

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

ROBERT STARBUCK NEWSOM,
a/k/a ROBBY STARBUCK,

Plaintiff,

v.

TENNESSEE REPUBLICAN
PARTY, and the TENNESSEE
REPUBLICAN PARTY STATE
EXECUTIVE COMMITTEE,

Defendants.

FILED

JUN 07 2022

Clerk of the Appellate Courts
Rec'd By _____

No.M2022-00735-COA-

R10-CV

Case No. 22-0735-IV

Chancellor Perkins

EXPEDITED REVIEW REQUESTED

**PETITION FOR COMMON LAW WRIT OF CERTIORARI AND
SUPERSEDEAS**

HERBERT H. SLATERY III
Attorney General and Reporter
for the State of Tennessee

ANDREE BLUMSTEIN
Solicitor General

JANET M. KLEINFELTER
Deputy Attorney General
Public Interest Division
Office of Tennessee Attorney
General
P.O. Box 20207
Nashville, TN 37202
(615) 741-7403
Janet.kleinfelter@ag.tn.gov

ROBERT STARBUCK NEWSOM,)
a/k/a ROBBY STARBUCK,)
)
Plaintiff,)

TENNESSEE REPUBLICAN
PARTY, and the TENNESSEE
REPUBLICAN PARTY STATE
EXECUTIVE COMMITTEE,

No.M2022-00735-COA-
R10-CV
Case No. 22-0735-IV
Chancellor Perkins

**PETITION FOR COMMON LAW WRIT OF CERTIORARI AND
SUPERSEDEAS**

JANET M. KLEINFELTER
Deputy Attorney General
Public Interest Division
Office of Tennessee Attorney
General
P.O. Box 20207
Nashville, TN 37202
(615) 741-7403
Janet.kleinfelter@ag.tn.gov

Petitioners Tre Hargett, in his official capacity as Tennessee Secretary of State, and Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, petition this Court pursuant to Tenn. Code Ann. § 16-4-110 for a writ of common law certiorari and supersedeas vacating the June 3, 2022 mandatory injunction order of the Davidson County Chancery Court directing Petitioners to restore Plaintiff Robert Starbuck Newsom's name to the ballot as a candidate in the August 2022 Republican primary election for the office of U.S. House of Representatives for the 5th Congressional District.

Petitioners are requesting expedited review of their Petition as the mandatory deadline for sending absentee ballots to military personnel and overseas citizens is June 20, 2022. *See* Military and Overseas Voters Empowerment Act ("MOVE"), 42 U.S.C. § 1973ff-1(8) and Tenn. Code Ann. § 2-6-503(a). To meet this deadline, the county election commissions for the six counties within the 5th Congressional District (Wilson, Davidson, Williamson, Maury, Marshall and Lewis counties) need sufficient time to prepare the ballots for the August elections, submit the ballots to the State Election Coordinator for review and approval pursuant to Tenn. Code Ann. § 2-5-207(e) and then print the ballots. As there are currently only eight (8) business days before the June 20th deadline, Petitioners seek expedited review of their Petition for common-law writ of certiorari and supersedeas.

Petitioners are not named parties and were not served with process in accordance with Tenn. R. Civ. P. 4. in the chancery court case. Thus, the chancery court has/had no personal jurisdiction over Petitioners and

was without authority to enjoin them to restore Plaintiff to the ballot. Additionally, the injunction was issued in violation of Tenn. R. Civ. P. 65.04(1) as Petitioners were not provided notice.

STATEMENT OF THE CASE AND FACTS

By statute, a qualified candidate's name "shall be placed on the ballot" unless (1) the candidate dies more than forty (40) days before the election, (2) the candidate timely withdraws or (3) the candidate is disqualified by the political party's executive committee pursuant to Tenn. Code Ann. § 2-13-104. *See* Tenn. Code Ann. § 2-5-204(a), (e). A political party "may require by rule that candidates for its nominations be bona fide members of the party." Tenn. Code Ann. § 2-13-104. If a political party's executive committee determines that a candidate is not qualified pursuant to Tenn. Code Ann. § 2-13-104, the committee is required to file such determination with the State Coordinator of Elections no later than noon on the seventh day after the qualifying deadline for the election. Tenn. Code Ann. § 2-5-204(b)(2)(A). The candidate may appeal that determination, but unless the State Coordinator of Elections receives a letter from the political party's executive committee "withdrawing the committee's determination of the candidate's disqualification no later than the close of business seven (7) days after the original withdrawal deadline, the candidate's name must be excluded from the ballot." Tenn. Code Ann. § 2-5-204(b)(2)(B).

For purposes of the upcoming August 4, 2022, election, the deadline for a political party executive committee to give the State Coordinator of

Elections notice that it had determined that a candidate was not a bona fide party member and should be removed from the ballot was noon on April 14, 2022, and the deadline for withdrawal (i.e., reversal) of determination of a candidate's disqualification was close of business on April 21, 2022.

Plaintiff Robert Starbuck Newsom is a resident of Williamson County, Tennessee. (App. at 18.) Plaintiff sought to be a candidate for the Republican nomination for the United States House of Representatives for the 5th Congressional District. (*Id.*) On April 11, 2022, Defendant Tennessee Republican Party ("TRP"), acting through its State Executive Committee, filed a letter notifying Petitioner Goins that it had determined to remove the candidates listed in the letter from the Republican August 2022 primary ballot in accordance with Tenn. Code Ann. § 2-5-204(b)(2)(A). (App. 197-98.) Plaintiff was one of the candidates listed to be removed from the ballot. Petitioner Goins did not receive notice from the TRP that it was withdrawing its determination of Plaintiff's disqualification prior to the close of business on April 21, 2022.

On May 2, 2022, Plaintiff filed suit in federal court against the TRP and its chairman. Plaintiff also named as defendants in his federal suit Secretary Hargett and Director Goins—the petitioners now seeking a common law writ of certiorari. Plaintiff asked the federal district court to to declare the TRP's decision disqualifying him void and to enjoin the Secretary Hargett and Director Goins from removing his name from the August 2022 Republican Primary ballot. *See Newsom v. Golden*, No. 3:22-cv-00318 (M.D. Tenn. 2022). On May 12, 2022, the federal district court issued a memorandum opinion denying Plaintiff's motion for a

preliminary injunction. *See Newsom v. Golden*, --- F.Supp.3d---, 2022 WL 1500860 (M.D. Tenn. May 12, 2022). Plaintiff voluntarily dismissed the federal case without prejudice on May 18, 2022.

Two days later, Plaintiff filed the present action in state court but only against the TRP and its State Executive Committee; he did not sue either Secretary Hargett or Director Goins. He asserted as causes of action against the TRP and its Executive Committee violations of the Tennessee Open Meetings Act, breach of contract and/or promissory estoppel. And though no state official was named as a party defendant, the complaint sought

an injunction and/or order of specific performance directing the TRP to rescind its direction to remove Mr. Starbuck's name from the August 2022 federal primary ballot for U.S. Representative of Tennessee's 5th Congressional District and to *direct the state to reinstate Mr. Starbuck's name on the ballot for the August 2022 federal primary election for U.S. Representative of Tennessee's 5th Congressional District.*¹ (emphasis added.)

(App. at 38.²)

¹ Alternatively, Plaintiff sought an injunction directing the named defendants, the TRP and its Executive Committee, "to rescind their instructions to remove Mr. Starbuck's name from the ballot for the August 2022 federal primary election for U.S. Representative of Tennessee's 5th Congressional District and ordering them to instruct Mr. Goins and Mr. Hargett to restore Mr. Starbuck's name to the ballot." (App. at 37, 40.) (emphasis added).

² All references are to the Appendix filed by the Defendants TRP and its State Executive Committee with their Application for Extraordinary

Simultaneously with his complaint, Plaintiff filed an application for temporary injunction, but in that application, Plaintiff made no reference to directing or instructing the State or any state officials to reinstate Plaintiff's name to the ballot. (App. at 182-83.) Plaintiff did not serve a copy of his application for temporary injunction or otherwise give notice to Petitioners that he was seeking injunctive relief requiring "the state to reinstate Mr. Starbuck's name on the ballot." That same day, the chancery court issued an order setting a hearing on Plaintiff's application for June 2, 2022. (App. at 185.)

The TRP and its Executive Committee filed a response in opposition on May 31, 2022, in which they argued, among other things, that no justiciable controversy existed because the Plaintiff had failed to name Petitioner Goins—the only person or entity with the statutory authority to restore Plaintiff's name to the ballot, and therefore the injunctive relief sought would not redress Plaintiff's alleged injury. (App. at 210-213.)

In his reply, Plaintiff expressly acknowledged that neither Petitioner Goins nor the State of Tennessee were defendants in the chancery court action but argued that the injunctive relief requested in his Verified Complaint could be performed by the Defendants "without any action by the State." (App. at 236.)

The chancery court issued its order on June 3. It declined to grant a temporary injunction based on Plaintiff's claims of breach of contract and promissory estoppel because of the "measure of administrative

Appeal pursuant to Tenn. R. App. P. 10. That Appendix contains a complete copy of the records of the proceedings before the chancery court.

burden and potential disruption that a temporary injunction of this nature would cause” and because such claims “bring the Court into uncomfortable proximity to the autonomy and prerogative of the political party to determine who is, and who is not, a bona fide member of that party.” (App. at 1-2). However, the court went on to find that the TRP and its Executive Committee had violated the Tennessee Open Meetings Act and that, therefore, their April 11 decision to disqualify Plaintiff was null and void. (App. at 11.) In other words, the chancery court simply *declared* the decision of the Executive Committee to be of no effect—“null and void”—but the court did not issue any injunction against the Committee or the TRP; it did not order these defendants to do or not do anything.

But the court then purported to issue a mandatory injunction not against the defendants that Plaintiff had sued, but against all

other appropriate public officials [who] are expected to immediately take steps to treat the Defendants’ April 11, 2022 decision as a nullity and to restore Plaintiff, Robert Starbuck Newsom, also known as Robby Starbuck, to the ballot as a Republican candidate for the United States House of Representatives in the 5th Congressional District of Tennessee,

June 3, 2022 Order (App. at 11.).

ARGUMENT

A common-law writ of certiorari is an order from a superior court to an inferior court to send up a complete record for review, “so that the reviewing court can ascertain whether the inferior tribunal has exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily.” *State v. Lane*, 254 S.W.3d 349, 354 (Tenn. 2008) (citing *Hall v. McLesky*, 83 S.W.3d 752, 757 (Tenn. Ct. App. 2001)). The writ of certiorari was a remedy in civil cases at common law and the Supreme Court has recognized it to be “of ancient origin, and one of the most valuable and efficient remedies.” *Connors v. City of Knoxville*, 189 S.W. 870, 871 (1619) (citing *Tennessee Railroad Co. v. Campbell*, 75 S.W. 1012, 1012 (Tenn. 1903)).

Article VI, section 10 of the Tennessee Constitution guarantees the continuance of this power vested in the court by providing that courts have the power “in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.” The legislature has enacted statutory provisions establishing how parties may petition higher courts for a common-law writ and when review may be granted:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceed the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. . . .

Tenn. Code Ann. § 27-8-101. And pursuant to Tenn. Code Ann. § 16-4-110, “[t]he court of appeals, and the individual members of the court” are authorized to grant writs of certiorari and supersedeas in cases within the jurisdiction of the court of appeals.

The Supreme Court has held that a common-law writ of certiorari is appropriate to correct “(1) fundamentally illegal rulings; (2) proceedings inconsistent with essential legal requirements; (3) proceedings that effectively deny a party his or her day in court; (4) decisions beyond the lower tribunal’s authority; and (5) plain and palpable abuses of discretion.” *State v. Lane*, 254 S.W.3d at 355 (internal quotations omitted). And a petition for common-law writ of certiorari is available “[w]here either party has lost a right or interest that may never be recaptured.” *State v. Johnson*, 569 S.W.2d 808, 815 (Tenn. 1978). The scope of judicial review available through a common-law writ of certiorari is limited to determining whether the inferior court or tribunal (1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision. *Harding Acad. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 222 S.W.3d 359, 363 (Tenn. 2007); see also *Stewart v. Schofield*, 368 S.W.3d 457, 463 9Tenn. 2012).

“Excess of jurisdiction” means that “an act, though within the general powers of the tribunal or board, is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.” *Connors v. City of Knoxville*, 189 S.W. at 871. Here, the chancery court did not have personal jurisdiction over Petitioners—who

were neither named as parties nor served with process—and so its order directing Petitioners to restore Plaintiff Newsom’s name to the ballot was clearly in excess of its jurisdiction. “Equity acts in personam and broadly speaking may enjoin from illegal doings those of whom it has jurisdiction in personam.” *Carter v. Brown*, 263 S.W.2d 757, 758 (Tenn. 1953). A chancery court as a court of equity has the power to issue injunctions, but to be able to legally issue an injunction against a party, “that party must be subject to its jurisdiction, as a party in the cause in th[at] court.” *Kerr v. White*, 66 Tenn. 394, 396-97 (1874).

Indeed, this Court has recognized in multiple cases that a trial court has no jurisdiction and, thus, no authority to issue orders against persons who are not parties to the action. *See Henderson v. Mabry*, 838 S.W.2d 537, 541 (Tenn. Ct. App. 1992) (holding that since certain individuals were not parties and have no opportunity to participate in the proceedings, they were not subject to the injunctive jurisdiction of the trial court); *Larry E. Parrish, P.C. v. Dodson*, (No. M2011-00349-COA-R3-CV, 2011 WL 4529607, at *10 (Tenn. Ct. App. Sept. 29, 2011) (noting that there are numerous cases in which the court has held that trial court has no jurisdiction and authority to issue orders against non-parties); *Atkins v. Motycka*, No. 2007-02260-COA-R3-CV, 2008 WL 4831314, at *6 (Tenn. Ct. App. Nov. 6, 2008) (holding that trial court lacked jurisdiction to issue injunction against individual who was not a party, had not been served with process and had not consented to being added as a party).

Neither Petitioner was named as a party in this case or was served with process in accordance with Tenn. R. Civ. P. 4. Nor has either of these state officials consented to being added as a party. Consequently,

the trial court had no personal jurisdiction over the Petitioners or any other “public official.” See *Johnson v. McKinney*, 222 S.W.2d 879, 883 (Tenn. Ct. App. 1948) (“The general rule is that notice by service of process or in some other manner provided by law is essential to give the court jurisdiction of the parties; and judgment rendered without such jurisdiction is void and subject to attack from any angle.”). And a court without personal jurisdiction of a party is “wholly ‘without power to proceed to an adjudication’ binding on that [party], regardless of the specific reason such jurisdiction is lacking.” *Turner v. Turner*, 473 S.W.3d 257, 271 (Tenn. 2015) (quoting *Employers Reinsurance Corp. v. Bryant*, 299 U.S. 374, 381 (1937)).

If the chancery court or Plaintiff relies on Tenn. R. Civ. P. 65.04(1) to support the court’s “temporary injunction,” that reliance is fruitless. Rule 65.04(1) provides that [n]o temporary injunction shall be issued without notice to the adverse party.” No notice was provided to either of the Petitioners that Plaintiff Newsom was seeking a temporary injunction “to direct the state to reinstate Mr. Starbuck’s name on the ballot for the August 2022 federal primary election for U.S. Representative of Tennessee’s 5th Congressional District.” (App. at 38.)

Accordingly, the chancery court had no authority to issue a mandatory injunction directing all “appropriate public officials,” including Petitioners, to restore Plaintiff’s name to the ballot, and therefore, in doing so clearly exceeded its jurisdiction. Furthermore, as Petitioners are not parties to the underlying case, there is no other existing avenue of appeal available to Petitioners before the chancery court’s final disposition of the underlying case that would enable them to

protect their due process rights, or to protect the State's compelling interest safeguarding the integrity of the election process. *See City of Memphis v. Hargett*, 414 S.W.3d 88, 103 (Tenn. 2013) (cases cited therein).

This lack of a speedy or adequate remedy coupled with the crucial and core interests at stake is, as former Justice Henry has noted, “a critical consideration’ when ‘entertaining and acting upon’ this common law writ of certiorari.” *In re Lucas H.*, 634 S.W.3d 1, 9, Tenn. Ct. App. 2021) (citing *State v. Johnson*, 569 S.W.2d at 815-816)(“The ultimate test must be whether, absent the use of the common law writ, either party . . . loses a right or forfeits an interest that can never be recaptured.”); *see also Connors v. City of Knoxville*, 189 S.W. at 872 (“There are many authorities which hold that it is the inadequacy, and not the mere absence, of all other legal remedies, and the danger of a failure of justice without it, that must usually determine the propriety of this writ.”)

Here, the chancery court has clearly acted in excess of its jurisdiction and in contravention of Petitioner's due process rights. Its actions constitute a failure of justice. As discussed above, Petitioners have no other remedy to cure the court's error. Accordingly, the Petition for Common-Law Writ of Certiorari and Supersedeas should be granted, and the order of the chancery court should be declared *prima facie* void and vacated by this Court. *See Gentry v. Gentry*, 924 S.W.2d 678, 680 (Tenn. 1996) (“A [judgment] is void as to any person shown by the record itself not to have been before the Court in person, or by representation.”) (quoting Williams H. Inman, *Gibson's Suits in Chancery* § 228 at 219-20 97th ed. 1988)).

CONCLUSION

For these reasons, Petitioners request that this Court grant their Petition for Common-Law Writ of Certiorari and Supersedeas and vacate the June 3, 2022 order of the chancery court.

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

ANDREE BLUMSTEIN
Solicitor General

/s/ Janet M. Kleinfelter

JANET M. KLEINFELTER (BPR 013889)

Deputy Attorney General

Public Interest Division

Office of the Attorney General

P.O. Box 20207

Nashville, TN 37202

(615) 741-7403

Janet.kleinfelter@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by U.S. Mail, postage prepaid, and by electronic transmission, on the following counsel of record on this 7th day of June 2022:

Joshua A. Mullen
Womble Bond Dickinson (US) LLP
1222 Demonbreun Street
Nashville, TN 37203
Josh.Mullen@wbd-us.com

Eric G. Osborne
Mark Alexander Carver
Lauren Curry
Jayme Hartness-Gwaltney
Chris Sabis
Sherrard Roe Voigt & Harbison, PLC
150 Third Avenue North, Suite 1100
Nashville, TN 37201
eosborne@srvhlaw.com
acarver@srvhlaw.com
lcurry@srvhlaw.com
jhartness@srvhlaw.com
csabis@srvhlaw.com

/s/ Janet M. Kleinfelter
Janet M. Kleinfelter