

**IN THE COURT OF APPEALS OF TENNESSEE  
FOR THE MIDDLE SECTION, AT NASHVILLE**

In re: Sentinel Trust Company

)  
) No. M2005-00031-COA-R3-CV  
)  
) Lewis Equity No. 4781  
)

**APPEAL FROM FINAL JUDGMENTS OF  
THE LEWIS COUNTY CHANCERY COURT  
AT HOHENWALD, TENNESSEE**

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Reply Brief for Appellants  
Sentinel Trust Company, Danny N. Bates, Clifton T. Bates,  
Howard H. Cochran, and Gary L. O'Brien

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Carrol D. Kilgore (2544)  
227 Second Avenue, North, Fourth Floor  
Nashville, Tennessee 37201-1631  
615-254-8801  
*Attorney for Appellants*

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**Oral Argument Requested**

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**Appellants' Reply Brief**

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Appellees' brief, in particulars noted below, seeks to mislead or confuse the Court rather than to clarify this somewhat confusing case, in which the appeal does not arise from any *litigation* filed in any court (Appellants' Brief, p. 4) , but from a series of discrete approval/disapproval decisions of the type that would be ministerial had the legislature designated the Comptroller rather than a court of general jurisdiction to grant or deny these limited approvals.

But the primary fault in their brief is their insistence that the issue of jurisdiction is not properly before this Court, merely because Appellants initially informed the Court that the issue of jurisdiction was primarily for the Davidson County Chancery Court under the designated modes of judicial review (Appellants' Brief, p 10), only to finally insist, upon the presentation of a motion in nature critically harmful to Sentinel, that such local Court "should rule on these issues, under the rule 'that a Court of First Resort always has jurisdiction to determine issues of its own jurisdiction.' " (Appellees' brief, p. 19).

Yet in invoking the grant/deny jurisdiction of the Local Court, they did so solely on the basis that its jurisdiction was invoked under specific sections of the Tennessee Banking Act which created the specific statutory remedy provided for application against state banks, and they wholly disregard the fact that that Act, creating powers over **banks**, does not create these same powers over **trust companies**. But for that Act and its particular bank-seizure powers, there would be no vesting of *any jurisdiction* in the Local Court. They did not file any ordinary litigation, commenced by lead process

from the State of Tennessee, invoking the Court's general jurisdiction. And now, without branding the nature of Appellants' objections to their abuse of power, they assume that these appearances constituted either a submission to jurisdiction or a waiver of jurisdiction.

Appellees are simply wrong in urging that the trial-court jurisdiction issue is not before this Court. The lack of subject-matter jurisdiction, an issue raised in this appeal, is a deficiency that cannot be waived, does not have to be raised at the trial level, is not a deficiency that disappears by reason of consent (as in jurisdiction over the person), but can be raised for the first time even in the Tennessee Supreme Court or in the Supreme Court of the United States. *Southern Lumber and Mfg. Co. v. Tennessee Railway Co.*, 141 Tenn. 325, 329, 210 S.W. 639 (1918); *Barthell v. Zachman*, 162 Tenn. 336, 344; 36 S.W.2d 886 (1930).

The distinction applicable here was pointed out in a case on lack of subject-matter jurisdiction cited in Appellants' original brief, *Brown v. Brown*, 198 Tenn. 600; 281 S.W.2d 492 (1955), wherein the Supreme Court said:

The Circuit Court in this case had the general jurisdiction [\*614] of the subject matter of divorce and alimony; *but it could make no valid adjudication with reference thereto which was not within the powers granted to it by law.* *Jordan v. Jordan*, 145 Tenn. 378, 239 S.W. 423. A distinction must be made in this regard between the mere erroneous exercise of a power granted, and the usurpation of a power where none exists. As this Court said in *Chickamauga Trust Company v. Lonas*, 139 Tenn. 228, 235, 201 S.W. 777, 778, L.R.A.1918D, 451, quoting from 15 R.C.L. 853:

'One form of usurpation of power on the part of a court in rendering a judgment is where it attempts to disregard limitations prescribed by law restricting its jurisdiction. \* \* \* Where a court is authorized by statute to entertain jurisdiction in a particular case [\*\*\*15] only, and it undertakes to exercise the power and jurisdiction conferred in a case to which the statute has no application, in so doing it will not acquire jurisdiction, and its judgment will be a nullity and subject to collateral attack.'

The Circuit Court in this case exceeded the powers conferred upon it by law. Its judgment awarding the wife alimony after granting the husband a divorce is not only beyond the powers conferred upon it by statute, but is also directly contrary to the mandate of the applicable statute.

(198 Tenn. at 613-614; 281 S.W.2d at 499; emphasis added)

The above-quoted holding by the Supreme Court about the consequences of a court's not being vested with jurisdiction it sought to exercise clearly applies *a fortiori* to such unauthorized actions by executive officials.

In *Brown* and other such cases, the statute did not *prohibit* the Court from going to the extreme to which it went, it simply authorized only particular remedies and *did not authorize the remedy* ordered.

Appellees seek to coyly lead this Court to assume there is no jurisdictional question by pretending that the statute authorizes the Commissioner to act against "financial institutions" when its only authorization here relevant is that to act against "state banks," footnoting this bald assertion with the assurance (without any supporting reasoning) that "Although these statutes speak in terms of a 'state bank,' they are made applicable to state trust companies pursuant to Tenn. Code Ann. § 45-1-124(b)." (Appellees' Brief, p. 21, n. 72). Upon this unwarranted assumption, Appellees studiously use the phrase "financial institutions" as if that phrase were used in the statutes, which instead speak solely of "state banks" in this creation of power. Such intentional mischaracterization of a statute's language can only be to mislead this Court into unthinkingly assuming, out of respect for the high office of the Attorney-General, that the language substituted by counsel is accurate.

Appellees' footnote is apparently inserted in the secure hope that this Court will not look at the statute, because the sub-section referenced therein does not re-define any provisions of the Banking Act, nor does it claim to change the scope or application of any provision of that Act except to make trust companies, previously exempt, subject to it, by the words stating that the provisions of the Banking Act "shall also apply to the operation and regulation of state trust companies and banks whose purposes and powers are limited to fiduciary purposes and powers." But the same section, by its sub-section (f), applicable *solely* to the trust companies newly brought under the Commissioner's jurisdiction, states that "such entity shall be otherwise fully subject to chapters 1 and 2 of this title." It does not internally re-write provisions of the Banking Act, so that it is clear that it means that entities newly-subjected to the Act shall be as fully subject to it as if they had never

been excluded in the first place. This means that every provision whose terms control trust company operations shall apply to the newly-regulated trust companies as well as the old. EXCEPT, of course, that the same section goes further to conclusively refute the unwarranted assumption that “bank” means “trust company” wherever it appears in the Banking Act by providing, in its subsection (h), that trust companies newly subjected to this jurisdiction should **also** be subject to the Commissioner’s examination powers (with no other powers named for exercise against them) for the limited 3-year period from July 1, 1999, through June 30, 2002.

Appellees’ approach evinces faith that the Court will be biased in favor of the state and will be eagerly searching for a “hook”<sup>1</sup> on which to hang the unwarranted assumption that an important department of Tennessee government, having so blatantly and inexcusably usurped powers plainly not given to it, must be shielded from public exposure of its infidelity to law.

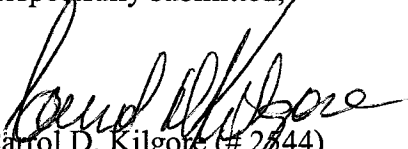
This prayerful approach disregards the fact that although the Act gives the ornamental title using “Financial Institutions” to the Commissioner and the department he heads, it in no place defines the term “financial institutions,”<sup>2</sup> although its definitional section, T.C.A. § 45-2-103, does contain mutually-excluding definitions of “bank” and “trust company,” with the command that these definitions must be applied in reading the words wherever they appear in the Banking Act. To disregard these definitions is to refuse to honor not only this specifically-declared legislative intent, but also the specifically-enacted command growing from that intent.

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<sup>1</sup>Used here as a colloquialism, “hook” is taken to mean an invalid excuse taken as true to support a desired conclusion as assumed to be justified, as when a mother of a son charged with a heinous crime takes great relief in his assurance that he didn’t do it.

<sup>2</sup>This, by implication, is defined by the entire Title 45 as including all types of institutions over which the Commissioner has some sort of oversight authority, being savings and loan associations, credit unions, industrial loan and thrift companies, pawnbrokers, money transmission companies, and check-cashing services. T.C.A. Title 45, Chapters 3-7 and 18.

Respectfully submitted,

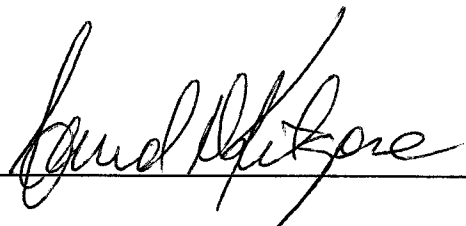
  
Carol D. Kilgore (# 2544)  
227 Second Avenue, N., Fourth Floor  
Nashville, TN 37201-1631  
Tel. (615) 254-8801.

### Certificate of Service

It is hereby certified that a copy of the foregoing brief has been mailed this May 24, 2005, postage prepaid, to the following:

JANET M. KLEINFELTER, ESQ.  
Financial Division  
Attorney-General of Tennessee  
425 Fifth Avenue, North  
Nashville, Tennessee 37243.

Graham Matherne, Esq.  
WYATT, TARRANT & COMBS  
2525 West End Avenue  
Nashville, TN 37203-1423

  
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