

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 REPLY IN SUPPORT OF
MOTION TO ALTER OR AMEND THE JUDGMENT**

Petitioner Stacy Jacobson submits this Reply in support of her Motion to Alter or Amend the Judgment.

ARGUMENT

I. Petitioner's Motion to Alter or Amend is procedurally proper.

The Department suggests in its opposition that Petitioner's Motion to Alter or Amend the Judgment is procedurally improper. (Resp. to Mot. at 3.) The Department is incorrect. The Motion is proper under both Tenn. R. Civ. P. 59.04 and Tenn. R. Civ. P. 54.02.

As explained in Petitioner's Memorandum in Support of her Motion to Alter or Amend, "[t]he 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." (Mem. of Law in Supp. of Mot. at 3 (quoting *Vaccarella v. Vacarella*, 49 S.W.3d 307, 312 (Tenn. Ct. App. 2001) (internal citations and

quotation marks omitted)); *see also* 2 Lawrence Pivnick, *Tennessee Circuit Court Practice* § 28.4 (Dec. 2021 Update) (“The motion to alter or amend allows the court to correct any errors as to the law or the facts or both *that may have arisen because the court overlooked or has failed to consider certain matters.*” (emphasis added and citations omitted)). Consistent with this precedent, Petitioner seeks to have the Court address her second claim for relief, which the Court’s order said it did not reach and thus did not consider. (Order at 7-8 (“The Court *does not reach the issue of the scope of the information that may otherwise by subject to disclosure under the TPRA, the inclusion of the related records. . . .*”) (emphasis added).) Petitioner’s motion thus does not raise new arguments and does not seek a second bite at the apple.

Moreover, even if Tenn. R. Civ. P. 59.04 is somehow the wrong rule under which to bring the Motion—and it is not—Petitioner’s Motion may also be considered pursuant to Tenn. R. Civ. P. 54.02. (Mot. at 1; Mem. of Law in Support of Mot. at 3.) Tenn. R. Civ. P. 54.02 provides, among other things, that “any order . . . that adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims . . . , and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties,” unless the Court specifically directs “the entry of a final judgment as to one or more but fewer than all of the claims . . . upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Here, the Court made no such express

determination for entry of a final judgment without addressing all claims.

Accordingly, because the Court did not adjudicate all of Petitioner's claims, revision of the Order pursuant to Tenn. R. Civ. P. 54.02 is likewise proper.

II. The Department's arguments against the Motion to Alter or Amend are unavailing.

The question Petitioner seeks to have the Court decide, which was not addressed in the Court's Order, is whether the Department's "records from its prior investigations involving the deceased child in Case File No. 2020-008 are part of the full case file and must be disclosed, with redactions, pursuant to both the Tennessee Public Records Act and Tenn. Code Ann. § 37-5-107(c)(4)(C)." (Mot. at 1.)

The Department appears to agree that under federal law the Department must, at a minimum, 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; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality." (Resp. at 7 (quoting Child Welfare Policy Manual, Section 2.1A.4, Q/A #8) (emphasis removed).) However, the Department claims that "the information contained in these prior case files is not pertinent to the child abuse or neglect that led to the decedent's death [in this case], as is apparent from the *in camera* inspection." (*Id.* at 8.)

While Petitioner is not privy to the records from the Department's prior investigations related to the deceased child, the Department's claim does not seem

to take into account two key factors: the breadth of what is covered by the word “pertinent” and the strong presumption in favor of access in public records cases.

As discussed at oral argument and in Petitioner’s Motion, “pertinent” means “Of, relating to, or involving the particular issue at hand; relevant.” (Mem. of Law in Supp. of Mot. at 6-7 (discussing Black’s Law definition and citing discussion at hearing on the topic).) “Relevant” is defined by Black’s Law Dictionary as “[c]onnected in some way; having relationship to or with something else.”

RELEVANT, Black’s Law Dictionary (11th ed. 2019). It is hard to imagine how four prior investigations by the Department related to the same child and family over a nine-year period are not “connected in some way” to the deceased child. The Department’s own report that lists its prior history with the deceased and his family is, by itself, an admission of a connection between the death investigation and the prior contacts with the Department. (Mem. of Law in Supp. of Pet. at 17 (showing the Department’s history with the deceased child and his family with four entries starting in 2006 and ending in 2015) .

This lenient standard of pertinence or relevance is the floor of what the Department must do under federal law, and it tilts even further in Petitioner’s favor when the standard for interpretation in public records cases is applied. As discussed in more detail in Ms. Jacobson’s Memorandum of Law in Support of her Petition, the General Assembly has instructed courts that the TPRA “shall be broadly construed so as to give the fullest possible public access to public records.” (Mem. of Law in Support of Pet. at 5-6 (quoting Tenn. Code Ann. § 10-7-505(d)).) In

other words, the tie goes to the requester on close calls and here, that would further counsel in favor of a finding that the records from the Department's prior contacts with the deceased child and his family should be included in the "full case file" and be redacted in the same manner as those which the Department has already released.

It is also worth noting that Tennessee requires more than the minimum necessary under federal law. The Child Welfare Policy Manual explains that "the State . . . can release the full investigation," Section 2.1A.4, Q/A #5, and that is what Tenn. Code Ann. § 37-5-107(c)(4)(C) calls for when it requires that the "full case file" must be released after the completion of a child death investigation. A complete file is what is necessary under Tennessee law, and a deceased child's file and death investigation would not be complete without the full context of the Department's contacts and interactions with him and his family.

The Department's other arguments are also unpersuasive. How the Department assigns separate Case ID numbers to its files is immaterial to whether such files are related and whether, by law, they should be included in the "full case file." Likewise, the Department's historical interpretation regarding what is a "full case file" is due no deference by this Court in deciding whether the prior records are part of the "full case file."

Finally, the Department's arguments that the records of prior contact with the Department must be withheld pursuant to Tenn. Code Ann. §§ 37-1-409(b), 37-1-612(a) and (b) and § 10-7-504(l) are also flawed. Tenn. Code Ann. §§ 37-1-612(b)

and 10-7-504(l) specifically exclude disclosures required under Tenn. Code Ann. § 37-5-107 from their dictates. Tenn. Code Ann. § 37-1-612(a) permits disclosures authorized by “this part” of the code, which includes Tenn. Code Ann. § 37-1-612(b). And, to the extent that Tenn. Code Ann. § 37-1-612(a) might be in conflict with Tenn. Code Ann. § 37-5-107(c)(4)(C), the latter would control as the more specific provision. *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (“Where a conflict is presented between two statutes, a more specific statutory provision takes precedence over a more general provision.”) (citation omitted). Tenn. Code Ann. § 37-1-409(b) does not apply because it is limited to documents “acquired in the course of the performance of official duties.” Petitioner has no official duties with the State of Tennessee. In addition, none of the cases cited by the Department in support of these arguments deal with the required disclosures necessary under Tenn. Code Ann. § 37-5-107(c)(4)(C) when a child dies.

CONCLUSION

For these reasons and those discussed in the Motion to Alter or Amend and its supporting Memorandum of Law, Petitioner respectfully requests that her Motion be granted and that the Court issue an order finding that the records from the Department’s prior contacts with the deceased child and his family are part of the full case file and thus must be released with the same type of redactions as the file that has already been publicly released and granting attorneys’ fees for her second claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 24, 2022, a true and correct copy of the foregoing was served by email, as agreed by the parties:

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