suit centered around allegations that Syngenta created a genetically modified corn seed which contained a “trait” that had not received import approval from China. The lawsuit alleged that Syngenta sold these corn seeds to corn producers in the United States and that, thereafter, China began rejecting corn shipments from the U.S. after this “trait” was allegedly detected in corn shipments originating from the U.S. This rejection of corn shipments and loss of access to the Chinese market resulted in lower corn prices for U.S. producers. I believe that the initial case was settled, became a class action, and then the search began for members of the class. Since I was a corn producer during the period of time in question, I qualified to be a member of the class, so I was contacted and I signed up in 2018 or 2019. Signing up as a member of the class was the extent of my involvement.

Court: The United States District Court for the District of Kansas

Date: A “FOURTH AMENDED CLASS ACTION MASTER COMPLAINT” was filed on March 12, 2018, so that case was initially filed prior to March 2018.

Docket Number: No. 2:14-MD-02591-JWL-JPO

Disposition: Settled

***Childress v. United Parcel Service, Inc., et al.:*** My father was involved in an automobile accident in 2012, and he ultimately passed away. My mother, who is also a co-administrator/executor of my father's estate, filed a civil action on behalf of herself, my father’s estate, and my father's heirs. I was involved in that case by virtue of my status as an heir. This was a personal injury/wrongful death case.

Court: Circuit Court of Tennessee sitting in Dyer County

Date: 2015

Docket number: 2015CV38

Disposition: Voluntarily dismissed

***Sikes v. Childress:*** Property line and drainage dispute on farm land in Dyer County, Tennessee.

Date: 2004

Court: Chancery Court of Tennessee sitting in Dyer County

Docket number: 04C499

Disposition: Dismissed

Other than what has been mentioned above, I do not recall having been involved as a party in any other legal proceeding.

I have had 5 or 6 traffic citations for speeding since I began driving over four decades ago. I deserved every citation for speeding that I have ever been issued, because I was driving over the posted speed limit. I either paid the fine and court costs without a court appearance, or I attended a driving class and the citation 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.

Dyer County Volunteer Fire Department: Volunteer Fireman for nearly 25 years. Currently, a Captain and the Treasurer at the Bogota Station.

Church of Christ: Bogota, Tennessee

WestStar Leadership: Class of 2018

Bogota Community Center

Community Cancer Fund

Tennessee Farm Bureau

Tennessee Soybean Association

Ducks Unlimited

National Rifle Association

The Boykin Spaniel Society

Noonday Rotary Club of Dyersburg: Paul Harris Fellow

Dyer County Future Farmers of America

Dyer County Republican Party

Tennessee Republican Party

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

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

I was a Cub Scout and Boy Scout in the 1970s. I believe at that time membership was limited only to boys.

I have not been a part of those organizations since that time.

### 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.

#### **Tennessee Trial Judge Association (TTJA): 2008-present**

- **President:** 2019-2021. The President of the TTJA is elected by the trial judges of Tennessee. I was elected twice to this position. The President organizes and appoints an executive committee. This committee is comprised of the offices of Vice President, Secretary, and Treasurer plus non-office members. As President, I appointed members to the executive committee from each grand division of the state. My goal was to appoint a diverse committee made up of members who represented urban, rural, and suburban areas. The President presides over the meetings of the executive committee and the meetings of the membership. The President has a number of administrative responsibilities. These responsibilities range from organizing meetings to keeping the executive committee and membership informed of issues that will impact the trial level judiciary. The President also has the responsibility of filing reports with the Bureau of Ethics. The TTJA appoints two members to the Board of Judicial Conduct, and in 2020 I appointed two members to that Board.
- **Treasurer:** 2014-19 and 2021-present. As treasurer of the TTJA, it is my responsibility to collect dues, keep a record of who has paid dues, and maintain the association's financial records. The treasurer issues financial report to the association's executive committee and the association's entire membership at least three times per year.
- **Member: Executive Committee:** 2014-present. This committee is appointed by the President. This committee, along with the President, operates the association. The committee takes positions on issues identified by the President or brought to its attention by a committee member. It also makes recommendations to the membership regarding what courses of action to be take on these issues.
- **Member and Secretary: Judicial Resource Study Committee:** 2017. I was appointed to this committee by the President of the TTJA. The committee's purpose was to review the 31 judicial districts and to make recommendations regarding possible redistricting and resource allocation. The goal of the committee was improving the trial level judiciary's service to the citizens of Tennessee. The committee issued a report which addressed each grand division of the State separately. I kept the minutes of committee meetings, and I authored the initial draft of the West Tennessee portion of the final report.

**Member of Tennessee Judicial Conference (TJC): 2008-present**

- **Moving Vice-President:** 2024. At its June 2024 conference, the membership of the TJC elected me to serve as its president beginning in June of 2026. The title of that position is Moving Vice-President. I will be I believe my background, leadership roles in judicial organizations, and work in all levels of the judiciary have prepared me to serve as a member of this court. President-Elect beginning in June of 2025. I will be President in June of 2026.
- **Member Executive Committee:** 2019-present. The President of the TTJA is an *ex officio* member of the TJC executive committee, and it is through that position that I first became a part of this committee. When my second term as President of the TTJA ended in 2021, the President of the TJC appointed me to a three-year term on this committee as a representative from West Tennessee. That term ended in June of 2024. I was elected Moving-President of the TJC in June of 2024, so I remained a member of this committee by virtue of that position. This committee makes important decisions on various issues that range from how to accomplish the long-term goals of the judiciary to what should be requested in the judiciary's budget.
- **Chair: Weighted Caseload Committee:** 2016-present. I have served on this committee since its creation in 2016. The president of the TJC appointed me to serve as one of the original nine members of this committee. I was elected chair by the members at the committee's organizational meeting. I have served in that position ever since.

The weighted caseload study is required by Tennessee Code Annotated section 16-2-513(a), and the results of that study are used to determine the need for trial court positions within the state and each judicial district. The accuracy and credibility of the study is very important to the judiciary as this study is used to gauge judicial need. Thus, the study is essential to the administration of justice, since its outcome is an indicator of which areas of the state may need additional resources to ensure that Tennesseans have timely access to the courts. The primary purpose of this committee is four-fold. First, the committee serves as the voice of the TJC regarding the annual adjustments to the weighted caseload formula required by Tennessee Code Annotated section 16-2-513(a). Second, the committee actively maintains the current weighted caseload formula and stands ready to assist in devising any future weighted caseload formula. Third, the committee reviews new legislation to determine if its enactment will affect a trial judge's workday, and if it does, the committee makes recommendations concerning any necessary adjustments to the study formula. Fourth, the committee seeks to raise awareness of the importance and function of the weighted caseload study among the state's trial judges and court staff. As committee Chair, I have spoken several times regarding the weighted caseload study at TJC conferences and at meetings of the State Court Clerk's Conference. The weighted caseload has not been updated in over a decade, and the State Comptroller will be completing an update in 2025. The weighted caseload committee will have an important role in how the study to complete this update will be conducted. In anticipation of the work ahead, I, as Chair of the weighted caseload



committee, have been holding committee meetings so that the committee can make preliminary decisions regarding how this update will be conducted. The committee has also been meeting with interested partners regarding the structure of the study and factors for the update.

- **Member:** Committee on Judicial Resources: 2022. This committee of seven judges was created to review issues surrounding judicial redistricting and resource allocation among the judicial districts. I was appointed to this committee by the President of the TJC. I authored the initial draft of three sections of the report and contributed ideas and editing to the report's other sections. The committee submitted its final report to the Conference President in October 2022. The submission of the report fulfilled the committee's responsibilities, and the committee has been disbanded.
- **Chair:** Ad Hoc Committee to Review Judicial Assistant Compensation: 2021. This committee was created to study the compensation package of trial judge assistants as compared to others in the legal arena. I was appointed to this committee by the President of the TJC. I authored the initial draft of the committee's report and assembled all of the report's exhibits. The committee submitted its final report to the Conference President in August 2021. The committee disbanded soon thereafter.
- **Member:** Legislative Committee: 2012-present. This committee reviews legislation that has been filed in the General Assembly with the goal of determining what impact, if any, the proposed legislation might have on the judiciary. When appropriate, the committee sends comments and suggestions regarding proposed legislation to the AOC's legislative team.
- **Member:** Workload Assessment Advisory Committee: 2013. This committee assisted with creating the current weighted caseload study and helped devise the current weighted caseload formula that is used to gauge the needs of Tennessee's trial level judiciary.
- **Dyer County Bar Association:** This bar association has not always been active. From 2006 to the present, I have been a member when it has been active.
- **Arizona Bar Association:** 2002-2015. The Arizona Bar Association is a mandatory membership organization, so I was a member while I held an active Arizona Bar license.

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

I am honored to have been elected by the people to serve as a judge since 2006, have served on numerous service committees, and have been appointed to several leadership positions as described above. The Supreme Court has also appointed me to serve on various panels, and I

have been elected twice by the trial judges of Tennessee to serve as President of the Tennessee Trial Judge Association. In June of 2024, the Tennessee Judicial Conference elected me to be its President beginning in June of 2026. I consider these appointments and elections by my peers as honors. Other than as previously discussed, I have not received prizes, awards, or formal/public recognitions or honors.

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

I have published no books or articles.

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.

*Keeping Judges on The Straight and Narrow: Judicial Conduct Oversight in Tennessee:* June 4, 2024; No Excuse for Elder Abuse Training Union City, TN

*The Tennessee Judicial Weighted Caseload:* March 11, 2024; Tennessee Mini-Judicial Academy

*Let's Learn a Little about Why you have this New Job:* The Tennessee Judicial Weighted Caseload Formula: August 25, 2022; Tennessee Judicial Academy

*Some Things to Know When Selecting/Working with a Clerk and Master:* October 2022; Tennessee Judicial Conference

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.

September 2004-August 2006: **Dyer County Board of Education representing District D. I was elected to this position.**

September 2006-August 2008: **Dyer County General Sessions and Juvenile Court Judge. I was elected to this position.**

September 2008-present: **Chancellor of the Chancery Court of Tennessee sitting in the 29<sup>th</sup> Judicial District. I was elected to this position in 2008, 2014 and 2022.**

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 included three writing samples. Two are from cases that I have decided as a trial judge, and the third is a majority opinion I authored while serving as a special judge on the Supreme Court's Special Worker's Compensation Appeals Panel. The majority opinion is the panel's joint effort, but it does reflect my legal reasoning and ideas and was cited and quoted several times by the Supreme Court in *Mansell v. Bridgestone Firestone North America Tire, LLC.*, 417 S.W.3d 393 (Tenn. 2013). The two other samples are 100% a reflection of my own personal effort.

### ESSAYS/PERSONAL STATEMENTS

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

I believe my background and work in all levels of the judiciary have prepared me to serve as a member of this court. Moreover, the public's confidence in the judiciary hinges on legal issues being resolved in a timely and thorough manner. In addition to serving the public, appellate courts also serve the trial level judiciary, and appellate courts need to have the confidence of the judges who serve on the trial level. Believing that members of the appellate courts truly understand what trial judges do on a day-to-day basis is the foundation upon which that confidence is built. Resolving legal issues timely and thoroughly have been a priority of mine for 18 years now, and I understand what trial judges do on a day-to-day basis. So, I seek this position because I want to put my experiences and background to work serving Tennesseans and the judiciary in this capacity.

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)*

Different people give different meanings to the phrase "equal justice under the law." To me, the most important part of that phrase is that everyone (plaintiff, defendant, State, victim, people with attorneys, and people who represent themselves) has the right to have access to and be treated fairly by the court system. There should be no unreasonable barriers to legal issues being addressed thoroughly and as quickly as possible. This phrase means not only access to the courts, it also means treatment that is respectful, honest, and free from bias or prejudice. I am firmly committed to these principles, and since becoming a judge many years ago, I have worked hard to deliver "equal justice under the law" every day.

I have been employed as a public defender, court staff, or judge since 1999. The rules and law regarding my employment have precluded me from the private practice of law.

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

The Tennessee Court of Appeals is a 12-member statewide court divided into three sections of four judges each that hears appeals of civil cases. The judgeship I seek is on the western section of this court. The western section hears appeals filed in all three grand divisions.

In my capacities as a general sessions, juvenile, or trial judge for the last 18 years, I have presided over about every type of civil case imaginable. I have decided thousands of these cases and written innumerable decisions and orders. I have also authored roughly thirty appellate opinions, and I served as a staff attorney for this very section of this Court for six years. So, I understand how the appellate process works. I believe my diverse experiences in life and the law, my leadership roles, and my background will bring perspectives and insights that will have a positive impact on this court.

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)*

From a young age, I have been involved in various community services and organizations. I learned from my parents that service brings a sense of fulfillment to life. I will not repeat here all the community services and organizations in which I have participated. I will simply say that most have been activities to raise funds or awareness for services or organizations I believed served the needs of people or the community. Most recently, my volunteering efforts have been geared toward a local community center and fire department.

For more than two decades, I have been a volunteer firefighter with the Dyer County Fire Department (DCFD). I am a Captain and Treasurer of the Bogota station. The DCFD is full of volunteers who provide a mentally and physically demanding service when people are in tough and bad situations. I am proud to be a part of those efforts. Now, I am no super fireman, and I do not make every call. I just make the ones that I can and do my best when I get there.

I believe people need and want to see judges involved in their communities. By being involved, judges seem more relatable to everyday people. I genuinely believe community service helps the image of the judiciary and keeps a judge grounded. So, if appointed, I intend to remain a volunteer firefighter and stay involved in my community in much the same way as I always have. It is just part of who I am.

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 grew up in the late 1970s-early 1980s on a small livestock and row crop farm in rural West Tennessee, where I witnessed government decisions cause the collapse of the farming economy. Times were very tough. That had a lasting effect on me. I played football in high school. I was slow and weighed 140lbs, but I learned the value of teamwork. I learned how to

stand my ground and battle to the end. I made the All-Conference team, twice. No one in my family had a college degree, but I decided to go to college. I worked my way through college. It took me seven years, but in 1992 I became the first member of my family to earn a college degree. I worked many jobs to earn money to attend law school. I worked more than one job to make ends meet, and I graduated from college and law school without borrowing money, which was my goal. My parents served the community doing whatever needed to be done: from raising money for the community's school to facilitating the installation of a reliable community water supply. I saw the fulfillment those efforts brought to them, and it had a lasting effect on me, too.

Life has taught me there will be ups and downs, but things will be ok if you work hard, make sacrifices, prepare yourself, be respectful, stay involved, and serve God and your community. These are some of the experiences I would bring to the Court.

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

Yes. I will always uphold the law. Allow me to give two examples.

The first involved the former version of the "Paternal Relocation Statute." That statute precluded a court from determining whether the relocation of a child out of state or more than 50 miles from the other parent within the state was in the best interest of the child unless each of the parents were "actually spending substantially equal intervals of time with the child." The caselaw that developed around that statute evolved into baffling mathematical determinations. In my opinion, that was a poor way to treat children and to determine those emotional cases. I thought that courts should always determine whether the relocation was in a child's best interest. However, that was not the law at that time, so I set aside my beliefs and applied the law.

Another example involved a Court of Appeal's (COA) opinion which held that even when divorcing parties agreed to a plan to parent their children, the trial court nevertheless had to enter written findings and conclusions on whether that plan was in the children's best interest. I had always made a best interest determination, but what I, and many others, disagreed with was having to take extensive proof and then make written findings and conclusions on settled issues. That seemed like a waste of judicial resources and the litigants' time and money, but I did what was required by the COA until the TTJA got the General Assembly nullified that holding.

**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. Mr. Jeff Agee, Chairman and CEO, First Citizens National Bank, [REDACTED] [REDACTED]
B. Mr. Stan Welch, Tyson Foods Plant Manager, [REDACTED] [REDACTED]
C. Mr. Bradford Box, The Law Firm of Rainey, Kizer, Reviere & Bell, PLC., [REDACTED] [REDACTED]
D. The Honorable J. B. Cox, Chancellor 17 <sup>th</sup> Judicial District of Tennessee, Past President Tennessee Trial Judge Association and Tennessee Judicial Conference, [REDACTED] [REDACTED]
E. The Honorable Douglas Jenkins, Chancellor 3 <sup>rd</sup> Judicial District of Tennessee, Past President of Tennessee Trial Judge Association and President-Elect of the Tennessee Judicial Conference, [REDACTED] [REDACTED]

**AFFIRMATION CONCERNING APPLICATION**

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Justice of the Supreme Court 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: October 22, 2024.

  
\_\_\_\_\_  
Signature

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



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

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

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

**WAIVER OF CONFIDENTIALITY**

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

Tony A. Childress Tony A. Childress  
Type or Print Name

T. A. Childress  
Signature

October 22, 2024  
Date

019330  
BPR #

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

Department of Education: State of Tennessee:

License Number: 000253082

State Bar of Arizona: State of Arizona:

License Number 19426

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IN THE CHANCERY COURT OF TENNESSEE  
TWENTY-NINTH JUDICIAL DISTRICT  
DYER COUNTY, TENNESSEE

AM \_\_\_\_\_ PM 3:30  
# \_\_\_\_\_

OCT 18 2024

CINDY ROSE  
CHANCERY CLERK *CR* DC

THOMAS BAKER MILLER

v.

Docket Number: 22-CV-290

JOSEPH SWEAT, JR. and ASHLEY CARTER

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PROCEDURAL HISTORY, FINDINGS OF FACT, ANALYSIS,  
CONCLUSIONS OF LAW AND ORDER

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PROCEDURAL HISTORY

On June 24, 2022, Thomas Baker Miller (hereinafter "Plaintiff") filed a complaint against Joseph Sweat, Jr. and Ashley Carter (hereinafter "Defendants") wherein he raised a claim to quiet title and for a declaratory judgment. Common-law adverse possession was the basis of the quiet title claim. The Plaintiff requested that the Court declare that he held title to a part of the Defendants' property via adverse possession. The Defendants filed their answer and a counter-complaint on November 23, 2022. In their counter-complaint, the Defendants requested that the Plaintiff be required to remove a gate he had erected on their land, pay for damages he caused to their property, cease commercial activities on his property that involved the use of an easement where their property was the servient estate, and pay their costs and attorney's fees. The Plaintiff filed his answer on December 27, 2022.

On May 30, 2023, the Plaintiff filed a motion for partial summary judgment along with a statement of undisputed facts and memorandum of law. The Defendants filed their response to the May 30, 2023, motion on July 11, 2023. A hearing on the May 30, 2023, motion occurred on November 21, 2023. At the conclusion of that hearing, the Court granted a summary judgment on

one issue but denied summary judgment on another issue. Specifically, it was undisputed that, at one time, a public road located in Dyer County, Tennessee, Barber Road, went across the Defendants' property (hereinafter "Dyer Farm") and proceeded to the Plaintiff's property (hereinafter "Miller Farm"). According to the Plaintiff, a portion of this road was no longer maintained by Dyer County and had been abandoned. Concluding that no issue of genuine fact as to abandonment was in dispute, the Court granted a summary judgment on the abandonment issue. The Court denied summary judgment on the Plaintiff's adverse possession claim. An order to that effect was entered by the Court on February 2, 2024.

A trial of this matter was set for February 28, 2024. On February 20, 2024, however, the Defendants' counsel made an oral motion to continue that trial. The Plaintiff's counsel orally responded to that motion to continue. The Court found the Defendants' request to continue convincing, and the Court granted the request. A written order on the Court's actions of February 20, 2024, was entered on March 14, 2024. A trial of this matter was set for October 1, 2024. On September 12, 2024, the Court ordered the parties to file pretrial briefs by no later than September 24, 2024. Both parties filed their pretrial briefs on September 24, 2024. The trial on the issues in dispute occurred on October 1, 2024.

In addition to himself, the Plaintiff called six people as witnesses. They were: Mr. Brasfield, Mr. Gwinn, Mr. Vernon, Mr. Tatum, Mr. Nash and Mr. Walker. The Plaintiff also introduced one document into evidence, Exhibit 1. Mr. Carter, one of the Defendants, and Mr. Dyer were witnesses for the Defendants. The Defendants introduced three documents into evidence, exhibits 2-4. The Plaintiff testified as a rebuttal witness. From all the evidence, the Court's findings of fact are as follows.

## FINDINGS OF FACT

### **Plaintiff's Claims**

The Plaintiff owned the Miller Farm, and the Defendants own the Dyer Farm. Barber Road is a public road located in a rural area of Dyer County, Tennessee. A portion of this road went across the south end of the Dyer Farm and into the east side of the Miller Farm. The county maintained Barber Road until the late 1980s when it stopped maintaining a portion of Barber Road that crossed the Dyer Farm. The portion the county stopped maintaining is the portion of Barber Road the Court concluded at the summary judgment stage had been abandoned by the county. The portion of Barber Road the county abandoned on the Dyer Farm is what the Court will refer to from this point forward as "the abandoned road." The abandoned road is the property that the Plaintiff contends he has gained title to via adverse possession.

Although the county stopped maintaining the abandoned road, the roadway on this property remained open, accessible and open to travel. The Plaintiff and the farmers who farmed the Miller Farm used this roadbed to access Miller Farm. Others traveled this roadbed as well. Over time, this roadbed became virtually impassable due to no maintenance and continued use, and it became difficult for farming equipment to get to the Miller Farm. In 1995-96, the Plaintiff repaired the roadbed on the abandoned road, placed culverts in the bed to control soil erosion from flood waters, and placed gravel on this bed. To protect this investment and limit access to the Miller Farm, the Plaintiff placed a gate on the abandoned road. The Plaintiff did not request permission from anyone who owned a portion of the Dyer Farm in this time frame for permission to erect this gate on or make repairs to their property. He just made the repairs and erected the gate. The Plaintiff placed a chain and lock on this gate, and from the time it was put in place until 2021, this gate remained locked excepted for the rare occasions when it was not. The Plaintiff had

the key to this lock, and only those people whom the Plaintiff had given a key could unlock the gate. The Plaintiff would also unlock the gate for those who did not have a key and allow them to use the abandoned road. The Plaintiff used the abandoned road to travel to and from the Miller Farm.

From 1987 until an easement was granted to the United States of America (hereinafter "USA") in 2020, Mr. Gwinn was the person who farmed the Miller Farm for the owners of that property. The Plaintiff's father owned the Miller Farm from the time Mr. Gwinn began farming the property until the property was deeded to the Plaintiff by a warranty deed recorded with the Dyer County Register on December 13, 1996. Mr. Gwinn was given a key to the lock on the gate on the abandoned road so he could access the Miller Farm for farming purposes. This key was misplaced shortly thereafter, and from that point forward until farming operations ceased on the Miller Farm, Mr. Gwinn or his employees would call the Plaintiff to have the lock on this gate unlocked when farming work had to be performed on the Miller Farm.

The Plaintiff leased the Miller Farm to a Mr. Barnet for hunting purposes. Mr. Barnet was given a key to the lock on the gate the Plaintiff had placed on the abandoned road. In addition to Mr. Barnet, there were approximately five other people included in what the Court will refer to as "Mr. Barnet's hunting club." Mr. Barnet's hunting club used the abandoned road to travel to and from the Miller Farm. This use was with the Plaintiff's permission.

Mr. Dyer and his relatives owned the Dyer Farm from the 1950s until this farm was sold to the Defendants in May of 2021. Mr. Dyer's mother acquired sole ownership of the property in 2001, and Mr. Dyer managed the property from then until his mother passed in 2010. Mr. Dyer acquired an ownership interest in the Dyer Farm upon his mother's passing, and he managed the property for the owners from that point until the farm was sold in 2021. Mr. Dyer visited the Dyer

Farm two or three times per year from 2001 until 2021, and he was aware of the gate the Plaintiff had placed on the Dyer Farm. Mr. Dyer did not have a key to the lock on this gate, so he could not access the property west of that gate with an automobile. Access to the Dyer Farm, however, could be had by way other than across that property. Approximately 50 times over those years, Mr. Dyer walked around the gate and walked down the roadbed west of the gate.

Sometime shortly before 2020, the Plaintiff was attempting to grant the USA an easement on the Miller Farm. The Plaintiff was to be paid for this easement. Since the county had abandoned the abandoned road in the late 1980s, however, the Miller Farm was no longer accessible via Barber Road or any other public road, and this easement transaction could not be completed until legally recognized access to the Miller Farm was obtained. The abandoned road ran across the Dyer Farm, and a quick remedy to this access issue was to obtain an easement across that property. The then owners of the Dyer Farm were contacted regarding such an easement, and by document recorded with the Dyer County Register on January 8, 2020, an easement over that portion of Barber Road that ran across the Dyer Farm that had been abandoned by the county was granted to the Plaintiff. The easement granted to the Plaintiff provides in part as follows:

Barber Road previously extended westerly, across the Dyer Farm into the Miller Farm, however, several years ago the Dyer County Highway Department stopped maintaining Barber Road at a point 1.0 mile westerly along Barber Road from its point of intersection with N. Green Hill Bottom Road, which point was approximately halfway across the Dyer Farm. Since then, Thomas Baker Miller has continued to use and maintain the old roadway from the end of Barber Road, westerly to the Miller Farm...”

The Plaintiff was able to complete the easement transaction with the USA once he obtained this easement, and that transaction was completed in 2020. The Plaintiff sold the Miller Farm in December of 2022.

There were no disagreements or disputes regarding the gate that the Plaintiff had placed on the Dyer Farm, or the restricted access to this property that this gate provided, from the time the gate was erected in 1995-96 until the Defendants purchased the property in 2021. It is at that point that disagreements and disputes began to occur. The Defendants had no knowledge of the property prior to 2021. At some point after the Defendants purchased the Dyer Farm, the Plaintiff told Mr. Carter that he owned what amounted to the entirety of Barber Road that extended across the Dyer Farm. The Plaintiff believed he had ownership since he maintained the property. The Plaintiff never told anyone that he owned any portion of Barber Road at any point prior to him making such a statement to Mr. Carter. The Plaintiff never paid taxes on the property that was included in the deed to the Dyer Farm.

#### **Defendants' Claims**

A gate erected by the Plaintiff is located on the property deeded to the Defendants. This gate has been in place since 1995-96. The Plaintiff and "his heirs and assigns" were granted an easement across a portion of the Dyer Farm 2020. The Plaintiff was granted an easement across the portion of Barber Road located on the Dyer Farm that was abandoned in the late 1980s. That easement begins where the part of Barber Road still maintained by the county ends and proceeds "over and across the old existing roadway that runs along the southern boundary of their property, to the eastern boundary line of the Miller Farm." This was an easement for "ingress and egress" to the Miller Farm. The Plaintiff may have entered onto a portion of the Dyer Farm that is not a part of the disputed property while it was planted with a cotton crop, and that incursion may have caused damage to that crop. No monetary value as to what those damages may have been was proven. The Plaintiff did lease the Miller Farm for hunting purposes while he owned that farm. The Plaintiff, however, has not owned the Miller Farm since December 21, 2022, and he is not

now operating any type of commercial activity on that property. The Plaintiff and the Defendants had no type of contractual relationship. No amount of costs or attorney's fees were established.

### **ISSUES FOR DETERMINATION**

The following five issues have been brought before the Court for determination:

1. The Plaintiff's quiet title action based on common-law adverse possession;
2. The Defendants' claim to have the Plaintiff remove a gate he has erected on their property;
3. The Defendants' claims that the Plaintiff is unduly burdening the easement he was granted across their property;
4. The Defendants' claim for damages that the Plaintiff caused to their property; and
5. The Defendants' claim for costs and attorney fees.

### **ANALYSIS AND CONCLUSIONS OF LAW**

#### ***COMMON-LAW ADVERSE POSSESSION***

"Tennessee courts ... [have] developed what is now known as common-law adverse possession. Under the doctrine of common-law adverse possession, a court presumes that a possessor has a grant or deed if he or she has remained in uninterrupted and continuous possession of land for a certain time period." *Mathes v. 99 Hermitage, LLC*, No. M2021-00883-SC-R11-CV, 2024 WL 3587100, at \*1–2 (Tenn. July 31, 2024) (citations omitted.) "Common-law adverse possession requires uninterrupted and continuous possession of land for twenty years but . . . does not require assurance or color of title. When the twenty-year threshold is met, legal title to the property vests in the possessor." *Id.* (citations omitted.) Generally, acquisition by adverse possession for the requisite period of time must be (a) actual and exclusive; (b) open, visible, and notorious; (c) continuous and peaceable; and (d) hostile and adverse. *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 376 (Tenn. 2007) (citations omitted.) "Exclusivity does not imply that the

possessor can never allow anyone on his adverse holding without the holding being broken but that the holder claims exclusive right to say who can and who cannot come on his possession.”

***Hightower v. Pendergrass*, 662 S.W.2d 932, 937 (Tenn. 1983).** Also,

‘[u]nlike its general usage, hostility for the purposes of adverse possession does not require ill will. ‘Hostility’ exists, in the legal sense, when one ‘holds the possession as his, against the claims of any other.’ Moreover, the hostile possession must be open such that it provides notice to the world that the adverse possessor claims ownership of that property. Although fencing a property demonstrates a clear claim of ownership, enclosure is not necessary to demonstrate possession. Rather, the possessor must use the property in a manner consistent with its nature and purpose and in such a way as to give notice to the rightful owner that another is asserting dominion over his property.

Additionally, a party is not required to harbor the intent to possess another's land in order to invoke the doctrine of adverse possession. ‘The possession, use, and dominion may be as absolute and exclusive where...the occupant has no actual intention to claim adversely to anyone, as where such an intention exists.’

***Wilson v. Price*, 195 S.W.3d 661, 667–68 (Tenn. Ct. App. 2005)** (citations omitted.)

“Adverse possession is . . . a question of fact. The burden of proof is on the individual claiming ownership by adverse possession and the quality of the evidence must be clear and convincing.” ***Cumulus Broad., Inc.*, 226 S.W.3d 366 at 377.** “The ‘clear and convincing’ [evidence] standard falls somewhere between the ‘preponderance of the evidence’ in civil cases and the ‘beyond a reasonable doubt’ standard in criminal proceedings.” ***Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997)** (citations omitted.) “Evidence is clear and convincing when ‘there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’ This is a demanding burden. The evidence ‘must produce a firm belief or conviction in the fact finder's mind about the truth of the facts to be established.’” ***Charles v. McQueen*, 693 S.W.3d 262, 281–82 (Tenn. 2024)**(citations omitted.)



Barber Road went across the south part of the Dyer Farm and into the Miller Farm. This road was how one got to and from the Miller Farm. A portion of this road was abandoned by the county in the late 1980s. People continued to use the roadbed after it was abandoned, and over time, the roadbed became nearly unusable due to use and neglect. Around 1995-1996, the Plaintiff started to maintain the abandoned part of the road. The Plaintiff repaired the roadbed, placed gravel on the roadbed, placed culverts in this roadbed and erected a gate. He placed a chain on that gate, and a lock on that chain. Except for a few occasions, the lock on this gate was locked from the time the gate was put in place until at least 2021, which is more than a 20-year period of time. The Plaintiff regulated who had the ability to unlock the lock on the gate, and who had a key to the lock. He did not request permission to do any of these things from the owners of the Dyer Farm. He just did them.

The owners of the Dyer Farm were aware of the Plaintiff's action regarding their property. In fact, one of the owners would walk around the gate to get onto the property beyond the gate. The Plaintiff used Barber Road to go to and from the Miller Farm, and he used the property west of the gate he put in place for the same purposes. Others did use the property west of the gate to access the Miller Farm, but this use was with the Plaintiff's permission. In 2020, the owners of the Dyer Farm granted the Plaintiff an easement across the abandoned part of Barber Road that went across the south end of their farm. This easement, which the Plaintiff requested so that he could quickly conclude a transaction with the USA, extends approximately halfway across the Dyer Farm. This grant, however, was given more than 20 years after the Plaintiff had started to maintain and restrict access to the property beyond the gate. The Plaintiff did not tell anyone he owned any part of the Dyer Farm until he made such a claim to Mr. Carter, he did not pay taxes on any part of the property included in the deed to the Dyer Farm, and he allowed others to use the property

west of the gate. While these are all facts to consider, declaring ownership is not an element of adverse possession, see *Wilson*, 195 S.W.3d 661 at 668, paying property taxes on property being claimed via adverse possession is not an element of common-law adverse possession, see *Cumulus Broad., Inc.*, 226 S.W.3d 366 at 376, and prohibiting others from using property being claimed via adverse possession is not required. *Hightower*, 662 S.W.2d 932 at 937.

The Court concludes that the Plaintiff has established by the required standard of proof every element of common-law adverse possession of the portion of the Dyer Farm that was once a part of Barber Road roadbed that extends west from the gate he erected in 1995-1996 to the Miller Farm. This property begins where the easement granted in 2020 begins. Accordingly, the Court declares that the Plaintiff has obtained title to that property via his adverse possession thereof. The site of the gate the Plaintiff put in place in 1995-1996 is located on property he has obtained title to via adverse possession. Thus, the Defendants' request that the Plaintiff remove the gate at that site is denied.

### ***BURDEN OF THE EASEMENT***

“The owner of an easement cannot materially increase the burden of it upon the servient estate[]...” *Mize v. Ownby*, 225 S.W.2d 33, 35 (1949) (citations omitted.) In fact,

‘[t]he use of an easement must be confined strictly to the purposes for which it was granted or reserved. A principle which underlines the use of all easements is that the owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden.’

‘A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land, whether adjoining or distinct tracts, to which the right is not attached. In other words, an easement appurtenant to a dominant tenement can be used only for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment

of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication.’

‘A principle which underlies the use of all easements is that the owner thereof cannot materially increase the burden of it upon the servient estate, nor impose a new and additional burden thereon. \*\*\* It may be said in general that if an easement is put to any use inconsistent with the purpose for which it was granted, the grantee becomes a trespasser to the extent of the unauthorized use.’

*Adams v. Winnett*, 156 S.W.2d 353, 357 (1941) (citations omitted.)

The easement the Plaintiff was granted across the Dyer Farm in 2020 was an easement for “ingress and egress” to the Miller Farm. The Defendants contend in their counterclaim that the Plaintiff’s “operation of commercial activities” on the Miller Farm is a use of the easement beyond what was originally intended when the easement was granted. Since this alleged unintended use of the easement has placed additional burdens on their property, the Defendants request that the Plaintiff should “be ordered to cease any commercial activities that are occurring upon his property that involve the use of the easement.”

The Defendants filed their counterclaim on November 23, 2022, but the Plaintiff sold the Miller Farm in December of 2022. So, he no longer is the owner of the Miller Farm, and the easement in question only provided ingress and egress to that particular piece of property. Further, even if commercial uses are currently occurring on the Miller Farm, the Defendants did not convince the Court that the Plaintiff was the one who is in control of or is operating those activities. Since the Defendant does not now own the Miller Farm and does not appear to be operating any commercial activity on that farm, the Court concludes this claim should be denied.

#### ***DAMAGES TO THE DEFENDANTS’ CROP OR PROPERTY***

“[U]ncertain and speculative damages are prohibited only when the existence of damage is uncertain, not when the amount is uncertain. When there is substantial evidence in the record

and reasonable inferences may be drawn from that evidence mathematical certainty is not required.” *Ellis v. Pauline S. Sprouse Residuary Tr.*, 304 S.W.3d 333, 339 (Tenn. Ct. App. 2009) (citations omitted.)

The Defendants contend that the Plaintiff damaged their property. Mathematical certainty of damages is not required, but before damages can be awarded, there must be substantial evidence in the record that would allow a trier of fact to draw reasonable inferences as to what those damages may be. No such evidence was presented in this case. Accordingly, this claim is denied.

#### ***ATTORNEY’S FEES AND COSTS***

“Tennessee, like most jurisdictions, adheres to the ‘American rule’ for [an] award of attorney fees. Under the American rule, a party in a civil action may recover attorney fees only if: (1) a contractual or statutory provision creates a right to recover attorney fees; or (2) some other recognized exception to the American rule applies, allowing for recovery of such fees in a particular case. *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009)(citations omitted.) “This Court has adhered strictly to the guiding principle that the American rule, prohibiting an award of attorney fees, will apply unless a contract specifically and expressly creates a right to recover “attorney fees” or some other recognized exception to the American rule is present. *Id.* at 310.

The parties do not have a contractual relationship that would provide for the recovery of attorney’s fees. Also, the Defendants have not alleged a statutory provision or any other recognized exception to the American rule that would allow them to recover their attorney’s fees. Thus, the American rule governs this case. Even if the American rule did not govern, the Plaintiff is the prevailing party in this case, and the Defendants did not establish what their attorney’s fees and

costs have been. For all these reasons, the Court concludes the Defendants' claims for attorney's fees and costs should be denied.

**ORDER**

The Plaintiff's counsel shall have twenty-one (21) days from the date this ruling is entered and served in which to prepare a proposed order reflecting the above decision and to circulate the same to the Defendants' counsel for his review. This proposed order shall also be presented to the Court within this same timeframe. The clerk shall serve the parties' counsels with a stamp filed copy of this document. **It is SO ORDERED.**

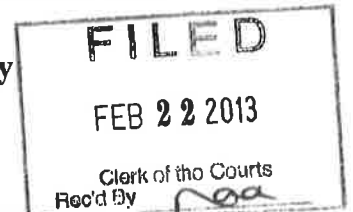
 10/18/2024  
**TONY A. CHILDRESS**

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

December 10, 2012 Session

**JOSEPH E. SMITH v. ELECTRIC RESEARCH & MANUFACTURING  
COOPERATIVE, INC. AND ACE AMERICAN INSURANCE CO.**

**Appeal from the Chancery Court for Obion County  
No. 28,967 William Michael Maloan, Chancellor**



**No. W2012-00656-WC-R3-WC - Mailed January 17, 2013**

Joseph E. Smith (“Employee”) alleged that he injured his back in the course and scope of his employment with Electric Research & Manufacturing Cooperative, Inc. (“Employer”). Employee’s evaluation physician assigned a 12% permanent impairment rating to the body as a whole as a result of the injury. A physician selected through the Medical Impairment Registry (“MIR”) process assigned a 3% permanent impairment rating to the body as a whole. The trial court found that Employee rebutted the statutory presumption of accuracy afforded the MIR physician’s rating by clear and convincing evidence pursuant to Tennessee Code Annotated section 50-6-204(d)(5) (2008) and awarded 40% permanent partial disability to the body. Employer has appealed.<sup>1</sup> After reviewing the record as we are required to do, we affirm the trial court’s judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;  
Judgment of the Obion Chancery Court Affirmed**

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and DONALD E. PARISH, SP. J., joined.

Lori J. Keen, Memphis, Tennessee, for the appellants, Electric Research & Manufacturing Cooperative, Inc., and Ace American Insurance Co.

Jeffrey A. Garrety and Charles L. Holliday, Jackson, Tennessee, for the appellee, Joseph E. Smith.

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<sup>1</sup> Pursuant to Tennessee Supreme Court Rule 51, this workers’ compensation appeal has been referred to the Special Workers’ Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

## MEMORANDUM OPINION

### Factual and Procedural Background

Employee began working for Employer in 2007. Employee's job required him to lift coils or cores that weighed thirty to eighty pounds. On April 7, 2008, Employee was lifting a core and twisting to place it on a table when he heard a "pop" in his lower back and felt pain in his back and tingling in his buttocks. Employee reported the injury to Employer and received treatment at Urgent Care in Dyersburg.

In June of 2008, Employee was referred to Dr. Jason Hutchison. Dr. Hutchison, who testified at trial by way of deposition, stated that Employee told him that he had pain in his back, buttocks, and legs. Dr. Hutchison testified that a June 2008 magnetic resonance imaging scan ("MRI") showed retrolisthesis with a posterior bulge at L5-S1 and an annular tear in the posterolateral aspect of the L5-S1 disc. Dr. Hutchison stated that the MRI indicated the left S-1 nerve root was pinched between the left disc extrusion and left hypertrophy facet joint. According to Dr. Hutchison, retrolisthesis is a disc slippage backwards whereas spondylolisthesis is a disc slippage forward. Dr. Hutchison stated that the retrolisthesis was "most likely" a preexisting asymptomatic condition that was aggravated by what occurred on April 7, 2008. When asked whether retrolisthesis is a "form of spondylolisthesis or under the umbrella definition of spondylolisthesis," Dr. Hutchison responded, "Yes. Spondylo we typically think of as going forward, but - - retrolisthesis is going backward, but yeah, I would - - under a broad stroke, they're under the same heading." Dr. Hutchison prescribed conservative treatment and physical therapy for Employee; however, Employee's symptoms did not diminish. Dr. Hutchison imposed a permanent restriction against lifting in excess of fifty pounds. Employee was subsequently laid off by Employer.<sup>2</sup>

Dr. Apurva Dalal examined Employee in March of 2010. In his deposition testimony, Dr. Dalal stated that Employee reported ongoing pain in his lower back as well as bilateral leg pain. Dr. Dalal stated that the June 2008 MRI showed "minimal retrolisthesis" at L5-S1 "with a small broad based posterior disc bulge," as well as "[a]n annular tear in the left posterolateral aspect of the disc with a minimal left foraminal, left posterial lateral, and supradical extrusions, which contours the left L5 dorsal root ganglion as well as the L5-S1 nerve root." Dr. Dalal opined that the "left S1 nerve root is probably pinched," and he also

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<sup>2</sup> Because Employee did not return to work for the pre-injury Employer at a wage equal to or greater than the pre-injury wage, the parties agreed that the greater statutory multiplier applied, meaning Employee's award of benefits may not exceed six times the medical impairment rating. See Tenn. Code Ann. § 50-6-241(d)(2)(A) (2008).

noted a disc bulge at L1-L2. Dr. Dalal explained that x-rays revealed Employee had “mild spondylolisthesis.” According to Dr. Dalal, Employee had ongoing radicular pain and radiculopathy. Dr. Dalal assigned a 12% impairment rating to the body as a whole based on the Sixth Edition of the American Medical Association Guides (“AMA Guides”), and he based this rating specifically on the portion of Table 17-4 located on page 571 of the AMA Guides. Dr. Dalal explained that when a medical condition may be rated under more than one section of the AMA Guides, the AMA Guides call for applying the section that provides the “higher rating.”

The parties also obtained an evaluation through the Tennessee Department of Labor MIR process and selected Dr. Alan Pechacek as the MIR physician. Dr. Pechacek examined Employee in August of 2010. Dr. Pechacek interpreted the June 2008 MRI substantially the same as Dr. Dalal. Additionally, like Dr. Dalal, Dr. Pechacek determined that Employee had ongoing pain, decreased sensation, limited leg extension, and leg pain. However, Dr. Pechacek found no muscle atrophy and opined that Employee “does not have spondylolisthesis as dictated by Dr. Dalal.” After diagnosing low back pain, Dr. Pechacek classified the injury as a sprain or a strain and assigned a 3% impairment rating to the body as a whole under the AMA Guides, based specifically on the Soft Tissue and Non Specific Conditions portion of Table 17-4 located on page 570. Dr. Pechacek’s MIR report was introduced into evidence, but Dr. Pechacek did not testify in person or by deposition.<sup>3</sup>

In his deposition, Dr. Dalal responded to Dr. Pechacek’s findings. Dr. Dalal testified that Employee’s pain, decreased sensation, limited leg extension, atrophy, and leg pain were consistent with radiculopathy. As a result, Dr. Dalal opined that Dr. Pechacek erred in treating the injury as a sprain/strain and in assigning an impairment rating under the Soft Tissue and Non Specific Conditions portion of the AMA Guides. Specifically, Dr. Dalal testified:

[A] sprain/strain kind of rating indicates that there is no other pathology rather than just ligaments. In this particular case, . . . [w]e have objective findings of spondylolisthesis. We have objective findings of a compressed nerve root on an imaging study. We have findings on physical examination of myself, Dr. Hutchison and Dr. Pechacek that this patient has evidence of radiculopathy. And because of all the doctors’ physical findings, they match with the

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<sup>3</sup> See Tenn. Code Ann. § 50-6-204(f) (2008) (stating that a physician “whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom”).



objective science on radiographs and on MRI. So the right thing . . . to do is assign an appropriate rating based on those exams and objective findings.

At the time of trial, Employee was thirty-two years of age, and he had experience as a roofer, a boat dock worker, and a correctional officer. Despite this experience, Employee testified that he had been unable to find full time employment following his injury. Employee testified that standing, sitting, twisting, turning, pushing, pulling, and lifting caused pain in his back and legs. Employee reluctantly admitted that he had taken some jobs as a roofer and as a hunting guide to make some money. Employee also admitted that he had been involved in sporting activities on a limited basis. Employee testified that these jobs and sporting activities had caused pain in his lower back and legs.

After considering the live testimony and the depositions, the trial court determined that Employee injured his lower back in the course and scope of his employment with Employer and suffered a 40% permanent partial disability to the body. Employer has appealed, and on appeal, Employer argues that the trial court erred in failing to apply the 3% impairment rating assigned by Dr. Pechacek's MIR report and that the award was otherwise excessive. Employee responds that the evidence in the record does not preponderate against the trial court's judgment.

#### **Standard of Review**

Our standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); see also Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When issues of credibility of witnesses and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, 152 S.W.3d 439, 443 (Tenn. 2004).

## Analysis

### 1. MIR Report

Tennessee Code Annotated section 50-6-204(d)(5) provides that the “written opinion as to the permanent impairment rating given by the independent medical examiner” selected through the MIR process “shall be presumed to be the accurate impairment rating,” unless “rebutted by clear and convincing evidence to the contrary.” Tenn. Code Ann. § 50-6-204(d)(5) (2008). Clear and convincing evidence has been defined as evidence “in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 n.3 (Tenn. 1992). We have observed that the presumption found in section 50-6-204(d)(5) may be rebutted by affirmative evidence that an MIR physician “used an incorrect method or an inappropriate interpretation” of the AMA Guides. Tuten v. Johnson Controls, Inc., No. W2009-1426-SC-WCM-WC, 2010 WL 3363609, at \*4 (Tenn. Worker’s Comp. Panel Aug. 25, 2010).

In awarding 40% permanent partial disability, the trial court relied on Dr. Dalal’s 12% impairment rating and found that Dr. Pechacek’s 3% impairment rating was “inconsistent with the lay and medical testimony in this case.” The trial court explained as follows:

Dr. Pechacek’s MIR report which is filed into evidence indicates that [Employee] has a 3% impairment to the whole person based upon the 6th Edition AMA Guides for a sprain/strain. Dr. Pechacek found that [Employee] had “persistent chronic back pain from the right lumbar region, with primarily muscular pain and spasm and right leg symptoms, but without objective neurological deficits.” Dr. Dalal testified to complaints of low back and bilateral leg pain. Dr. Dalal reviewed the June 12, 2008 MRI report which showed a pinched nerve at L5-S1. Dr. Dalal also found that [Employee] had spondylolisthesis which was confirmed by the MRI. Dr. Dalal reviewed Dr. Pechacek’s MRI report and disagreed with Dr. Pechacek’s evaluation that [Employee] merely had a strain based upon numerous objective findings, such as history of bilateral leg pain, positive straight leg raise test, atrophy of the right thigh, and ongoing radiculopathy.

Dr. Pechacek’s 3% impairment rating was based on his determination that Employee had no neurological deficits, radiculopathy, or spondylolisthesis. Dr. Dalal testified that these conclusions were inconsistent with Dr. Pechacek’s own observations of Employee’s leg pain, limited movement and loss of sensation and also conflicted with the results of Employee’s MRI. Dr. Pechacek’s MIR report stated that Employee “does not have

spondylolisthesis as dictated by Dr. Dalal.” Dr. Dalal stated that Dr. Pechacek erred in concluding that Employee does not have spondylolisthesis. Thus, Dr. Dalal and Dr. Pechacek disagreed, in some respects, as to the proper diagnosis of Employee’s condition.

A disagreement between medical expert witnesses as to the proper diagnosis of an employee’s condition may not, in and of itself, constitute the clear and convincing evidence needed to overcome the statutory presumption of accuracy afforded an MIR physician’s impairment rating. “When deciding whether or not an employee has rebutted the statutory presumption of correctness enjoyed by an MIR physician’s impairment rating, the focus is on the evidence offered to rebut that physician’s rating.” See Brooks v. Corr. Med. Serv., W2010-00266-WC-R3-WC, 2011 WL 684600, at \*5 (Tenn. Workers’ Comp. Panel Feb. 25, 2011).

In this case, the MIR physician did not testify in person or by way of deposition. Instead, his report was simply submitted into evidence as an exhibit. To rebut the MIR physician’s rating, Employee introduced Dr. Dalal’s deposition testimony, and Dr. Dalal stated that the Dr. Pechacek erred in concluding that Employee did not have spondylolisthesis. Dr. Dalal also testified that when a medical condition may be rated in more than one section, the AMA Guides call for applying the section that provides the “higher rating.” Dr. Dalal explained that the impairment rating he assigned pursuant to the portion of Table 17-4 located on page 571 of the AMA Guides was the higher rating. Employer did not offer any evidence that refuted Dr. Dalal’s testimony on these points. Moreover, Dr. Dalal’s testimony that Employee had spondylolisthesis is consistent with Dr. Hutchison’s testimony. Dr. Hutchison explained that Employee had retrolisthesis, that retrolisthesis is a form of spondylolisthesis, and that both conditions fall under “the same heading.”

In reaching its decision, the trial court considered the lay and expert testimony offered in the case. The trial court’s judgment does not specifically cite the “clear and convincing” evidence standard, but the trial court’s findings clearly identified the shortcomings of the rating assigned by Dr. Pechacek. The trial court’s ruling indicates that it found clear and convincing evidence rebutting the statutory presumption of accuracy afforded to Dr. Pechacek’s impairment rating. Considering the record as a whole, we are simply unable to conclude that the evidence preponderates against the trial court’s finding.

## 2. Vocational Disability

In assessing the extent of an employee’s vocational disability, the trial court may consider the employee’s skills and training, education, age, local job opportunities, anatomical impairment rating, and her capacity to work at the kinds of employment available

in her disabled condition. Tenn. Code Ann. § 50-6-241(d)(2)(A) (2008); Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn. 1990). The Employee's own assessment of physical condition and resulting disabilities cannot be disregarded. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn. 1975); Tom Still Transfer Co. v. Way, 482 S.W.2d 775, 777 (Tenn. 1972). The trial court is not bound to accept physicians' opinions regarding the extent of the disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Hinson, 654 S.W.2d at 677.

In this case, Employee testified that he was a high school graduate with no vocational training and "one or two" semesters of college. He had prior work experience as a roofer, a dock worker, and a corrections officer. He started working for Employer in 2007 because of the pay and benefits. Since his injury, he has had consistent pain in his lower back and both legs. He has difficulty sitting, standing, pulling, pushing, bending, squatting, twisting, and lifting. Employee had worked as a roofer and as a duck hunting guide following his injury, but he testified that these and other activities increased the pain in his low back and both legs. Employee also stated that he has "constant pain in [his] back through [his] right leg, numbness, and also [his] left leg with activities that make it hurt even more." While evidence was introduced that may have raised doubts as to Employee's truthfulness, the trial court heard Employee's testimony in-court and implicitly found him to be a credible witness. See Richards, 70 S.W.3d at 733 (recognizing that a trial court's credibility findings may be inferred from the manner in which conflicts in the testimony are resolved and the case is decided).

Although a trial court's award of workers' compensation benefits may be reversed or modified under the appropriate circumstances, Howell v. Nissan N. Am., Inc., 346 S.W.3d 467, 474 (Tenn. 2011) (citing Tryon v. Saturn Corp., 254 S.W.3d 321, 335 (Tenn. 2008)), a reviewing court may not "simply substitute its judgment for that of the trial court in assessing the employee's vocational disability." Id. While the evidence certainly does not mandate the judgment reached by the trial court on this issue, after our review of the record, we are unable to conclude that the evidence preponderates against the trial court's judgment.

### Conclusion

For the foregoing reasons, the trial court's judgment is affirmed. Costs are assessed to Employer, for which execution shall issue, if necessary.

  
TONY A. CHILDRESS, Special Judge

IN THE CHANCERY COURT OF TENNESSEE  
TWENTY-NINTH JUDICIAL DISTRICT  
DYER COUNTY, TENNESSEE

LARRY REYNOLDS  
v.  
TENNESSEE DEPARTMENT OF  
SAFETY AND HOMELAND SECURITY

Docket Number: 24-CV-92

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JUDICIAL REVIEW

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*Facts and Procedural History*

On December 15, 2022, investigators executed a search warrant involving child pornography on the home of Larry Reynolds (hereinafter "Petitioner"). During the search, several suspected marijuana plants were observed in the Petitioner's garage. The 24<sup>th</sup> Judicial District Drug Task Force (hereinafter "DTF") was notified of these plants, and the DTF obtained an additional search warrant. This search warrant was also executed on December 15, 2022.

A 12'x12' grow room was found in the Petitioner's garage, and 27 potted plants of suspected marijuana were found inside this room. Approximately one-half pound of dried marijuana, small plastic bags, a vacuum sealer, and digital scales were found inside the Petitioner's home. A 2014 Jeep and a 6'x10' two-wheeled trailer were also found at the Petitioner's residence. The Petitioner admitted the plants were marijuana. The Petitioner also admitted he had constructed the grow room and that he had used the Jeep and two-wheeled trailer to transport the materials used in the construction of the grow room to his home. The agents seized this Jeep and trailer.

In March of 2023, the Tennessee Department of Safety and Homeland Security (hereinafter "Respondent") opened a case against the Petitioner. This case was opened in the Administrative Procedures Division of the Tennessee Secretary of State (hereinafter "APD"). Through the case, the Respondent was seeking the forfeiture of the Jeep and trailer seized from the Petitioner's home. On September 12, 2023, Administrative Law Judge Steve R. Darnell held a hearing on the Respondent's case. Judge Darnell filed a final order in the APD on November 2, 2023. The November 2, 2023 order provided that the "seized vehicle and trailer were forfeited to the seizing agency."

At some point, the Petitioner transmitted via facsimile transmission a document styled "PETITION FOR JUDICIAL REVIEW" (hereinafter "Petition") to the circuit court clerk in Henry County, Tennessee. On December 29, 2023, employees of the circuit court clerk delivered this Petition to the office of the Henry County Clerk and Master, Mr. Albert Wade, Jr. (hereinafter "C&M"). This delivery occurred at 4:00 p.m. on December 29, 2023. The C&M concluded that

this Petition required a filing fee, and since such a fee had not been paid, the Petition could not be filed via facsimile transmission. Thus, the C&M did not file the Petition on that date. Instead, on January 2, 2024, the C&M sent the Petitioner's counsel a letter advising him that the Petition had not been filed and explaining why the Petition had not been filed. The filing fee was paid at some point, and, on January 8, 2024, the C&M filed the Petition. By order entered, February 8, 2024, the Chancery Court of Tennessee sitting in Henry County transferred this case to this Court. On February 27, 2024, this Court received the file. The Respondent filed the administrative record on March 12, 2024.

The Court noticed two things while reviewing the court file and the administrative record. The first was that the January 8, 2024, Petition stated that it was being filed "pursuant to TCA § 4-5-322." The other was that the Petition stated "[t]he Petitioner is seeking judicial review from an order issued ... on the 2<sup>nd</sup> of November, 2023." The Court was aware that Tennessee Code Annotated section 4-5-322(b)(1)(A)(iv) provides that "[p]etitions seeking judicial review shall be filled within sixty (60) days after the entry of the agency's final order thereon." The Court was also aware that this 60-day time frame is jurisdictional. *Bishop v. Tenn Dep't of Corr.*, 896 S.W.2d 557, 558 (Tenn.Ct.App. 1994), *abrogated on other grounds by Hughley v. State*, 208 S.W.3d 338 (Tenn. 2006).

Since January 8, 2024, was more than 60 days after November 2, 2023, the Court became concerned that it may not have subject matter jurisdiction to review the agency's decision. To address this concern, the Court entered an order on March 22, 2024, outlining the facts and law regarding this jurisdictional issue. This order gave the Petitioner 14 days in which to show cause why this case should not be dismissed. On April 4, 2024, the Petitioner filed a response to that order. In that response, the Petitioner set forth the steps taken to file the Petition for judicial review. For the purposes of this order, the Court has accepted each of the steps set forth in the response as being factually accurate, and those steps are included as part of the facts and procedural history.

### *Analysis*

#### **I. Subject matter jurisdiction**

Subject matter jurisdiction relates to a court's authority to adjudicate a particular type of case or controversy brought before it. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn.2004); *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn.2000). A court derives subject matter jurisdiction, either explicitly or by necessary implication, from the Constitution of Tennessee or from a statute enacted by the Tennessee General Assembly or Congress. *Osborn v. Marr*, 127 S.W.3d at 739; *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn.1996); *Walker v. White*, 89 S.W.3d 573, 577 (Tenn.Ct.App.2002). The parties cannot confer subject matter jurisdiction on a trial or appellate court by appearance, plea, consent, silence, or waiver. *Caton v. Pic-Walsh Freight Co.*, 211 Tenn. 334, 338, 364 S.W.2d 931, 933 (1963); *Brown v. Brown*, 198 Tenn. 600, 619, 281 S.W.2d 492, 501 (1955).

Because the orders and judgments entered by courts without jurisdiction over the subject matter of a dispute are void, *Brown v. Brown*, 198 Tenn. at 610, 281 S.W.2d at 497, issues regarding a court's subject matter jurisdiction should be considered as a threshold inquiry, *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn.2012), and should be resolved at the earliest possible opportunity. When a court's subject matter jurisdiction over a particular claim is challenged, the claimant must demonstrate that the court has the jurisdiction to adjudicate its claim. *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d at 445.

Determining whether subject matter jurisdiction exists in a particular case requires the courts to examine (1) the nature or gravamen of the cause of action, (2) the nature of the relief being sought, and (3) the constitutional or statutory provisions relied upon by the plaintiff. See *Northland Ins. Co. v. State*, 33 S.W.3d at 729; *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn.1994). All these matters involve questions of law. Therefore, determinations regarding a court's subject matter jurisdiction are questions of law which will be reviewed de novo without a presumption of correctness. *Northland Ins. Co. v. State*, 33 S.W.3d at 729; *Benson v. Herbst*, 240 S.W.3d 235, 239 (Tenn.Ct.App.2007).

*In re Est. of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012). The question of subject jurisdiction may be raised *sua sponte* by this Court. Tenn. R. Civ. Proc. Rule 12.08; see also *Gillespie v. State*, 619 S.W.2d 128 (Tenn.Ct.App. 1981) (perm. app. denied July 6, 1981).

## II. Subject matter jurisdiction to review agency decisions

Cases of the type the Respondent filed against the Petitioner are governed by the Uniform Administrative Procedures Act. See Tenn. Code Ann. § 4-5-301 et seq. (2023). This Act provides that “[a] person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method for judicial review.” Tenn. Code Ann. § 4-5-322(a)(1) (2023). “Proceedings for review are instituted by filing a petition for review in chancery court.” Tenn. Code Ann. § 4-5-322(b)(1)(A)(i) (2023). Tennessee Code Annotated section 4-5-322 grants chancery courts subject matter jurisdiction to review the agency decision the Petitioner requests be reviewed. This jurisdiction, however, is not automatic. Instead, in order to invoke such jurisdiction, the procedures set forth in Tennessee Code Annotated section 4-5-322 must be followed.

## III. Procedure to invoke court’s subject matter jurisdiction to review agency decision

Venue for appeals from decisions of the agency involved in this case “shall be the chancery court nearest to the place of residence of the person contesting the agency or alternatively, at the person’s discretion, in the chancery court nearest where the cause of action arose, or in the chancery court of Davidson County. Tenn. Code Ann. § 4-5-322(b)(1)(A)(ii) (2023). “Petitions seeking judicial review shall be filled within sixty (60) days after the entry of the agency’s final order thereon.” Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv) (2023). “In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the

case shall be transferred to the appropriate court.” **Tenn. Code Ann. § 4-5-322(b)(2) (2023)**. “The time for seeking judicial review of an agency’s decision runs from the date of the entry of the agency’s final order, not from a party’s receipt of such order.” *Davis v. Tennessee Dep’t of Emp. Sec.*, **23 S.W.3d 304, 309 (Tenn.Ct.App. 1999) (perm.app.denied June 5, 2000)**. This sixty-day time frame is jurisdictional. *Bishop v. Tenn. Dep’t of Corr.*, **896 S.W.2d at 558**. Thus, filing a petition for judicial review with a trial court within 60 days of the final agency decision invokes this Court’s jurisdiction to hear these types of cases. Likewise, a petition filed outside that 60-day time frame fails to invoke this Court’s jurisdiction to hear these types of cases.

The Petitioner is seeking judicial review of a final agency decision entered on November 2, 2023. In order to invoke this Court’s jurisdiction to review that decision, the petition seeking review had to have been filed within 60 days of November 2, 2023. January 1, 2024, is the 60<sup>th</sup> day after November 2, 2023, but that date was a state holiday. So, in order to be timely, the Petition for review had to be filed with a court clerk by no later than January 2, 2024. The Petition in this case was not filed by the trial court clerk until January 8, 2024. However, at some point prior to January 2, 2024, the Petitioner transmitted, via facsimile transmission, the Petition to the circuit court clerk in Henry County, Tennessee. The C&M received this Petition from the circuit court clerk at 4:00 p.m. on December 29, 2023. After determining that a fee to file the Petition was required and that the fee had not been paid, the C&M concluded the Petition could not be filed via facsimile transmission. Thus, the C&M did not file the Petition immediately upon receipt. The petition would have been timely if the C&M had filed it upon receipt.

It seems that the determination whether or not this Court has subject matter jurisdiction to review this agency decision hinges on the two following issues:

- (1) Did the C&M act properly when refusing to file the Petition until after January 2, 2024?
- (2) Is the Petition deemed filed by operation of the Tennessee Rules of Civil Procedure regardless of when the C&M actually stamped the Petition as having been filed?

#### **IV. Rule governing filing by facsimile transmission**

Filing by facsimile transmission is governed by Rule 5A of the Tennessee Rules of Civil Procedure. Tennessee Rules of Civil Procedure Rule 5A.02(4) sets forth a list of “documents that **shall not be filed** in the trial court by facsimile transmission.” (emphasis added). Included in this list is “[a]ny pleading or similar document for which a filing fee and/or litigation tax must be paid (excluding the facsimile service charge), including, without limitation, a complaint commencing a civil action, an appeal from the general sessions court to the circuit court, and an appeal to a trial court from an inferior tribunal, board or officer[.]” **Tenn. R. Civ. P. 5A.02(4)(a) (2023)**. A petition for judicial review of an agency decision is an appeal, **Tenn. Code Ann. § 4-5-322(b)(1)(A)(ii) (2023)**, and trial court clerks have a statutory duty to charge a fee to file such petitions. **Tenn. Code Ann. § 8-21-401(C)(i) (2023)**. Even if the filing fee had been paid on or before January 2, 2024, the plain language of the Tennessee Rules of Civil Procedure clearly provides that filing petitions of this type by facsimile transmission is not permitted. **Tenn. R. Civ. P. 5A.02(4)(a) (2023)**. So, regardless when the fee was paid, the C&M’s decision to not file the Petition complied with the plain language of the rules.



Nevertheless, there is a provision in the Tennessee Rules of Civil Procedure that deems a document submitted by facsimile transmission as being filed regardless of when the clerk actually stamps the document as having been filed. That provision is found in Rule 5A.03, and generally speaking, this provision provides that a document received by facsimile transmission before midnight of a business day is considered filed as of the date the transmission is received. **Tenn. R. Civ. P. 5A.03(1) (2023)**. The facsimile transmission of this Petition was received before 4:00 p.m. of December 29, 2023. December 29, 2023, was a business day, and it was less than 60 days after November 2, 2023. It would seem then that this Petition would be deemed as having been filed on December 29, 2023, and that it is therefore timely. However, since the rules did not allow this Petition to be filed by facsimile transmission, it only stands to reason that deeming this Petition as having been filed on December 29, 2023, would be rewarding the doing of an act that is strictly prohibited by the Tennessee Rules of Civil Procedure. Rewarding prohibited acts only encourages more prohibited acts, and encouraging prohibited acts could not have been the intent of Rule 5A.03(1). Instead, only applying the safe harbor provision of Rule 5A.03(1) to those documents that are allowed to be filed by facsimile transmission is the lone application of this provision that is logical. Concluding otherwise would be contrary to how common sense would suggest that this provision is to be applied. Accordingly, the safe harbor provision Rule 5A.03(1) Tennessee Rules of Civil Procedure does not apply to this Petition.

#### **V. Timeliness of the Petitioner's petition for review**

The Petitioner is seeking a review of an agency decision filed on November 2, 2023, but his Petition for review was not filed by the court clerk until January 8, 2024, which is more than 60 days after November 2, 2023. The Petitioner did submit the Petition to a court clerk via facsimile transmission within 60 days of November 2, 2023, but petitions of this type are not allowed to be filed by such a transmission. Moreover, a common-sense application of Rule 5A.03(1) of the Tennessee Rules of Civil Procedure simply does not support the conclusion that this Petition should be deemed as having been filed on the date that the C&M received the facsimile transmission. Applying the law to the facts of this case leads to one unescapable determination and one unavoidable result: the Petitioner did not timely file his Petition for review, and as a result, the Court does not have subject matter jurisdiction to review the agency's decision at issue.

#### **VI. Conclusion**

For the reasons stated above, this case must be dismissed. The clerk of the trial court shall serve a stamp filed copy of this document upon the parties' counsels.

  
Tony A. Childress