

FILED

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Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
September 28, 2022 Session

IN RE MARKUS E.

**Appeal by Permission from the Court of Appeals
Circuit Court for Davidson County
No. 16D2220 Philip E. Smith, Judge**

No. M2019-01079-SC-R11-PT

SARAH K. CAMPBELL, J., concurring in part and concurring in the judgment.

I concur in the Court’s judgment reversing the termination of parental rights as to both Mother and Father, and I join nearly all of Justice Kirby’s opinion for the majority. In particular, I agree with the majority’s conclusion that this case presents circumstances that call strongly for application of the prior-construction canon. I would hesitate to apply the canon if only one or two intermediate appellate courts had interpreted the language at issue. Here, however, the Court of Appeals had issued at least eight opinions interpreting “knowing” in a uniform manner before the General Assembly’s reenactment of that language. *See, e.g., Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (finding “the uniformity of . . . judicial precedent construing the [statutory] definition significant”); *Kentucky v. Biden*, 57 F.4th 545, 554 (6th Cir. 2023) (noting that the force of the prior-construction canon is “stronger when the lower courts uniformly adopt a particular interpretation of an oft-invoked statute”); *cf. Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 243 (2011) (declining to apply canon where “widespread disagreement exist[ed] among the lower courts”).

My only point of disagreement with the majority opinion is its suggestion that statutory interpretation requires consideration of a statute’s purposes and objectives separate and apart from its text. The majority adopts its interpretation of the term “knowing” because it aligns not only with the text of Tennessee Code Annotated section 37-1-102(b) (Supp. 2016), but also with its “purposes[] and objectives.”

I do not dispute that statutory interpretation requires consideration of a statute’s purpose. After all, a statute’s purpose is “a vital part of its context,” and context is critical to determining how a reasonable reader would understand a statute’s terms. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012); *see also id.* at 56 (“The subject matter of the document (its purpose, broadly speaking) is the context that helps to give words meaning—that might cause *draft* to mean a bank note rather than

a breeze.”). But when we consider a statute’s purpose, we must be careful to glean that purpose from the text itself, to define it as precisely and concretely as possible, and to use it only as a means of reasonably construing—rather than supplementing or contradicting—the statutory language. *Id.* at 56; *see also Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1792–93 (2022). Adhering to these limits will help ensure that “[t]he text of the statute [remains] of primary importance.” *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019) (quoting *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012)).

The majority asserts that its interpretation of “knowing” aligns with the purposes and objectives of the statute, but it never explains what those purposes and objectives are or how they inform its understanding of the statutory language. While I agree with the majority’s textual analysis, I do not join its reliance on vague and undefined statutory purposes.

SARAH K. CAMPBELL, JUSTICE