COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

JOHN ANTHONY GENTRY,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**No. M2022-00654-COA-R3-CV**
	)	
SPEAKER OF THE HOUSE CAMERON SEXTON,	)	**Chancery No. 21-1265-IV**
	)	
	)	
Defendant-Appellee.	)	

ON APPEAL FROM THE JUDGMENT OF THE DAVIDSON COUNTY CHANCERY COURT

BRIEF OF DEFENDANT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether the trial court abused its discretion in denying Plaintiff's Petition for Writ of Mandamus. (Petitioner's Issues 1 and 2.)

STATEMENT OF THE CASE AND RELEVANT FACTS

This case involves the second petition for writ of mandamus filed by Plaintiff, John Anthony Gentry, a citizen and resident of Goodlettsville, Tennessee (TR Vol. I at 6), against the Speaker of the Tennessee House of Representatives—both petitions sought to enforce Petitioner's purported rights under art. I, § 23, of the Tennessee Constitution.

Plaintiff filed his first mandamus action in May 2019 against then-current-but now-former Speaker of the House Glen Casada, and others;[1] it sought an order requiring the House clerk to "properly announce" his petition of remonstrance and requiring the House of Representatives "to hear and decide" the petition. The trial court denied the petition, and this Court affirmed. *See Gentry v. Former Speaker of the House Glen Casada,* No. M2019-02230-COA-R3-CV, 2020 WL 5587720, at *1 (Tenn. Ct. App. Sept. 17, 2020) ("*Gentry I*"), *perm. app. denied* (Tenn. Jan. 13, 2021), *cert. denied*, 141 S. Ct. 2804 (June 21, 2021). This Court found that Plaintiff did not have "a clearly established right to have his petition heard or considered by either house of the General Assembly" and that "the General Assembly had no duty to read at the table or to hear and decide [Plaintiff's] petition of remonstrance." *Id.* at *5.

While Plaintiff's first mandamus action was still on appeal, he submitted a copy of his "Application by Address: Restoration

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[1] **Plaintiff subsequently filed an amended petition adding Speaker Cameron Sexton as a defendant. (TR Vol. II at 243-256.)**

of Right to Apply for Redress of Grievance or Other Proper Purpose by Address or Remonstrance" to Representative Johnny Garrett, who filed it with Chief Clerk of the House, and Plaintiff's Application was subsequently announced on the House floor on May 3, 2021. (TR Vol. I at 7.) Plaintiff then sought to schedule a date and time when he could "address" the House regarding his Application, relying on Tenn. Const. art. I, § 23. (*Id.* at 8-9.) Representative Garrett informed Petitioner on December 2, 2021, that this Court had previously ruled against him in this respect:

> **It appears you are asking for the same action by our Speaker that contradicts the opinion of the Court of Appeals where no petition may be "read" at the table. It is my understanding that you have filed your petition and have emailed it to every member of the General Assembly.**
>
> **I suggest you discuss or present it to those members as you wish.**

(*Id.* at 10.)

Plaintiff initiated this second mandamus action two weeks later, on December 15, 2021; his petition was filed against Speaker of the House Cameron Sexton and alleged that Speaker Sexton had violated his rights under art. I, §§ 17 and 23, and art. XI, § 16, of the Tennessee Constitution to "make application 'by address" to the Tennessee House of Representatives. (TR Vol. I at 11, ¶¶ 20, 24.) Plaintiff sought an order mandating that the Speaker "schedule Plaintiff's address . . . to a quorum of the House"; "call Plaintiff to the table before a quorum of the House, at the mutually agreed upon date and time, to address the body";

and "provide reasonable time to Plaintiff to make oral address." (*Id.* at 12.)

Plaintiff filed a motion for summary judgment on December 29, 2021. (TR Vol. I at 148.) Defendant filed a response arguing that, in light of this Court's decision in *Gentry I*, Plaintiff's petition was barred by the doctrine of *res judicata*; Defendant also argued that Plaintiff had otherwise failed to satisfy the requirements for the issuance of a writ of mandamus. (TR Vol. II at 196-209.) The trial court agreed and denied the motion, finding that Plaintiff had not shown "that he has a clearly established right warranting the issuance of the Writ of Mandamus." (TR Vol. III at 381, 387.)

After answering the Petition, Defendant moved for summary judgment, arguing that Plaintiff's petition was barred by the doctrine of *res judicata*. (TR Vol. III at 388-389, 394-407.) In response, Plaintiff filed a second motion for summary judgment, in which he raised the same arguments asserted in his first motion. (TR Vol. III at 416-427.)

After a hearing, the trial court issued an order on April 8, 2022, granting Defendant's motion for summary judgment and denying Plaintiff's motion. The court found that Plaintiff "ha[d] exercised his right under Article I, Section 23 of the Tennessee Constitution to apply for redress of grievances by address," but that "[n]o other rights are conferred him under [that provision]." (TR Vol V at 684.) Specifically, the court found, with respect to Plaintiff's purported right to address and be heard by a quorum

of the House, that "the Tennessee Constitution does not confer any of these rights on [Plaintiff]." (*Id.*)

The trial court also found that all the elements of the doctrine of *res judicata* were met and, therefore, that Plaintiff's claims were barred. (TR Vol. V at 679-688.) The dispute in this case is identical to the one in *Gentry I*—namely, Plaintiff "seeking to enforce his right to petition under Article I, Section 23 of the Tennessee Constitution against the Speaker of the Tennessee House of Representatives"; the "only distinction is that in the prior suit Plaintiff sought to enforce his right to petition by remonstrance and address while in the present suit he seeks to enforce his right [to] petition by address." (*Id.* at 687-688.)

Plaintiff subsequently filed a motion to alter or amend (TR Vol. V at 691-699), which the trial court denied on May 4, 2022, finding that Plaintiff sought "to relitigate issues and theories which were or could have been raised before the [c]ourt" (TR Vol. V at 746-748).

Plaintiff timely filed a notice of appeal. (TR Vol. V at 749.)

STANDARD OF REVIEW

Plaintiff appeals the denial of his petition for a writ of mandamus. A trial court's decision to issue a writ of mandamus is "a discretionary one" subject to the abuse-of-discretion standard of review. *Willis v. Johnson*, No. E2017-02225-COA-R3-CV, 2018 WL 4672928, at *4 (Tenn. Ct. App. Sept. 27, 2018). A trial court commits an abuse of discretion when it "applies an

incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (citations omitted).

ARGUMENT

The Trial Court Did Not Abuse its Discretion in Denying Plaintiff's Petition for Writ of Mandamus.

Plaintiff argues that the trial court erred in dismissing this action on the basis of *res judicata*. (Br. Appellant, 11.) It did not—all four elements of the doctrine were satisfied here.

***Res judicata* is a claim-preclusion doctrine that "bars a second suit between the same parties or their privies on the same claim with respect to all issues which were, or could have been, litigated in the former suit." *Jackson v. Smith*, 387 S.W.3d 486, 491 (Tenn. 2012) (citations omitted.) The purpose of the doctrine is "to promote finality in litigation, prevent inconsistent or contradictory judgments, conserve legal resources, and protect litigants form the cost and vexation of multiple lawsuits." *Creech v. Addington*, 281 S.W.3d 363, 376 (Tenn. 2009) (citing *Sweatt v. Tenn. Dep't of Corr.*, 88 S.W.3d 567, 570 (Tenn. Ct. App. 2002)).**

In order to establish a defense predicated on *res judicata* or claim preclusion, a party must demonstrate "(1) that a court of competent jurisdiction rendered the prior judgment, (2) that the prior judgment was final and on the merits, (3) that both proceedings involved the same parties or their privies, and (4) that both proceedings involved the same cause of action." *Young*

***v. Barrow*, 130 S.W.3d 59, 64 (Tenn. Ct. App. 2003). The determination of whether a claim is barred by the doctrine of *res judicata* is a question of law. *Ralph v. Scruggs Farm Supply LLC*, 470 S.W.3d 48, 52 (Tenn. Ct. App. 2014).**

A. The prior judgment was rendered by court of competent jurisdiction.

The trial court had jurisdiction to deny Plaintiff's first petition for writ of mandamus, and this Court undoubtedly had jurisdiction to review that judgment. A trial court's jurisdiction relates to its inherent power or authority to hear and decide a particular type of case. *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). Pursuant to Tenn. Code Ann. § 29-25-101, chancery courts are specifically vested with the "power to issue writs of mandamus, upon petition or bill, supported by affidavit." *See State ex rel. Aina-Labinjo v. Metropolitan Nashville Bd. of Educ.*, No. M2012-01176-COA-R3-CV, 2013 WL 2492653, at *3 (Tenn. Ct. App. June 6, 2013) (finding that chancery court had jurisdiction under Tenn. Code Ann. §§ 16-11-102(a) and 29-25-101 to issue a writ of mandamus). And authority to grant the writ necessarily includes authority to deny it as well.

Plaintiff argues that both the trial court and this Court did not have subject-matter jurisdiction over his prior case because they were "interested" and did not obtain consent of all the parties before presiding over the case as required by Article IV, Section 11, of the Tennessee Constitution. (Br. Appellant, 12.) But Plaintiff's argument does not draw any court's jurisdiction

into question. Article IV, § 11, concerns the qualifications of an individual judge to hear *a particular case*—not the authority of a court to hear and decide a particular *type* of case. Moreover, as this Court has already noted, any issue regarding the trial court's ability to decide Plaintiff's first mandamus action was waived by Plaintiff's failure to properly raise it during those proceedings. *See Gentry I*, 2020 WL 5587720, at *7 n. 5.

B. The prior judgment was final and on the merits.

The trial court dismissed Plaintiff's first petition for writ of mandamus with prejudice, finding that he was not entitled to the writ. *See Gentry I*, 2020 WL 5587720, at *1. This judgment was both final and on the merits.

A judgment is final in Tennessee "when it decides and disposes of the *whole* merits of the case leaving nothing for the further judgment of the court." *Richardson v. Tenn. Bd. of Dentistry,* 913 S.W.2d 446, 460 (Tenn.1995) (quoting *Saunders v. Metro. Gov't of Nashville & Davidson County,* 383 S.W.2d 28, 31 (1964)) (emphasis in original). The prior judgment in this case decided and disposed of the entire case. And an involuntary dismissal "other than a dismissal for lack of jurisdiction or for improper venue or for lack of indispensable party, operates as an adjudication upon the merits." *See* Tenn. R. Civ. P. 41.02. The trial court did not dismiss Plaintiff's first petition for any of these reasons, so the prior adjudication was on the merits.

Plaintiff argues that his first petition was not decided on the merits because it was "dismissed *sua sponte* without hearing and

without an operating motion to dismiss." (Br. Appellant, 15.) But this Court has already considered and rejected this argument. In *Gentry I*, the Court concluded that the trial court acted within its discretion in dismissing the petition *sua sponte* because Plaintiff "could not establish a clear right to the relief he sought or a clear duty on the part of the defendants to perform the requested acts. The trial court set out the reasons for its decision in a detailed memorandum." 2020 WL 5587720, at *8.

Furthermore, Tennessee courts do not require a "hearing on the merits" for *res judicata* to apply. A judgment can be on the merits even in the absence of a *hearing* on the merits. *See Ralph*, 470 S.W.3d at 53 (holding that a "hearing on the merits" is not necessary in order for a party to establish *res judicata*).

C. Both proceedings involve the same parties or their privies.

Both this mandamus action and Plaintiff's first mandamus action involved the same parties or their privies. Indeed, the Speaker of the House of Representatives was named as a defendant in both actions. *See Gentry I*, 2020 WL 5587720, at *1; TR Vol I at 6.) Each petition did name different individuals—Glen Casada and Cameron Sexton—but only in their official capacities, and as the trial court observed, "[w]hen state officials holding the same office in succession are sued in their official capacities in two successive lawsuits, the actual defendant in both lawsuits is the State of Tennessee or the applicable state office." (TR Vol V at 687.) *See Garrett v. Parker*, No. M2020-01742-

COA-R3-CV, 2021 WL 4739067, at *3 (Tenn. Ct. App. Oct. 12, 2021) (citing Tenn. R. App. P. 19(c) ("When an officer of the state . . . or other governmental agency is a party to an appeal or other proceeding . . . in the officer's official capacity and . . . ceases to hold office, . . . the officer's successor is automatically substituted as a party.")).

Furthermore, Speaker Sexton was actually named as a defendant in both proceedings—Plaintiff later filed an amended petition in the first mandamus action adding him as a defendant. (TR Vol. II at 243-256.) Plaintiff seizes on this point to argue that the two cases therefore involve different parties, since he sued Speaker Sexton in the first action as "Speaker of the House Elect." (Br. Appellant, 16.) But regardless of the title Plaintiff may have used, Plaintiff named Speaker Sexton as a defendant in his official capacity, just as he did in this mandamus action. The two proceedings therefore involved the same parties.

D. Both proceedings involve the same cause of action.

Both proceedings also involved the same cause of action for purposes of res judicata. The doctrine does not require that the two causes of action be *identical*; it "bars a second suit between the same parties or their privies on the same claim with respect to *all issues which were, or could have been, litigated in the former suit.*" *Rainbow Ridge Resort, LLC v. Branch Banking and Trust Co.*, 525 S.W.3d 252, 263-64 (Tenn. Ct. App. 2016) (emphasis in original) (internal quotes and citation omitted). And the Supreme Court has adopted a "transactional" standard for

determining the breadth of a "cause of action" for *res judicata* purposes:

> **When a valid and final judgment rendered in an action extinguishes the plaintiff's claim . . ., the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.**

***Creech*, 281 S.W.3d at 379-80 (quoting Restatement (Second) of Judgments § 24(1) (1982)). In other words, "[t]wo suits . . . shall be deemed the same 'cause of action' for purposes of *res judicata* where they arise out of the same transaction or a series of connected transactions." *Id.* at 381.**

The term "transaction" in this context "is intended to be analogous to the phrase' transaction or occurrence' as used in the Federal Rules of Civil Procedure." *Id.* at 380 (citations omitted.) This Court has applied a "logical relationship" test to determine whether claims arise out of the same "transaction or occurrence." Under this test, claims arise out of the same transaction or occurrence if "the issues of law and fact raised by the claims are largely the same and whether substantially the same evidence would support or refute both claims." *Roberts v. Vaughn*, No. W2008-01126-COA-R3-CV, 2009 WL 1608981, at *7-8 (Tenn. Ct. App. June 10, 2009) (citing *Sanders v. First Nat'l Bank & Trust Co. in Great Bend*, 936 F.2d 273 277 (6th Cir. 1991)); *see Suddarth v. Household Commercial Fins. Servs., Inc.*, No. M2004-01664-COA-R3-CV, 2006 WL 334031, at *3-4 (Tenn. Ct. App. Feb. 13, 2006).

Under this test, both this mandamus action and Plaintiff's first mandamus action clearly involved the same cause of action. In both suits, Plaintiff sought to enforce the same right—the right to petition under art. I, § 23, of the Tennessee Constitution. Plaintiff argues that the causes of action are different because in the prior suit, Plaintiff sought to enforce his right under art. I, § 23, by a written petition of *remonstrance*, while in the present suit Plaintiff sought to enforce his right under art. I, § 23, to petition only by *address*. (Br. Appellant, 16-17.) For purposes of *res judicata*, however, this argument draws a distinction without a difference. As this Court has stated, "'[r]equiring the subsequent cause of action to be identical in all respects to the original cause of action is too narrow a reading of the doctrine of res judicata.'" *Bank of New York Mellon v. Chamberlain*, No. 2022 WL 3026908, at *15 (Tenn. Ct. App. Aug. 1, 2022) (quoting *XL Sports, Ltd., v. $1,060,000 Plus Int. Traceable to Respondent*, No. W2005-00698-COA-R3-CV, 2006 WL 197103, at *9 (Tenn. Ct. App. Jan. 26, 2006).

In any event, Plaintiff *did* seek to enforce his right under art. I, § 23, to petition by address in the prior suit. Part of the relief Plaintiff sought was an order requiring the House to "uphold and honor Petitioner's constitutional right *to petition by address* (orally)." (TR Vol. II at 253-254.) (emphasis added.) And in denying that request, the trial court held that "[n]othing in the Tennessee Constitution confers a right on a citizen to *orally address* the Senate and the House." (TR Vol. II at 273 (emphasis

added).) This Court affirmed, holding that the Plaintiff "does not have a clearly established right to have his petition *heard* or considered by either house of the General Assembly," nor is there a "clear duty on the part of the General Assembly to *hear* it" under art. I, § 23. *Gentry I,* 2020 WL 5587720, at *5 (emphasis added.)

E. Mandamus did not lie in any event.

Finally, Plaintiff asserts that "res judicata is a prohibited pretense," insisting that he has a right under art. I, § 23, to address the House of Representatives that the courts should enforce by mandamus. (Br. Appellant, 19-20.) This argument is entirely unavailing.

First, as the trial court concluded, and as this Court essentially held in *Gentry I*, the purported right Plaintiff invokes—the right to orally address the House—is simply not conferred by the Tennessee Constitution. *See* TR Vol. V at 683 ("[The constitutional right established is the right to apply for redress of grievances by address or remonstrance. Neither the Tennessee Constitution nor Tennessee statutes provide the process by which a citizen may exercise this right before the General Assembly."); *Gentry I*, 2020 WL 5587720, at *5 ("Mr. Gentry does not have a clearly established right to have his petition heard or considered by either house of the General Assembly").

Second, mandamus would not lie in any event. Mandamus is an extraordinary remedy and one that a court may grant only

"where a plaintiff's right to the relief sought has been clearly established [and] the defendant has a clear duty to perform the act the plaintiff seeks to compel." *Cherokee County Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 479 (Tenn. 2004). "The office of mandamus is to execute, not adjudicate," *Peerless Construction Co. v. Bass*, 14 S.W.2d 732, (Tenn. 1929), and certainly not to adjudicate claims of "First Impression." (Br. Appellant, 20.) Furthermore, " '[i]t is the universally recognized rule that mandamus will only lie to enforce a ministerial act or duty and will not lie to control a legislative or discretionary duty." *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988) (citing *Lamb v. State ex rel. Kisabeth*, 338 S.W.2d 584, 586 (Tenn. 1960)).

Article 2, Section 12 of the Tennessee Constitution vests exclusive authority in the legislature to make, interpret and enforce its own rules of proceeding. *See State v. Cumberland Club*, 188 S.W. 583, 585 (Tenn. 1916) (recognizing that the each house has the right, under the Constitution, to make its own rules and "be the judge of those rules"). House Rule of Order 22 provides that only members of the General Assembly and other specified persons are permitted into the House Chamber "prior to and during any session" and House Rule of Order 33 provides that "[n]o one may address the Speaker except a member of the House." (TR Vol. II at 288-290.)

And as the trial court determined, "[n]o rights are granted to [Plaintiff] under the House Rules" and, therefore, "[h]e does not have a clear right, as a private citizen, to speak on the floor

of the House of Representatives or to require the House of Representatives to hear (and decided) his application." (TR Vol. V at 685.) Accordingly, the trial court rightly found that it had no authority to compel the Speaker "to act contrary to the rules of proceeding adopted by the Tennessee House of Representatives pursuant to Article II, § 12 of the Tennessee Constitution." (*Id.*)

Thus, in the absence of any clear right to orally address the House and no clear duty on the part of the House to hear Plaintiff's Application, the trial court appropriately acted within its discretion in denying Plaintiff's petition for a writ of mandamus. *See Gentry I*, 2020 WL 5587720, at *5.

CONCLUSION

For the reasons stated, the judgment of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief has been sent by the Court's electronic filing system and/or U.S. Mail, to:

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Certificate of Compliance

I hereby certify that this brief consists of 3537 words in compliance with Tenn. Sup. Ct. R. 46.

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