

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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LARRY STRICKLAND, ET AL. v. DUSTY RHOADES, ET AL.

**Chancery Court for Williamson County
No. 22CV-51711**

No. M2022-01211-SC-R10-CV

ORDER

On August 1, 2022, Plaintiffs Larry Strickland, as surviving spouse of decedent Naomi Judd, and as executor of the estate of Naomi Judd, and Wynonna Judd, as surviving daughter, filed a verified complaint for declaratory and injunctive relief against Dusty Rhoades, in his official capacity as Sheriff of Williamson County, Tennessee. The complaint sought an order “finding that Plaintiffs have constitutional privacy rights, that the records held by the Defendant pertaining to Ms. Judd’s death are confidential and exempt from disclosure under Tennessee law, and that any release or dissemination of the records by the Defendant[] would violate such rights[.]” On August 12, 2022, Plaintiffs filed a first amended and restated verified petition for declaratory and injunctive relief, which added Ashley Judd, as surviving daughter, as a plaintiff, and added Williamson County, Tennessee, as a defendant (together with Mr. Rhoades, “the County”). Also on August 12, 2022, Plaintiffs filed a motion for a temporary injunction seeking to “prohibit the Defendant from releasing, disseminating, distributing, or making public any records related to the investigation into the death of Naomi Judd, other than those expressly defined as public record by statute.” On August 25, 2022, Plaintiffs filed a second amended and restated verified petition for declaratory and injunctive relief adding Jamie Vaughan, Natalie Neysa Alund, and Dalton Hammonds—journalists who had submitted public records requests to the County related to the death of Ms. Judd—as defendants (together, “the Journalists”). The County and the Journalists both filed responses to the motion for a temporary injunction, and a hearing was held on August 30, 2022. The trial court denied the motion for temporary injunction by written order on August 31, 2022, and also denied Plaintiffs’ request for an interlocutory appeal.

On September 2, 2022, Plaintiffs filed an application for extraordinary appeal in the Court of Appeals, which was denied on September 6, 2022. On September 8, 2022, Plaintiffs filed an application for extraordinary appeal in this Court. On September 9, 2022, this Court ordered Defendants to file an answer to the application, and further ordered the County to refrain from producing any records related to the death of Naomi Judd until this Court enters an order granting or denying the application. The County and the Journalists have filed their answers, and we now address the application for extraordinary appeal.

As a threshold matter, the Journalists argue that Plaintiffs lack standing and, as a result, this Court should dismiss the application and the entire case for lack of subject matter jurisdiction. The Journalists did not challenge Plaintiffs' standing below, but argue before this Court that Plaintiffs' standing is jurisdictional because the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 *et seq.*, ("TPRA") sets out who may file suit. Plaintiffs, however, did not bring an action under the TPRA. They filed their action under the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101 *et seq.*, and the Journalists have not addressed Plaintiffs' standing to bring a complaint for declaratory judgment. Thus, we find the Journalists' argument regarding lack of standing unavailing at this stage of the litigation.

Tennessee Rule of Appellate Procedure 10 provides that "an extraordinary appeal may be sought on application and in the discretion of the appellate court alone of interlocutory orders of a lower court from which an appeal lies to the Supreme Court, Court of Appeals or Court of Criminal Appeals: (1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules." This Court has explained that "[a]n appellate court should grant a Rule 10 extraordinary appeal only when the challenged ruling represents a fundamental illegality, fails to proceed according to the essential requirements of the law, is tantamount to the denial of a party's day in court, is without legal authority, is a plain and palpable abuse of discretion, or results in either party losing a right or interest that may never be recaptured." *Gilbert v. Wessels*, 458 S.W.3d 895, 898 (Tenn. 2014).

Here, Plaintiffs' motion sought a temporary injunction enjoining "the release of Naomi Judd's medical records and/or law enforcement investigative reports, including, but not limited to, videos, audio records, notes, reports, and records." Plaintiffs argued that the production of such records was prohibited by Tennessee Code Annotated section 38-7-110(c) and would violate Plaintiffs' "fundamental and compelling right to privacy emanating from both the Tennessee and United States Constitutions." The County stated in response to Plaintiffs' motion that, as custodian of the records, it believed it was "obligated to produce most of the investigative records" in its possession. The County, however, identified specific records that it believed would not, or may not, be subject to

disclosure under the TPRA. In particular, the County stated that it believed body camera footage taken from inside the home of Naomi Judd is required to be treated as confidential pursuant to Tennessee Code Annotated section 10-7-504(u)(1)(c), which provides that law enforcement body camera footage that shows “[t]he interior of a private residence that is not being investigated as a crime scene,” is not subject to public inspection. The County stated that it responded to Naomi Judd’s home in response to a reported suicide, that the investigation ultimately concluded the manner of death was a suicide, and that suicide is not a crime in Tennessee. As a result, the County stated that “body camera footage taken from inside the residence of Naomi Judd should be maintained as confidential.”

In its August 31, 2022 order, the trial court not only denied Plaintiffs’ motion for temporary injunction, but also made merits determinations regarding the application of the TPRA to specific categories of documents identified by the County. In particular, the trial court determined that law enforcement had conducted a crime scene investigation and, as a result, “the body camera footage from inside the home is not subject to the narrow exception stated by Tenn. Code Ann. § 10-7-504(u)(1)(c).” This conclusion was directly contrary to the determination the County had made as the custodian of the records. In making determinations regarding the application of the TPRA to specific categories of documents, the trial court effectively consolidated the hearing on the temporary injunction with a partial hearing on the merits. Under Tennessee Rule of Civil Procedure 65.04(7), “[b]efore or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.” In *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 755 (Tenn. 2006), this Court explained that before a court may consolidate a trial on the merits with a hearing on a temporary injunction, the court must provide the parties with notice that allows the parties a full opportunity to present their respective cases. In *Clinton Books*, this Court found that the trial court had erred in ruling on the constitutionality of a statute following an injunction hearing without ordering consolidation, observing that the trial court’s order had “effectively resolved the issue presented in the declaratory judgment action.” *Id.* Thus, this Court remanded the case to the trial court for a hearing on the merits. *Id.* at 755-56. Similar to the trial court in *Clinton Books*, the trial court here made determinations regarding the application of the TPRA to specific categories of documents following an injunction hearing without providing the parties a full opportunity to present their respective cases. As a result, we find that the trial court departed from the accepted and usual course of judicial proceedings by issuing a partial merits determination regarding the application of the TPRA within the context of Plaintiffs’ motion for temporary injunction. We further find that review is necessary because, absent review, documents that the County, as the custodian of the records, had determined are not, or may not be, subject to disclosure will be publicly released based on a procedurally improper merits determination.

Accordingly, upon consideration of the application for permission to appeal of Plaintiffs, the answers of Defendants, and the record before us, the application is GRANTED, the August 31, 2022 order of the trial court is VACATED, and the case is REMANDED to the trial court for a properly conducted consolidated hearing pursuant to Tennessee Rule of Civil Procedure 65.04(7).

PER CURIAM