

**IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE
MIDDLE DISTRICT AT NASHVILLE**

NANDIGAM NEUROLOGY, PLC ET AL,)	
)	
PLAINTIFFS/APPELLANTS.)	
)	
VS.)	CASE # <u>M2020-00553-COA-R3-CV</u>
)	
KELLY BEAVERS,)	WILSON COUNTY
)	CIRCUIT COURT,
DEFENDANT/APPELLEE.)	CASE NO's. 2020-CV-89 &
)	2020-CV-152

ON TRANSFER FROM THE CIRCUIT COURT
FOR WILSON COUNTY, TENNESSEE
JUDGE CLARA BYRD PRESIDING

BRIEF OF APPELLANTS

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ORAL ARGUMENT REQUESTED

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DESIGNATION OF THE RECORD

The record on appeal is composed of two (2) volumes of technical records from the Wilson County Circuit Court and three (3) volumes of transcripts.

For purposes of this brief, references to the technical record shall be designated by “R.” along with the volume number and corresponding page number(s). References to the transcripts shall be designated by “Tr.” along with the volume number, corresponding page, and line number(s).

There are two Plaintiffs/Appellants in this matter—“Nandigam Neurology PLC” and “Kaveer Nandigam, M.D.” References to Plaintiffs/Appellants will be designated as “Plaintiffs” or “Appellants” when referred to in their joint capacity. In the event only one specific Plaintiff/Appellee is being referenced to, such party will be referred to individually as “Plaintiff Nandigam Neurology” or “Appellant Nandigam Neurology” and as “Plaintiff Nandigam, M.D.” or Appellant “Nandigam, M.D.”

References to Defendant/Appellant will be designated as “Defendant” or “Appellee”.

STATEMENT OF THE ISSUES

- I. WHETHER THE COURT OF APPEALS HAS EXCLUSIVE JURISDICTION FOR ANY APPEALS FOR CASES INVOLVING THE TENNESSEE PUBLIC PARTICIPATION ACT.

- II. WHETHER AN APPEAL FROM THE GENERAL SESSIONS COURT IS DE NOVO TO THE CIRCUIT COURT.

STATEMENT OF THE CASE

This appeal involves the application of the recently enacted Tennessee Public Participation Act, T.C.A. §20-17-101 et seq. relating to an appeal from General Sessions Court to the Circuit Court.

In the instant case, Appellant Nandigam Neurology filed suit against Defendant in Wilson County General Sessions Court for defamation and Appellant Nandigam, M.D. filed against Defendant for false light invasion of privacy. Defendant responded in General Sessions Court with a *Petition to Dismiss* under T.C.A. §20-17-104(a) (i.e. the Tennessee Public Participation Act). The Wilson County General Sessions Court granted Defendant's *Petition to Dismiss*. Plaintiffs thereafter timely sought a de novo appeal of the General Sessions Court's decision to the Wilson County Circuit Court pursuant to T.C.A. §27-5-108.

Upon the General Session's appeal to Circuit Court, the Circuit Court determined it did not have jurisdiction to consider Plaintiffs' appeal due to its interpretation of the wording of the Tennessee Public Participation Act T.C.A. §20-17-106 which states "The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals.". Thereafter, the Wilson Circuit Court ordered Plaintiffs' case transferred to the Tennessee Court of Appeals for resolution.

STATEMENT OF FACTS

The complete history of this matter was not fully contained in the record on appeal. Although the record of the prior history between the parties is not necessary in order for this court to make a determination as to the issues at hand, it would assist this court in understanding the overall posture of this case in order to completely comprehend the submitted record on appeal.

Appellant Nandigam Neurology initially initiated a case in Wilson County Circuit Court on November 27, 2019 (R. I. 35-38)¹. In its *Complaint* in Wilson County Circuit Court, Appellant Nandigam Neurology brought claims against Defendant Kelly Beavers and another party, Devin Yount², for defamation and false light relating to false statements those two persons made regarding Plaintiff Nandigam Neurology in a negative Yelp! review in November 2019. Plaintiff Nandigam Neurology thereafter filed a voluntary non-suit of the Circuit Court case as to Kelly Beavers on January 14, 2020 (R. I. 76-77) and refiled the case in Wilson County General Sessions Court on January 21, 2020 (R. I. 1). In the refiled General Sessions court case, Plaintiff Nandigam Neurology brought claim against Defendant for defamation. Furthermore, Plaintiff Kaveer Nandigam, M.D. was added as an additional Plaintiff for his claim against Defendant for false light invasion of privacy.

The initial General Sessions hearing date on the matter was set for February 13, 2020 (R. I. 1). On January 23, 2020, Defendant filed a *Petition to Dismiss* Plaintiffs' General Sessions case pursuant to the Tennessee Public Participation Act, T.C.A. 20-17-104(a) (R. I. 2-79). Defendant set the hearing date on her General

¹ The initial lawsuit of Plaintiff Nandigam Neurology (Wilson County Circuit Court Case #2019-CV-663) is a case that is not on appeal with this court.

² Devin Yount is not a party to this current appeal.

Session's *Petition to Dismiss* for February 6, 2020 (R. I. 28). On January 31, 2020, Plaintiffs filed their Response to Defendant's *Petition to Dismiss* (R. I. 80-83). On February 5, 2020, Defendant filed their rebuttal to Plaintiffs' Response (R. I. 84-90).

At the February 6, 2020 hearing date, General Sessions Judge Barry Tatum deferred making a decision on the *Petition to Dismiss* and directed the parties to appear again in court the following week on February 13, 2020 (Tr. I. P19, Lines 16-23; P23, Line 22 to P24, Line 8). Thereafter, on February 12, 2020, Plaintiffs filed a *Supplemental Answer* to Defendant's *Petition to Dismiss* (R. I. 102-125).

At the February 13, 2020 hearing, Judge Tatum ruled Plaintiffs' General Sessions warrant filed to state a valid claim (Tr. II P8, Lines 4-19) and granted Defendant's *Petition to Dismiss* under the Tennessee Public Participation Act (Tr. II P9, Lines 5-14) with the impression Plaintiffs could appeal the decision to the Wilson County Circuit Court (Tr. II P11, Line 25 to P12, Line15). Thereafter, on February 18, 2020, Plaintiffs timely filed a *Notice of Appeal* of the General Sessions case to the Wilson County Circuit Court (R. I. 126-127).

Upon the General Sessions appeal being sent to the Wilson County Circuit Court, Defendant filed another *Motion and Petition to Dismiss* Plaintiffs' General Sessions appeal arguing, among other things, that the appeal from General Sessions must be made to the Tennessee Court of Appeals rather than to the Circuit Court (R. I. 128 to R. II. 223). At the March 24, 2020 telephonic hearing on Defendant's *Motion and Petition to Dismiss*, the Circuit Court determined T.C.A. §20-17-106 required an appeal concerning the Tennessee Public Participation Act to be under the jurisdiction of the Tennessee Court of Appeals (R. II. 224-225). As such, the Wilson County Circuit Court transferred this case to the Court of Appeals due to the belief it lacked jurisdiction to hear the matter.

LEGAL ARGUMENT

STANDARD OF REVIEW

The standard of review for a bench trial is *de novo* upon the record accompanied by a presumption of correctness as to findings of fact, unless the preponderance of evidence is otherwise. Tenn. R. App. Proc. 13(d). Statutory construction is a question of law reviewable on a *de novo* basis without any presumption of correctness. In re: Estate of Tanner, 295 S.W.3d 610, 613 (Tenn. 2009). Likewise, the trial court's conclusions of law are subject to *de novo* review with no presumption of correctness. Blackburn vs. Blackburn, 270 S.W. 3d 42, 47 (Tenn. 2008); Mitchell vs. Owens, 185 S.W. 3d 837, 839, 2005 Tenn. App. LEXIS 648 at *4 (Tenn. Ct. App. 2005).

I. THE CIRCUIT COURT ERRED IN DETERMINING THE COURT OF APPEALS HAS EXCLUSIVE JURISDICTION FOR ANY APPEALS FOR CASES INVOLVING THE TENNESSEE PUBLIC PARTICIPATION ACT.

The Tennessee Public Participation Act, T.C.A. 20-17-101 et seq (herein referred to as “the Act”), is a recently enacted set of statutes which takes effect for any cases commenced after July 1, 2019. At the time of Plaintiff Nandigam Neurology's initial *Complaint* in Wilson County Circuit Court on November 27, 2019, the Act had only been in effect for a few months. Accordingly, there is currently very sparse Tennessee case law and precedent concerning the Act. The purpose of the Act is to prevent meritless lawsuits from being filed against persons who are engaged in the exercise of free speech.

In the current case, T.C.A. §20-17-106 provides an exception to appealing a decision by the trial court in dismissing or refusing to dismiss a legal action filed pursuant to the Act. To wit, T.C.A. §20-17-106 states:

The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals. The Tennessee Rules of Appellate Procedure applicable to appeals as a matter of right governs such appeals.

[Emphasis added by author]

Although there are no published Tennessee cases involving the nature and scope of the right to immediate appeal under the Act, a similar provision exists under the Tennessee Uniform Arbitration Act, T.C.A. §29-5-319. Under the Tennessee Uniform Arbitration Act, T.C.A. §29-5-319:

An appeal may be taken from:

- 1) *An order denying an application to compel arbitration made under §29-5-303,*
- 2) *An order granting an application to stay arbitration made under §29-5-303(b),*
- 3) *An order confirming or denying confirmation of an award;*
- 4) *An order modifying or correcting an award;*
- 5) *An order vacating an award without directing a re-hearing;*
and
- 6) *A judgment or decree entered pursuant to this part.*

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

The case of Mitchell vs. Owens, 185 S.W. 3d 837; 2005 Tenn. App. LEXIS 648 (Tenn. Ct. App. 2005) discusses the application of a party's election to make an immediate appeal of a trial court decision to the Court of Appeals. In Mitchell, the Plaintiff Mitchell filed an action to compel arbitration. The trial court denied the action to compel arbitration and proceeded to trial and final judgment. On appeal,

the Court of Appeals determined Plaintiff Mitchell had the right to an immediate appeal under the Tennessee Uniform Arbitration Act when the trial court denied his request to demand arbitration. However, since Plaintiff did not pursue his right to appeal within the 30 day timeframe required by Tenn. R. App. Proc. 4(a), he waived his right to an immediate appeal of the denial of his arbitration request and thus could not raise the same demand for arbitration issue after the court's later judgment became final.

In arriving at its decision, the Mitchell court held 1) generally an appeal of right is permitted only from final judgments, however, T.C.A. §29-5-319 provides exceptions to this rule (Mitchell at 839, *4), 2) the appeal granted by §29-5-319 shall be taken in the same manner and to the same extent as from orders or judgments in a civil action (*Id* at 839, *6), and 3) failure to immediately appeal constitutes waiver of that issue if the opposing party was prejudiced (*Id* at 840, *7). The purpose behind the right to immediately appeal a ruling to deny arbitration would be defeated if a party could reserve its right to appeal an interlocutory order denying arbitration, allow the substantive lawsuit to run its course, and then if dissatisfied with the result, seek to enforce the right to arbitration on appeal from the final judgment. *Id* at 840, *9.

In the current case, Appellee Beavers seeks to use the statute allowing immediate appeal of the General Sessions court's decision to the Court of Appeals as a sword rather than a shield in forcing Appellants to pursue this matter in the Court of Appeals rather than allowing Appellants their right to a de novo trial in Circuit Court. The right to appeal to the Court of Appeals under T.C.A. §20-17-106 is elective rather than mandatory. Much like the Plaintiff in Mitchell, if the current Appellants do not desire to appeal to the Court of Appeals under T.C.A. §20-17-106, they simply waive their right to bring the issue to the Court of Appeals after the judgment becomes final.

The appeal from Wilson County General Sessions to Wilson County Circuit was intended by Plaintiffs to be a de novo appeal to Circuit Court pursuant to T.C.A. §27-5-108 (and discussed in further detail, *infra*, in Section II of this brief). In fact, the *Notice of Appeal* filed by Plaintiffs in General Sessions Court explicitly designated its appeal to be to the “Circuit Court of Wilson County” (R. I. 126). Appellee would be strained to point to anything remotely indicating Appellants desired their appeal to be to the Court of Appeals.

The right to an immediate appeal to the Court of Appeals under T.C.A. §20-17-106 is supplemental to the other Tennessee statutes and rules of procedure. It is not the only exclusive and mandatory avenue afforded to the Appellants. Accordingly, under T.C.A. §20-17-106, Appellants should not be forced into pursuing this matter in the Court of Appeals if they do not desire to do so. The Court of Appeals should remand this case to the Wilson County Circuit Court for a de novo trial pursuant to the primary statute governing appeals from General Sessions Court, T.C.A. §27-5-108.

II. AN APPEAL FROM THE GENERAL SESSIONS COURT IS DE NOVO TO THE CIRCUIT COURT.

As an additional corollary to the arguments presented above, under T.C.A. §27-5-108:

(a)

(1) *Any party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with this chapter.*

(2) *In civil cases, if one (1) or more of the parties before the general sessions court, on one (1) or more warrants, perfects an appeal*

of a decision of the general sessions court to the circuit court, as provided in this section, then cross appeals and separate appeals are not required, and upon the filing of a notice of appeal by any party, issues may be brought up for review by any party.

- (b) This provision allowing ten (10) days in which to perfect an appeal shall apply in every county of Tennessee, any provision of any private act to the contrary notwithstanding, it being the legislative intent to establish a uniform period of ten (10) days in which any such appeal may be perfected in any county in Tennessee.*
- (c) Any appeal shall be heard de novo in the circuit court.*
- (d) If no appeal is taken within the time provided, then execution may issue.*

[Emphasis added by author]

It has been well established law that an appeal of any decision of the General Sessions court can be made to Circuit Court if such appeal is perfected within 10 days. T.C.A. §27-5-108(a)(1). The appeal to Circuit Court shall be heard de novo. T.C.A. §27-5-108(c). No civil case appealed from General Sessions to Circuit Court shall be dismissed for any informality whatever but shall be tried on its merits. T.C.A. §16-15-729.

In the instant case, the provision of the Tennessee Public Participation Act allowing an aggrieved party the right to an immediate appeal to the Court of Appeals (T.C.A. §20-17-106) is supplemental to the other statutory laws and rules of procedure governing appeals. The intent of such provision is to grant the right to an interlocutory appeal to the aggrieved party. There is no language contained in the wording of the Act indicating an appeal to the Court of Appeals is the exclusive remedy nor is there any language in the Act indicating T.C.A. §20-17-106 overrides

or limits the provisions of any other statutes relating to a party's rights to request alternative avenues for appeal.

The courts will not construe statutes to change existing law more than a statute itself declares or necessarily implies. Since the General Assembly is presumed to know the law, the courts will consider both the pre-existing and the later statutes relating to the statute being construed. Winter vs. Smith, 914 S.W.2d 527, 538; 1995 Tenn. App. LEXIS 553 at *27 (Tenn. Ct. App. 1995).

Since there is no language contained in T.C.A. §20-17-106 of the Act limiting Appellants' right to make a de novo appeal from General Sessions to the Circuit Court under T.C.A. §27-5-108, the provision of the Act allowing an interlocutory appeal as a matter of right to the Court of Appeals must be read as being supplemental to any other rights to appeal which Appellants may have. Accordingly, this court should remand the case to the Wilson County Circuit Court for resolution.

CONCLUSION

Upon the forgoing arguments, the Wilson County Circuit Court misinterpreted the meaning of the provision under T.C.A. §20-17-106 which grants an aggrieved party the right to an immediate appeal to the Court of Appeals of a court order dismissing or refusing to dismiss an action filed under the Tennessee Public Participation Act. This confusion is layered with the additional complications caused by the newness of the Act as well as the procedural novelties encountered when the case initiates from the General Sessions Court rather than originating from a court of record. The Wilson County Circuit Court deemed it had no jurisdiction to hear the General Sessions appeal and transferred the case to the Court of Appeals according to the Circuit Court's interpretation of T.C.A. §20-17-106.

Appellants made no request nor any indication their appeal from the General Sessions decision was to be to the Court of Appeals. To the contrary, Appellants'

Notice of Appeal filed with the General Sessions Court specifically designated their appeal to be to the “Circuit Court for Wilson County”. Appellants should not be forced to litigate an appeal in a forum they did not desire nor request.

The provision of T.C.A. §20-17-106 allowing an immediate appeal to the Court of Appeals is elective rather than mandatory. If the aggrieved party chooses to forgo their right to an immediate appeal to the Court of Appeals under T.C.A. §20-17-106, the case proceeds as normal and is governed by the other remaining Tennessee statutes and rules of procedure relating to the parties’ rights to appeal their case.

This court should remand the case to the Wilson County Circuit Court for resolution and condone the Circuit Court’s jurisdiction to hear this matter in a de novo trial.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing *Brief* was served electronically via the Court of Appeals e-filing system to:

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CERTIFICATE OF COMPLIANCE

I hereby certify this brief complies with the formatting requirements and word count limits for electronic filing under Supreme Court Rule 46, Section 3.02. The number of words contained in this brief, excluding the Title Page, Table of Contents, Table of Authorities, and Certificate of Compliance is 2,981 words using Microsoft Word, Version 2016.

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