STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 23, 2012

Opinion No. 12-23

Appeals of General Sessions Court Decisions

QUESTIONS

1. If a matter is appealed from General Sessions Court to Circuit Court, and the appealing party pays costs to the General Sessions Court Clerk as required by Tenn. Code Ann. § 8-21-401(a), must the party also submit a surety bond under Tenn. Code Ann. § 27-5-103 to perfect the appeal?

2. If an indigent party appeals a General Sessions Court judgment to the Circuit Court, is the review and determination of the party's indigence made by the General Sessions or the Circuit Court judge?

OPINIONS

1. Yes, a party must provide a surety bond to perfect an appeal from General Sessions to Circuit Court.

2. The examination of a party's indigence prior to the filing of an appeal may be conducted by the General Sessions Court pursuant to Tenn. Code Ann. § 27-5-103(a). However, after the appeal is filed and the case is transferred to the Circuit Court, any questions regarding a party's indigence may also be raised before the Circuit Court under Tenn. Code Ann. § 20-12-132.

ANALYSIS

The initial question is whether a party must provide a surety bond to perfect an appeal from General Sessions to Circuit Court when the party has already paid costs to the General Sessions Court clerk. The primary goal in interpreting the Tennessee statutory provisions governing this appeal process is "to ascertain and carry out the legislature's intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Premium Finance Corp. of America v. Crump Ins. Services of Memphis, Inc.*, 978 S.W.2d 91, 93 (Tenn. 1998). When the language of a statute is clear and unambiguous, "legislative intent is to be ascertained from the plain and ordinary meaning of the statutory language used." *Gragg v. Gragg*, 12 S.W.3d 412, 415 (Tenn. 2000). Further, "[w]hen construing statutes, the mention of one subject in a statute excludes other subjects that are not mentioned." *State v. Peele*, 58 S.W.3d 701, 704 (Tenn. 2001).

Applying these principles to the question presented, this Office finds the General Assembly clearly intended that a party must provide a surety bond to perfect an appeal from General Sessions to Circuit Court. Initially, Tenn. Code Ann. § 27-5-103 expressly requires all persons, except indigents, to post a security bond before an appeal from General Sessions Court is granted, stating in pertinent part:

> (a) Before the appeal is granted, the person appealing shall give bond with security, as hereinafter provided, for the costs of the appeal, or take the oath for poor persons.
>
> (b) An appeal bond filed by a plaintiff or defendant pursuant to this chapter shall be considered sufficient if it secures the cost of the cause on appeal.

Tenn. Code Ann. § 27-5-103.

This requirement is not mitigated by Tenn. Code Ann. § 8-21-401(a), which only relieves a party under defined circumstances from posting surety *under Tenn. Code Ann. § 20-12-120*, stating:

> If a party, other than a party who initiated a proceeding under a pauper's oath, pays costs at the time the services are requested, such payment shall be deemed to satisfy the requirement for security to be given for costs, *pursuant to § 20-12-120*.

Tenn. Code Ann. § 8-21-401(a) (emphasis added).[1]

Thus Tenn. Code Ann. § 8-21-401(a) does not provide an exception for the surety bond requirement set forth in Tennessee Code Annotated § 27-5-103 for perfecting an appeal from General Sessions to Circuit Court. Because the General Assembly did not specifically provide an exception to the surety requirement for perfecting an appeal when it enacted Tennessee Code Annotated § 8-21-401(a), it must be assumed that no exception was intended. *See State v. Peele*, 58 S.W.3d at 704.

2. The next question is whether the determination of indigence of a party seeking an appeal from the General Sessions Court to the Circuit Court is to be made by the General Sessions or the Circuit Court judge. Tenn. Code Ann. § 27-5-103(a) specifically states that "[b]efore the appeal is granted," the person appealing from General Sessions Court must provide

[1] Tenn. Code Ann. § 20-12-120 provides that:

> No leading process shall issue from any court without security being given by the party at whose instance the action is brought for the successful prosecution of the party's action, and, in the case of failure, for the payment of court costs and taxes that may be awarded to the party, unless in cases and instances specifically excepted.

a surety bond *or* "take the oath for poor persons." This language is plain and unambiguous, and requires that before an appeal is granted the General Sessions Court must approve a surety bond *or* have the appellant take the oath for poor persons. *See In re Sidney J.*, 313 S.W.3d 772, 774 (Tenn. 2010) (holding when the wording of a statute is clear, courts should apply the plain meaning without complicating the task). *See also Spencer v. Dixie Finance Co.*, 205 Tenn. 485, 491-492, 327 S.W.2d 301, 304 (1959) (stating that when a bond is filed or the pauper's oath taken, then the General Sessions Court must transfer the case to the Circuit Court given the bond or oath is prima facie evidence that an appeal was prayed and granted).

The corollary question then arises of when an opposing party, or a court *sua sponte*, can question the legitimacy of the pauper's oath. Tennessee courts in addressing this question have found that the power to inquire into the truthfulness of the pauper's oath *only* belongs to the trial court and "it must be invoked therein or the appeal will be treated as having been regularly taken." *Perry v. Carter*, 188 Tenn. 409, 415, 219 S.W.2d 905, 908 (1949) (quoting *Dann v. Moore*, 22 Tenn. App. 412, 123 S.W.2d 1095, 1097 (1938)). *See also Locke v. Smith Funeral Service Corp*., 180 Tenn. 18, 21-22, 171 S.W.2d 272, 273 (Tenn. 1942).

However, this general rule is not applicable to pauper's oaths executed to appeal a General Sessions Court decision to Circuit Court because pursuant to Tenn. Code Ann. § 27-5-108 any appeal from General Sessions Court to Circuit Court is heard de novo. Tenn. Code Ann. § 27-5-108(c). A "de novo trial" represents an entirely new trial on the entire case, conducted as if there had been no trial in the first instance. *Doster v. State*, 195 Tenn. 535, 539, 260 S.W.2d 279, 280 (1953); *Cornelius v. Dept. of Children's Services*, 314 S.W.3d 902, 906 (Tenn. Ct. App. 2009). Thus, the fact that the appeal to Circuit Court in essence results in a new trail allows the Circuit Court to review and if appropriate dismiss a pauper's action pursuant to Tenn. Code Ann. § 20-12-132, which states:

> (a) If it is made to appear to the court, at any time before trial, that the allegation of poverty is probably untrue, or the cause of action frivolous or malicious, the action may be dismissed.
>
> (b) The burden shall be upon a pauper to justify the pauper's oath.

Tenn. Code Ann. § 20-12-132.

Indeed this was the conclusion reached in the early case of *Fort v. Noe*, 144 Tenn. 337, 233 S.W. 516 (1920). In *Fort*, the Tennessee Supreme Court found the Circuit Court could review the validity of a pauper's oath given in an appeal from a justice of the peace (now the General Sessions Courts). *Id*. at 516-17. The Court found such a review appropriate pursuant to Shannon's Code § 4932, which is the predecessor statute to Tenn. Code Ann. § 20-12-132. *Id*.

Accordingly, given an appeal from General Sessions Court creates a de novo trial in Circuit Court, the legitimacy of a pauper oath may be examined by either the General Sessions Court when an appeal is sought pursuant to Tenn. Code Ann. § 27-5-103(a) or, once an appeal is perfected, by the Circuit Court at the de novo trial pursuant to Tenn. Code Ann. § 20-12-132.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

JOSHUA DAVIS BAKER
Assistant Attorney General

Requested by:

Honorable James F. Kyle
State Senator
9A Legislative Plaza
Nashville, TN 37243-0028