

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to 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.

Circuit Court Judge, Division III, 30th Judicial District

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

2000- BPR #021018

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee (BPR #021018). My date of licensure is October 26, 2000. My license is active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

State of Tennessee

I was appointed by Governor Bill Haslam to serve as the Circuit Court Judge in Division III of Circuit Court in Shelby County on March 8, 2016. I currently serve in that position.

Nahon, Saharovich, and Trotz, PLC

February 2006- September 2016

I practiced in the firm's litigation section. While there is some overlap with my judicial position, the Rules of Judicial Conduct allow 180 days to wrap up practice after taking the bench. I concluded all representation in September 2016.

Shelby County District Attorney General

Upon completion of my legal education in May 2000, I was employed with the Shelby County District Attorney General's Office as a Victim Witness Coordinator in September 2000 before being promoted to a prosecutor after passing the bar exam. I served as an ADA from January 2001- February 2006.

During my early years with the District Attorney General's Office, I worked weekends and some nights at Ann Taylor which is a women's retail clothing store. I began working there in December 2000. To the best of my recollection, I worked there until the spring of 2003. I sold a line of retail clothing from my home around 2005.

I worked on occasion in my mother's retail and wholesale business for as long as I can recall. Starting around age 10, I began working in the various cotton related trade and gift show booths associated with our family business. Since completing my legal education, my involvement is limited. I worked at the Mid-South Farm and Gin show to support my family's business for over 30 years. We ceased exhibition in 2021; I continue to work with my parents in our family business and assist with our family's farms as needed.

I worked as a secretary in college and at times in law school assisting in the preparation of tax returns. I worked as a research assistant to my real estate professor while in college.

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 remained continuously employed since beginning work at the Shelby County District Attorney's office in September 2000.

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

Pursuant to the Code of Judicial Conduct, Rule 3.10, as a judge, I am precluded from practicing 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.

From October 2000, until my appointment to the bench, I practiced primarily in West Tennessee with some cases in other parts of the state. I practiced in every Circuit, Criminal, Chancery, and General Sessions Court in Shelby County. I tried over 50 jury trials, numerous bench trials, and some arbitration matters.

During my time with the Shelby County District Attorney General's Office, I practiced in every division of General Sessions Criminal Court and in Criminal Court. I handled dockets as the assigned prosecutor, negotiated cases, and represented the State of Tennessee in bench trials and preliminary hearings. I was promoted to Criminal Court where I was assigned to Criminal Court Division I. After trying multiple cases, I was assigned to the Narcotics Unit where I worked alongside the West Tennessee Drug Task Force. I regularly advised law enforcement in educational forums in West Tennessee and when called upon for specific matters. In the Narcotics Unit I handled cases from arrest, through indictment in the Grand Jury, and in Criminal Court. I was then assigned to the Gang and Narcotics Unit where I again tried numerous jury and bench trials. I engaged in motion practice regularly. I prosecuted matters civilly, including forfeiture and nuisance actions both in court and under the jurisdiction of the Tennessee Department of Safety. On several occasions, matters that began in General Sessions Court were ultimately transferred to Chancery Court. I appeared in General Sessions Civil Court as well as Bankruptcy Court as part of the Drug Dealer Eviction Program. I participated as needed or requested in preparation for appellate oral arguments for cases that I tried.

My time in private practice was primarily devoted to civil litigation. I practiced in all the civil courts in Shelby County as well as in the Western District of Tennessee. I participated in appellate matters and argued before the Court of Appeals.

I represented clients in matters before the Department of Labor and in numerous cases before the Tennessee Claims Commission. I regularly appeared in Bankruptcy Court regarding employment, automatic stays, and settlement approvals. I practiced some criminal defense work in Shelby, Crockett, Haywood, and Madison Counties.

In most of the cases I handled, whether criminal or civil, I was responsible for meeting the burden of proof. I took hundreds of depositions and interviewed countless witnesses during my time as a practicing attorney.

During my time as both a prosecutor and in private practice, I called upon legislators regarding proposed or pending legislation.

I refer to my answer to question 10 for a description of my work since 2016.

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

For cases that I presided over, I cite to those in my answer to Question 10 as well as my attached writing samples. I am proud to have had an extensive and varied practice and trial resume during my years in practice. The following are matters of special note:

State of Tennessee v. Reginald Rome, 2008 WL 2331018 (Tenn. Crim. App. June 5, 2008), No. W2006-00838-CCA-CD, 03-01497. This matter was tried over the course of ten days with a sequestered jury. Approximately 40 witnesses were called from multiple law enforcement agencies. I prosecuted this first-degree murder case at the trial level with now retired Judge Bobby Carter. This case involved the murder of a law enforcement officer. The appellate court affirmed the convictions.

State of Tennessee v. Gerald Pendleton, 2004 WL 2941153 (Tenn. Crim. App. May 9, 2005), No. W2003-03043-CCA-R3-CD, 02-00512. This case involved the death of a child, J.W. The Defendant was convicted of first-degree felony murder, aggravated child abuse, aggravated child neglect, and perjury. I prosecuted this case at the trial level with now retired Judge James Lammey. The appellate court affirmed the convictions.

Applewhite v. Blanchard, 2011 WL 345632 (Tenn. Ct. App. Feb. 1, 2011) No. W2010-00343-COA-R3-CV, CT 000510-05. I represented the Plaintiff in this automobile action. A jury trial was held on March 23-24, 2009. A directed verdict was granted in this matter at the conclusion of the Plaintiff's proof. I appealed the directed verdict, and the trial court was reversed.

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

I am the Judge in Circuit Court Division III for the Thirtieth Judicial District. I was appointed to my current position by Governor Bill Haslam on March 8, 2016. I was elected for the remainder of the term on August 4, 2016. I was unopposed in the 2022 election and elected to an eight-year term on August 4, 2022.

I serve in one of eight divisions of Circuit Court. In Shelby County, Circuit Court is devoted exclusively to civil matters. The cases breakdown to approximately 43% tort cases, 33% family law, 12% miscellaneous civil cases, and 11% are contract / debt cases. The lion's share of the matters heard are bench trials.

During my time on the bench, I have disposed of over 4,000 cases. I have presided over 47 jury trials, hundreds of bench trials, and dispositive motions. Additionally, my weekly motion

dockets average 20 cases a week.

I hear civil cases ranging from torts, contracts, products liability, health care liability, and domestic cases. Some matters are heard in a few hours while others take many days or even months to complete. I hear cases that involve the breakup of families and disputes over who will spend what time with children. Some cases involve large sums of money and others very little. I hear cases about injured parties and who, if anyone, may bear responsibility. In my eight plus years on the bench, I have gained a deep understanding that everyone appearing before me deserves to have their matter, whatever it is, heard. That hearing must be impartial and conducted by a jurist who takes the time to prepare and is well versed in the law.

Below are several matters of note. One case is currently pending appeal. The other cases listed were appealed, and my decisions affirmed. This selection, while not exhaustive, represents the varied cases that I have presided over on the bench.

- *Springfield v. Eton, et al.*, CT-1549-22. This is a health care liability case. Questions arose as to notice given to providers as directed in the Health Care Liability Act. This matter also required interpretation of two recent Tennessee Supreme Court cases involving vicarious liability. My order entered January 24, 2024, is attached as a writing sample. The matter is currently on appeal.
- *Ponnapula v. Wright*, 2024 WL 1476832 (Tenn. Ct. App. April 5, 2024), No. W2023-00703-COA-R3-CV, CT-004704-17. This matter was heard April 18, 2023. Summary judgment was granted in this case for breach of the cooperative clause of an insurance policy. The Plaintiff also argued enforcement of a settlement agreement. I determined that there was no enforceable contract because the Plaintiff's counteroffer constituted a rejection of the insurance company's offer. I concluded there was no genuine issue of material fact that Plaintiff breached the insurance policy by failing to submit to an examination under oath. My decision was affirmed on appeal.
- *Delores Jones v. Smith & Nephew, Inc.*, 2022 WL 767709 (Tenn. Ct. App. March 14, 2022), No. W2021-00426-COA-R3-CV, CT-4773-20. The matter was heard February 8, 2021. In this products liability case, the Plaintiff asked the Court to create two new exceptions to the Tennessee Products Liability Act statute of repose for latent diseases and/ or fraudulent concealment. The statute was clear. I granted the motion to dismiss and declined to expand the law in Tennessee to include exceptions not named by the General Assembly. My decision was affirmed on appeal.
- *Franklin v. Franklin*, 2021 WL 5500722 (Tenn. Ct. App. November 24, 2021), No. W2020-00285-COA-R3-CV, CT-001869-13. My order was entered on January 31, 2020. This was a contested parental relocation case. Mother sought to relocate from Memphis, TN to Houston, TX. I applied the statutory factors as enacted by the legislature and made fact intensive rulings, evidentiary decisions, and credibility determinations. Ultimately, I ruled that the mother and the child were allowed to relocate. My decision was affirmed on appeal.

- *Rozen v. Ardis*, 2019 WL 6876769 (Tenn. Ct. App. December 18, 2019), No. W2019-00396-COA-CV, CT-003797-16. The order was entered on February 7, 2019. This was a legal malpractice trial. This case involved notice of the applicable statute of limitations. I made extensive factual and credibility determinations. My decision was affirmed on appeal.
- *Foltz v. Barnhart Crane & Rigging Co.*, 2019WL 6842375 (Tenn. Ct. App. December 16, 2019), No. W2018-02198-COA-R3-CV, CT-005005-15. I found that no causal connection between the worker's compensation claim and termination of employment and thus the fourth prong of the prima facie case for retaliatory discharge was not satisfied. Summary Judgment was granted in favor of the employer. The order was entered on November 15, 2018. My decision was affirmed on appeal.

Three-Judge Panel

I serve on the three-judge panel in *Metropolitan Government of Nashville and Davidson County, et al v. Tennessee Dept. of Ed. et al.*, 20-143-II. As part of this panel, I gained valuable insight and experience working as one of three judges making decisions. We collaborate on rulings, orders, and any other matters necessary. I am hesitant to comment further since the matter is still pending.

Judicial Settlement Conferences

I conduct judicial settlement conferences from time to time. I consider cases that have been mediated without success or when the parties cannot afford mediation. I have conducted settlement conferences for personal injury cases, car accidents, and domestic cases.

Of note is *Shelby County v. MLGW, et al*, CH-15-0123. I conducted a judicial settlement conference between governmental entities at the request of a chancellor. The conference spanned four different days in 2017-18 covering disputes arising from electric and gas PILOTs (payment in lieu of taxation). I worked closely with attorneys and officers from the City of Memphis and Shelby County as well as members of the City Council and County Commission.

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.

While in private practice, I served as guardian ad litem in many personal injury cases where minors suffered injury. I reviewed settlements, confirmed subrogation interests, and investigated injuries and disabilities to determine if the settlement was fair. I served as guardian ad litem in parental termination of rights cases when appealed to Circuit Court. I spent time with the children and parents independently.

I have served as treasurer of several organizations. Prior to my appointment to the Circuit Court bench, I served as Assistant Treasurer for the Leo Bearman, Sr. Inn of Court. I served as Treasurer 2017-2018.

I served as Treasurer of the Tennessee Trial Judges Association from 2019-2021.

I am the Treasurer of the Ad Hoc committee of the Tennessee Judicial Conference for

Compensation and Retirement. I have served in that role since 2017.

Before taking the bench, I chaired and worked closely in many campaigns for local offices and judicial races. I directed payments and collected donations in accordance with the reporting requirements.

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

I served as the Judicial Law Clerk for The Honorable James F. Russell in Division II of the Shelby County Circuit Court from May 1999 to May 2000. I prepared the motion docket, researched issues, and drafted orders. I gained great insight through the eyes of a judge at the outset of my career.

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.

I applied for appointment to Circuit Court, Division III for the Thirtieth Judicial District on November 28, 2015. The Governor's Council met on January 7, 2016. I was one of three nominees submitted to Governor Haslam. I was interviewed by Governor Haslam and his staff on February 23, 2016. I was appointed to my current position on March 8, 2016.

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.

University of Memphis, Bachelor of Business Administration: Real Estate, 1997 *cum laude*
August 1993- May 1997

- Early Scholar's Academic Scholarship
- John Elkington Scholarship

University of Memphis, Juris Doctor, 2000
August 1997- May 2000

- Phi Delta Phi
- Who's Who Among American Law Students
- Law School Ambassador

- Dean's Award for Products Liability

PERSONAL INFORMATION

15. State your age and date of birth.

[REDACTED]

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

I am a lifetime Tennessee resident.

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

I have lived continuously in Shelby County since August 1998.

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

I am registered to vote in Shelby County.

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 not 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 received no complaints to the Board of Professional Responsibility while practicing law. I have responded to three complaints to the Board of Judicial Conduct. All were summarily dismissed. The summary dismissal of a 2017 complaint included a reminder of the importance of the Rules of Judicial Conduct.

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.

Valerie Smith v. Bill McAnally, General Sessions Court of Shelby County, 1103236, Dismissed May 12, 2008. The dispute involved a home inspection.

Valerie Smith v. Eric Roe, CT-002280-11, Circuit Court of Shelby County, Division I, Dismissed October 7, 2011. The lawsuit was filed on May 11, 2011. It involved my injuries from a car accident.

Both actions resolved.

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.

I hold the following offices in organizations:

Section 901 Youth Athletic Fund

- *Board member 2022- present*

In 2018, this organization was formed to relieve financial pressures of coaches and parents whose children participate in inner-city youth sports. My husband and I are founding members. Through my involvement in the community, I see these needs firsthand. We work with other organizations such as the Academy for Youth Empowerment to make a difference however we can within our mission.

Memphis Gridiron Ministries

- *Board member- 2024- present*

Memphis Gridiron Ministries supports youth football for early grade schoolboys. It is a Christ-centered organization focusing on coaching, mentoring, and relationship building. My husband is a coach for the Binghampton Bulldogs. In addition to my board service, I attend games and practices as able.

Alpha Gamma Delta, Gamma Zeta Chapter, University of Memphis

- *Academic Excellence Advisor- 2015- present*

I am a member of the following organizations. I have not held offices in the last five years.

- Idlewild Presbyterian Church
- Junior League of Memphis- Sustainer
- Daughters of the American Revolution- Hermitage Chapter
- Veterans of Foreign Wars Auxiliary, Post 5066
- Mid-Town Rotary
- WILLOW

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.

Alpha Gamma Delta

Alpha Gamma Delta's membership is limited to women. I joined in 1994 and remain an active alumnus.

Junior League of Memphis

I am a sustaining member of the Junior League of Memphis. Our official mission states “The Junior League of Memphis is an organization of women committed to promoting volunteerism, developing the potential of women and improving communities through the effective action and leadership of trained volunteers. Its purpose is exclusively educational and charitable.”

WILLOW

WILLOW stands for Women in Leadership Learning on Wisdom. I believe membership is limited to women though men are regularly at events and involved.

Daughters of the American Revolution

The DAR by its nature limits membership to women. It has a “brother” organization, The National Society, the Dons of the American Revolution, for which only males are admitted. The Daughters of the American Revolution serves a noteworthy purpose including civic education, community service, the preservation of history, and patriotism.

Shelby County Republican Women of Purpose

Membership is limited to women. Men may join as associate members.

Shelby County Republican Women

Membership is limited to women. Men may join as associate members.

I will resign from any organization if required by the Rules of Judicial Conduct.

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.

Service to the Tennessee Judicial Conference and Related Committees

Tennessee Judicial Conference- Executive Committee

- Immediate Past President 2024-25
- President 2023-24
- President-Elect 2022-23
- Moving Vice President 2021-2022
- Western Section Representative- Executive Committee 2019-2021
- Convention Co-Chair 2020-2021
- Hospitality Chair 2017-2019

TJC Legislative Committee 2021- present

- Co- Chair 2024-25
- Vice Chair 2023-24

Tennessee Judicial Conference Compensation and Retirement Committee

- Treasurer 2017- present

I served as President of the Tennessee Judicial Conference from June 2023- June 2024. This role is a large and important one. The President of the Conference serves as its principal executive officer. The President presides over all business affairs of the conference, general membership meetings (3 per term), executive committee meetings (4 per term), executes contracts, and represents the Tennessee Judicial Conference as needed.

During my tenure as President, I led a committee to amend the bylaws. As part of that work, we worked with the Tennessee Trial Judges Association to form a budget committee comprised of members of the Supreme Court, the Appellate Courts, and the trial courts. I personally led the effort to refresh 14 committees of the conference. I worked with every committee to make certain that those chosen to lead were willing and up to the task.

Programming for the three Judicial Conference meetings begins well in advance. When I was named Moving Vice President in 2021, I began attending the Education Committee meetings and participating in the planning of programs. I worked closely with the Administrative Office of the Courts to ensure that programming was practical, educational, and even enjoyable. For example, attendees at the June conference in Memphis enjoyed a Broadway production as the last CLE event of the conference. As President, I was a hands-on leader. When a speaker canceled the day before our planned October session, I worked closely with a handful of judges to ensure helpful and insightful programming. Though last minute, we led an interactive session that proved helpful to many judges.

I made recommendations to the Strategic Planning Committee for long range planning for judges. It might be some time before those plans come to fruition, but I am confident that the committee in place will follow through on that vision.

The Legislative Committee of the TJC works very closely with the Legislative Liaisons of the Administrative Office of the Courts. During the legislative season, we meet weekly and review pending legislation. We also identify areas of the law that might need clarification and work with the General Assembly as needed. This role is important to ensure the branches of government are working together. I served as Vice-Chair of this committee while also serving as President of the TJC. I Co-Chair the Committee for the upcoming legislative session.

I serve as the Treasurer of the Ad Hoc Committee for Compensation and Retirement. I have served in that role since 2017. I collect dues from members of the conference and have worked closely with lobbyists when appropriate.

I am the Immediate Past President of the Tennessee Judicial Conference. In this role, I serve on the Executive Committee. I remain a voting member of that body.

As Moving Vice President and as President-Elect, I attended all executive committee meetings and assisted the President as needed.

I served as one of three Executive Committee members from the Western Section until I was named Moving Vice President. I attended all executive committee meetings and served as a liaison for judges in the Western Division to the committee. I served as Convention Co-Chair while a member from the Western Section. I planned the activities for the 2021 June Conference, executed contracts, and oversaw the week's events.

I served as hospitality chair from 2017-2019. Affectionately and accurately known as the hardest job in the conference, I set up and managed a hospitality suite for six different meetings of the conference. The job involved planning and managing a budget for the year.

Tennessee Trial Judges Association

- Executive Committee 2019- present
- Secretary 2021-2023
- Treasurer 2019-2021

I currently serve as a member of the Executive Committee of the Tennessee Trial Judges Association. As treasurer from 2019-21, I collected yearly dues and paid the bills of the association. As secretary from 2021-23, I recorded minutes of all membership and executive committee meetings and distributed them.

I currently serve on the committee to review domestic arbitration as an appointee of the President of the Tennessee Trial Judges Association.

Board of Judicial Conduct

August 2021- present

I was appointed to the Board of Judicial Conduct by Speaker Cameron Sexton in 2021. I was reappointed to a second term in August 2024. The board is comprised of 16 members. It is a working board. As a member, I communicate with other board members and staff counsel regularly. Complaints are reviewed by three-member panels and a determination made as prescribed by statute. The board's counsel regularly communicates with panels for review within the statutory timelines. Reviews are often conducted several times a week. I have reviewed hundreds of complaints.

The business of the board has on occasion required working directly with the legislature. I have also served on several subcommittees as requested by the chair. Additionally, I am often contacted by other judges with questions regarding ethical concerns.

American Inns of Court, Leo Bearman, Sr. Chapter

2013-present

- President 2020-2021
- Vice President 2019-2021
- Secretary 2018- 2019
- Treasurer 2017-2018
- Assistant Treasurer- 2015- 2017

I served as President of the Inn during the height of COVID-19. I made a plan for as much involvement and normalcy as possible. I coordinated a videographer and sought assistance from other Inn members to ensure that meetings went on despite the in-person difficulties we faced. Members of the Inn were allowed to rotate in-person appearances at meetings to continue meeting safely. I created a new officer position to communicate the information necessary for such a change. Our Inn pivoted to continue our goals. For several years prior, my husband and I hosted the annual holiday party for our Inn. It was often accompanied by a food drive. Though the Rules of Judicial Conduct prohibited me from directly soliciting funds or donations, I arranged for a drive-through location and the availability of an online donation portal. Though the pandemic limited our ability, I encouraged membership to participate in all ways possible. Under my leadership, our Inn maintained its coveted Platinum status in very trying circumstances.

As Treasurer and Assistant Treasurer, I collected dues and submitted budgets to the national office. I also negotiated contacts with facilities for our monthly meetings.

Memphis ADR Inns of Court

August 2024- present

Tennessee Bar Association

2017-2018; 2023-present

- Board of Governors 2023-24

I served on the Board of Governors as President of the TJC. I attended meetings throughout the year and offered the perspective of the judiciary in multiple ways. Those included the judiciary's perspective on proposed legislation.

Memphis Bar Association

2010- present

- Bench Bar State Judicial Chair 2024
- Bench Bar State Judicial Co-Chair 2023
- Bench Bar Chair 2017
- Bench Bar Co-Chair 2016
- Board Member 2016
- Fellow Memphis Bar Foundation

I have twice served as a Chair of the Memphis Bar Association's annual bench bar conference. Each time I participated in the planning of CLE as well as social events. I sought to encourage collegiality among members of the bar and the judiciary. I presented at the conferences when I served as a chair and co- chair. The CLE's presented for the last two years are listed in question 31.

Association of Women Attorneys

2006-present

- Judicial Liaison 2017- 2023

Federalist Society

February 2024- present

National Bar Association, Ben F. Jones Chapter

2022- present

University of Memphis Law Alumni Board

Board Member 2014-2017

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

- Board of Judicial Conduct- August 2021- August 2024;
August 2024- *present*
- Memphis Bar Association Fellow- 2017
- Leo Bearman, Sr. American Inn of Court, Outstanding Barrister- 2015
- Mid-South Super Lawyers, Rising Star- 2009, 2010, 2012,
- Shelby County District Attorney's Office, Outstanding Employee- 2004

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

- Valerie L. Smith, The Value of Varied Practice, Memphis Lawyer, May 30, 2024, at 16.
- Valerie L. Smith, Business can Reduce Bottom Line Exposure by Taking Steps to Avoid Litigation, Memphis Business Journal, June 12-18, 2009, at 6A.
- Valerie L. Smith, Discovery is the Key to Successful Nursing Home Litigation, The Tennessee Trial lawyer, Winter 2006-7, at 18.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

I have presented numerous CLE seminars in the last five years. I have not always claimed credit for those since I was well over the hours required. The following CLE seminars represent a list to the best of my recollection:

- “Three Judges, Three Courts, Three Perspectives” *presented with* Chancellor JoeDae Jenkins and Judge Phyllis Gardner; September 7, 2024- MBA Bench Bar Conference
- “Social Media, Marketing, and Ethics” MBA Bench Bar Conference *presented with* Shayla Purifoy, Carlissa Shaw, and Estelle Winsett; September 7, 2024- MBA Bench Bar Conference
- “TBA YLD: Doing Your Best Virtually” *presented with* John Murphy, Bridgett Stigger, Laquita Stokes, and Claire Tuley; June 13, 2024
- “Ethics Update: TN BPR Case Overview” December 13, 2023
- “Caselaw Update” Tennessee Judicial Conference; October 16, 2023
- “Caselaw Update” *presented with* Judge Bobby Carter; September 22, 2023, MBA Bench Bar Conference
- “A View from the Bench” November 9, 2022
- “Lawyers transitioning to Judges: Ethical Pointers and Pitfalls” August 11, 2022, *presented with* Judge Jennifer Mitchell, Lewis Lyons, and Deb Ireland
- “A Conversation: Judicial Referral to Mediation” February 15, 2022, *presented with* Justice Janice Holder and Justice Mary Wagner
- “Why Judges Say No and Do What We Do” December 16, 2021
- “Caselaw update: A selection of recent opinions” September 28, 2021, *presented with* Judge Bobby Carter; MBA Bench Bar Conference
- “Pandemic Practice Panel discussion of decorum and communication with courts with COVID 19 limitations” July 22, 2021; Mid-Year Ethics CLE

- “Avoiding Quicksand to Make it to the Beach: Ethical Perils in our Current Litigation Posture, Pro Hac Vice Admissions, Electronic Communication with Courts and Relevant Opinions” June 30, 2021
- “The Doors to the Court are Open: What to Expect on your return to Chancery and Circuit Court” May 20, 2021, *presented with* Judge Gina Higgins, Chancellor Joe Dae Jenkins, and Chancellor Jim Kyle
- “Effective and Appropriate Advocacy in Unusual Times” March 18, 2021; TTLA Domestic Law Forum
- “Courtroom Manners” December 1, 2020, *presented with* Judge Annie Christoff
- “Caselaw Update” October 13, 2020, *presented with* Judge Bobby Carter; Virtual MBA Bench Bar Conference
- “Leo Bearman, Sr. American Inn of Court: Federal, State, and local court responses to COVID 19” September 8, 2020, *presented with* Justice Holly Kirby, U.S. Attorney Mike Dunavant, Phyllis Aluko
- “Circuit and Chancery Town Hall” April 13, 2020, *presented with* Chancellor Jim Kyle and Judge Gina Higgins
- “Discovery Objections and how the Courts Stop Out of Control Discovery” February 6, 2020; Tennessee Trial Lawyers Domestic Forum

I have spoken to multiple law school classes as a guest lecturer. For the last three years, I have been invited to speak to students participating in Legal Representation and Advocacy for Children at the University of Memphis Cecil C. Humphreys School of Law.

I have spoken to the Tennessee Broadcasters Association Reporters Workshop from 2022-24 as part of a program hosted by the Tennessee Bar Association. In this workshop, judges from across the state discussed with members of the media the role of the courts and ways to work together for effective and accurate reporting.

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.

Circuit Court Judge, Division III, 30th Judicial District. I was appointed by Governor Bill Haslam on March 8, 2016. I was elected August 4, 2016. I was re-elected August 4, 2022.

Board of Judicial Conduct. I was appointed by Speaker Cameron Sexton August 11, 2021, to a three-year term. I was reappointed by Speaker Sexton on May 17, 2024, for a second three-year term.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I have attached four orders for review. They are my own work. I conducted my own research. On occasion, I receive proofreading assistance or citation edits from a law clerk or intern. The orders attached reflect my varied experience as a Circuit Court Judge. All samples are from 2024.

- *Springfield v. Eton, et al.* CT-1549-22

This is a healthcare liability case. It is currently on appeal.

- *Brandt v. Brandt*, CT-0060-20

This divorce action was tried over the course of several days in January 2024. I heard proof from witnesses and applied the statutory factors put forth by the General Assembly to determine the best interest of the child for a custody determination.

- *Hunt v. Hunt*, CT-4885-21

This is a divorce action. I applied the law pertaining to equitable division of a martial estate as set out by the General Assembly.

- *XXX Law Firm, PLLC v. XXX Healthcare, et al.*, CT-XXXX-24

This order involves a request for interpleader. My order discusses why it is not appropriate in this case.

ESSAYS/PERSONAL STATEMENTS

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

I seek this position to serve the judiciary statewide and provide clear guidance in the application of the law as written by the legislature. Judges must communicate well both orally and in writing. Writings of courts must stand the test of time, and opinions be understood by multiple audiences. Well-reasoned opinions that provide guidance in the application of the law are of immense value to the legal community and the public. Appellate judges have an important and difficult job to do. They must carefully read the law as enacted by the General Assembly and review decisions of trial courts in a straightforward and consistent way. Clear

writing and discernment are essential for litigants, attorneys, and trial courts. My experiences as an attorney and as a trial judge leave me well-suited for this role where I will rule thoughtfully and reasonably.

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)*

While in practice, I regularly volunteered with legal clinics and served pro bono as guardian ad litem. As a judge, I have provided support to legal clinics and encouraged participation within the bar.

I am always aware of the difficulties facing *pro se* parties. I endeavor to be patient, kind, and compassionate while also balancing the other side of the coin. I provide instruction so far as the Rules of Judicial Conduct allow. I encourage open dialogue between *pro se* parties as well as *pro se* parties and attorneys. When encouraged to communicate and given instructions, I find that parties are often able to settle their disputes with minimal assistance from the Court.

As President of the TJC, I expressed our support to increase funding for indigent representation to the other branches of our state government.

Additionally, I constantly work to promote confidence in the courts and the judiciary.

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)*

This judgeship is one of four from West Tennessee, and twelve statewide. The intermediate appellate courts review factual and legal decisions of trial courts using the appropriate standards of review.

I bring a great amount of perspective through my personal and professional experiences. I have spent my career in courtrooms whether litigating or on the bench. I appreciate effective written communication, and the evidentiary and procedural decisions made by trial courts. I have a great breadth of experience in complex tort, domestic, and contract cases.

My geographical background is unique. Memphis is my home, but my upbringing was entirely rural. I maintain close ties to my home county. I have consistently served the Memphis community for over 20 years. I bring to this position my experience gained in 17 years of practice, over eight years on the trial bench, and my service to the Memphis and Shelby County community.

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)*

Community service provides much needed perspective. It provides insight to life outside your own bubble. My service has changed over different seasons of my life. While in practice, I served on many community boards. My service shifted when I took the bench and married my husband. I currently serve through the legal profession, with youth sports, and mentorship.

My husband and I are founding members of Section 901 Youth Athletic Fund. With friends, we formed a 501(3)(c) to assist coaches shouldering financial burdens of kids. We have provided everything from bowling bags to Gatorade.

I serve on the board of Memphis Gridiron Ministries which supports the youth football team that my husband coaches. Our mission is one of Christ-centered mentoring, relationship building, and spiritual coaching. Encouragement leads to success. While I do not call the plays, I am part of the team.

My service to the legal community is demonstrated through Inn of Court and the MBA. I assist when called for mock trial competitions by judging or coaching. I speak regularly about the courts to promote confidence in the judiciary. Since 2016, I have spoken weekly to the jury pool expressing to jurors the importance of their role.

Since 2015, I have served as the academic excellence advisor to Alpha Gamma Delta at UM. I encourage focus on academic success and offer tools to contribute to it.

I regularly dedicate time and resources to food drives and causes for veterans.

I will continue to serve the community as allowed.

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)*

Life is not measured by time, but by your work and character. I am dedicated to my family, my work, and service to others.

I am a Memphian by choice. I serve through my judgeship and community involvement. I am a sixth generation Tennessean. Like my father's family before me, I was born and raised in the Clopton area of Tipton County. My mother's family hails from Weakley County. I learned the value of hard work on our farm and in my family's business. My family stressed to me that respect is something earned, that compassion and humility are essential, and that a hard work ethic will lead to success. My roots run from the Kentucky line to the Mississippi and sprawl east through the Western Grand Division. I am from a rural farming community. When coupled with my residency in and service to an urban area, I possess a unique understanding of the citizens of West Tennessee.

I became a trial judge to rule with careful study and utilize the life experiences that shape me. Trial judges must make quick decisions. Writing is not always practical. I love to write. The longer I serve as a trial judge, I crave the time to study and express my reasoning and application of the law in a thoughtful and helpful way. When time allows, I lean into that through written rulings.

I have the perspective, knowledge, and experience to rule fairly and justly on the issues presented to the Appellate 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 uphold the law even if I disagree with the substance.

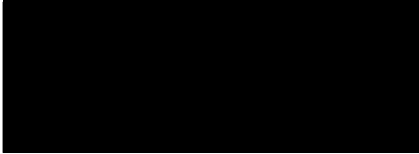
I preside over cases with catastrophic facts. The decisions I make may end those cases. I am often presented with appeals from eviction actions in General Sessions Court. These cases often involve forcibly removing parties from their homes.

Tennessee law is enacted by the General Assembly. The judiciary must apply those laws as written in a neutral and objective way. Though I may sympathize with parties and not like the outcome, the law is not mine to conform. Tragic circumstances do not allow tailoring or stretching of the law to fit a given dispute. I listen to all parties with compassion and respect but make decisions that adhere to the law as written. I will continue to do so.

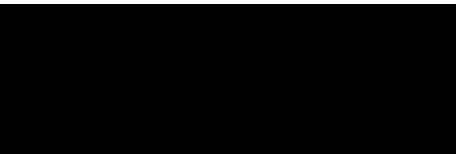
REFERENCES

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.

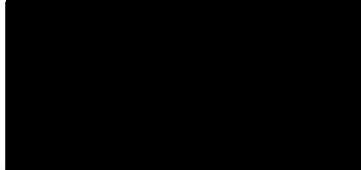
A. Chief Justice Roger Page (retired)



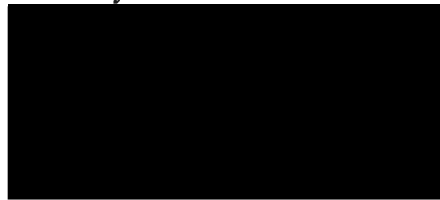
B. William Orgel
President/ CEO Tower Ventures



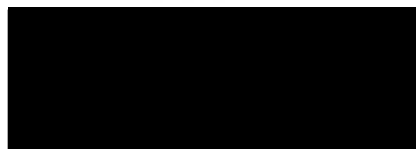
C. Mike Keeney, Attorney at Law
Lewis Thomason



D. Leader William Lamberth, Tennessee House of Representatives
Attorney at Law



E. Senator Paul Rose, Tennessee Senate
Rose Construction



AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Appeals 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.

A handwritten signature in cursive script, appearing to read "John Jefferson", written over a horizontal line.

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.

Valerie L. Smith

Type or Print Name



Signature

10/22/2024

Date

021018

BPR #

<p>Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.</p> <p>N/A</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

ROMEASHEA YVETTE SPRINGFIELD,

Plaintiff,

Docket No. CT-1549-22

v.

Div. III

DARWIN ETON, M.D.,
UT REGIONAL ONE PHYSICIANS,
SHELBY COUNTY HEALTHCARE
CORPORATION, d/b/a Regional One Health,

Defendants.

**ORDER GRANTING MOTION TO DISMISS OF DARWIN ETON, M.D.
AND GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS
OF UT REGIONAL ONE PHYSICIAN INC.'S AS IT RELATES TO
VICARIOUS LIABILITY FOR DEFENDANT DARWIN ETON, M.D.**

Two Motions are before the Court: The Motion to Dismiss of Darwin Eton, M.D. and the Motion for Judgment on the Pleadings of UT Regional One Physician, Inc. Upon review of the pleadings, oral arguments, and the entire record in this cause, the Court is now ready to rule.

Facts of the Case

The Plaintiff, Romeashea Yvette Springfield, sustained an injury to her right knee on January 16, 2021. She was transported to Regional One Health. She received treatment by various physicians including Dr. Darwin Eton. Plaintiff's injuries ultimately necessitated the amputation of her right extremity below the knee as well as above. Her complaint for damages alleges deviations from the standard of care by the Defendants.

A Motion to Dismiss was filed by Dr. Eton on May 31, 2022. An Answer was filed by Shelby County Healthcare d/b/a Regional One Health on June 17, 2022. An Answer was filed by UT Regional One Physicians (hereinafter “UTROP”) on June 24, 2022. A Motion for Judgment on the Pleadings as it Relates to Vicarious Liability Claims for Defendant Darwin Eton, M.D. was filed by UTROP on May 16, 2023.

Questions Presented

The issues before this court as to Dr. Eton and UTROP are intertwined but must be reviewed one at a time. Dr. Eton argues that he was not served pre-suit notice under Tennessee’s Health Care Liability Act, specifically T.C.A. § 29-26-121(a)(2), and was therefore sued outside the statute of limitations and so the case against him must be dismissed. UTROP argues that the allegations against it are solely of vicarious liability, and so if Dr. Eton prevails, it must be dismissed as well.

Dr. Eton’s Motion to Dismiss

Defendant, Dr. Eton, filed a Motion to Dismiss. Discovery ensued including several depositions. Several exhibits were also filed in this matter.

Plaintiffs mailed the required pre-suit notice to 890 Madison Avenue, Memphis, TN 38103 on January 5, 2022. Dr. Eton was ultimately emailed the notice sent to that address. Dr. Eton may or may not have opened the email. Plaintiff argues that the address where pre-suit notice was mailed was found on the internet where she determined that Dr. Eton worked when his full address was not found on the Tennessee Department of Health website named in the Act. Plaintiffs further argue that the statute contemplates Dr. Eton’s “current business address” and that “current” is not defined by statute. Plaintiffs present several arguments in support of their

position that Dr. Eton received adequate pre-suit notice. First, Dr. Eton eventually received pre-suit notice. Second, Dr. Eton did not provide his address to the Tennessee Department of Health website. Third, extraordinary circumstances exist to excuse strict compliance with the Act.

The portion of the Act at issue is T.C.A. §29-26-121(a)(3)(B). It provides the following instruction as to mailing pre-suit notice:

B) Mailing of the notice:

(i) To an individual health care provider at both the address listed for the provider on the Tennessee department of health web site and the provider's current business address, if different from the address maintained by the Tennessee department of health; provided, that, if the mailings are returned undelivered from both addresses, then, within five (5) business days after receipt of the second undelivered letter, the notice shall be mailed in the specified manner to the provider's office or business address at the location where the provider last provided a medical service to the patient; or

(ii) To a health care provider that is a corporation or other business entity at both the address for the agent for service of process, and the provider's current business address, if different from that of the agent for service of process; provided, that, if the mailings are returned undelivered from both addresses, then, within five (5) business days after receipt of the second undelivered letter, the notice shall be mailed in the specified manner to the provider's office or business address at the location where the provider last provided a medical service to the patient.

Plaintiffs argue that they were justified in sending the notice to the address found on the internet since there was an incomplete address on the Tennessee Department of Health website. They further argue that they found the address on the internet that made sense to send notice.

The Act uses the word “shall” which speaks to the legislature’s intent. Use of “shall” speaks to a mandatory requirement. *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 306 (Tenn. 2012). The statute plainly says where pre-suit notice *shall* be sent and what to do when it is returned.

Did Dr. Eton receive notice?

In this case, pre-suit notice was eventually delivered to Dr. Eton, but the Court finds that the steps taken by Plaintiff fall short of the mandatory requirements to give pre-suit notice within the statute. Plaintiffs used an incorrect address which happened to wind up providing notice sometime later. This Court is bound by the statute as enacted by the General Assembly. The Court finds that Plaintiff's argument that notice was ultimately received is not well taken and that forwarded notice is not sufficient pre-suit notice as mandated by TCA §29-26-121(a)(1).

Whether Dr. Eton provided an address or not is a question the Court need not ponder. The language of the statute provides an alternative. That a Plaintiff may have to mail something that it knows will be returned does not excuse compliance with the plain language of the statute.

The Act provides instruction should pre-suit notice be undeliverable. Nowhere in the Act is there language which contemplates or endorses the steps as were taken by Plaintiff. Had Plaintiff followed the first section as to the pre-suit notice requirement and received an undeliverable return, another option would have become available as prescribed by the Act.

Extraordinary circumstances

Plaintiffs argue that extraordinary circumstances exist here because the address found on the Tennessee Department of Health website was incomplete, and Plaintiff believed that her research led to the correct business address. Respectfully, the Court disagrees. The Plaintiffs rely on *Myers* in support of their argument that extraordinary circumstances exist.

"Extraordinary" is not defined by the statute itself, and so must be interpreted as its plain and ordinary meaning. The Court looks to the common definition of "going far beyond the ordinary degree, measure, limit, etc.; very unusual; exceptional; remarkable." *Webster's New World*

Dictionary of the American Language, 516 (1966). The Court finds that the circumstances here fail to demonstrate extraordinary cause. It is far from unusual that a physician might move or that an address on the Tennessee Department of Health website might not be correct. Had the General Assembly intended a Plaintiff's best efforts to satisfy the notice requirement— it surely would have said so.

The Court of Appeals addressed a similar situation wherein a provider received notice by it being forwarded in *Breithaupt v. Vanderbilt*, No. 2021-00314-COA-R3-CV, 2022 WL 1633552 (Tenn. Ct. App. May 24, 2022). The Court finds that situation to be analogous to the case at bar. Our Supreme Court has held that “the proper inquiry is whether the plaintiff gave pre-suit notice to the health care provider to be named a defendant, not whether the health care provider knew about the claim to another potential defendant.” *Runions v. Jackson-Madison Cnty. Gen. Hosp. Dist.*, 549 S.W.3d 77, 87 (Tenn. 2018). In this case, the notice was received and ultimately forwarded via email to Dr. Eton, but not as a result of compliance with the Act.

Plaintiff argues that the *Myers* case stands for the proposition that receiving notice is the most important factor. Respectfully, the Court disagrees. *Myers* articulates that compliance with the statute is mandatory and discusses possible extraordinary circumstances. *Myers* at 308. The Court finds that those do not exist here.

Ruling as to Dr. Eton

The Plaintiffs did not provide pre-suit notice within the confines of the Act. The Complaint as to Dr. Eton was filed outside of the statute of limitations. The claim against Dr. Eton is dismissed.

UTROP's Motion for Judgment on the Pleadings

The Court now turns to the Motion for Judgment on the pleadings filed by UTROP. At the initial hearing in this matter, the Court heard only the substance of Dr. Eton's Motion to Dismiss. The Court set UTROP's Motion to be heard and was prepared to rule on both at that time. The Supreme Court had recently released two opinions which all parties agreed might have some bearing on the Court's decision as to vicarious liability. Supplemental briefing was submitted, the matter argued, and transcripts received. The Court, having considered all of these, is now ready to rule on UTROP's Motion for Judgment on the Pleadings.

The Supreme Court decided two cases much like one another during the pendency of these motions. In *Ultsch v. HTI Mem. Hosp. Corp*, No. M2020-00341-SC-R11-CV, 2023 WL 4630894 (Tenn. July 20, 2023) and *Gardner v. St. Thomas Midtown Hosp*, No. M2019-02237-SC-R11-CV, 2023 WL 4630706 (Tenn. July 20, 2023) the Plaintiffs chose to sue only a provider under a theory of vicarious liability. The issue in those cases was that no pre-suit notice was sent to the agents. The Plaintiffs complied with the statute as to the providers sued but did not serve the agents in any way.

Plaintiff argues, while not conceding the pre-suit notice issue as to Dr. Eton, that the new cases direct this court to deny Defendant UTROP's motion. They submit that a conflict exists, and the operation of law exception should be abrogated here because UTROP was properly served within the statute of limitations. Defendant argues that there is no conflict and that in fact the narrow holdings of *Ultsch* and *Gardner* are not meant to apply here. They argue instead that *Taylor v. Miriam's Promise*, No. M2017-01908-COA-R3-CV, 2019 WL 410700 (Tenn. Ct. App. January 31, 2019) is the controlling law that the Court should consider.

In *Ultsch* and *Gardner*, the Supreme Court held that the operation of law exception to vicarious liability is abrogated in the narrow circumstances of those cases. *Ultsch* at *6, *Gardner* at *6. The dissent held that the exception was not abrogated and that it is possible for a Plaintiff to comply with the statute and the operation of law exception to exist finding that additional service by a Plaintiff is not a bridge too far. *Ultsch* at *14, *Gardner* at *12. The division of the Justices was based on whether the abrogation was mandated by necessary implication.

The majority holding in both *Ultsch* and *Gardner* are not helpful to the Plaintiff. The position of the dissent is even less so. The holding is meant to apply only to the unique facts of those cases which happen to have in common a Plaintiff only filing suit against a provider under a theory of vicarious liability. This Court notes that these opinions are a helpful reminder to this Court that when “the General Assembly has enacted statutes that clearly and definitively set boundaries on rights, obligations, and procedures, ... ‘it should be left to the legislature to change those boundaries ... and to define new ones.’” *Ultsch*, at *6, and *Gardner*, at *6. If in fact a higher court wishes to extend abrogation of vicarious liability in cases such as this, it is for them or the General Assembly to do so.

The answer to the question posed here is referenced in both opinions which mention *Taylor*. While the Supreme Court does not cite *Taylor* as a nonpublished opinion and makes clear that they are not bound by its precedence, this Court finds *Taylor* to be instructive. The Supreme Court plainly explains *Taylor* as “the Plaintiff in *Taylor* sued both the principal and the agent but did not comply with the Act’s pre-suit notice as to the agent.” *Id* at 10. Having found that Plaintiff did not comply with pre-suit notice as to Dr. Eton, the ruling in *Taylor* is on all fours with the circumstances in the case at bar.

Ruling as to UTROP

Plaintiff's claims against UTROP for vicarious liability are barred by operation of law. Defendant UTROP's Motion for Judgment on the Pleadings is well taken and therefore granted.

Conclusion

Though Plaintiff's circumstances are unfortunate, the Court may not fashion a remedy to accommodate Plaintiff's failure to comply with the law as set forth by the Tennessee legislature. The Motion to Dismiss filed by Dr. Eton is granted as the Complaint was filed outside the statute of limitations. The Motion for Judgment on the Pleadings of UTROP is granted as it relates to the vicarious liability of Dr. Eton.

It is so ordered this the 24th day of January 2024.

Valerie L. Smith

JPP
MP

FILED
JAMITA E. SWEARENGEN
APR 19 2024
CIRCUIT COURT CLERK
BY *[Signature]* D.C.

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

MATTHEW CHRISTOPHER BRANDT,
Plaintiff/ Counter- Defendant,

v.

Case No. CT-0060-20
Division III

MEGAN KATHLEEN BRANDT,
Defendant/ Counter Plaintiff.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard by this Court for trial on January 29-31, 2024. The Court heard from multiple witnesses in this matter.

The parties entered into a Marital Dissolution Agreement filed May 2, 2022. The issues to be decided by this Court are custody of the minor child (M) shared between Mr. Brandt (hereinafter Father) and Megan Brandt (hereinafter Mother), a child support arrearage, request for a name change, and attorney's fees. ¹

While the Parties presented proof that would warrant a divorce, counsel stated to the Court that the Parties wish to be divorced pursuant to statute. The Court finds that the Parties are hereby divorced pursuant to Tennessee law and restored to the rights of unmarried persons.

The parties stipulate that the child shall continue to attend Lamplighter Montessori School.

¹ Defendant/ Counter Plaintiff has given birth to two other children during the pendency of this litigation. DNA testing shows that though these children are born of this marriage, they are not the biological children of Plaintiff/ Counter- Defendant. The birth of these two children delayed the trial in this matter.

The majority of the proof heard at trial centers around custody of the party's minor child. Mother has enjoyed only supervised visitation since early in this litigation.

Proof at Trial

Matthew Brandt

The Court heard from Matthew Brandt. He testified that the parties experienced a happy marriage until M was born. At that time his wife had spiritual concerns for M which are supported by Mrs. Brandt's testimony. Mother became involved in an organization called the J Project and a person named Abigail Noel.

The parties used marijuana together. Father testified that he stopped using marijuana in 2019. Mother continued to use marijuana. The Court finds this testimony to be credible.

Father testified that Mother's conduct became increasingly disturbing to him. She claimed to communicate with the dead and found herself compelled to do "what God told her to do" including ordering a certain type of food at a restaurant and not keeping shoes that she wished to have. Father testified that Mother told him that God would smite him and that upon his death he would only be able to communicate with their daughter (though dead) through her.

There was testimony regarding Father's own belief or interest in Bigfoot. The Court also heard testimony as to the parties possessing poisonous frogs as well as discussion of the Illuminati.

Father is adamant that he does not want M to be involved in any way or exposed to members of the J project.

Father testified that Mother currently owes \$6,010 in child support. He asks for attorney fees.

Father testified that he feels that Mother may be under the control of the J Project and he is afraid of a negative impact on M.

Father also testified that M and Mother have a loving relationship and that she has adhered to the Court's orders regarding visitation. He pointed out that Mother did once drive with M but stated that she has complied with the Court's orders as to visitation. He also points out that Mother has not complied with the Court's orders regarding child support.

Father takes the position that Mother should continue to have supervised visitation as her beliefs and involvement in the J Project are a danger to M.

Rick Ross

The Court heard from Rick Ross who testified as an expert in the occult without objection. He opined that the J Project is an "authoritarian personality driven group." His testimony was based on having read deposition in this case and reviewing the videos he had access to of interaction between Abigail Noel and Mother. He expressed concern around whether Mother would be controlled by Abigail Noel and that the issue with Mother is whether she will allow herself to be influenced by and controlled by Ms. Noel.

The Court finds his testimony to be credible and instructive. The Court finds however that he does not have sufficient direct knowledge to opine as to the current situation of these parties.

Kevin Stearnes

Mr. Stearnes is the father of Mother's two children born after the filing of this divorce. He testified that he met Mother at a rally in Washington D.C. where he and Abigail Noel chained themselves to a tree while naked in support of "Justice for Prince" and to bring attention to their belief that Prince was murdered.

His testimony appeared to the Court to be rehearsed or programmed. The Court found unsettling that upon being asked if he would take an injured or ill child to a hospital that he

responded that he would “have to ask God.” He then testified that if God did not think it best, he would not seek treatment for a child.

He testified that he believed the J Project will be bigger in the future.

Megan Brandt

Mother testified that she would like to be restored to her maiden name and that she was not seeking that restoration for any improper purpose.

Mother testified that she was unemployed for 1 year and 8 months because she wanted to be a stay-at-home mom for a while as well as grieve the loss of her father.

She proposes a parenting plan where neither party has supervised visitation and equal visitation.

Mother stated that the J Project has not been active in 2.5 years. She stated that she has no problem having nothing to do with Abigail Noel.

Mother further testified that she has no intention of discussing her “out of the box” beliefs with M. She stated that among other things she does not want her child to be made fun of at school.

She testified that she does believe that she was Timothy in a prior life.

She testified that she “just wants her kid back.”

Mother seeks attorney fees in this matter.

Alicia Sanders

Testified that she had been very worried about M spending time with her daughter. Said that since she has stopped smoking marijuana, she is the “old Meg.”

May 5, 2021, Deposition testimony of Dr. Fulliton

He said that she has a history of brain injury as well as marijuana use. His ultimate recommendation was supervised visitation until there was a reduction in delusions. The Court finds his testimony to be helpful and instructive, but unfortunately stale.

Findings of the Court

Credibility

The Court noted some credibility findings in its recitation of the proof presented and incorporates those into this section.

The Court finds the testimony of Father to be credible in that he is genuinely concerned for M to be in the care of Mother unsupervised. The Court also finds it credible that Mother has followed all Court orders (save child support) regarding visitation parameters with M. The Court finds credible and notes that Mother has gone to extraordinary lengths to exercise visitation that she has, particularly since the births of her two younger daughters.

The Court finds credible the testimony of Alicia Sanders. The Court finds credible that testimony that without the excessive marijuana use, Mother has returned to being the daughter that she knew before these proceedings. The Court also finds credible Ms. Sanders' testimony that her daughter has relaxed her beliefs and is more tolerant of others.

Best interest of the child

As is the case with contested custody matters, the biggest issue is to unravel what the situation is currently and determine what is in the best interest of M. The Court finds that both parties have engaged in rather unconventional behavior. Mother has done so to a far greater extent than Father. While the court does not share the beliefs of Mother and might indeed find them odd, this Court does not find her to be a danger to M such that her visitation should continue to be supervised.

The Court analyzes the best interest factor of T.C.A. 36-6-106 as follows:

- (1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;**

It is without dispute that Father has performed the majority of the parenting responsibilities since the temporary parenting plan was put in place. The Court notes that Mother has been restricted to supervised visitation and has testified to performing parenting duties when allowed under the supervision of her own mother.

This factor weighs in favor of Father.

- (2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;**

Both Mother and Father testified that each parent loves M. Father testified that Mother has followed all court orders apart from driving with M once and child support. Mother testified credibly that she will follow this Court's orders.

Though it is understandable that Father would want to maintain the status quo that he has dealt with for years, the Court finds that this factor weighs in favor of increased visitation with Mother in an unsupervised capacity.

- (3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;**

This factor is not weighed in this case.

(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

The Court finds that both parents will care for M as far as necessary care. The Court does take note of Mr. Stearnes testimony that he would have to pray about whether to take a child to the Hospital first and so Orders that M may not be left alone with Mr. Stearnes.

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

Father has taken the greater responsibility since the entry of the temporary parenting plan.

This Factor weighs in favor of Father as the PRP.

(6) The love, affection, and emotional ties existing between each parent and the child;

All testimony supports that both parents love M and that she has a close relationship with each. The Court finds this factor to be neutral.

(7) The emotional needs and developmental level of the child;

The Court finds that both Mother and Father are able to provide for the emotional and developmental needs of the child. This finding is predicated on Mother's ability to follow the provisions of this Order and not expose M to Abigail Noel or the J Project.

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

The Court has carefully considered this factor. The Rule 35 evaluation presented to this Court is several years old. The Court has heard extensive proof as to the unconventional or out of the box beliefs of Mother. The Court finds, however, that those beliefs do not outweigh her right to enjoy unsupervised visitation with M. The Court finds that both Mother and Father are fit to parent M within the confines of this order.

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

The Court heard testimony for Mother as well as Grandmother as to M's close relationship and love for her sisters. The Court finds that this factor weighs in favor of increased visitation with Mother.

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

The Court finds that this factor weighs in favor of Father continuing to be the primary residential parent and that M spend the majority of time with him. The Court finds that travel to and from her established school from Mother's chosen out of state residence to warrant parenting time during a school week is not in M's best interest. The Court finds that it is in M's best interest to remain in the stable and satisfactory environment that she is in other than visitation with Mother detailed herein.

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

There was testimony as to M having a positive drug test. The Court finds Mother's testimony that she stopped using marijuana as well as the drug tests that show she has not had positive screens in some time show that she is not in danger of being abused by being exposed to drugs.

The Court finds credible Mother's testimony that she will not discuss her "out of the box" beliefs with M. The Court notes with specificity Mother's acknowledgment that she would not discuss same as she would not want M to be made fun of at school. The Court finds that this demonstrates an awareness on the part of mother that to do so would not be in M's best interests.

The Court finds that there is no likelihood of abuse from either parent.

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

The Court has expressed its concern as to Mr. Stearnes. The Court does not find that Mr. Stearnes is a danger to M, but per his testimony might not make the proper decisions in an emergency. While the Court finds this concerning as noted herein, the Court addressed that concern by ordering that M not be left alone in the care of him.

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

This factor is not applicable.

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules;

The Court finds that Mother's employment schedule and choice to live the distance from Father and M's school weighs against having custody of M during the school week. The Court

heard testimony from both Mother and Ms. Sanders that she would have to rely on help from her Mother and Stepfather.

(15) Any other factors deemed relevant by the court; and

The Court finds that it is not in M's best interest to travel over 30 minutes to school each way during the week. The Court finds that this factor weighs in favor of Father remaining the primary residential parent and M remaining with him during the school week.

(16) Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more.

The court does not weigh this factor as one in its determination here.

Custody and Visitation

The Court finds that it is in the best interest of M that Father shall remain the primary residential parent. The Court finds that Mother shall have unsupervised visitation with M every other weekend beginning after school on Friday and returning to Father no later than 6:00 PM on Sunday.

The Court finds that Mother shall have one week of uninterrupted visitation during the summer vacation on two occasions (not to be consecutive). Notice shall be given to father of the desired weeks 45 days in advance. The parties are ordered to attempt resolution as to any dispute regarding weeks.

The parties are ordered to alternate holidays that occur over weekends. Should a holiday occur during a week, that day shall remain with Father.

The parties shall alternate spring break and fall break with mother receiving fall break for 2024. The parties shall alternate the Christmas Holiday with an exchange to occur on Christmas

Even at 2:00 PM or at a mutually convenient time. Father shall have the time before Christmas in 2024.

Decision making

Father shall have decision-making authority over medical decisions.

The parties shall share decision-making authority over education with father as the tie break.

The parties shall share decision-making authority over extracurricular activities with father as the tie break.

Father shall have decision-making authority over religious decisions.

Additional Orders

The Court orders that M is to have no contact with Abigail Noel. The Court orders that while in Mother's custody, M is not to be left alone in the care of Mr. Stearnes. Apart from Mr. Stearnes, and only then in the company of Mother, M is not to be exposed to any member of the J Project or any activities connected to it.

The Court orders that Mother is to submit to quarterly drug tests for one year from the date of the final decree and parenting plan in this matter.

Contempt

Father has pending before the Court a Petition for Contempt for Mother's willful failure to pay child support. His testimony reflected that her outstanding child support as of the trial to be \$6,010.00.

Mother filed a petition for modification of child support as of March 4, 2002. Child support shall be modified retroactively to the filing of that Petition.

Mother testified that after the birth of her second child she wanted to be a “stay at home mom” for a while and grieve for her father. While these desires are understandable, they ignore her responsibility owed. Mother further testified that if the choice was to “keep a roof over their heads or pay Matt” she would not pay Father. The Court finds her testimony as to her ability to pay less than credible. Proof was put forward as to Mother’s choices regarding chicken rescue, eating out, and buying a house in the name of Mr. Stearnes. Mother testified “I just don’t think it’s fair” that she was not allowed some luxuries. This testimony as well as attitude demonstrate a lack of understanding of her own willful conduct. Mother’s choice to have two additional children with a paramour while still married to Father is the root cause of her ultimate complaints.

The Court finds that Mother engaged in voluntary underemployment when she chose to be a “stay at home” mom and remain out of work for one year and eight months. The Court finds that Mother willfully failed to pay the ordered support to Father.

Attorney Fees

Attorney fees in a divorce case are awarded as alimony in solido. The parties put forth little, if any, proof of either party’s need or the other’s ability to pay legal fees. Further, the parties entered into a marital dissolution agreement on May 2, 2022, which divided all their assets and liabilities prior to the trial in this matter. Section 9 of the agreement states “That neither party shall pay alimony to the other party.”

The Court declines to award attorney fees in connection with the divorce.

The Court finds that Father is the prevailing party regarding the Petition for Contempt for failure to pay child support. The proof submitted to the Court for Father’s attorneys’ fees

encapsulates all the fees incurred throughout the litigation. Counsel for Father is ordered to produce an affidavit reflecting the work done in connection with the contempt charge that is sustained by this court within 14 days of this order.

Name Change

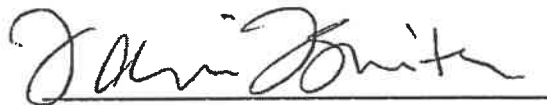
The Court finds that Megan Brandt's last name shall be returned to her maiden name of Roehl.


Conclusion

The Court finds that any Petitions or Motions not addressed by these findings are hereby denied. Counsel are directed to work together to draft a final decree and permanent parenting plan consistent with these findings and to present same to the Court within 30 days.

This matter is set for a status conference on May 13, 2023.

It is so ordered this the 19th day of April, 2024.


Valerie L. Smith

JAMITAE SWEARENGEN
SEP 30 2024
CIRCUIT COURT CLERK
BY  S.W.

IN THE CIRCUIT COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

SANFORD HUNT, JR.,
Plaintiff/ Counter-Defendant,

v.

No: CT-4885-21
Division III

CYNTHIA HUNT,
Defendant/ Counter-Plaintiff.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard by the Court on August 13, 2024, upon a Complaint for divorce. The issues before the Court for determination whether the parties are granted a divorce; the equitable division of the marital estate including the marital home, a \$16,000.00 downpayment, and items of personal property; Wife's request for a name change; and Wife's request for attorney's fees.

Statement of the Case

Sanford Hunt, Jr. (hereinafter Husband) and Cynthia Hunt (hereinafter Wife) were married and divorced prior to this action. The marriage before the Court is approximately ten years old.

The Court heard from the parties in this matter. While testimony was presented about the fault of each party, both parties submitted that grounds are not an issue for determination by this Court. Limited proof was presented as to income. The largest asset of their marriage is without question the marital home. The Court is also charged with deciding whether certain property is

separate or was transmuted during the marriage. Items of personal property are in dispute. Wife requests restoration of her maiden name to Cynthia Marie Brown. Wife also requests attorney fees.

Factual Findings

The duration of this marriage is ten years. Wife continues to work, while Husband is receiving social security and most recently worked as a crossing guard. Wife's monthly income is \$4,286.00. Husband's monthly income is \$3,887.54. The parties each paid the bills for the home at times and contributed to the upkeep of home. Wife's contributions at times came from money she received from the parties' son's disability check.

The parties agree that they are to each keep the bank accounts and vehicles in their respective names but disagree as to Wife's claim to \$16,000.00 as her separate property and other personal items.

Among the disputes are a television and items of property wife argues were destroyed by Husband. Husband testified credibly that the DVDs are his property. The Court heard no credible testimony about the television. The Court heard no credible testimony about the property Wife alleges was destroyed or the value of that property.

The Court finds that wife is in a better position financially and economically since she is younger than Husband and continuing to work. Wife's vehicles are unencumbered while Husband's vehicles are.

The main asset of the martial estate is the martial home. Wife began paying the mortgage on the home in 2021, when Husband moved out. Before Husband moved, he paid all the bills for the household while she paid for food and household items. Sometime during the marriage,

Wife began to contribute \$600.00 toward the monthly bills. Wife used money came from a disability payment that the parties' son receives for part of that payment.

Wife withdrew \$16,000.00 from a retirement account for the downpayment on the marital home. The house is titled solely in Husband's name. Husband had better credit at the time, and so the home was only titled in his name. Husband planned to give wife back \$5,000.00, but that did not pan out.

Wife testified credibly that she is not looking to change her name for any illegal purpose. Wife testified credibly that her request is not to avoid creditors, avoid the no-fly list, avoid the sexual offender's registry, or avoid criminal prosecution.

Conclusions of Law

1. The parties are granted a divorce.

Based on the statements of counsel at trial, the Court finds that the parties shall be divorced per Tennessee law. The parties are restored to the rights of single people.

2. Equitable Division of the Marital Estate

The Court turns to T.C.A. §36-4-121 in making the equitable division of this marital estate. Neither party seeks support¹ from the other, and so the Court considers the following factors:

The Court finds that the factors applicable to this case are:

- The duration of the marriage
- The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities, and financial needs of each of the parties
- The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property

¹Wife requests attorney fees.

- The value of the separate property of each party
- The estate of each party at the time of the marriage
- The economic circumstances of each party at the time the division of property is to become effective

(a) Was the \$16,000.00 downpayment transmuted or is it Wife's separate property?

Wife asserts that the \$16,000 is still her separate property. The question before the court is whether after using that money to buy the marital home, the money remained separate or became marital property.

There are four common factors to look to when deciding if separate property is transmuted. They are the use of the property as a marital residence, the ongoing maintenance and management of the property by both parties, placing the title to the property in joint ownership, and using the credit of the non-owner spouse to improve the property. *Gleaves v. Gleaves*, 2008 WL 4922533 (Tenn. Ct. App. Sept. 12, 2008).

The facts of this case do not fit neatly into the factors listed above but the factors do provide guidance to this Court. The \$16,000.00 at issue was the downpayment on the marital residence. Husband paid most bills for the first half of the marriage until moving out when wife took over entirely. The title to the home is only in the name of Husband, though Wife now asserts that the house holds her separate property. There is no testimony that the credit of either spouse was used to improve the home, however, there was testimony that the credit of Husband was used to buy the marital home.

Wife willingly placed her funds in the marital home titled only in Husband's name. The parties both contributed to the maintenance and management of the property during the marriage.

The Court finds that the downpayment of \$16,000.00 has been transmuted and is now marital property. The Court finds no credible proof that Wife kept her claim of \$16,000.00 other than the assertion in this litigation. Wife has failed to present credible proof that the \$16,000.00 downpayment stayed her separate property.

(b) Vehicles

Neither party makes a claim to the other's vehicles. The only value put forward at trial was that in Husband's marital balance sheet. The Court adopts those values. Husband has two newer cars with notes and no equity, while Wife has two older vehicles that she owns outright. Husband chose to have these newer vehicles and testified that he had them because "I wanted them."²

The negative equity in these vehicles is not persuasive to the Court when Husband freely acknowledges that he bought them simply because he wanted them. The Court cannot endorse and reward behavior that is not financially sound by then awarding him a greater share of the marital home.

(c) Other separate property

Wife argues that Husband should repay her for items he destroyed or threw away. When asked for a value Wife testified the value was "probably a couple thousand" and then "\$1,500.00."³ No list of property was presented to this Court. The Court did not hear credible proof as to the value of property or even a credible description of the property. The Court did not hear credible proof that Husband destroyed property of value.

² No court reporter was present. No record citation is available.

³ The Court has clear recollection of the quoted phrases. No citation is available.

Husband argues that he should receive his collection of DVDs. Wife argues that these were a gift to her. No value of the property was given by either party. The Court finds Husband's testimony to be credible as to his DVD's and awards them to him.

Husband argues he should receive an additional television from the house. He submits that the value of a 2013 television is \$1,000.00- \$1,200.00. No proof was offered to support this amount. The Court finds this testimony less than credible and awards the television to Wife.

(d) Equity in the martial home

Wife argues that she should receive 65% of the equity from the sale of the martial home and any funds being still in escrow. Wife's argument is based on having paid all bills associated with the home for the last two and a half years. Wife argues that this case should only be about the real estate and other items should not be considered. Husband argues for an even division of the equity because he paid the all the bills at the beginning of the marriage with minimal if any contributions from Wife.

Husband voluntarily left the home, and it is undisputed that he has not contributed to its expenses since his departure two and a half years ago. The Court finds that both parties were on their own with the bills for roughly the same amount of time. Wife, however, shouldered the bills without Husband's presence. The Court balances that with the fact that wife is in a better position financially since she has retirement savings, her vehicles are unencumbered, and she is still working. Additionally, Wife receives income from the parties' daughter and son's disability check giving her an economic advantage over Husband.

To equitably divide the marital estate, the Court must consider all the proof presented and all assets of the parties. The Court cannot make a division based only on the real estate as wife suggests. The Court finds that based upon the applicable factors as set forth by the Tennessee

General Assembly, the equity in the home shall be equally divided among the parties. Wife asked that any remaining escrow funds be awarded to her. The Court finds that those funds should be accounted for in the sale of the home and distributed upon closing.

5. Wife's Request for Name Change

Name changes in Tennessee are governed by T.C.A. § 29-8-101. Wife requests restoration of her maiden name to Cynthia Maria Brown. The Court finds that Wife's credible testimony to supports her request and hereby orders restoration of her maiden name.

6. Attorney fees


Attorney fees in Tennessee are awarded as alimony in solido. *Owens v. Owens*, 241 S.W.3d 478, 496 (Tenn. Ct. App. 2007). Wife argues that Husband should pay for her attorney's fees because this matter should have been resolved. While that may be true, that is not a basis for an award by this Court. The primary factor to consider is the need of one party and the ability to pay of the other. Neither party proved need and the other party's ability to pay to support an award of attorney's fees. The Court declines Wife's request for attorney fees.

Conclusion

The parties are awarded as divorce per Tennessee law. The martial estate is hereby equitably divided as described in this Order. Wife is restored to her maiden name- Cynthia Maria Brown. No attorney fees are awarded in this matter.

Counsel for Husband is directed to prepare a final decree of divorce consistent with this Order. Costs are to be divided equally between the parties.

It is so ordered this the 30th day of September 2024.


Valerie L. Smith

**IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

XXXX FIRM PLLC AND XXXXX,

Interpleader Plaintiffs,

v.

**CASE NO. CT-XXXX-24
DIVISION III**

XXXXXXXXXXXXXXXXXX,

Interpleader Defendants.

**ORDER DENYING APPROVAL OF
INTERPLEADER AND DISMISSING COMPLAINT**

Plaintiffs XXXX Law Firm, PLLC and XXXX filed a Complaint for Interpleader Action on February 24, 2024. The Complaint seeks relief under Tennessee Rules of Civil Procedure 21.01¹ or 22.02. Per the Complaint, Plaintiffs entered into a settlement agreement for a claim with National Indemnity Insurance for the sum of \$105,000.00. Liens against the settlement proceeds total \$127,582.92. In their Complaint, Plaintiffs request this Court to determine distribution of the settlement proceeds. Summons were issued to all Defendants in this cause. Plaintiffs filed a Petition for Distribution on August 20, 2024, and a hearing date was set for August 28, 2024. The Court requested authority from the Plaintiffs for the relief requested. A proposed order directing distribution of the funds to the Plaintiffs and one lienholder was submitted to the Court in September. The pleadings filed in this cause cite no law in support of their position.

¹ Rule 21 covers misjoinder and joinder of parties. The Complaint does not specifically address this rule and relief requested nor did the Court hear argument about this Rule.

What is an interpleader action?

Interpleader is an action available under Rule 22 of the Tennessee Rules of Civil Procedure. The rule states in part “persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.” The first question before the Court is whether the circumstances presented in the Complaint are those contemplated for a proper interpleader action.

“Interpleader is designed to protect a stakeholder against the vexation of proceedings by two or more doubtful claimants when the whole matter may be settled in a single suit.” *C&C N. Am. Inc. d/b/a Cosentino v. Nat. Stone Distributors, LLC, et al.* 571 S.W.3d 254 (Tenn. Ct. App. 2018), *Woodard v. Metro. Life Ins. Co.*, 160 Tenn. 325, 24 S.W.2d 888, 889 (1930). Interpleader permits a “stakeholder who has no claim to the money and is willing to release it to the rightful claimants to put the money in dispute in the court, withdraw from the proceeding, and leave the claimants to litigate between themselves the ownership of the fund in court.” *Id.*

Do the facts presented in the Complaint and to the Court support interpleader and an order awarding the settlement funds to the Plaintiffs and the lienholder who answered the Complaint?

The Complaint before the Court states in part:

11. Plaintiff² has been notified by Claimants that they each have a lien on the settlement proceeds to pay their respective bills.
12. Plaintiff³ is unable to determine the rightful distribution of the settlement proceeds between the Claimants and seeks a determination from this Court.
13. Plaintiff admits that it has no interest in the settlement proceeds, other than to recover

² Both Plaintiffs XXXXX Firm PLLC and XXXX are included in the caption.

³ The Court is unsure which Plaintiff is referenced in this paragraph.

attorney fees and litigation expenses.⁴

There are two stages to interpleader. The first stage involves a stakeholder's initiation of the process, disclaims their interest in the fund, and offers to pay the money into Court. Lawrence A. Pivnick, *Interpleader*, 1 TENN. CIR. PRAC. §1:27. At the outset, the Court must determine whether interpleader has been properly invoked. The Court finds Plaintiffs fail to meet their initial burden.

The Court heard from counsel for Plaintiffs as to a suggested distribution of the settlement funds. The suggested distribution included payment of one lienholder Defendant who answered the interpleader complaint, Plaintiff XXXX, and Plaintiff XXXXX Law Firm PLLC. That the Plaintiffs in this action seek \$91,111.76 of the \$105,000.00 for themselves raises an alarm. In this case, Plaintiffs are ignoring a key element of interpleader- *disclaiming* interest in the fund.⁵ Indeed, Plaintiffs make no request to pay anything into court.

The Court surmises from the Complaint that Plaintiff contracted with the lienholder Defendants. Interpleader might be a proper remedy if Plaintiffs were not seeking funds for themselves, or if the payor of the \$105,000.00 sought this remedy. Interpleader is not an avenue to nullify contracts made by Plaintiff and thus avoid payment of claims.

A proper interpleader involves placement of money into court so that those making claims might fight it out while the party owing money walks away. Plaintiffs seek endorsement from the Court to ignore what the Court can only assume from this action are proper liens, recover most of the funds, and have the Court order that the lienholder Defendants be estopped from pursuing a remedy for collection in the future. Here, Plaintiffs request interpleader to stave off and thwart collection efforts of the lienholders. The Court finds Plaintiffs' request for interpleader contrary to intent of Rule 22 and so does not find Plaintiffs request for interpleader to be proper.

⁴ The Court presumes from the context that Plaintiff in this paragraph is the XXXX Firm LLC.

⁵ Attorney's fees and expenses are an interest.

Conclusion

The Court finds that the Complaint fails to pass the first stage in the filing of an interpleader complaint. The Court finds that this action is not appropriate for the relief sought and dismisses Plaintiffs' Complaint. Costs are assessed to the Plaintiffs for which execution may levy.

Ordered this the 2nd day of October, 2024.

Valerie L. Smith