

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STACY JACOBSON,

Petitioner,

v.

TENNESSEE DEPARTMENT OF
CHILDREN'S SERVICES,

Respondent.

No. 22-0662-I

**PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF HER MOTION TO ALTER OR AMEND THE JUDGMENT**

Petitioner Stacy Jacobson submits this Memorandum of Law in support of her Motion to Alter or Amend the Judgment to obtain a ruling on her second claim for relief and, if such relief is granted, reasonable costs, including attorneys' fees for that claim.

INTRODUCTION

The Tennessee Public Records Act ("TPRA") provides for the release of all "public records" unless otherwise provided by state law, Tenn. Code Ann. § 10-7-503(a)(2)(A), and Tenn. Code Ann. § 37-5-107(c)(4)(C) mandates the release of the Department of Children's Services' "full case file" after it closes "an investigation of a child abuse or neglect fatality." This "full case file" "may be redacted to comply with the confidentiality requirements of this section." *Id.* Tenn. Code Ann. § 37-5-107(c)(4)(C) was enacted to comply with the federal Child Abuse Prevention and Treatment Act ("CAPTA"). *See* Tenn. Code Ann. § 37-5-107(c)(4)(A) (noting that the subdivision is intended to "provide for disclosure of information about any case that

results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(B)(x”).

Ms. Jacobson’s Petition asserted two claims pursuant to the TPRA, Tenn. Code Ann. § 1-3-121, and Tenn. Code Ann. § 37-5-107(c)(4)(C) related to the Department’s closed investigation referred to as Case File No. 2020-008. First, Ms. Jacobson sought a ruling by the Court that the redactions in the case file must be “limited to those required by Tenn. Code Ann. § 37-5-107.” (Pet. ¶ 52.) Second, Ms. Jacobson sought a ruling that “the Department improperly denied Ms. Jacobson’s request for records of its prior investigations of the deceased child and family in Case File No. 2020-008, which are part of the child’s ‘full case file.’” (Pet. ¶ 64.)

The Court’s June 23, 2022 Memorandum and Final Order on Show Cause Hearing (the “Order”) decided Ms. Jacobson’s first claim when it found that the Department’s redactions in the publicly available Case File No. 2020-008 were proper, including those based on Tenn. R. Crim. P. 16 (“Rule 16”). (Order at 6-8.)

The Court, however, “d[id] not reach the issue” of “the inclusion of the related records” raised in Petitioner’s second claim. (*Id.* at 7–8). Because the second claim is an essential part of Petitioner’s case—given that records of prior investigations provide critical context about the Department’s role in the life of the deceased child—Petitioner seeks alteration or amendment of the Order to reach this issue. Should the Court find that the records from the Department’s prior investigations are part of the “full case file,” Petitioner also requests that the Court address whether Petitioner is entitled to attorneys’ fees on that claim. Such alteration or

amendment would squarely address Ms. Jacobson’s second claim so that any potential appeal may completely adjudicate the issues raised in her Petition.

LEGAL STANDARD

Pursuant to Tennessee Rule of Civil Procedure 59.04, any party may file and serve a motion to alter or amend a judgment within thirty days of the trial court’s entry of the judgment. Tenn. R. Civ. P. 59.04. “The motion to alter or amend allows the trial court to correct any errors as to the law or facts that may have arisen as a result of the court overlooking or failing to consider matters,” including “to correct a clear error of law or to prevent injustice.” *Vaccarella v. Vaccarella*, 49 S.W.3d 307, 312 (Tenn. Ct. App. 2001) (internal citations and quotation marks omitted).

Motions to alter or amend judgments are proper, and have been granted, in cases involving petitions for access to public records under the TPRA. *See Conley v. Knox Cnty. Sheriff*, 2022 WL 289275, at *2 (Tenn. Ct. App. Feb. 1, 2022) (granting as to fee award); *Jetmore v. City of Memphis*, 2019 WL 4724839, at *5 (Tenn. Ct. App. Sept. 26, 2019) (granting as to deadline for city to produce records); *Jetmore v. Metro. Gov’t of Nashville*, 2017 WL 4570413, at *6 (Tenn. Ct. App. Oct. 12, 2017) (granting as to fee award).

In the alternative, Tenn. R. Civ. P. 54.02(1) provides for revision of an order “at any time before entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.”

ARGUMENT

I. The Order did not address Petitioner’s claim that the Department improperly withheld records of prior investigations.

In its Order, the Court only addressed one of the two challenged withholdings: the Department’s redactions. It did not address the Department’s refusal to include prior investigative records related to the deceased child. (Order 3–8). The Court ultimately agreed with the Department that Rule 16 is a TPRA exception that applies to the mandatory disclosure requirement of Tenn. Code § 37-5-107(c)(4)(C), despite the limiting language in that provision. (*Id.* at 6–8.) The Court did not, however, address whether the Department was permitted to withhold in their entirety the Department’s records of prior investigations related to the deceased child, in light of Tenn. Code Ann. § 37-5-107(c)(4)(C)’s requirement that the Department release the “full case file.”

Other than saying the Court would “not reach” the issue of the records from the related prior investigations, the Order’s discussion of Petitioner’s second claim is very limited. First, the Order states that “Petitioner in this matter is not permitted access to the unredacted Case File No. 2020-008, or the related investigative files, under Rule 16 during the pendency of the criminal proceedings against certain family members of the deceased child, and any collateral challenges to the results of those proceedings.” (*Id.* at 7–8.) This statement appears to allow the Department to redact current and prior investigative files pursuant to Rule 16, but it does not address whether the Department erred by withholding those prior investigative files entirely, as opposed to releasing them in redacted form. Indeed,

the Department never claimed that Rule 16 permitted it to withhold prior investigative files in their entirety; rather, it argued that Rule 16 was a proper basis for redacting the files it did release. (Response to Petition for Access to Public Records (“Dep’t Resp.”) 19–21).

Second, the Court’s Order twice described the Department’s prior investigative records as being “related” to Case File No. 2020-008, evidently based on the Court’s *in camera* review of those records. (Order at 6-7). But the Court did not rule as to whether Petitioner is entitled to receive redacted copies of the prior investigative records.

The Order, therefore, fails to resolve Petitioner’s claim for access to the prior investigative records and, notwithstanding the Court’s acknowledgment that the records are related, thereby permits the Department to continue withholding those records in their entirety. Accordingly, Petitioner seeks a ruling on her second claim that she and the public should not be denied access to critical information about the Department’s involvement with the deceased child throughout his life as required by Tenn. Code Ann. § 37-5-107(c)(4)(C).

II. Upon amendment, the Court should order the Department to release the redacted prior investigation records related to the deceased child because they are part of the “full case file.”

As discussed more fully in Ms. Jacobson’s Memorandum of Law in Support of her Petition for Access to Public Records (“Petitioner’s Memorandum”) (Pet’r’s Mem. at 15-19), and at oral argument, (Hr’g Tr. 48:19-49:24 (attached to the Motion as Exhibit A)), should the Court alter or amend its Order to address the merits of Petitioner’s second claim, the Court should hold that the prior investigative records

form part of the Department's statutorily mandated disclosure of the "full case file" under Tenn. Code Ann. § 37-5-107(c)(4)(C).

The Court's conclusion that the prior investigative files are "related" to Case File No. 2020-008, (Order at 6-7) is significant and supports alteration or amendment of the Order. Indeed, as discussed in Petitioner's Memorandum (Pet'r's Mem. 16), "full" is defined by the American Heritage Dictionary, in pertinent part, as "[c]omplete in every particular." *Full*, Am. Heritage Dictionary Eng. Language (5th ed. 2022), <https://perma.cc/QZX2-S4CD>. Thus, a "full case file" must be a complete file on a deceased child that should include not only the documents from the fatality investigation, but also the Department's related prior investigations related to the child, if there are any.

The Court's conclusion that the prior investigation records are related to Case File No. 2020-008 is also significant in light of the federal government's interpretation of CAPTA. CAPTA sets a floor for what states must do in the event of a child's death. (Hr'g Tr. 43:9-44:17; Notice of Filing, Ex. A, Attach. 1 at 4-5.) CAPTA, at a minimum, requires that states release "information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality." (Notice of Filing, Ex. A, Attach. 1 at 4-5.) Black's Law Dictionary defines "pertinent" as: "Of, relating to, or involving the particular issue at hand; relevant." PERTINENT, Black's Law Dictionary (11th ed. 2019); *see also* Hr'g Tr. 43:20-44-2 (discussing applicable portion of CAPTA and mentioning that Black's Law Dictionary defines "pertinent"

as relevant). Tennessee law provides for the release of the “full case file,” which must be interpreted to include pertinent or relevant records of prior abuse or neglect investigations—anything less would put Tennessee in violation of CAPTA and would be contrary to the plain language meaning of “full case file.” As illustrated in this case, without the “full case file” required under Tennessee law, the Department’s redacted Case File No. 2020-008 contains only the barest of information on the prior, pertinent child abuse or neglect investigations related to the deceased child and fails to satisfy the Department’s obligations under both Tennessee and federal law. (Jacobson Decl. Attach. 2 at 2.)

The Department’s position that “its ‘withholding’ of the reports of the prior investigations was authorized by Tenn. Code Ann. §§ 37-1-409, 37-1-612 and § 10-7-504(l)” because “a report or information obtained from the investigation of a report of abuse or child sexual abuse is confidential,” (Dep’t Resp. at 14.), is erroneous because instances of child fatality are an exception to those provisions. *See* Tenn. Code Ann. § 37-5-107(c)(4)(C). Accordingly, the full case file related to a deceased child is a public record under state law and must be disclosed pursuant to a TPRA request. *Id.*; *see also* Order at 3 (“There is no dispute that the DCS records requested by Petitioner are ‘public records’ as defined by the TPRA,” and must be disclosed “unless otherwise provided by state law.”) (citing Tenn. Code Ann. § 10-7-505(a)–(b); Tenn. Code Ann. § 10-7-503(a)(2)(A)). Further, the cited provisions’ confidentiality and disclosure requirements all align with those of Tenn. Code Ann. § 37-5-107. *See* Tenn. Code Ann. § 10-7-504(l) (providing that documents or

information that directly or indirectly identify a child or family receiving services from the Department or a person who made a report of harm shall be confidential, except as provided by Tenn. Code Ann. § 37-1-409, 37-1-612, 37-5-107, and other provisions); Tenn. Code Ann. § 37-1-409 (preventing disclosure of the names of persons who report harm, alleged victims and perpetrators, persons receiving services from the Department, and the report itself, except to certain authorized individuals and as provided in Tenn. Code Ann. §§ 37-5-107 and 37-1-612); Tenn. Code Ann. § 37-1-612 (stating that, except as provided in Tenn. Code Ann. § 37-5-107 and elsewhere, it is unlawful to disclose information on investigations of reports of harm and child sexual abuse). As these statutory provisions recognize, Tenn. Code Ann. § 37-5-107 not only permits, but *requires*, the Department to release the full case file in the event of a child fatality—including in the tragic instance of this child’s fatality.

Fully disclosing prior investigative records is essential to enabling the public to see the complete picture of the Department’s history with this family and child, and to fully evaluate the Department’s performance. *See, e.g.,* Adria Hyde, *Grandmother, Therapist Say Disabled Child Was at Risk Long Before His Death in Clarksville*, Clarksville Now (July 13, 2022), <https://perma.cc/27K2-RR2M> (describing how therapist to deceased child twice reported her suspicions of abuse to the Department in the years preceding his death); Anita Wadhvani, *DCS Investigated 186 Child Deaths Last Year; Most Children Were Known to the Agency*, Tennessean (May 5, 2019), <https://bit.ly/3LKxxtM> (discussing how, in the case of

one deceased child, “DCS responded at least 15 times to allegations of child abuse or neglect involving the family during a 14-year period prior to the child’s death”).

Without access to the prior investigations, the public is left to guess what the Department did or did not do to protect the deceased child and his siblings prior to his death.

Withholding records of the Department’s prior investigations related to the deceased child violates the TPRA and the mandatory disclosure requirements in Tenn. Code Ann. § 37-5-107(c)(4)(C). This improper withholding leaves the public, including members of the press like Ms. Jacobson, in the dark, deprived of critical context regarding the child’s history with the Department and his later death.

Accordingly, the Order should be altered or amended to require the Department to release to Ms. Jacobson and the public the redacted records of its prior investigations of the deceased child in Case File No. 2020-008 because only in so doing will the Department comply with its statutory obligation to disclose its “full case file” on the deceased child.

III. Should the Order be altered or amended to require disclosure of the records from prior investigations related to the deceased child, the Order should also be altered or amended to find that the withholding of these records was knowing and willful.

Should the Court alter and amend the Order to hold that the records from the Department’s prior investigations must be disclosed in redacted form, Petitioner also respectfully requests that the Order be altered or amended to find that the Department’s withholding was knowing and willful and that Petitioner is entitled to

an award of reasonable attorneys' fees and costs for her second claim pursuant to Tenn. Code Ann. § 10-7-505(g).

As discussed in Petitioner's Memorandum, "[t]he Court of Appeals 'stressed that willfulness should be measured 'in terms of relative worth of the legal justification cited by [an agency] to refuse access to records.'" (Pet'r's Mem. 19-20) (quoting *Clarke v. City of Memphis*, 473 S.W.3d 285, 290 (Tenn. Ct. App. 2015)). The Department's argument as to Petitioner's second claim is contrary to the plain language of Tenn. Code Ann. § 37-5-107(c)(4)(C), and contrary to the guidance provided by the federal government as to how CAPTA's required disclosure provision should be interpreted. As such, the Court should exercise its discretion and award reasonable costs, including reasonable attorneys' fees, to Petitioner.

CONCLUSION

Petitioner respectfully requests that the Court alter or amend its Order to require the Department to immediately release redacted records of its four prior investigations related to Case File No. 2020-008, and to award reasonable attorneys' fees and costs for Petitioner's second claim for such access.

Respectfully submitted,

s/ Paul R. McAdoo
Paul R. McAdoo (BPR No. 034066)
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
6688 Nolensville Rd., Suite 108-20
Brentwood, TN 37027
Phone: 615.823.3633

Facsimile: 202.795.9310
pmcadoo@rcfp.org

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that on July 22, 2022, a true and correct copy of the foregoing was served by email, as agreed by the parties:

Janet M. Kleinfelter, BPR No. 13889
P.O. Box 20207
Nashville, TN 37202
Tel: (615) 741-7403
Janet.kleinfelter@ag.tn.gov

s/ Paul R. McAdoo

Counsel for Petitioner