

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 2, 2015

Opinion No. 15-09

Scope of Statutory Writ of Certiorari

QUESTION

Does the statutory writ of certiorari process, generally codified at Tenn. Code Ann. §§ 27-8-101 to -119 and 27-9-101 to -114, constitute a cause of action?

OPINION

No. Tennessee’s statutory writ of certiorari is a process for obtaining judicial review of an inferior tribunal’s decision, and the writ process itself does not create or constitute any substantive legal cause of action.¹

ANALYSIS

Tennessee’s statutory writ of certiorari process is generally codified at Tenn. Code Ann. §§ 27-8-101 to -119 and 27-9-101 to -114. The writ “may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.” Tenn. Code Ann. § 27-8-101. The writ does not apply to an action governed by the Tennessee Rules of Appellate Procedure. *Id.* As the Tennessee Court of Appeals recently explained:

The writ of certiorari derives from Article 6, Section 10 of the Constitution of Tennessee, but the practice with respect to how and when it may be obtained is set forth in statutory provisions enacted by the General Assembly. *Tragle v. Burdette*, 222 Tenn. 531, 438 S.W.2d 736, 737 (1969). . . . The writ may also not take the place of an appeal when an express provision for an appeal is available. *Tragle* at 737; *Sullivan v. Cocke*, 167 Tenn. 253, 68 S.W.2d 933 (1934); although, there are some circumstances such as fraud, contrivance by the opposing party or the court, or the willful or negligent act of the court clerk that will excuse the failure to pursue an available appeal and permit review by way of certiorari. See e.g. *McMurry v. Milan*, 32 Tenn. 176 (1852);

¹ A cause of action is defined as “all the facts which together constitute the plaintiffs’ right to maintain the action.” *Mattix v. Swepton*, 155 S.W. 928, 929 (Tenn. 1913).

Belcher v. Belcher, 18 Tenn. 121 (1836); *Kearney v. Jackson*, 9 Tenn. 294 (1830); *General Motors Acceptance Corp. v. Dennis*, 675 S.W.2d 489 (Tenn.App.1984). Neglect on the part of the petitioner is not a ground to grant the writs of certiorari. *General Motors Acceptance Corp. v. Dennis*, 675 S.W.2d 489, 491 (Tenn.App.1984)(citing *Useton v. Price*, 41 Tenn.App. 134, 292 S.W.2d 788 (1956); *Watson v. Wells*, 20 Tenn.App. 611, 103 S.W.2d 30 (1937)).

Yousif v. Clark, 317 S.W.3d 240, 244 (Tenn. Ct. App. 2010). *See also* 14 AM. JUR.2d *Certiorari* § 1 (stating the certiorari “is a writ issued by a superior to an inferior court of record or to some other tribunal or officer exercising a judicial function, requiring the certification and return of the record and proceedings so that the record may be revised and corrected in matters of law”).

These various authorities evidence that the statutory writ of certiorari is a process to request a superior court to review the actions of an inferior tribunal. The writ process thus does not itself create or preclude any substantive legal cause of action. Of course, the failure to properly follow the writ process might forfeit a further review of an inferior tribunal’s decision. *See Johnson v. Metropolitan Government for Nashville Davidson Co., Tenn.*, 54 S.W.3d 772, 774 (Tenn. Ct. App. 2001); *Jasper Engine and Transmission Exchange v. Mills*, 911 S.W.2d 719, 720 (Tenn. Ct. App. 1995).

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