IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION, AT NASHVILLE

JAMES WILLIAM ROSE and JENNIE ADAMS ROSE,	§	
Petitioners-Appellees,	§	
v.	§	Case: M2022-01261-COA-R3-CV
PATRICK M. MALONE,	§	Williamson County Chancery Court Case No.: 19CV-48249
Respondent-Appellant.	§	

APPELLANT PATRICK M. MALONE'S REPLY TO APPELLEES' RESPONSE TO MOTION TO ALTER OR AMEND JUNE 12, 2023 ORDER

I. INTRODUCTION

Comes now Appellant Patrick Malone, through undersigned counsel of record, and respectfully replies to the Appellees' Response to his *Motion to Alter or Amend June 12, 2023 Order*. For the reasons detailed below, the Motion should be granted.

II. ARGUMENT

To ensure that Mr. Malone's statutory right to bail; constitutional right to bail; and constitutional due process right to have his substantive right to bail adjudicated "at a meaningful time[,]" *see Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992), are respected, Mr. Malone has moved this Court to alter or amend its June 12, 2023 Order in one of the following ways:

i. By setting bail itself, in an amount not to exceed $30,000.00, as Mr. Malone initially requested and as it has done in similar cases in the past, *see* Ex. 2 [to Mot. to Alter or Amend] at 2 ("it is ORDERED that upon Appellant furnishing bail in the amount of $5,000 in satisfactory form, Appellant is to be immediately released on bail pending final determination of her appeal now before this Court"); or

ii. By ordering Mr. Malone released on his own recognizance pending the Trial Court's compliance with this Court's remand order.

In response, the Appellees raise two arguments. neither is persuasive.

First, the Appellees make wild false accusations of dishonesty. *See* Resp. at 2. To begin, they assert an "egregious omission" based on asserted failure to disclose that "*seven* of his *convictions* for criminal contempt relate to his *failure to appear* in Court as ordered." *Id.* (emphases the Appellees'). Tenn. R. App. P. 8(a) calls for disclosure of "the crime or crimes charged or of which defendant was convicted," though, not the facts underlying them. *See id.* And the charges are contempt, as Mr. Malone correctly stated. That is what matters here; Mr. Malone disclosed it; and the import of the charges at issue being contempt charges is that he has an absolute right to bail for them. In any event, three of the failure-to-appear-based contempt convictions are currently pending review before this Court (so it knows about them), and the remainder actually are *not* convictions as represented, the Trial Court not yet having entered judgment on them. *See Broadway Motor Co. v. Pub. Fire Ins. Co.*, 12 Tenn. App. 278, 280 (1930) ("A judgment must

be reduced to writing in order to be valid. It is inchoate, and has no force whatever, until it has been reduced to writing and entered on the minutes of the court"). "This rule, requiring a judgment be reduced to writing, survived the adoption of Tennessee Rule of Civil Procedure 58." *See Blackburn v. Blackburn*, 270 S.W.3d 42, 49 (Tenn. 2008).

The Appellees make other scurrilous and wrong allegations of dishonesty, too. For instance, they complain that "Mr. Malone's counsel filed less than two substantive pages of the full transcript from the June 9, 2023, hearing regarding bail[,]" *see* Resp. at 3, apparently ignorant that Tenn. R. App. P. 8(a) asks for "the trial court's written statement of reasons," not the transcript of the hearing that preceded them. *See id.* They also state that "[d]espite representing to this Court that Mr. Malone's trial counsel is unavailable on the soonest available date of June 22, 2023, Mr. Malone's trial counsel subsequently filed a Notice of Hearing setting this matter on the trial court's June 22, 2023, docket." *See id.* at 3. Both things are true. More specifically, given that Mr. Malone, a single father, has now spent a month in jail illicitly, Mr. Malone's trial counsel set a hearing on the first available, unduly-delayed hearing date *despite her own unavailability*.

<u>Second</u>, the Appellees respond substantively in opposition to Mr. Malone's motion to set bail, asserting that they "are requesting a bail amount in excess of $30,000" as well as various bond conditions. *See* Resp. at 5–6. They had a full and fair opportunity to raise such claims and have them heard below, though. Instead, they passed on requesting bond conditions and filed a response below asking that bail either be

denied outright (which is illegal, though they got the Trial Court to give them what they wanted), or else, set bail at "a significant amount" (which $30,000.00 is) that the Appellees did not bother to specify. *See* Resp. at Ex. C. Having had their illegal request adopted by the Trial Court and then promptly reversed due to its categorical illegality, though, the Appellees then cleverly sought to delay a bail decision even further by asking for a new and *additional* hearing (while Mr. Malone remains incarcerated) regarding "the bail amount/some other precautionary measures" that the Appellees initially chose not to raise. *See* Ex. 1 to Mot. to Alter or Amend.

That is not how this works or is supposed to. Because the Appellees have been blessed with a Trial Court that is willing to act illegally and violate Mr. Malone's unambiguous statutory, judicial, and constitutional rights for their benefit, though, they have taken full advantage. This Court should not tolerate the affront to Mr. Malone's rights, which take precedence over the Appellees' bad-faith efforts to ensure he is incarcerated illegally for as long as possible. It should accordingly set bail itself or order Mr. Malone released pending the Trial Court's compliance with its remand order.

III. CONCLUSION

The Appellant's Motion to Alter or Amend should be **GRANTED**.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
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CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of June, 2023, a copy of the foregoing was served via the Court's electronic filing system, via email, and/or via USPS mail, postage prepaid, to the following parties:

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