

IN THE CHANCERY COURT FOR THE THIRTIETH JUDICIAL DISTRICT OF
SHELBY COUNTY TENNESSEE AT MEMPHIS DONNA D. RUSSELL, C & M
TIME: 14:33 BY: AOH

Tanyawa Sallie, LaChundia Richmond, David Richmond,
Kristopher Cole, and Jane Does and John Does,
Individually, and as Next Friends of Minor Children,

Petitioners,

v.

No. CH-14-1044-1

JUVENILE COURT OF MEMPHIS and
SHELBY COUNTY, TENNESSEE,
Hon. Curtis Person, Judge of the Juvenile Court
of Memphis and Shelby County, Tennessee (JCMSC),
Individually and as Administrative Officer of the Court;
Hon. Larry S. Scroggs, Individually and as Administrative
Officer of the JCMSC;
Hon. Herbert Lane, Individually and as Administrative
Officer of the JCMSC;
Hon. Dan Michael, Individually and as Administrative
Officer of the JCMSC;

Defendants.

PETITION FOR DECLARATORY JUDGMENT and INJUNCTIVE RELIEF

Come now Tanyawa Sallie, LaChundia Richmond, David Richmond, Kristopher Cole, and Jane Does and John Does, Petitioners, and file this complaint seeking a declaratory judgment and injunctive relief and for remedy from damages caused by the acts and omissions of the Defendants, to wit; the denial and violations of procedural and substantive due process of law protections guaranteed to the parties and litigants of the Juvenile Court of Memphis and Shelby County by the United States and Tennessee Constitutions and laws enacted thereto. In support hereof, Petitioners present the following statements of fact:

PARTIES as PLAINTIFFS

1. Petitioner Tanyawa Sally is a resident of Memphis and Shelby County Tennessee at all times pertinent and material to this lawsuit. She is a single mother of three minor children. She has been denied the right guaranteed by statute to receive a hearing before the constitutionally elected Judge of the Juvenile Court of Memphis and Shelby County and has standing to bring this petition.
2. David Richmond and LaChundia Richmond are residents of Memphis and Shelby County, Tennessee at all times pertinent and material to this lawsuit. Mr. and Mrs. Richmond are maternal cousins of a minor child removed from his mother and taken into custody by the Tennessee Department of Children's Services who participated with the Department's requirements to be approved, and were approved, as a relative placement for the child. Magistrate Dan Michael, purportedly sitting as a special judge, constructively denied the Richmonds from further consideration by the Department as a placement for the minor child without notice or a hearing on the merits or the law. They have standing to bring this petition.
3. Kristopher Cole is the legal father of a minor child taken into custody by the Tennessee Department of Children's Services after the child's mother was murdered. He was awarded custody of the minor child upon hearing of proof before Magistrate Harold Horne on April 25, 2014. Upon information and belief, within hours of the Magistrate's ruling, Magistrate Dan Michael was contacted by Department of Children's Services attorney Jessica Wood, and acting as self-appointed special judge, Magistrate Michael issued a stay of Magistrate Horne's order without a hearing or communications with the other parties, all of which is in violation of the law. Dan Michael was not properly

authorized or appointed to act as a special judge in this matter and was without jurisdiction to set aside the ruling of a fellow Magistrate. Kristopher Cole was unlawfully denied custody of his child and he has standing to bring this petition.

4. Jane Does and John Does are those parties who come before the Juvenile Court of Memphis and Shelby County and are denied the opportunity to be heard by the constitutionally elected judge or a special judge approved by the parties and/or the Supreme Court of the State of Tennessee in accordance with Tennessee statutes and rule of law. These parties represent a class of persons with standing to bring this petition.

5. Voters represented as John Doe and Jane Doe is a class of persons who have had their vote disenfranchised by the acts and omissions of the defendants. The voters of Memphis and Shelby County Tennessee comprise a class of persons that have standing to bring this petition.

PARTIES AS DEFENDANTS

6. The Juvenile Court of Memphis and Shelby County Tennessee as an entity was established by a Private Act of the 1967 Tennessee legislature.

7. Hon. Curtis Person is the elected judge of the Juvenile Court of Memphis and Shelby County, Tennessee (JCMSC). He was chief referee of the court from 1977 until 1995 and chief legal officer from 1995 until 2006. He served as state representative in the Tennessee legislature from 1966 to 1968 and served in the state senate from 1968 until 2006, when he was elected Judge of Juvenile Court. He sponsored bills and voted on laws that directly affected the operation of the Juvenile Court of Memphis and Shelby County while simultaneously working in both the juvenile court and the state legislature.

8. Larry K. Scroggs has served as a magistrate and is the Chief Administrative Officer and Chief Counsel for JCMSC at all times pertinent to this lawsuit. He served in the State of Tennessee House of Representatives and co-sponsored bills with then Senator Curtis Person that directly affected the operation of the Juvenile Court of Memphis and Shelby County.

9. Herbert Lane is a magistrate and Chief Legal Officer for JCMSC at all times pertinent to this lawsuit. He has presided over cases in the Juvenile Court as a special judge over a period of several years on delinquency cases, termination of parental rights hearings, hearings to transfer children to be tried as adults, and *de novo* hearings on matters involving dependency and neglect, custody, visitation, and child support. It is upon information and belief that he has worked for the Juvenile Court for more than thirty years and that he had limited trial experience as an attorney representing parties in any civil, criminal, juvenile, or federal court actions prior to his appointment as magistrate.

10. Dan Michael is a magistrate for JCMSC at all times pertinent to this lawsuit. It is upon information and belief that he has been a referee or magistrate since being hired at the juvenile court and more recently granted the title of Chief Magistrate. Mr. Michael is not the only magistrate who serves as a special judge on a daily basis, but is the only one that publicly holds himself out as a permanent special judge. He has a special courtroom nameplate reading, "Honorable Dan Michael, Special Judge." See Exhibit A. He also states publicly he was appointed by Judge Person as Chief Magistrate and Special Judge in January of 2013. It is upon information and belief that Mr. Michael has little or no trial

experience as a practicing attorney and has never represented a party as an attorney in any criminal, civil, juvenile, or federal matter in any court.

JURISDICTION

11. The Shelby County Chancery Court has jurisdiction over the parties and the issues in controversy and venue is proper in this Court.

FACTS

12. Parties who come before the Juvenile Court of Memphis and Shelby County have a constitutional and statutory right to have their matters heard by the elected judge.

13. Defendants have violated that right by acting in concert to transfer the duties and responsibilities of the elected judge of the Juvenile Court to magistrates who serve solely at the discretion and pleasure of the elected judge and are wholly dependent upon him for their tenure and salaries.

14. The right of parties to be heard by the elected judge is violated by the administrative policy of the Juvenile Court to have magistrates sit as “special” or “substitute” judges in place of the elected judge on a daily basis.

15. Defendants have acted to contravene and abuse the Tennessee laws and Supreme Court rules pertinent to the appointment and utilization of substitute or special judges by regularly bestowing magistrates with the title of “special” or “presiding” judge.¹

¹ The term of art used in the statutes and utilized by the juvenile court is “special” or “substitute” judge. When observing the dockets published by the clerk’s office for public view, the term “presiding” judge is used when a “substitute” judge is to take the bench. It is upon information and belief that the term “presiding” is used to avoid bringing unwanted attention to the fact that a party’s matter will be heard by a “special” or “substitute” judge, rather than the elected judge.

16. The Juvenile Court magistrates are neither elected by the voters nor appointed by the Tennessee Supreme Court to sit as special judges, nor qualified or authorized to do so by the statutes and rule of law in Tennessee pertinent to special or substitute judges.

17. The Juvenile Court receives its limited authority to act solely from the Tennessee legislature and the Tennessee Supreme Court.

18. Petitioners assert there is no statute or Supreme Court rule that allows the elected judge to abdicate his responsibilities at will and transfer his duties on a daily basis to his magistrates.

19. The court has intentionally and systematically enacted an administrative policy that both distorts and ignores the Tennessee law and Supreme Court Rules that provide remedy for an elected judge to seek a substitute judge when he or she finds it “*necessary* to be absent from holding court.” See Tenn. Code Ann. §§ 16-15-209, 17-2-118, and 17-2-122²; Tenn. Sup. Ct. Rule 11, Section VII.

20. Petitioners assert the policy of having magistrates sit as substitute judges is done as a matter of convenience rather than of necessity, and is in direct contradiction to the statutory mandates as interpreted by Supreme and Appellate court rulings of which the defendants are or should be aware. See *Ferrell v. Cigna Property & Cas. Ins. Co.*, 33 S.W.3d 731 (Tenn. 2000); *Maxwell Medical, Inc. v. Chumley*, 282 S.W.3d 893 (Tenn. Ct. App. 2008).

² Tenn. Code Annotated notes pertinent to §§ 17-2-118, 122 state unequivocally when citing the construction of the statute that “A judge may not use mere convenience as a basis for being absent from holding court; “necessary” as used in T.C.A. §§ 17-2-118 and 17-2-122(b) should be understood in a restrictive sense, i.e., indispensable as opposed to more liberal construction. i.e., convenient.”

21. The abuse and misapplication of the above cited statutes by defendants is an unconstitutional administrative procedure that precludes the substitute or special judges from having subject matter jurisdiction over the parties or the issues in controversy.

22. There is no provision in Tennessee law authorizing standing orders of appointment for a magistrate to sit as a substitute or special judge and any action taken through such standing order, constructive or otherwise, should be set aside for lack of subject matter jurisdiction by the court over the parties and issues in controversy.

23. Magistrate Dan Michael publicly holds himself out as having been appointed as a special judge by Curtis Person in January of 2013. This appointment amounts to a direct standing order in strict violation of the statutes, Supreme Court Rules, and case law pertinent to the appointment of special and substitute judges. Matters heard by Mr. Michael in which he sat as a special judge can be challenged and set aside for lack of subject matter jurisdiction by the court.

24. Petitioners assert that they and others similarly situated that have come before the court in good faith seeking to be heard by the elected judge for the interpretation, protection and enforcement of the rule of law, have suffered a violation of their constitutional and civil rights by defendants who, acting under the pretense of legal authority and color of law, have denied them procedural and substantive due process protections guaranteed by the United States Constitution, including but not limited to the fifth and fourteenth amendments; the Tennessee Constitution, including but not limited to Article 1, Declaration of Rights, Section 7; and the laws of the State of Tennessee pertinent to the appointment and use of special judges, including but not limited to Tenn.

Code Ann. § 16-15-209, 17-2-118, and 17-2-122 and Tennessee Supreme Court Rule 11, Section VII.

25. Petitioners demand injunctive relief pursuant to Rule 65 of the Tennessee Rules of Civil Procedure to (a) enjoin any magistrates of the Juvenile Court of Memphis and Shelby County from hearing any cases as a special judge without first advising parties of their right to be heard by the elected judge or a senior judge duly appointed by the Supreme Court; (b) enjoin any magistrates of the Juvenile Court of Memphis and Shelby County from hearing any cases as a special or substitute judge without stating into the record the reason(s) the elected judge finds it necessary to be absent from holding court and providing parties written copies of Tenn. Code Ann. § 16-15-209, 17-2-118, and 17-2-122 and annotated notes attached thereto, and Tennessee Supreme Court Rule 11, Section VII; (c) enjoin any magistrates from sitting as special judges on matters with which they do not possess substantial experience as a practicing attorney prior to their appointment as a magistrate; (d) require the Juvenile Court of Memphis and Shelby County to comply with the statutory remedies pertinent to substitute judges and available to the Court if the elected judge finds it necessary to be absent from holding court; (e) require the Juvenile Court of Memphis and Shelby County to immediately comply with Tennessee Supreme Court Rule 11, Section VII and request a senior judge to hear the matters before the court that the due process rights of citizens and parties can be protected and upheld.

26. The threat of harm is immediate and irreparable if the Juvenile Court of Memphis and Shelby County is not enjoined from continuing its practice of transferring the responsibility of the elected judge to magistrates, which it does on a daily basis. The

likelihood of prevailing upon hearing the merits of Petitioners' complaint is extremely high. Injunctive relief is demanded and necessary to protect the substantive and procedural due process rights of petitioners to have access to justice and a fair hearing before a qualified and impartial judge as guaranteed by the constitution and laws of the State of Tennessee.

27. Pursuant to Tenn. Code Ann. § 29-14-101, Petitioners seek a declaratory judgment from this court finding that the administrative policy of appointing magistrates to sit as judges on a daily basis by the Juvenile Court of Memphis and Shelby County amounts to a standing order, and is an unconstitutional application of Tenn. Code Ann. § 17-2-118 and 17-2-122. Notice of this petition and the challenge to the constitutionality of Tenn. Code Ann. §§ 17-2-118 and 17-2-122 has been provided to the Attorney General of the State of Tennessee.

28. This is petitioner's first application for injunctive relief. In accordance with Tennessee Rule of Civil Procedure 65.01, Petitioners are seeking relief that may be obtained by an injunction restricting Defendants' actions.

WHEREAS, PREMISIS CONSIDERED, PETITIONERS PRAY that this Honorable Court enter a decree;

A. Enjoining the Juvenile Court of Memphis and Shelby County from continuing the appointment of special judges on a daily basis; and,

B. Enjoining the magistrates of the Juvenile Court of Memphis and Shelby County from hearing any cases as a special judge without first advising parties of their right to be heard by the elected judge or a senior judge duly appointed by the Supreme Court;

C. Enjoining the magistrates of the Juvenile Court of Memphis and Shelby County from hearing any cases as a special or substitute judge without stating into the record the reason(s) the elected judge finds it necessary to be absent from holding court and providing parties written copies of Tenn. Code Ann. § 16-15-209, 17-2-118, and 17-2-122 and annotated notes attached thereto, and Tennessee Supreme Court Rule 11, Section VII;

D. Enjoining the magistrates of the Juvenile Court of Memphis and Shelby County from sitting as special judges on matters with which they do not possess substantial experience as a practicing attorney prior to their appointment as a magistrate;

E. Requiring the Juvenile Court of Memphis and Shelby County to comply with the statutory remedies pertinent to substitute judges and available to the Court if the elected judge finds it necessary to be absent from holding court;

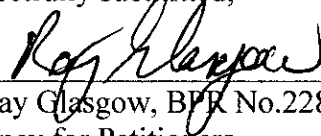
F. Requiring the Juvenile Court of Memphis and Shelby County to immediately comply with Tennessee Supreme Court Rule 11, Section VII and request a senior judge to hear the matters before the court that the due process rights of citizens and parties can be protected and upheld;

G. Declaring Tenn. Code Ann. §§ 17-2-118 and 17-2-122 unconstitutional as applied by the Juvenile Court of Memphis and Shelby County; and,

H. Advising the Tennessee Supreme Court of the action before the Court and requesting the Supreme Court appoint a senior judge to preside over matters in the Juvenile Court of Memphis and Shelby County due to the continued absence or inability of the elected judge to fulfill his official responsibilities and duties; and,

- I. Finding that administrators, individually and in their professional capacities, acting under color of law, have violated the civil and due process rights of Petitioners and others similarly situated; and,
- J. Awarding fees and costs associated with the prosecution of this petition, including reasonable attorneys fees made necessary by the actions of Defendants; and,
- K. Any and all other relief to which this Honorable Court finds Petitioners justly entitled under the circumstances and in the best of interest of the public welfare.

Respectfully submitted,



W. Ray Glasgow, BPR No.22804
Attorney for Petitioners
44 North Second Street, Suite 701
Memphis, TN 38103
901-527-9819 Telephone
901-527-9820 Facsimile
ray@rayglasgowlaw.com

I, Tanyawa Sallie, hereby state under oath that the facts contained in the foregoing are true and correct to the best of my knowledge, information and belief.

Tanyawa Sallie
Tanyawa Sallie

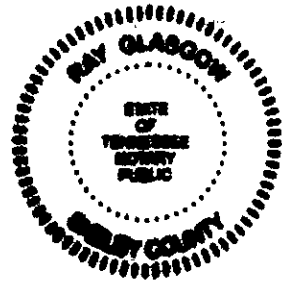
STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, W. Ray Glasgow, a Notary Public of the County and State aforesaid, TANYAWA SALLIE, with whom I am personally acquainted or proven to me on the basis of satisfactory evidence, and who acknowledged execution of the within instrument for the purposes contained therein.

WITNESS my hand, at office, this 30 day of June, 2014.

W. Ray Glasgow
Notary Public

My Commission Expires: 12-15-15



I, Lachundia Richmond, hereby state under oath that the facts contained in the foregoing are true and correct to the best of my knowledge, information and belief.


Lachundia Richmond

STATE OF TENNESSEE

COUNTY OF SHELBY

Personally appeared before me, W. Ray Glasgow, a Notary Public of the County and State aforesaid, LACHUNDIA RICHMOND, with whom I am personally acquainted or proven to me on the basis of satisfactory evidence, and who acknowledged execution of the within instrument for the purposes contained therein.

WITNESS my hand, at office, this 11 day of March 2014.



Notary Public

My Commission Expires:

12-15-15



I, David Richmond, hereby state under oath that the facts contained in the foregoing are true and correct to the best of my knowledge, information and belief.



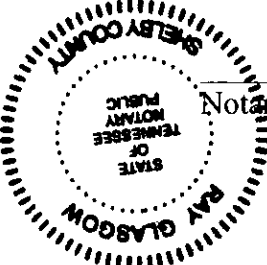
David Richmond

STATE OF TENNESSEE

COUNTY OF SHELBY

Personally appeared before me, Ray Glasgow, a Notary Public of the County and State aforesaid, DAVID RICHMOND, with whom I am personally acquainted or proven to me on the basis of satisfactory evidence, and who acknowledged execution of the within instrument for the purposes contained therein.

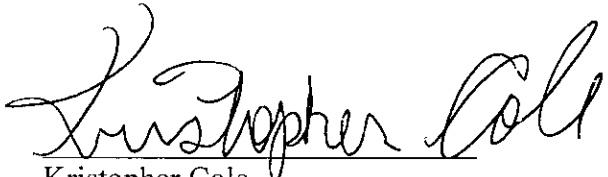
WITNESS my hand, at office, this 30 day of June, 2014.


Ray Glasgow
Notary Public

My Commission Expires:

12-15-15

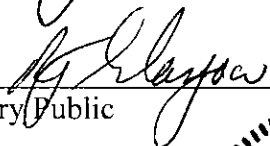
I, Kristopher Cole, hereby state under oath that the facts contained in the foregoing are true and correct to the best of my knowledge, information and belief.


Kristopher Cole

STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, W. Ray Glasgow, a Notary Public of the County and State aforesaid, KRISTOPHER COLE, with whom I am personally acquainted or proven to me on the basis of satisfactory evidence, and who acknowledged execution of the within instrument for the purposes contained therein.

WITNESS my hand, at office, this 19th day of May, 2014.


Notary Public

My Commission Expires: 12-15-15



COURTROOM

3

HONORABLE
DAN MICHAEL
SPECIAL JUDGE



IN THE CHANCERY COURT FOR THE THIRTIETH JUDICIAL DISTRICT OF
SHELBY COUNTY TENNESSEE AT MEMPHIS

Tanyawa Sallie, LaChundia Richmond, David Richmond,
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Hon. Dan Michael, Individually and as Administrative
Officer of the JCMSC;

Defendants.

FIAT

TO THE CLERK OF COURT:

Please set this matter for hearing at 10:00 (A)M/PM on the 16th day of
July, 2014 and provide timely notice in proper form to all parties
of interest.

Walter L. Evans
Chancellor
7/1/14