

FILED

December 3, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE

MINA WOODS and)	
ROBERT WOODS,)	
)	
Plaintiffs/Appellants,)	Davidson Circuit
)	No. 93C-280
VS.)	
)	Appeal No.
WORLD TRUCK TRANSFER, INC.,)	M1997-00068-COA-R3-CV
and EDWARD J. SEIGHAM,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE DAVIDSON COUNTY CIRCUIT COURT
AT NASHVILLE, TENNESSEE

THE HONORABLE BARBARA N. HAYNES, JUDGE

For Plaintiffs/Appellants:

Stanley H. Less
Memphis, Tennessee

For Defendants/Appellees:

John Thomas Feeney
Cynthia DeBula Baines
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Nashville, Tennessee

**AFFIRMED IN PART; VACATED IN PART
AND REMANDED**

WILLIAM C. KOCH, JR., JUDGE

OPINION

This appeal involves a personal injury action that was dismissed because the Clerk of the Circuit Court for Davidson County refused to accept and file a summons that had not been prepared on an original form provided by the clerk. By the time the plaintiff provided another summons acceptable to the clerk, the time for filing the complaint and the summons had elapsed. Accordingly, on motion of one of the defendants, the Circuit Court for Davidson County dismissed the personal injury claim because it was time-barred. We have determined that the clerk's office exceeded its authority when it declined to accept and file the summons and, therefore, that the trial court erred by dismissing the complaint. Accordingly, we vacate the order dismissing the personal injury claims and remand the case for further proceedings.

I.

Mina Woods was traveling on Interstate 65 in Nashville when her automobile was struck by a tractor trailer truck. The force of the collision drove Ms. Woods's automobile into a concrete median. After striking the median, Ms. Woods's automobile ricocheted back into the path of another oncoming tractor trailer truck and then careened over a grassy embankment. Ms. Woods was seriously injured, and her automobile was substantially damaged.

On February 1, 1993, Ms. Woods and her husband filed suit in the Circuit Court for Davidson County against World Truck Transfer, Inc., the owner of the truck that first struck her automobile, and Edward Seigham, the driver of the truck. Ms. Woods had difficulty serving World Truck Transfer and Mr. Seigham because they were Ohio residents.¹ The original process to World Truck Transfer was returned unserved on February 23, 1993, marked "forwarding order expired." Likewise, the original process to Mr. Seigham was returned unserved on March 25, 1993, marked "unclaimed." Alias process issued on Mr. Seigman was also returned unserved in August 1993, marked "moved."

Ms. Woods and her husband undertook to save their personal injury claims from untimeliness by recommencing their action against both World Truck Transfer and Mr. Seigham pursuant to Tenn. R. Civ. P. 3. Accordingly, their lawyer, who practices in Memphis, mailed a new complaint and

summons to the trial court clerk. The clerk received the suit papers on January 27, 1994. While the clerk's office filed the new complaint on January 27, 1994, it declined to accept or file the summonses accompanying the complaint because they were prepared on photocopies of the original printed summons form used by the circuit courts in Davidson County. In a telephone conversation, the chief deputy clerk requested Ms. Woods's lawyer to provide new summonses on original forms and agreed to mail these forms to Memphis. The lawyer prepared new summonses, and they were received by the trial court clerk on February 18, 1994.

As with the original suit, the process in the second case was initially returned unserved. The process issued to Mr. Seigham was returned on March 11, 1994, marked "moved, not forwardable," and the original process to World Truck Transfer was returned marked "forwarding order expired." Stymied by their continuing inability to effect service through the Secretary of State, Ms. Woods and her husband placed alias summonses in the hands of a private process server in Ohio who was eventually able to locate and serve World Truck Transfer on June 7, 1994. All efforts to serve Mr. Seigham proved unsuccessful.

World Truck Transfer promptly moved for a partial summary judgment on the ground that the second complaint was untimely under the statute of limitations in Tenn. Code Ann. § 28-3-104(a)(1) (Supp. 1999). World Truck Transfer argued that Ms. Woods and her husband had not successfully recommenced their original action within one year after the issuance of the original process because the circuit court clerk had not accepted the summonses in their recommenced action until February 18, 1994 – more than one year after the issuance of the original process. In response, Ms. Woods and her husband asserted that the unwillingness of the clerk's office to accept and file the summonses was an "omission" or "clerical mistake" correctable under Tenn. R. Civ. P. 60.01. Accordingly, they moved to "correct the record" to show that they had delivered both their complaint and the summonses to the trial court clerk in a timely manner. The trial court eventually denied Ms. Woods's Tenn. R. Civ. P. 60.01 motion and granted World Truck Transfer's partial summary judgment motion, with regard to the personal injury claims.

While the motions in the second proceeding were pending, Ms. Woods and her husband had pluries process issued against World Truck Transfer in the moribund first suit. Their private process server served World Truck Transfer with this process on August 4, 1994. In the spring of 1995,

World Truck Transfer moved to dismiss the first suit based on the running of the statute of limitations and the lack of service. After the trial court dismissed the first suit on August 29, 1996, Ms. Woods and her husband filed a timely notice of appeal but failed to file an appeal bond. When their lawyer failed to appear at a show cause hearing, the trial court dismissed Ms. Woods's and her husband's appeal from the dismissal of their first complaint for failure to file an appeal bond. The trial court later declined to set aside its dismissal of the first appeal after Ms. Woods belatedly filed an appeal bond. Ms. Woods and her husband appealed from this order.

Ms. Woods and her husband let their second renewed complaint languish while attempting to resurrect their first complaint. In January 1997, the trial court dismissed what was left of the second suit for lack of prosecution. At that point, Ms. Woods and her husband, completely out of court on all their claims in both actions, filed a notice of appeal in the second suit. In the interests of judicial economy, we ordered that the appeals involving the first and second suits be consolidated for disposition.

II.

The Dismissal of the Second Complaint

The primary issue confronting us concerns the legal effect of the trial court clerk's refusal to accept and file the summonses accompanying the second complaint filed by Ms. Woods and her husband. While Ms. Woods and her husband frame the issue with reference to the trial court's denial of their Tenn. R. Civ. P. 60.01 motion, their substantive arguments address the same question. Accordingly, we focus first on the trial court clerk's actions regarding the summonses accompanying the second complaint. We have determined that the trial court clerk erred by declining to accept and file these summonses.

A.

The Effect of the Clerk's Refusal to Accept the Summons

Ms. Woods and her husband filed suit against World Truck Transfer and Mr. Seigham within one year after her cause of action accrued. After they were unable to serve either World Truck Transfer or

Mr. Seigham, they decided to keep their suit alive by recommencing the action within one year from the issuance of the original process. *See* Tenn. R. Civ. P. 3(2). At that time, Tenn. R. Civ. P. 3 provided that “[a]ll civil actions are commenced by filing a complaint and summons with the clerk of the court.” Thus, when Ms. Woods and her husband “recommenced” their action in 1994, they were required to file a complaint and the accompanying summonses within one year from the issuance of the original process.

The Memphis lawyer representing Ms. Woods and her husband mailed the trial court clerk a new complaint and the accompanying summonses well before Tenn. R. Civ. P. 3(2)’s deadline. The summonses were photocopies of the original summons form used by the trial court clerk. The trial court clerk accepted and filed the new complaint but declined to accept and file the summonses because they were photocopies, as opposed to original, summons forms.² By the time the lawyer provided summonses acceptable to the clerk, the time for recommencing the action had lapsed.

As a result of the trial court clerk’s refusal to accept their summonses, Ms. Woods and her husband did not successfully recommence their action because they failed to file a new complaint and summons within one year after the issuance of the original process. Their failure to do so meant that they could not “rely upon the original commencement to toll the running of a statute of limitations.” *See* Tenn. R. Civ. P. 3. Preventing Ms. Woods and her husband from taking advantage of the relation-back feature of Tenn. R. Civ. P. 3 caused their renewed complaint to be filed late. Thus, the correctness of the dismissal of the renewed complaint filed by Ms. Woods and her husband hinges on the correctness of the trial court clerk’s refusal to accept and file the photocopied summonses received by the clerk on January 27, 1994.

B.

Legal Requirements Governing the Form and Content of Summonses

The term “process,” as generally understood in the context of legal proceedings, means the command issued in the state's name to effect the jurisdiction of a court either at the beginning of, during, or at the end of a lawsuit. *See* Sam B. Gilreath, *Caruthers' History of a Lawsuit*, § 29 (6th ed. 1937). In courts of record, the original, or leading, process used in most cases is the “summons.” A

summons is nothing more than a formal written notice to the defendant to appear and to answer the plaintiff's complaint.

When Ms. Woods and her husband filed their second complaint, the legal requirements concerning the content of a summons were set out in the Constitution of Tennessee,³ the statutes,⁴ and the Tennessee Rules of Civil Procedure.⁵ While these provisions dictate the information to be included in a summons and who must sign a summons, they are silent concerning how the required information should be arranged in the summons document itself. Thus, the Advisory Commission Comment to the 1992 amendment to Tenn. R. Civ. P. 3 points out that “there is no officially prescribed form for a summons” and provides a recommended format for a summons in order to achieve state-wide uniformity.

Nothing in the applicable statutes, rules, or constitutional provisions requires that a summons be prepared only on pre-printed forms provided by a clerk's office or that the contents of a summons appear on the front and back of a single sheet of paper, as opposed to two sheets of paper. Clearly, the primary concern should be the content of the summons, not its form or appearance, as long as the form or appearance of the summons does not defeat its purpose or materially interfere with its use. A summons should not be considered invalid as long as the form used is reasonable and contains all the information required by law. *See Hometown Lumber and Hardware, Inc. v. Koelling*, 816 S.W.2d 914, 916 (Mo. 1991); *Young v. Seaway Pipeline, Inc.*, 576 P.2d 1144, 1147 (Okla. 1977).

C.

The Responsibilities of the Trial Court Clerk

Trial court clerks hold a public office established and defined by the Constitution of Tennessee and statutory law. They serve as the principal administrative aides to the trial courts. Trial court clerks and their deputies provide assistance with courtroom administration, records management, collection of fees, maintenance of case files and minutes, and docket scheduling. *See* Frederic S. LeClercq, *The Tennessee Court System*, 8 Mem. St. U.L. Rev. 185, 260-64 (1978). Thus, they are officers of the court, rather than agents of the parties. *See Kennedy v. Kennedy*, 81 Tenn. 24, 25 (1884); *Burford v. Memphis Bulletin Co.*, 56 Tenn. (9 Heisk.) 691, 696 (1872).

A trial court clerk is a ministerial, as opposed to judicial, officer. *See Morris v. Smith*, 30 Tenn. (11 Hum.) 133, 134 (1850). Included among a clerk's ministerial duties are accepting and filing pleadings and documents,⁶ and issuing summonses.⁷ As a ministerial officer, a trial court clerk does not have the authority to reject pleadings, papers, and other documents for lack of conformity with formal requirements. *See McClellon v. Lone Star Gas Co.*, 66 F. 3d 98, 101 (5th Cir. 1995); *Rojas v. Cutsforth*, 79 Cal. Rptr. 2d 292, 293 (Ct. App. 1998); *Ferlita v. State*, 380 So.2d 1118, 1119 (Fla. Dist. Ct. App. 1980); *Dwyer v. Clerk of Dist. Court for Scott County*, 404 N.W.2d at 170; *Director of Fin. v. Harris*, 602 A.2d 191, 194 (Md. Ct. Spec. App. 1992); *Bowman v. Eighth Judicial Dist.*, 728 P.2d 433, 435 (Nev. 1986). This task is more properly suited to judicial officers. *See Price v. Obayashi Haw. Corp.*, 914 P.2d 1364, 1372 (Haw. 1996).

The parties and their lawyers are ultimately responsible for complying with the filing requirements governing papers filed in the trial court. When presented with an apparently non-conforming paper, a trial court clerk should stamp it received or filed and then should notify the filing party of the problem with the paper. *See Bing Constr. Co. v. Nevada Dep't of Taxation*, 817 P.2d 710, 711 (Nev. 1991); *White v. Katz*, 619 A.2d 683, 687 (N.J. Super. App. Div. 1993). The clerk should leave it to others to question the legal sufficiency of any paper tendered for filing. Thus, the parties themselves should be the ones to present the sufficiency of a paper to the court for determination. *See Barker v. Heekin Can Co.*, 804 S.W.2d 442, 443-44 (Tenn. 1991) (noting that the party seeking to challenge the sufficiency of process should present the issue to the court by motion).

D.

World Truck Transfer's Summary Judgment

We now consider whether World Truck Transfer was entitled to a summary judgment in light of our conclusions regarding the form and content of summonses and the responsibilities of trial court clerks for filing documents. Even though the facts are essentially undisputed, we have determined that the trial court erred by denying the Tenn. R. Civ. P. 60.01 motion filed on behalf of Ms. Woods and her husband. Had the trial court corrected the record to show that Ms. Woods and her husband filed a summons with the trial court on January 27, 1994, World Truck Transfer would not have been able

to demonstrate that it was entitled to a judgment as a matter of law on the statute of limitations defense asserted in its summary judgment motion.

Summary judgments are appropriate only when there are no genuine factual disputes with regard to the claim or defense embodied in the summary judgment motion and when the moving party is entitled to a judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). Because summary judgments enjoy no presumption of correctness on appeal, *see City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997), courts reviewing them must make a fresh determination concerning whether the requirements of Tenn. R. Civ. P. 56 have been satisfied. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Mason v. Seaton*, 942 S.W.2d 470, 472 (Tenn. 1997).

The trial court's decision to grant summary judgment in this case was colored by an overly strict interpretation of the Tennessee Rules of Civil Procedure and an overly generous view of the powers of a trial court clerk. The Tennessee Rules of Civil Procedure should be interpreted to prevent parties from having their claims time-barred as a result of actions of the trial court clerk or other officials over whom they have no control. *See Hine v. Commercial Carriers, Inc.*, 802 S.W.2d 218, 220 (Tenn. 1990); *General Elec. Supply Co. v. Arlen Realty & Dev. Corp.*, 546 S.W.2d 210, 214 (Tenn. 1977). When a paper or other document is presented for filing, the trial court clerk should accept the document, rather than refuse to accept and file the document because of perceived shortcomings in its form or content.

This record contains undisputed evidence that the trial court clerk received summonses from Ms. Woods and her husband on January 27, 1994 that contained all the information required to be included on a summons. The trial court clerk erroneously refused to accept the summonses, but the failure to mark the summonses "filed" on January 27, 1994 should not prejudice either Ms. Woods or her husband. A pleading should be deemed filed when it is handed to an employee in the clerk's office with authority to receive documents to be filed. *See Rush v. Rush*, 97 Tenn. 279, 283, 37 S.W. 13, 14 (1896); *Montgomery v. Buck*, 25 Tenn. (6 Hum.) 416, 417 (1846); *Fry v. Cermola*, No. 03A01-9507-JV-00246, 1996 WL 30903, at *3 (Tenn. Ct. App. Jan. 29, 1996) (No Tenn. R. App. P. 11 application filed).

Based on the undisputed evidence that Ms. Woods and her husband submitted summonses to the trial court clerk on January 27, 1994, the trial court clerk should have granted their Tenn. R. App. P. 60.01 motion to correct the record to reflect that they filed a renewed complaint and summonses on January 27, 1994. Once this correction is made, the record will show that Ms. Woods and her husband renewed their complaint within one year after the issuance of the original process in the first lawsuit and, accordingly, that they are entitled to take advantage of the relation-back features in Tenn. R. Civ. P. 3. Because Ms. Woods and her husband are entitled to take advantage of their first complaint's filing date, World Truck Transfer is not entitled to a judgment as a matter of law on its defense that their second complaint was time-barred.

III.

The Fate of the Remaining Claims

We will consider several other issues raised in this appeal in an effort to simplify and expedite the resolution of the remaining issues after this case is remanded to the trial court. These issues involve (A) the status of the first complaint, (B) the status of the claims against Mr. Seigham, and (C) the status of the property damage claims against World Truck Transfer. We have determined that none of these claims have survived the five-year procedural snarl resulting from the unsuccessful efforts to serve World Truck Transfer and Mr. Seigham.

A.

The Status of the First Complaint

Ms. Woods and her husband decided to keep their claims against World Truck Transfer and Mr. Seigham alive by filing a renewed complaint as permitted by Tenn. R. Civ. P. 3. Ordinarily, the maneuvering regarding the first complaint would become secondary once the renewed complaint is filed. In this case, however, for reasons that are not readily apparent, the lawyer representing Ms. Woods and her husband had pluries process issued for the first complaint after successfully obtaining service of the second complaint on World Truck Transfer.

World Truck Transfer moved to dismiss the first complaint based on the statute of limitations

and the lack of service. The “lack of service” argument is somewhat mystifying in light of the evidence that World Truck Transfer had, in fact, been served with both the first complaint and the second complaint by the time it filed the motion to dismiss. The trial court dismissed the first complaint on the ground that the “plaintiffs have failed to demonstrate the requisite diligence to require a tolling of the statute of limitations, and that service of process upon defendants has not been effectuated.” Later, the trial court dismissed Ms. Woods’s and her husband’s appeal from the dismissal of the first complaint because they had not filed a timely appeal bond.

1.

The Trial Court’s Dismissal of the Appeal

Ms. Woods and her husband filed a timely notice of appeal from the trial court’s order dismissing their first complaint. They did not, however, file an appeal bond with their notice of appeal as required by Tenn. R. App. P. 6. In accordance with Rule 37.06 of the Local Rules for the Circuit Court, Chancery Court, Criminal Court and Probate Court of Davidson County, the trial court issued an order directing Ms. Woods and her husband to show cause why their appeal should not be dismissed for failure to file an appeal bond. The trial court ordered the appeal dismissed after neither Ms. Woods, nor her husband, nor their lawyer appeared at the show cause hearing. Even though Ms. Woods and her husband filed an appeal bond four days later, the trial court refused to set aside its order dismissing the appeal.

The trial court was not empowered to dismiss the appeal from its dismissal of the first complaint. A trial court’s jurisdiction over a case is significantly curtailed thirty days after it enters a final order. Its authority over the case, if any, must be defined either by rule or statute. Because no rule or statute empowers a trial court to dismiss an appeal,⁸ only appellate courts can consider and act on motions to dismiss an appeal. Thus, the trial court should not have dismissed the appeal. *See Dunlap v. Dunlap*, 996 S.W.2d 803, 810 (Tenn. Ct. App. 1998); *Muesing v. Ferdowski*, No. 01A01-9005-CV-00156, 1991 WL 20403, at *2 (Tenn. Ct. App. Feb. 21, 1991) (No Tenn. R. App. P. application filed).

The Tennessee Rules of Appellate Procedure should be construed to enable, rather than defeat, the consideration of appeals on their merits. *See* Tenn. R. App. P. 1. Accordingly, we view the

dismissal of an appeal as a harsh sanction that should not be casually imposed. *See Trakas v. Quality Brands, Inc.*, 759 F.2d 185, 186-87 (D.C. Cir. 1985). The appellate rules and the decisions construing them make clear that once an appeal bond has been filed – even if late – the courts should waive the strict application of Tenn. R. App. P. 6. *See* Tenn. R. App. P. 3(e); *Bush v. Bradshaw*, 615 S.W.2d 157, 158 (Tenn. 1981). Thus, had the appeal bond issue been presented to us, we would have accepted the late appeal bond and would have permitted the appeal to proceed on its merits.

2.

The Dismissal of the First Complaint

We now turn to the trial court's dismissal of the first complaint. We have determined that the trial court reached the correct result but for the wrong reason.⁹ The trial court should have dismissed the first complaint simply because the first complaint was no longer a viable pleading after Ms. Woods and her husband preserved their claims against World Truck Transfer and Mr. Seigham by filing a renewed complaint.

Tenn. R. Civ. P. 3, as it read in 1994, provided plaintiffs with two alternatives for keeping their claims alive. They could either continue to obtain new process within six months from the issuance of the previous process or recommence the action within one year from the issuance of the original process by filing a new complaint and summons. It would have been duplicative for a plaintiff to undertake to do both simultaneously.

Ms. Woods and her husband kept the claim against World Truck Transfer alive by timely recommencing their action within one year following the issuance of the original process. It was not necessary for them to also undertake to serve World Truck Transfer with the first complaint as well. In addition to being unnecessary, their effort to serve the first complaint was to no avail because it did not comply with Tenn. R. Civ. P. 3. The pluries process was issued on July 20, 1994; while the previous process regarding the first complaint had been issued seventeen months earlier on February 1, 1993. The July 20, 1994 process had no legal effect because it was issued more than six months after the issuance of the previous process. Accordingly, the trial court should have dismissed the first complaint because it duplicated the second complaint and because the process associated with the first

complaint was issued more than six months after the issuance of the previous process regarding the first complaint.

B.

The Status of the Claims Against Mr. Seigham

Despite filing two complaints and making numerous attempts to serve process, Ms. Woods and her husband have never been able to serve a copy of a complaint on Mr. Seigham. The case had been pending for four years by the time the trial court dismissed both the first and the second complaint. Accordingly, the trial court properly dismissed all claims against Mr. Seigham for lack of service of process.

C.

The Property Damage Claims Against World Truck Transfer

Both complaints filed by Ms. Woods and her husband sought damages for personal injuries and property damage. These claims have different limitations periods. The limitations period for personal injury claims is one year; while the period for property damage claims is three years. *See* Tenn. Code Ann. §§ 28-3-104(a)(1) & -105(1) (Supp. 1999). Thus, the property damage claims in both the complaint filed in February 1993 and the renewed complaint filed in January 1994 were timely in that they were filed within three years after the cause of action accrued.

Ms. Woods and her husband did not pursue the property damage claims in their renewed complaint after the trial court dismissed their personal injury claims in August 1994. That order of dismissal was not a final, appealable judgment because it did not resolve all their claims against World Truck Transfer. For reasons not apparent in the record, Ms. Woods and her husband did not pursue their property damage claims that had not been dismissed. Finally, in January 1997, the trial court dismissed the property damage claims in their renewed complaint for lack of prosecution.

Trial courts must dispose of pending cases and avoid congestion of their dockets in order to be efficient. *See Chrisman v. Curle*, 18 Tenn. (10 Yer.) 488, 488 (1837). Accordingly, trial courts may manage their dockets to move cases along with reasonable dispatch and may, when necessary, dismiss

a complaint involuntarily when the plaintiff has failed to prosecute the case. *See* Tenn. R. Civ. P. 41.02(1). Accordingly, trial courts may dismiss a complaint when a plaintiff fails to have process issued or served on a defendant over a long period of time, *see Ford v. Bartlett*, 62 Tenn. (3 Baxt.) 20, 21-22 (1873), or when a plaintiff fails to move a case toward adjudication when there is no compelling reason for delay. *See Timber Tracts, Inc. v. Fergus Elec. Coop., Inc.*, 753 P.2d 854, 856 (Mont. 1988); *Penn Piping, Inc. v. Insurance Co. of N. Am.*, 603 A.2d 1006, 1009 (Pa. 1992).

We understand that Ms. Woods and her husband were reluctant to pursue only their property damage claim. However, we find no reason in the record why they would have allowed the property damage claim in their renewed complaint to languish from August 1994 until January 1997. Their procedurally incorrect and futile efforts to reinvigorate their first complaint do not adequately account for this delay. After the trial court dismissed the first complaint in August 1996, the lawyer representing Ms. Woods and her husband failed to press forward on their property damage claim. Based upon the absence of a cogent explanation for the five year delay in prosecuting their property damage claim against World Truck Transfer, the trial court properly dismissed the claim for lack of prosecution.

IV.

We affirm the dismissal of the personal injury and property damage claims against Mr. Seigham and the property damage claims against World Truck Transfer. We also vacate the portion of the trial court's orders dismissing Ms. Woods's and her husband's claims against World Truck Transfer stemming from the personal injuries she sustained in the collision and remand the case for further proceedings consistent with this opinion. We tax the costs of this appeal to Mina Woods and Robert Woods and their surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE

CONCUR:

HENRY F. TODD,
PRESIDING JUDGE, MIDDLE SECTION

BEN H. CANTRELL, JUDGE