

**IN THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF
TENNESSEE, NORTHEASTERN DIVISION**

CHRISTOPHER SULLIVAN,
NATHAN HASKELL, and
WILLIAM GENTRY,

Plaintiffs,

v.

SAM BENNINGFIELD and
ODDIE SHOUBE,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Case No. 2:17-cv-00052

Judge Crenshaw

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
ESTOPPEL BASED ON DEFENDANT BENNINGFIELD'S PUBLIC
REPRIMAND**

I. Defendant Benningfield's Public Reprimand

On November 15, 2017, the Tennessee Board of Judicial Conduct publicly reprimanded Defendant Sam Benningfield.¹ The Board's Public Reprimand is attached hereto as **Attachment 1**. Critically, the Board's Public Reprimand conclusively resolves several contested legal and factual issues set forth in the Plaintiffs' Amended Complaint.

Defendant Benningfield's Public Reprimand specifically reflects that in a formal proceeding to which he was a party, the Tennessee Board of Judicial Conduct issued a final judgment that resolved the following issues of fact and law against him:

1. "[D]uring a hearing regarding a probation violation hearing, [Defendant] Benningfield threatened to end the house arrest program which was then a practice in [his] court, and order persons currently under house arrest to be put in jail, if the defendant's attorney did not withdraw a valid objection that he had made concerning certain records being admitted in the probation

¹ The Public Reprimand was filed on November 20, 2017. See Attachment 1, p. 1.

violation, which [Defendant Benningfield] acknowledged at the time was a valid objection.”

2. Defendant Benningfield entered the May 15, 2017 and July 26, 2017 Orders that are the subject of the Plaintiffs’ Amended Complaint.

3. Defendant Benningfield has acknowledged that the May 15, 2017 Order “could unduly coerce inmates into undergoing a surgical procedure which would cause at least a temporary sterilization, and it was therefore improper.”

4. The above described actions were not in compliance with the law, as required by Rule 1.1. of Canon 1 of the Tennessee Code of Judicial Conduct.

5. The above described actions similarly violated Rule 1.2 of the Canon 1 of the Tennessee Code of Judicial Conduct, which provides that: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

6. Defendant Benningfield’s intended purpose in entering the May 15, 2017 Order was to “prevent[] the birth of substance addicted babies[.]”

Attachment 1, pp. 1-3.

Critically, all of these issues are directly relevant to several allegations and claims set forth in the Plaintiffs’ Amended Complaint. These issues also conclusively resolve or otherwise implicate myriad contested matters that are currently pending before this Court. *See, e.g.,* Doc. #19, *Plaintiffs’ Response in Opposition to Defendants’ Motion to Dismiss* (arguing, *inter alia*, that the “offer” set forth in Defendants’ Sterilization Orders was coercive and illegal, and that as applied to the Plaintiffs, the Orders cannot survive even rational basis review because male inmates are incapable of giving birth to substance addicted babies); Doc. #22, *Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for Partial Summary Judgment* (arguing, *inter alia*, that vasectomies constitute “sterilization,” that Defendants’ Sterilization Orders shock the judicial conscience and interfere with the exercise of a fundamental right, and that there is no constitutionally

adequate justification for the Sterilization Orders' gender-based discrimination or discrimination based on the exercise of a fundamental right); Doc. #20 *Plaintiffs' Motion to Certify Questions of State Law* (arguing, *inter alia*, that whether Defendant Benningfield's Sterilization Orders exceeded his jurisdiction under Tennessee law is a dispositive and exclusive question of state law that conclusively determines Plaintiffs' claim for attorney's fees). Consequently, the Tennessee Board of Judicial Conduct's determinative resolution of the above factual and legal issues against Defendant Benningfield is of critical importance to the instant action.

II. Legal Effect of a Sanction from the Tennessee Board of Judicial Conduct

A sanction issued by the Tennessee Board of Judicial Conduct represents "a formal finding of fact and opinion." Tenn. Code Ann. § 17-5-309(b). Facts and opinions issued by the Board of Judicial Conduct also constitute the "entry of [a] judgment" that is appealable *de novo* "as a matter of right" to the Tennessee Supreme Court. See Tenn. Code Ann. § 17-5-310(a) ("Within thirty (30) days from and after entry of the judgment of the board of judicial conduct, the aggrieved judge may appeal to the supreme court, as a matter of right."); Tenn. Code Ann. § 17-5-310(b)(1) ("The review in the supreme court will be *de novo* on the record made before the board of judicial conduct."). *Cf. In re Bell*, 344 S.W.3d 304 (Tenn. 2011) ("we affirm the Court of the Judiciary's judgment").

In the instant case, because Defendant Benningfield's Public Reprimand was issued "pursuant to [an] agreement with an investigative panel of th[e] Board," the Board's judgment does not appear to have been appealed. See Attachment 1, p. 1. Accordingly, Defendant Benningfield's November 15, 2017 Public Reprimand constitutes a final judgment against him. The factual and legal determinations set forth in the Board's Public Reprimand carry immediate, preclusive effect against him as a result.

III. Preclusive Effect of Defendant Benningfield's Public Reprimand

“Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153 (1979). Critically, collateral estoppel—better termed “issue preclusion”—bars relitigation of both issues of fact and issues of law that were resolved by a prior judgment. *See Bravo-Fernandez v. United States*, 137 S. Ct. 352, 358 (2016) (“issue preclusion ordinarily bars relitigation of an **issue of fact or law** raised and necessarily resolved by a prior judgment.”) (emphasis added). For purposes of the instant motion, the Plaintiffs seek to preclude Defendant Benningfield from contesting any of the factual findings or legal conclusions resolved against him in the Board's November 15, 2017 Public Reprimand.

Collateral estoppel can be used for either offensive or defensive purposes. “[Offensive] collateral estoppel precludes relitigation of an issue decided against a defendant in a previous case.” *Vogt v. Emerson Elec. Co.*, 805 F. Supp. 506, 509 (M.D. Tenn. 1992). To the extent that Tennessee law controls the inquiry,² Tennessee law is in accord with federal law in rejecting mutuality of the parties as a requirement for the offensive use of collateral estoppel, the Tennessee Supreme Court having recently opted to utilize the Second Restatement's approach instead. *See Bowen ex rel. Doe v. Arnold*, 502 S.W.3d 102, 115 (Tenn. 2016) (“when determining whether to apply offensive or defensive collateral estoppel in a particular case, Tennessee courts should be guided by

² In diversity cases—which this is not—“federal common law borrows the state rule of collateral estoppel to determine the preclusive effect of a federal judgment where the court exercised diversity jurisdiction.” *CSX Transportation, Inc. v. Gen. Mills, Inc.*, 846 F.3d 1333, 1340 (11th Cir. 2017). *See also Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001).

the general approach set out in section 29 of the Restatement (Second) of Judgments.”). This approach “generally precludes relitigation of issues decided in prior lawsuits unless the party against whom collateral estoppel is asserted lacked a full and fair opportunity to litigate the issue in the first action or some other circumstance justifies affording that party an opportunity to relitigate the issue.” *Id.* at 116.

Critically, a party’s ability to use collateral estoppel offensively is also unaffected by the type of prior proceeding at issue. Instead, the doctrine applies with full force to a judgment—like the Board’s—issued by a prosecuting authority as well. *See id.* (“[a] judgment in favor of [a] prosecuting authority is preclusive in favor of a third person in a civil action. . . .” *Id.* (quoting Restatement (Second) of Judgments § 85)). Accordingly, in the instant case, Defendant Benningfield’s Public Reprimand carries preclusive effect as to all of the issues of fact and law that the Board previously determined against him. *Id.*

IV. Availability of Collateral Estoppel

To prevail on a claim of collateral estoppel, a party must establish:

- (1) that the issue to be precluded is identical to an issue decided in an earlier proceeding,
- (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding,
- (3) that the judgment in the earlier proceeding has become final,
- (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and
- (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Bowen, 502 S.W.3d at 107 (quoting *Mullins v. State*, 294 S.W.3d 529, 535 (Tenn. 2009)).

Indistinguishable requirements govern the use of offensive collateral estoppel under federal common law. *See In re Dickson*, 655 F.3d 585, 591 (6th Cir. 2011) (“Four requirements must be met before issue preclusion may be applied: (1) the precise issue must have been raised and actually litigated in the prior proceedings; (2) the

determination of the issue must have been necessary to the outcome of the prior proceedings; (3) the prior proceedings must have resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.”) (quotation omitted).

In the instant case, all of these factors are easily met. Here, the Plaintiffs seek to rely on the previously determined issues of law and fact set forth in the Board of Judicial Conduct’s attached November 15, 2017 Public Reprimand against Defendant Benningfield. *See* Attachment 1. Defendant Benningfield’s Public Reprimand also reflects that the issues regarding which the Plaintiffs seek preclusive effect were previously raised and decided on the merits against him. *Id.* Further, the Board’s Public Reprimand was an appealable final judgment, *see* Tenn. Code Ann. § 17-5-310(a), and Defendant Benningfield was indisputably a party to the proceeding. *See* Attachment 1. Finally, there is no indication whatsoever that Defendant Benningfield did not have a full and fair opportunity to contest the legal and factual issues determined against him by the Board. Instead, these issues appear to have been resolved against him by agreement. *See id.* at p. 1. Further, Defendant Benningfield opted to forgo his automatic right to *de novo* review by the Tennessee Supreme Court regarding the Board’s legal and factual determinations against him. *See* Tenn. Code Ann. § 17-5-310(b) (“The review in the supreme court will be *de novo* on the record made before the board of judicial conduct.”).

V. Conclusion

For the foregoing reasons, all of the legal and factual issues resolved against Defendant Benningfield in the Tennessee Board of Judicial Conduct’s November 15, 2017 Public Reprimand should be deemed conclusively determined against him for purposes of the instant action.

Respectfully submitted,

By: /s/Daniel A. Horwitz
Daniel A. Horwitz, BPR #032176
1803 Broadway, Suite #531
Nashville, TN 37203
daniel.a.horwitz@gmail.com
(615) 739-2888

Richard M. Brooks
130 Third Avenue West
Carthage, TN 37030

Pro Bono Counsel for Plaintiffs

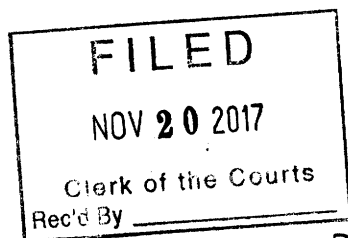
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2018, a copy of the foregoing was sent via CM/ECF to the following parties:

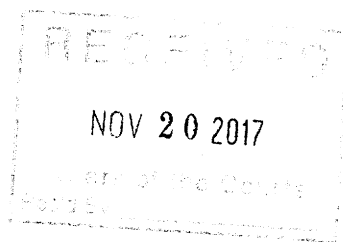
Michael T. Schmitt, BPR #026573
330 Commerce Street, Suite 110
Nashville, TN 37201
mschmitt@ortalekelley.com
615-256-9999

Counsel for Defendants

By: /s Daniel A. Horwitz



ADM 2017 - 00011



THE TENNESSEE BOARD OF JUDICIAL CONDUCT

511 Union Street
Suite 600
Nashville, TN 37219

November 15, 2017

James M. Hivner, Clerk
100 Supreme Court Building
401 Seventh Avenue, North
Nashville, TN 37219-1407
615-253-1470

MEMBERS OF THE TENNESSEE
BOARD OF JUDICIAL CONDUCT

- Chris Craft
Chairperson
- Timothy R. Discenza
Disciplinary Counsel
- Patrick J. McHale
Assistant Disciplinary Counsel
- Kenny Armstrong
- Miles Burdine
- Angelita B. Dalton
- Joe F. Fowlkes
- Tas Gardner
- Dee Gay
- J. Ronald Hickman
- Chris A. Hodges
- Thomas W. Lawless
- Christy R. Little
- Larry J. Logan
- Norma Ogle
- Ward Phillips
- J. Michael Sharp
- Dwight E. Stokes

FOR PUBLIC RELEASE

The Honorable Sam Benningfield
11 Depot Street
Sparta, Tennessee 38583

RE: Board of Judicial Conduct Complaints
File Nos. B17-7052, B17-7055 and B17-7144

Dear Judge Benningfield:

This letter shall serve as a public letter of reprimand pursuant to your agreement with an investigative panel of this Board.

Complaint B17-7052 deals with a case in which, during a hearing regarding a probation violation hearing, you threatened to end the house arrest program which was then a practice in your court, and order persons currently under house arrest to be put in jail, if the defendant's attorney did not withdraw a valid objection that he had made concerning certain records being admitted in the probation violation, which you acknowledged at the time was a valid objection. Because of this statement by you, the defendant insisted that the attorney representing the defendant withdraw the objection, which the attorney did.

Complaints 17-7055 and 17-7144 are based upon two orders that were entered by you. The first order, entered on May 15, 2017, entitled Standing Order, and attached as Exhibit 1 to this letter of reprimand, provided in pertinent part that any White County inmate serving a sentence for the General

Sessions Court who satisfactorily completed a State of Tennessee, Department of Health Neonatal Syndrome Education Program would be given two (2) days credit toward the completion of his/her jail sentence. Any such female inmate who receives the free nexplanon implant or any such male inmate who has the free vasectomy as a result thereof, would be given an additional thirty (30) days credit toward the completion of his/her jail sentence.

An order rescinding this order was entered on July 26, 2017, this order being attached as Exhibit 2 to this to this letter of reprimand. This order provided that the State of Tennessee, Department of Health, has indicated to the court that it will no longer offer free vasectomies to White County inmates serving a sentence for the General Sessions Court, and will no longer provide the free nexplanon implant to White County inmates serving a sentence for the General Sessions Court who receives any credit toward the completion of their jail sentence, and as a result of this, the previous order was rescinded by you. You further provided in this order that inmates who have demonstrated to the Court the desire to improve their situations and take serious steps toward their rehabilitation by having the procedure or agreeing to have the procedure would be awarded the 30 days credit whether they ultimately received the procedure or not.

The Canon or rules violated by the above-described conduct are therefore the following, as they were in effect at the time of the conduct:

CANON 1 — A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Upon receiving notice from Disciplinary Counsel in this matter, you promptly and with candor responded and have fully cooperated with the Board of Judicial Conduct.

You have fully and without hesitation or reservation indicated in your meeting with Disciplinary Counsel, and in your response to the complaint, that you fully recognized your error in making the statements concerning the termination of house arrest if the

defendant in the case did not withdraw a valid and sustainable objection to evidence being introduced.

You have acknowledged that even though you were trying to accomplish a worthy goal in preventing the birth of substance addicted babies by the entry of your order of May 15, 2017, you now realize that this order could unduly coerce inmates into undergoing a surgical procedure which would cause at least a temporary sterilization, and it was therefore improper.

You also indicated that your order of July 26, 2017 was not intended to extend the 30-day jail time credit for anyone who promised to undergo those surgical procedures in the future, but was intended only to insure that inmates who had already complied with your standing order of May 15, 2017 would receive the benefit. You have entered an order clarifying the order of July 26, 2017, indicating that this credit is no longer available to any inmate.

Accordingly, this letter constitutes a Public Reprimand for your actions in the above matter, pursuant to Tenn. Code Ann. § 17-5-301.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Craft", written in a cursive style.

Chris Craft
Board Chair

CC/bep