

**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE**  
**TWENTIETH JUDICIAL DISTRICT**  
**AT NASHVILLE**  
**PART III**

**FILED**  
 2019 NOV -1 AM 8:59  
 CLERK OF COURT  
 DAVIDSON CO. CHANCERY CT.  
 C. J. D.C. & M.

**STATE OF TENNESSEE, *ex rel.*** )  
**JULIE MIX MCPEAK, solely in her** )  
**official capacity as Commissioner of** )  
**Commerce & Insurance,** )  
 )  
**Plaintiff,** )  
 )  
**vs.** )  
 )  
**GALILEE MEMORIAL GARDENS,** )  
**JM&M SERVICES, INC., LAMBERT** )  
**MEMORIAL CO., aka LAMBERT** )  
**MEMORIALS, INC., LAMBERT &** )  
**SONS, INC., JEMAR LAMBERT,** )  
**MARJE LAMBERT, and MARY H.** )  
**LAMBERT, and ALL PERSONS** )  
**ACTING IN CONCERT WITH THEM,** )  
 )  
**Defendants.** )

No. 14-102-II(III)

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**MOTION TO INTERVENE BY SHELBY COUNTY, TENNESSEE**

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Shelby County, Tennessee (the "County") respectfully moves this Court pursuant to Rule 24.01 of the Tennessee Rules of Civil Procedure to intervene as an interested party in this Action, and in support thereof would state unto this Court as follows:

1. Galilee Memorial Gardens ("Galilee") is located within the boundaries of the County.
2. The County has an interest in the outcome of this Action as it pertains to the future maintenance and upkeep of Galilee.
3. Under applicable law, the County may elect, upon majority vote of its legislative body, to care for and maintain Galilee. T.C.A. § 46-2-107.

4. Galilee is currently being cared for and maintained by the State of Tennessee (the “State”) and the Commissioner of Commerce and Insurance (and predecessors) through a Receivership pursuant to Tenn. Code Ann. § 46-1-312.
5. The State has petitioned for, and this Court has granted the State exclusive title of Galilee for purpose of selling the property or allowing the County or other local government body to assume responsibility over Galilee.
6. The State has also petitioned this Court to dissolve its receivership over Galilee, which remains pending.
7. The trust accounts for Galilee have been reported by the trustee at year-end 2018 as follows: Galilee Improvement Care Trust Fund \$521,930; Galilee Preeed Merchandise and Services Trust \$3,019.75.
8. The County is currently expending significant resources and funds on the care and maintenance of four (4) other abandoned cemeteries within the County. The County’s interest in these proceedings is specifically the status of the State’s Receivership of Galilee and the future care and maintenance of Galilee.
9. The County’s interest is not adequately represented by the existing parties to this Action. The disposition and outcome of this Action may, as a practical matter, impair or impede the County’s interest. *See* Tenn. R. Civ. P. 24.01.
10. In support of its Motion the County relies upon its memorandum in support of its Motion to Intervene and the entire record in this case.

WHEREFORE, PREMISES CONSIDERED, THE MOVANT RESPECTFULLY  
PRAYS:

1. That Shelby County, Tennessee be allowed to intervene as of right.
2. For such other relief as the County may be entitled to under the premises.

Respectfully submitted,

GLANKLER BROWN, PLLC



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*Attorneys for Shelby County, Tennessee*

### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion to Intervene has been mailed First Class postage prepaid to the following interested persons and attorneys requesting notice and transmitted via email if indicated this 30<sup>th</sup> day of October, 2019:

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Special Deputy Receiver of Galilee Memorial Gardens

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Individual Defendants in Receivership case, pro se

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Counsel for Lamberts in Shelby County cases

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Trustee of Trusts for Galilee Memorial Gardens

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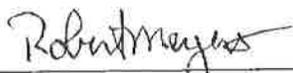
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Defense Liaison for Funeral homes in Shelby County Class cases

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Person requesting notice of proceedings

  
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Robert D. Meyers

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 Defendants. )

No. 14-102-II(III)

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE  
 BY SHELBY COUNTY, TENNESSEE**

---

Shelby County, Tennessee (the “County”) files this Memorandum in support of its contemporaneously filed Motion to Intervene, pursuant to Rule 24.01 of the Tennessee Rules of Civil Procedure, and would show unto the Court as follows:

**INTRODUCTION**

Although the County and State have been negotiating about the possibility of the County voluntarily assuming the responsibility for maintaining Galilee once the Receivership is

dissolved, no agreement has been reached at this time. The issue that is preventing the parties from reaching an agreement is the status of the Improvement Care Trust Fund (“Trust”).

The Special Deputy has said that he does not believe that there are adequate resources to rehabilitate the cemetery. *Receiver’s Statement for Status Conference on the Termination of the Receivership of Galilee Memorial Gardens (Thirteenth Interim Report)*, ¶ 1. Currently, the funds available from the Trust are insufficient to cover the reasonably expected ongoing cost of maintaining Galilee, which the State has acknowledged in saying that the “[Trust] does not meet all the statutory funding requirements for [Trusts].” *Id.*, at ¶ 6. Further, Galilee is a no-asset cemetery, and “provides no reasonable prospect for sale, because it supplies no future income stream and no business may be conducted there.” *Id.*, at ¶ 8.

Absent an agreement by the County to take over the maintenance of Galilee, the State has indicated it would have no choice but to seek to terminate the receivership and cease maintaining Galilee. If that were to occur, it could have the practical effect of forcing the County to maintain Galilee. The County does not believe the State can simply abandon Galilee at the end of the Receivership without either transferring the property to a suitable private entity or a local government. Absent either one of these events the county would object to the State abandoning its care and maintenance of Galilee.

Accordingly, the County moves this Honorable Court for an Order allowing its intervention in this case, pursuant to Rule 24 of the Tennessee Rules of Civil Procedure. Absent intervention, the County is otherwise unable to assert and/or defend its rights concerning the property at issue. Moreover, the current Parties to the litigation do not adequately represent the interests of the County because what is in the current Parties’ best interests is in contravention to the County’s best interest.

## PROCEDURAL HISTORY

The State was granted a Receivership over Galilee on February 21, 2014, and Julie Mix McPeak, in her role as Commissioner of Commerce and Insurance for the State, was appointed as the Receiver of the Receivership pursuant to Tennessee law. *See Court's Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction; see also* T.C.A. § 46-1-312.

On June 12, 2019, the Court transferred title of Galilee from the original owners to the State. Pursuant to the Court's Order (and upon the State's petition), the State now has exclusive title of Galilee for the purpose of selling the property or allowing the County or another local governmental body to assume responsibility over Galilee. *See Court's Memorandum and Final Order from Hearing of 4/10/2019 to Dissolve Corporation and All Business Entities in Receivership; to Grant Receiver Exclusive Title to the Original Cemetery Parcel; to Permanently Enjoin Defendants from the Galilee Cemetery Business; and to Determine or Bar Claim of Defendants.*

Recently, the County learned of the State's plans to terminate its Receivership over Galilee and, if the County would not assume the responsibility for maintaining it, to abandon the cemetery. The State filed its Status Report on September 27, 2019 to identify, as requested by the Court, "whether the *only* matter remaining to be determined to wind up and close the Receivership is the future maintenance and upkeep of the cemetery and the interface and application of Galilee's Improvement Care Trust Fund [] and local government maintenance []." *Receiver's Response to 9/6/19 Order to Identify Final Matters for Determination of Galilee*

*Memorial Gardens*, ¶ 1. In this report, the State concluded that although discussions with the County are ongoing, a resolution regarding these issues has not been reached. *Id.*, at ¶¶ 2-6.

Although the State and County continue to negotiate, nonetheless, to protect its interest, the County now petitions to intervene in this litigation as a matter of right.

### ARGUMENT

The County must be allowed to intervene in this matter as of right, because its petition is timely; it has a significant legal interest in the property that is the subject of this litigation; its rights will be impaired if it does not become a party; and the current Parties to this litigation do not adequately represent the County's interests. Rule 24 of the Tennessee Rules of Civil Procedure provides in pertinent part:

Upon timely motion any person shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; *or (2) when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest*, unless the movant's interest is adequately represented by existing parties; or (3) by stipulation of all the parties.

Tenn. R. Civ. P. 24.01 (emphasis added). A party seeking to intervene under Rule 24.01 must establish that: "(1) the application for intervention was timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the pending litigation; (3) the proposed intervenor's ability to protect that interest is impaired; and (4) the parties to the underlying suit cannot adequately represent the intervenor's interests." *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 190-91 (Tenn. 2000) (citing *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir.1989)).

First, the County's Motion to Intervene is timely because the County only recently learned that the State wishes to abandon the cemetery at the end of the Receivership if it cannot reach an agreement with the County to assume the maintenance of Galilee.

Second, the County has a substantial legal interest in the subject of this litigation because Galilee is located within the boundaries of Shelby County. If the State is successful in moving this Court to dissolve the Receivership and then the State abandons the cemetery, as it has stated it wishes to do, then the County will, as a practical matter, be forced to take over its maintenance. Such an outcome would be contrary to the intent of Tennessee's Cemetery Act: Section 46-2-107(c)<sup>1</sup> of the Act, which contemplates a local government's *voluntary assumption* of a cemetery's maintenance. Thus, the statute gives the County a legal interest in the outcome of this Action. *See City of Alcoa v. Tennessee Local Gov't Planning Advisory Comm.*, 123 S.W.3d 351, 354 (Tenn. Ct. App. 2003) (finding that the city and airport authority had a right to intervene in action by neighboring city because the city and authority had a right to bring an independent action).

Third, the County has a legal interest that allows for intervention as of right because the State has initiated the process of dissolving the Receivership and announced its intent to abandon the cemetery if the State and the County cannot come to a resolution. The process of dissolving the Receivership is not a "*mere contingent, remote, or conjectural possibility*," it is a pending issue to be determined by the Court – a determination that will inherently affect the County and the County's rights. Cf. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191-92

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<sup>1</sup> T.C.A. § 46-2-107(c) states: "upon a majority vote of the legislative body of the local government, the local government may draw upon its general fund and may solicit, receive, and utilize funds from all other sources, public or nonpublic, for the purpose of rehabilitating or maintaining dilapidated or abandoned cemeteries, or portions of cemeteries[.]" "Local government" is defined as "any county, municipality, city, or other political subdivision of this state." *Id.*

(Tenn. 2000) (holding that a party cannot intervene as of right on the basis of mere conjectural possibilities). This litigation involves “*a direct claim on the subject matter of the suit such that the [County] will either gain or lose by direct operation of the judgment.*” *Id.* (emphasis added). If the Court dissolves the Receivership before the State ameliorates the deficiency of the Trust, the County would be forced to take over the care and maintenance of Galilee at its own expense, and the County is not in a fiscal position to assume sole responsibility over the cemetery.<sup>2</sup>

Fourth and finally, the County’s ability to protect its interest is impaired if it does not become a party to this litigation because the State’s request to dissolve the Receivership and intention to abandon Galilee is adverse to the interest of the County. The County has voiced its concerns over the deficient Trust and inadequate funds available to the County to assume responsibility over Galilee should the Court dissolve the Receivership and the State abandon the cemetery. But the Receiver has not repaired the deficiency in the improvement care trust as required under law and by the terms of this Court’s Receivership Order. *See Court’s Order Appointing Commissioner as Receiver for Galilee Memorial Gardens Cemetery and Granting Temporary Injunction.* The State’s request to dissolve its Receivership of Galilee and subsequently abandon the cemetery is of great concern to the County and is in direct contravention of the County’s interests.

### CONCLUSION

For these reasons, the County respectfully requests this Honorable Court to GRANT its Motion to Intervene and enter an Order allowing its intervention in this Action so that it may be allowed to protect its interests.

Respectfully submitted,

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<sup>2</sup> Shelby County is already maintaining four (4) other abandoned cemeteries within its borders.

**GLANKLER BROWN, PLLC**

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Counsel for Lamberts in Shelby County cases

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Trust Division

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*Via email to [ewalker@cbtnet.com](mailto:ewalker@cbtnet.com)*

Trustee of Trusts for Galilee Memorial Gardens

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Person requesting notice of proceedings

  
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<b>FAX FILED</b>	
ON	NOV - 1 2019
BY	<i>CAJ</i> D C & M
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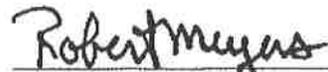
**NOTICE OF HEARING**

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Shelby County, Tennessee (the "County") gives notice, pursuant to Local Rules 26.03 and 26.05, that a hearing on its Motion to Intervene shall be heard before the Chancery Court of Davidson County, Tennessee on Friday, November 15, 2019 at 9:00 a.m., in the Chancery Courtroom, Part III. Respectfully submitted, this 1st day of November, 2019.

Respectfully submitted,

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Class Counsel (Plaintiffs *Wofford* case – Shelby County)

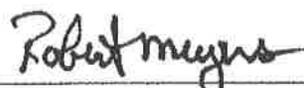
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