IN THE COURT OF APPEALS OF TENNESSEE
WESTERN DIVISION AT JACKSON

SOUTHERN AUTO SOURCE FINANCE, LLC

Petitioner/Appellant,

No. W2025-01053-COA-R10-CV
No. CT-5353-24
Circuit Court for Shelby County

vs.

AIRWAYS TOWING & RECOVERY

Respondent-Appellee,

BRIEF FOR APPELLEE

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2. Whether a *pro se* defendant can file an appeal on behalf of a sole proprietorship

IV. STATEMENT OF THE FACTS

On July 25, 2024, Plaintiff, Southern Auto Source Finance, LLC ("Southern Auto") filed a civil warrant based on replevin and other issues in the General Sessions Court of Shelby County against Airways Towing & Recovery. (A.R. Vol., Pp. 4-9). On December 9, 2024 the Shelby County General Sessions Court entered a judgment in favor of the Plaintiff. (A.R. Vol., P. 9). Thereafter, Timothy Gaston, signed a fill in the blank Shelby County General Sessions form requesting an appeal. (A.R. Vol., P. 10). Plaintiff now alleges that Mr. Gaston's action constituted the unauthorized practice of law because Mr. Gaston signed this form on behalf of an LLC. However, the civil warrant filed in this matter named "Airways Towing & Recovery" as the Defendant. (A.R. Vol., Pp. 14-17). Plaintiff failed to name Airways Towing & Recovery, LLC as a defendant in this matter. *Id.* This matter was docketed in the Shelby County General Sessions Court as *Southern Auto Source Finance, LLC v. Airways Towing & Recovery*. *Id.* Additionally, the Shelby County Circuit Court currently lists the parties to this matter as Southern Auto Source Finance, LLC and Airways Towing & Recovery. (*Id.*). At no time has *Airways Towing & Recovery, LLC* been a party to the case at bar.

V. LAW AND ARGUMENT

I. APPELLANT IS INAPPROPRIATELY REQUESTING AN ADVISORY OPINION FROM THIS HONORABLE COURT BECAUSE NO LLC IS A PARTY TO THIS CASE

The question is whether this Court improvidently granted this Rule 10 appeal on conflated misinformation. Regardless, this Honorable Court

requested that the parties brief one simple question, "[w]hether the Circuit Court erred in denying a motion to dismiss an appeal from General Sessions Court, where the notice of appeal was filed by a *pro se* individual on behalf of a Tennessee Limited Liability Corporation." However, the Appellee in this matter asserts that this question is a nullity because at no time did the Plaintiff sue *Airways Towing & Recovery, LLC*. In fact, the Appellant has presented this Court with a straw man argument that has misled this court to grant an emergency appeal.

Wikipedia describes the "Straw Man" fallacy as follows:

> A straw man is a common form of argument and is an informal fallacy based on giving the impression of refuting an opponent's argument, while actually refuting an argument that was not advanced by that opponent. The so-called typical "attacking a straw man" argument creates the illusion of having completely refuted or defeated an opponent's proposition by covertly replacing it with a different proposition (i.e. "stand up a straw man") and then refuting that false argument ("knock down a straw man") instead of the original proposition.
> https://en.wikipedia.org/wiki/Straw_man

The Appellant's argument is a disingenuous "Straw Man" argument, because Appellant never sued *Airways Towing & Recovery, LLC.* The Appellant is arguing as if he sued a corporation, however that is not the case. Simply put, the Appellant is attempting to argue itself into a better position than it would be entitled to unless it engaged the Tennessee Rules of Civil Procedure.

Here, the record is crystal clear that Plaintiff filed a civil warrant naming Airways Towing & Recovery, a sole proprietor as the Defendant. (A.R. Vol., Pp. 4-9). At no time did the Plaintiff sue an LLC. There is no LLC following the name Airways Towing & Recovery in the original civil warrant. (A.R. Vol., Pp. 4-9). Moreover, there is no "LLC" in the Consent Announcement that was filed by the Appellant on behalf of his client. (A.R. Vol., P. 2). Additionally, Plaintiff failed to file any Complaint in the Circuit Court matter modifying the name of the parties. To this day, in the Shelby County Circuit Court, the Defendant is listed as Airways Towing & Recovery.[1] Airways Towing & Recovery, LLC is not a party to this suit. Appellee has consistently argued that the Tennessee Rules of Civil Procedure do not apply in General Sessions' Court because in this matter only the Tennessee Rules of Civil Procedure would allow this Court or the trial court to correct Appellant's suit naming an improper party.

A. Appellant Is Requesting This Court To Inappropriately Issue An Advisory Opinion Based On A Manufactured Set Of Facts

Our Tennessee Supreme Court has made it abundantly clear that there must be a clear and cognizable claim for a Tennessee court to decide, and that our Tennessee courts will not provide advisory opinions. *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203 (Tenn. 2009) However, despite this clear direction, Plaintiff is requesting that this Honorable Court provide an advisory

[1] The current extraordinary appeal before this Honorable Court is docketed as *Southern Auto Source Finance, LLC v. Airways Towing & Recovery, LLC*. Defendant asserts that this does not reflect the original civil warrant. It also does not match the name on the Shelby County Circuit Court docket.

opinion, based on specific facts that do not apply to the case at bar. (A.R. Vol., Pp. 4-9).

Our Supreme Court in *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County, Tennessee, et al* stated in part:

> Tennessee's courts believed that "the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions." *State v. Wilson*, 70 Tenn. 204, 210 (1879); see also *Gilreath v. Gilliland*, 95 Tenn. 383, 385-86, 32 S.W. 250, 251 (1895); *Pritchitt v. Kirkman*, 2 Tenn. Ch. 390,393 (1875). Accordingly, they limited their role to deciding "legal controversies." *White v. Kelton*,144 Tenn. 327, 335, 232 S.W. 668, 670 (1921). A proceeding qualifies as a "legal controversy" when the disputed issue is real and existing, *see State ex rel. Lewis v. State*, 208 Tenn. 534, 536-37,347 S.W.2d 47, 48 (1961), and not theoretical or abstract, *State v. Brown &Williamson Tobacco Corp.*, 18 S.W.3d 186, 192 (Tenn. 2000); *Miller v. Miller*, 149 Tenn. at 474, 261 S.W. at 968; *State ex rel. Lewis v. State*, 208 Tenn. at 538, 347 S.W.2d at 48-49, and when the dispute is between parties with real and adverse interests. *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511,512 (Tenn. 1974).
>
> Justiciability doctrines assist the courts in determining whether a particular case presents a legal controversy. The justiciability doctrines recognized by Tennessee courts mirror the justiciability doctrines employed by the United States Supreme Court and the federal courts. 3 Compare 13 Charles Alan Wright *et al.*,Federal Practice and Procedure § 3529, at 612 (3d ed. 2008) (hereinafter "Federal Practice and Procedure"), with Barbara Kritchevsky, Justiciability in Tennessee, Part One: Principles and Limits, 15 Mem. St. U. L. Rev. 1, 3 n.5 (1984). These doctrines include: (1) the prohibition against advisory opinions, (2) standing,(3) ripeness,(4) mootness, (5) the political question doctrine, and (6) exhaustion of administrative remedies.

Here, in the case at bar, Appellant asserts that a *pro se* litigant inappropriately signed a fill in the blank document on behalf of an LLC. However, a simple review of the record reveals that Appellant never sued an LLC. (A.R. Vol., Pp. 4-9). As a result, Appellant's extraordinary appeal is "theoretical" and "abstract" and not justiciable. As a result, Appellant's extraordinary appeal should be DISMISSED.

B. Appellant's Extraordinary Appeal Should Be Dismissed Because It Does Not Comply with the Tennessee Rules of Court

1. The Tennessee Rules of Civil Procedure provide a remedy that the Appellant failed to use.

In Tennessee courts, the Tennessee Rules of Civil Procedure apply to General Sessions cases appealed to the Circuit Court, *see* Tenn. R. Civ. P. 1, the parties are not required to file formal pleadings. *Vinson v. Mills*, 530 S.W.2d 761, 765 (Tenn. 1975). As authorized by the Tennessee Code Annotated section 16-15-729, *de novo* appeals to circuit courts from general sessions courts entail "an entirely new trial as if no other trial had occurred and as if the case had originated in the circuit court." *Ware v. Meharry Medical College*, 898 S.W.2d 181, 184 (Tenn. 1995) (citing *Teague v. Gooch*, 206 Tenn. 291, 333 S.W.2d 1, 3 (Tenn. 1960); *Odle v. McCormack*, 185 Tenn. 439, 206 S.W.2d 416, 419 (Tenn. 1947); *Braverman v. Roberts Constr. Co.*, 748 S.W.2d 433, 435 (Tenn. Ct. App. 1987); Lawrence A. Pivnick, Tennessee Circuit Court Practice, § 3-10, at 115 (3d ed. 1991)). In *Ware v. Meharry Medical College*, the Tennessee

Supreme Court discussed the procedural transition from general sessions court to circuit court. *Ware v. Meharry Medical College*, 898 S.W.2d at 184. Our Supreme Court noted that, at the time of the decision, ambiguity existed "concerning the procedure to be followed in the circuit court and the scope of the circuit court's jurisdiction when the case arrive[d] from the general sessions court." *Id.* Importantly, our Supreme Court found that "the unmistakable trend [was] to use the circuit court's procedural flexibility to expand the scope of its jurisdiction and to provide complete resolution of all the claims between all the parties." *Id.* Indeed, our Supreme Court affirmed this trend when it explained that "the Tennessee Rules of Civil Procedure apply to general sessions cases appealed to the circuit court" and that parties may "take advantage of the procedural flexibility in the Tennessee Rules of Civil Procedure." *Id.* at 185 (citing Tenn. R. Civ. P. 1). The Tennessee Supreme Court reiterated that the Tennessee Rules of Civil Procedure "govern civil actions appealed to the circuit court" and are given "full effect" upon a *de novo* appeal from general sessions court. *Id.* at 186.

Our Supreme Court has previously explained that the Tennessee Rules of Civil Procedure "are expressly not applicable in the general sessions court, except in those instances where that court exercises equivalent jurisdiction to circuit or chancery by virtue of a special statutory provision." *Vinson v. Mills*, 530 S.W.2d 761, 765 (Tenn. 1975). Appellant had ample opportunity to utilize the Tennessee Rules of Civil Procedure to more specifically state their claims. As noted in the numerous opinions stated above, our Tennessee courts have repeatedly held that upon appeal from a General Sessions Court any party may

utilize the Tennessee Rules of Civil Procedure to correct deficiencies. Due to its failures, Appellant is now asking this Court for an advisory opinion because he never filed a Complaint in Circuit Court pursuant to Tenn. R. Civ. P. 15.

2. The Appellant Failed to Follow the Tennessee Rules of Appellate Procedure.

Our Supreme Court has made it clear that the failure of an appellant to ensure that an adequate transcript or record on appeal is filed in the appellate court constitutes an effective waiver of the appellant's right to appeal. See, e.g., *In re Estate of Tipps*, 907 S.W.2d 400, 402 (Tenn.1995). Similarly, in this matter, Appellant alleges that Timothy Gaston inappropriately filed a Notice of Appeal for an LLC when there is absolutely no record that an LLC was ever sued. Appellant's argument is waived because there is no "adequate transcript or record on appeal" that supports these allegations.

Appellant failed to correctly list the parties to this matter. In addition, Appellant lacked candor with this Court and did not provide facts that accurately reflected the record in this matter. A lawyer's general duty of candor to the courts includes not only the duty to refrain from knowing misrepresentations but also a positive duty to disclose to the court all material facts. *Dunlap v. Bd. of Pro. Resp.*, 595 S.W.3d 593, 613 (Tenn. 2020) (attorney's failure to disclose material information to the court violated duty of candor under RPC 3.3 and was a misrepresentation under RPC 8.4); *Beard v. Bd. of Pro. Resp.*, 288 S.W.3d 838, 855-56 (Tenn. 2009) (attorney's knowing failure to correct an error discovered after the

filing of a proposed order violated RPC 3.3, 3.4, and 8.4). Here, as stated *supra.*, it is undisputed that Appellant did not sue an LLC. (A.R. Vol., Pp. 4-9). Our Tennessee courts have held that appellate courts are "precluded from addressing an issue on appeal when the record fails to include relevant documents." *State v. Zirkle,* 910S.W.2d 874, 884 (Tenn. Ct. Crim. App. 1995).

Appellant requested that this Honorable Court rule on the ability of a *pro se* litigant to sign a notice of appeal for an LLC without providing any actual documentation that Appellant actually sued an LLC. This is factually untrue, inappropriate and misleads the Court. As a result, Appellant's extraordinary appeal should be DISMISSED.

II. IN THE ALTERNATIVE, IN TENNESSEE, A *PRO SE* INDIVIDUAL MAY REPRESENT THEMSELVES AS A SOLE PROPRIETORSHIP.

In the alternative, if this Honorable Court somehow finds that this matter is justiciable, despite the incorrect allegations by Appellant, our Tennessee Supreme Court has made it abundantly clear that it is not the unauthorized practice of law for a person to represent themselves in any Tennessee court. *Beard v. Benson*, 528 SW 3d 487 (Tenn. 2017).

Our courts have repeatedly held that a sole proprietorship is "[a] form of business in which one person owns all assets of a business in contrast to a partnership and corporation." *Hitt v. Hitt*, No. 02A01-9310-CV-00218, 1994 WL 618608, at *2 (Tenn. Ct. App. Nov. 9, 1994)). Also, a "sole proprietorship has no separate legal existence or identity apart from the sole proprietor." *Nazi v. Jerry's Oil Co.*, No. W2013-02638-COA-R3-CV, 2014 WL 3555984, at *11 (Tenn. Ct. App. July 18, 2014) (quoting 18

C.J.S. Corporations § 4); see also *Ferguson v. Jenkins*, 204 S.W.3d 779, 785-86 (Tenn. Ct. App. 2006) (noting that with regard to a sole proprietorship, the owner and the business are "one and the same"); *Koch v. Koch*, 874 S.W.2d 571, 576 (Tenn. Ct. App. 1993) ("[A] sole proprietorship is nothing more than an individual conducting a business for profit, which in turn becomes his income.").

In *Ferguson*, Mr. Ferguson sought insurance coverage for an accident he was involved in while riding his motorcycle. *Ferguson v. Jenkins*, 204 S.W.3d 779, 785-86 (Tenn. Ct. App. 2006). The insurance company refused to cover him stating that policy was only for vehicles within his dealership, Jim's 11-E Auto Sales, a sole proprietorship. *Id.* The insurance company filed for summary judgment stating that a sole proprietorship or an individual is different and it was only required to cover the dealership. *Id.* The trial court disagreed and ruled that Mr. Ferguson was entitled to coverage. The Court of Appeals affirmed the trial court's ruling stating that a sole proprietorship and an individual are one and the same. *Ferguson v. Jenkins*, 204 S.W.3d 779, 785-86 (Tenn. Ct. App. 2006).

Here, similar to *Ferguson*, Appellant has sued *Airways Towing & Recovery,* a sole proprietorship. Appellant's failure to sue a corporation places the parties in the same posture as *Ferguson* because Appellant failed to properly sue any corporation in this matter. Similar to *Ferguson*, Mr. Gaston had every right to represent himself as an individual in this matter. The *Beard* court stated a person who is not an attorney "may conduct and manage *the person's own case* in any court of this state" without violating the prohibition against the unauthorized

practice of law. Tenn. Code Ann. § 23-1-109 (2009). *Beard v. Benson*, 528 SW 3d 487 (Tenn. 2017). As a result, Mr. Gaston was not representing an LLC and he had the right to sign whatever document necessary to effectuate his appeal. Based on this, Appellant's extraordinary appeal should be DENIED.

VI. CONCLUSION

For the foregoing reasons Appellee respectfully request this Court to dismiss this matter.

Respectfully submitted,

s/Darrell J. O'Neal

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Appellee's Brief in the above-caption ed matter was prepared using Microsoft Word 365, printed in 14-point Century proportionally spaced typed font. I further certify that, in conformity with the requirements of Supreme Court Rule 46, 3.02(c), the above brief contains 3,340 words.

s/Darrell J. O'Neal
_____
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CERTIFICATE OF SERVICE

I, Darrell J. O'Neal, hereby certify that a copy of the foregoing document has been sent via email to the following counsel of record:

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On this, the 24th day of October, 2025.

s/Darrell J. O'Neal
_____
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