IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 14, 2025 Session

EVA HAVLICEK ET AL. v. SEVIER COUNTY REGIONAL PLANNING COMMISSION ET AL.

Appeal from the Chancery Court for Sevier County
No. 23-9-216 James H. Ripley, Chancellor

No. E2024-01101-COA-R3-CV

Unhappy with a planning commission's approval of a subdivision concept plan, a not-for-profit corporation and an adjoining property owner petitioned for a writ of certiorari. The court dismissed the case for lack of subject matter jurisdiction. It concluded that the commission's approval of a concept plan was not final for purposes of judicial review. We agree that the court lacked subject matter jurisdiction albeit on a different basis.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, J., joined. D. MICHAEL SWINEY, J., not participating.

Gregory C. Logue and Lindy D. Harris, Knoxville, Tennessee, for the appellants, Eva Havlicek and Save Pittman Center.

Jerry H. McCarter, Gatlinburg, Tennessee, for the appellee, Sevier County Regional Planning Commission.

Benjamin C. Mullins and Richard E. Graves, Knoxville, Tennessee, for the appellee, Running Rock Developments, LLC.

OPINION

I.

With certain exceptions not applicable here, subdivision projects within the Sevier County planning region require approvals at three stages – concept plan, design plan, and final plat. SUBDIV. REGS. SEVIER CNTY. PLAN. REGION art. II.A.1 (Apr. 11, 2023) [hereinafter SUBDIV. REGS.].[1] In mid-2023, Running Rock Developments, LLC submitted a concept plan for a proposed subdivision to the Sevier County Regional Planning Commission. After an initial meeting, the planning director sent Running Rock a follow-up letter stating that "Design Plan approval, by the [Sevier Regional] Planning Department, is required before any construction work begins."

At the Planning Commission's public meeting to consider the concept plan, Eva Havlicek, who owned property adjoining the proposed subdivision, and Save Pittman Center, a Tennessee not-for-profit corporation representing property owners in the community, opposed the plan. But, despite the opposition, the commission approved it unanimously. Two days later, the planning department sent a letter notifying Running Rock of the approval of the concept plan. The letter also cautioned that a design plan "must be submitted for review and approval before construction may begin." The minutes for the July meeting were approved the following month at the next commission meeting.

Ms. Havlicek and Save Pittman Center challenged the commission's approval of the concept plan by filing a "Verified Complaint for Writ of Certiorari" against the Planning Commission and Running Rock. The complaint, which we refer to as a petition, states that it is the first application for the writ and alleges that the Planning Commission's actions were illegal, arbitrary, and capricious. Specifically, the petitioners alleged that the Planning Commission rushed the review process and that the concept plan did not comply in several ways with the "Subdivision Regulations for the Sevier County Planning Region."

After the Planning Commission and Running Rock answered, Ms. Havlicek and Save Pittman Center jointly moved for summary judgment. Running Rock and the Planning Commission moved to strike the motion, arguing that summary judgment is not an appropriate procedure to resolve a common law writ of certiorari proceeding. *See Jeffries v. Tenn. Dep't of Corr.*, 108 S.W.3d 862, 868 (Tenn. Ct. App. 2002) (observing that a motion for summary judgment "introduced a consideration into the decision-making

[1] Only two of the steps "require appearances before the regional planning commission for review and approval." SUBDIV. REGS. art. II.A.1. The design plan is submitted to the staff of the Sevier County Regional Planning Department, although formal review by the Planning Commission is required if "variances to the requirements of [the] regulations are requested by the developer." *Id.* art. II.C.1.

process—the existence of material factual disputes—that is not ordinarily part of a certiorari proceeding"). The chancery court denied the motion to strike, and the Planning Commission and Running Rock jointly responded to the motion for summary judgment and the statement of undisputed material facts.

In their response, the Planning Commission and Running Rock argued that the court lacked subject matter jurisdiction. They contended that Ms. Havlicek and Save Pittman Center did not properly verify their petition within the sixty-day period to seek review. The verification, they complained, was signed by the petitioners' attorney, not by the petitioners. And the attorney did not have the necessary personal knowledge to verify the contents of the petition. Without proper verification, the court did not have subject matter jurisdiction.

At the summary judgment hearing, the court raised an additional issue. It requested supplemental briefing on whether the Planning Commission's decision was final and, thus, subject to judicial review. The Planning Commission and Running Rock agreed that approval of a concept plan was not a final order. Under the subdivision regulations, some matters were left unresolved until the approval of the final plat, and some matters shown in the concept plan could change at the design plan or final plat stages.

The chancery court determined that the approval was not a final order, so it dismissed the case for lack of subject matter jurisdiction. The court reasoned that the concept plan review was only the first step in a three-step process and that concept plans by definition "function[ed] to give certain general information only 'insofar as possible.'"[2] Detail came with the second step, the design plan, which "consist[ed] of 'all detailed engineering design and construction drawings, calculations and related documents necessary to construct the proposed subdivision.'"[3] The court also took into consideration the Planning Commission's "admission . . . that its action [wa]s not final."

II.

A.

Before addressing the issues on appeal, some background on what is subject to judicial review and the procedure for seeking that review is helpful. Regional planning commissions, like the Planning Commission, are authorized by statute and created by the Tennessee Department of Economic and Community Development. Tenn. Code Ann. § 13-3-101 (2019). Under Tennessee Code Annotated § 27-9-101, "[a]nyone who may be

[2] SUBDIV. REGS. art. II.B.2.

[3] SUBDIV. REGS. art. II.C.1.

aggrieved by *any final order or judgment* of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts." *Id.* § 27-9-101 (2017) (emphasis added); *see also Save Rural Franklin v. Williamson Cnty. Gov't*, No. M2014-02568-COA-R3-CV, 2016 WL 4523418, at *3 (Tenn. Ct. App. Aug. 26, 2016) (observing that review of the regional planning commission's decision was sought under Tennessee Code Annotated § 27-9-101). In this context, whether a planning commission's decision is a "final order or judgment" and, thus, subject to judicial review depends on the applicable land-use review process. *Save Rural Franklin*, 2016 WL 4523418, at *3. Final orders or judgments tend to be made after a thorough review by the planning commission; they represent something more than a ministerial act. *See id.* at *6 (noting, under the applicable review process, preliminary plat approval was a final order, in part, because the final plat had to substantially conform to the approved preliminary plat). Another important consideration is whether the decision authorizes a significant or permanent alteration of the land. *Id.*

A party aggrieved by a final order of a planning commission seeks judicial review by filing a petition of certiorari "within sixty (60) days from the entry of the order or judgment." Tenn. Code Ann. § 27-9-102 (2017); *McFarland v. Pemberton*, 530 S.W.3d 76, 111 (Tenn. 2017); *Blair v. Tenn. Bd. of Prob. & Parole*, 246 S.W.3d 38, 40-41 (Tenn. Ct. App. 2007) (holding a request to amend a writ of certiorari must be granted within the 60-day filing period for the petition). If a petition of certiorari is not filed within sixty days, a court lacks subject matter jurisdiction to consider the petition. *Grigsby v. City of Plainview*, 194 S.W.3d 408, 412 (Tenn. Ct. App. 2005); *Thandiwe v. Traughber*, 909 S.W.2d 802, 803-04 (Tenn. Ct. App. 1994). The contents of a petition seeking review of board or commission decision are prescribed. The petition must "stat[e] briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and pray[] for an accordant review." Tenn. Code Ann. § 27-9-102. Because the petition is "a petition of certiorari," it must also meet two more requirements. *Bd. of Pro. Resp. v. Cawood*, 330 S.W.3d 608, 609 (Tenn. 2010). The petition must "be sworn to" and "state that it is the first application for the writ." Tenn. Code Ann. § 27-8-106 (2017); *Cawood*, 330 S.W.3d at 609. The requirement that a petition be sworn is constitutional and jurisdictional; the requirement that a petition recite "it is the first application for the writ" is not and may be waived. *Talley v. Bd. of Pro. Resp.*, 358 S.W.3d 185, 192 (Tenn. 2011).

B.

The issues on appeal focus on subject matter jurisdiction. Ms. Havlicek and Save Pittman Center contend that approval of the concept plan, although step one of the subdivision review process, is a final order for purposes of judicial review under Tennessee Code Annotated § 27-9-101. The Planning Commission and Running Rock counter that the approval was not a "final order or judgment" as required by the statute. They add that

the chancery court also "lack[ed] jurisdiction . . . because the [petition's] allegations were not verified by any plaintiff or upon personal knowledge." Subject matter jurisdiction is a question of law, and on that issue, our standard of review is de novo, without a presumption of correctness. *See Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000).

Rather than wading into the Subdivision Regulations for the Sevier County Planning Region to determine whether approval of a concept plan is a final order or judgment, we start with whether the petition filed by Ms. Havlicek and Save Pittman Center was properly verified. As noted above, petitions must be "sworn to." Tenn. Code Ann. § 27-8-106. The "sworn to" requirement can be traced to the Tennessee Constitution, which is the source of the courts' power to issue writs of certiorari.[4] *Talley*, 358 S.W.3d at 192. Under Article VI, Section 10, the request for the writ must be "supported by oath or affirmation." TENN. CONST. art. VI, § 10. The Tennessee Code mirrors this requirement. *See* Tenn. Code Ann. § 27-8-104(a) (2017) (providing "judges of the inferior courts of law . . . the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, supported by oath or affirmation").

"An 'oath' signifies the undertaking of an obligation to speak the truth." *D.T. McCall & Sons v. Seagraves*, 796 S.W.2d 457, 463 (Tenn. Ct. App. 1990). It is "[a] solemn declaration that one's statement is true." *Oath*, BLACK'S LAW DICTIONARY (12th ed. 2024). An affirmation is "[a] solemn pledge equivalent to an oath but without reference to a supreme being or to swearing." *Affirmation*, BLACK'S LAW DICTIONARY; see *Talley*, 358 S.W.3d at 191 n.6. Unlike an oath, "an affirmation is merely 'affirmed.'" *Affirmation*, BLACK'S LAW DICTIONARY. A verification may serve the same purpose as an oath or affirmation when it represents "[a] formal declaration made in the presence of an authorized officer, such as a notary public, . . . whereby one swears to the truth of the statements in the document." *Verification*, BLACK'S LAW DICTIONARY; *see State v. L.W.*, 350 S.W.3d 911, 914-15 (Tenn. 2011) (describing the statutes governing petitions for writ of certiorari as including "a verification requirement").

The Planning Commission and Running Rock complain, in part, that the verification was insufficient because it was not made on personal knowledge. Here, the notarized verification "affirm[s] that the foregoing petition is true and correct to the best of my knowledge, information, and belief." The Planning Commission and Running Rock point to the statutes governing petitions for writs of certiorari and Tennessee Rule of Evidence 602 as precluding consideration of statements made on information and belief. The meanings of "oath" and "affirmation," in their view, "necessarily require personal knowledge." And they note that a witness would not be able to "testify to a matter unless

[4] A writ of certiorari is an order from a superior court to an inferior tribunal "to send up a record for review." *Utley v. Rose*, 55 S.W.3d 559, 563 (Tenn. Ct. App. 2001).

evidence [wa]s introduced sufficient to support a finding that the witness ha[d] personal knowledge of the matter." TENN. R. EVID. 602.

Decisions of our supreme court from the nineteenth century support their position. In discussing a verification supporting a plea in a criminal case, the court did not endorse a particular form of verification, but it cautioned that that "the truth of the plea must be positive, and leave nothing to be collected by inference." *Armstrong v. State*, 47 S.W. 492, 492 (Tenn. 1898). In an even earlier decision, the supreme court set aside an affidavit supporting a plea in abatement because the affidavit stated that the affiant was "informed and believes that the above plea is true in substance and matter of fact." *Bank of Tenn. v. Jones*, 31 Tenn. (1 Swan) 391, 391 (1852). The statement that the affiant was "informed and believes" did not comply with the statute and was "no[t] proof of the truth of the plea." *Id.* at 392. As the court reasoned, the affiant "may have been so informed, and so believe, and yet the truth may be otherwise." *Id.*

In the context of pleadings, the supreme court has recognized statements "founded on information" are entitled to less weight. *Wilkins v. May*, 40 Tenn. (3 Head) 173, 175 (1859). Allegations made "upon information" and sworn "according to . . . belief" are not the same as allegations upon oath based upon one's own knowledge. *Trabue, Davis & Co. v. Turner*, 57 Tenn. (1 Heisk.) 447, 450 (1873).

Admittedly, in the current century, the supreme court may have a different view. In *Talley v. Board of Professional Responsibility*, the court considered whether it lacked subject matter jurisdiction over a petition for writ of certiorari seeking judicial review of a hearing panel's decision. 358 S.W.3d at 191. There, the petition lacked the recitation required by Tennessee Code Annotated § 27-8-106 "indicating that the petition was his first application for the writ." *Id.* at 190. In distinguishing an earlier supreme court decision concluding that omission of both an oath or affirmation and a recitation deprived the court of subject matter jurisdiction, the court noted that "Mr. Talley's petition . . . contains the required affirmation." *Id.* at 191. A footnote quoted the affirmation as "I, Mark D. Talley, hereby state under oath or by affirmation that the facts in the preceding petition for certiorari are true and correct to the best of my knowledge, information and belief." *Id.* at 191 n.6. The court, without addressing its earlier precedent, then stated that "[t]his verification clearly satisfies [constitutional, statutory, and rule-based oath or affirmation requirements]."[5] *Id.* Yet, it does not appear the language of the affirmation

[5] The statute cited, Tennessee Code Annotated § 27-8-106, does not expressly permit a qualified oath. Other statutes do permit oaths or verifications to be qualified. *See, e.g.,* Tenn. Code Ann. § 2-18-110 (2023) (requiring petitions and answers in gubernatorial election contests to "be sworn to and stated to be true to the best of the person's knowledge, information and belief"); *id.* § 36-1-116 (b)(1) (Supp. 2025) (permitting adoption petitions to be verified "upon information and belief"); *id.* § 36-4-107(a) (2021) (requiring petitions for divorce that must be verified to be verified as "true to the best of the complainant's knowledge and belief for the causes mentioned in the bill").

was challenged by the Board of Professional Responsibility, rather dismissal was sought solely on the lack of the recitation. *See id.* at 186.

This Court, however, has recently addressed a challenge to a verification's language in connection with a petition for writ of certiorari. *Downing v. Knox Cnty. Bd. of Zoning Appeals*, No. E2024-00844-COA-R3-CV, 2025 WL 1862486 (Tenn. Ct. App. July 7), *perm. app. denied*, (Dec. 12, 2025). In that case, like here, counsel for the petitioner signed the verification, stating that "[t]he statements contained in this affidavit are based on my personal knowledge." *Id.* at *2. And, like here, the verification affirmed that the petition was "*true and correct to the best of my knowledge, information, and belief*." *Id.* We observed that "[c]ounsel's belief is not equivalent to the petitioner's knowledge, and his verification does not establish that the petition's allegations are true."[6] *Id.* at *6. Further, although the verification indicated counsel was authorized to sign on the petitioner's behalf, "there [wa]s no indication that counsel ha[d] first-hand knowledge of the complaint's allegations." *Id.* So we concluded that the verification was insufficient to satisfy the "oath or affirmation" requirement. *Id.*

We conclude that the verification here is also insufficient. The verification reads as follows:

> I am . . . counsel for Eva Havlicek in the above matter. I am authorized to execute this affidavit on behalf of Eva Havlicek. I am above the age of majority and competent to verify the foregoing Petition for Writ of Certiorari. The statements contained in this affidavit are based on my personal knowledge. After review of the foregoing, I personally appeared before the undersigned notary public and affirm that the foregoing petition is true and correct to the best of my knowledge, information, and belief.

The qualification "to the best of my knowledge, information, and belief" makes the verification insufficient because it "leav[es] to intendment how much of the statement of facts was based on knowledge and how much on information and belief."[7] *Wrompelmeir*

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[6] Our courts have permitted an attorney to sign an affidavit or oath on behalf of a client when the attorney possesses personal knowledge of the facts. *See, e.g., D.T. McCall & Sons*, 796 S.W.2d at 462 (concluding that the oath requirement in the materialman's lien statute "means that the claimant or the claimant's attorney must state under oath that the allegations in the complaint are true" (footnote omitted) (citing *Smith v. Chris-More, Inc.*, 535 S.W.2d 863, 864 (Tenn. 1976))); *Bank of Tenn.*, 31 Tenn. at 392 (holding that an affidavit supporting a plea of abatement "may be made by the attorney or agent of the defendant, if the facts constituting the foundation of the plea be within his personal knowledge").

[7] Possibly for that reason, one treatise comments that a complaint verified on knowledge, information, and belief that "shows on its face clearly what statements are made on the plaintiff's own knowledge, and what on the information of others, . . . may have more weight . . . than a complaint less

& Co. v. Moses, 62 Tenn. 467, 470-71 (1874); *see also Pickett v. Gore*, 58 S.W. 402, 402 (Tenn. Ch. App. 1900) (treating an answer made upon "knowledge, information, and belief" as made "only upon information and belief"). But it also indicates a lack of personal knowledge on behalf of the swearing party. *Berg v. Berg*, No. M2018-01163-COA-T10B-CV, 2018 WL 3612845, at *3 (Tenn. Ct. App. July 27, 2018). Personal knowledge is a necessary requirement for swearing to or affirming the truth of a statement. *See PMC Squared, LLC v. Gallo*, No. E2023-00524-COA-R3-CV, 2024 WL 3757839, at *4 (Tenn. Ct. App. Aug. 12, 2024) (describing a verified pleading as the functional equivalent of an affidavit, which must be on personal knowledge to constitute admissible evidence). To paraphrase the supreme court, one may be informed something is true or believe that it is true without having personal knowledge that it is true. *See Bank of Tenn.*, 31 Tenn. (1 Swan) at 392.[8]

As noted above, the subject matter jurisdiction of both the trial court and this Court is based on a petition that is timely filed and properly verified upon oath or affirmation. *Blair*, 246 S.W.3d at 40-41. If a petition is not properly verified, the court lacks jurisdiction, and the case must be dismissed. *Waters v. Tenn. Dep't of Corr.*, No. M2022-00316-COA-R3-CV, 2023 WL 3371715, at *5-6 (Tenn. Ct. App. May 11, 2023); *Sepulveda v. Tenn. Bd. of Parole*, 582 S.W.3d 270, 276 (Tenn. Ct. App. 2018); *Hirt v. Metro. Bd. of Zoning Appeals of Metro. Gov't of Nashville*, 542 S.W.3d 524, 527-28 (Tenn. Ct. App. 2016). So we conclude that dismissal was appropriate because the petition filed by Ms. Havlicek and Save Pittman Center was not properly verified. Based on that conclusion, we do not reach the other issues raised by the parties.

III.

Because the verification was insufficient, the petition for a writ of certiorari was not properly filed within the required sixty days, and the chancery court lacked subject matter jurisdiction. We affirm the judgment of dismissal on that basis and remand for any necessary further proceedings.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE

correctly drawn, and sworn to on knowledge, information and belief in an indefinite manner." GIBSON'S SUITS IN CHANCERY § 6.08 (8th ed. 2026).

[8] Even the qualifier "best knowledge" is problematic. *See Seals v. Tri-State Def., Inc.*, No. 02A01-9806-CH-00172, 1999 WL 628074, at *2 (Tenn. Ct. App. Aug. 16, 1999) (commenting that an affidavit made "to my best knowledge and ability" appears not to be made on personal knowledge); *see also* Edward J. Levin, *"Best" Is Not Always Best When It Comes to Knowledge*, 30 PROB. & PROP. 44, 44-45 (January/February 2016).