

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

LITTLE ITALY OF TELLICO, LLC,)
AND ITS MEMBER,)

Plaintiffs,)

v.)

LOUDON COUNTY BEER BOARD)
AND ITS MEMBERS,)

Defendants.)

Case No. 13088

FILED 10 DAY OF JUNE 2023
AT 11:16 A.M.
USA SCOTT KAS
LOUDON CO. CLERK & MASTER

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS PLAINTIFFS’ COMPLAINT

Comes now Defendants Loudon County Beer Board and Its Members (“Defendants”), by and through counsel, respectfully submit this Memorandum of Law in support of their Motion to Dismiss Plaintiffs’ Complaint pursuant to Rule 12.02(1) & (5) of the Tennessee Rules of Civil Procedure.

I. INTRODUCTION

Little Italy of Tellico, LLC and Its Member (“Plaintiffs”) filed their complaint on May 24, 2023. Plaintiffs’ Complaint should be dismissed because: (1) the Complaint was not properly filed as a petition for a writ of certiorari; (2) the claims are time-barred; and (3) Defendants were not properly served. Accordingly, Defendants respectfully request that Plaintiffs’ Complaint be dismissed in its entirety.

In its Complaint, Plaintiffs allege that four years ago Defendants denied their application for a license to sell beer at Plaintiffs’ business location. (Compl. ¶ 4). Plaintiffs assert that the court has jurisdiction over their claims based on citizenship. (Compl. ¶ 3). Plaintiffs bring suit against the Loudon County Beer Board and the individual members thereof. (Compl. ¶ 2). Plaintiffs allege that Defendants determined that the Tellico Village Library (the “Library”) was a public meeting place

without making any findings of fact as to the age or scope of activities of the individuals utilizing the Library. (Compl. ¶ 5). Plaintiffs further allege that Defendants denied the beer license because of their misplaced reliance on *Boyd's Creek Enters., LLC v. Sevier Cty.*, 362 S.W.3d 600 (Tenn. Ct. App. 2010). (Compl. ¶ 6). Plaintiffs request that the court order Defendants to issue Plaintiffs a beer license. (Compl. 3).

II. LEGAL STANDARD

“The resolution of a Tennessee Rule of Civil Procedure 12.02 motion to dismiss is determined by an examination of the pleadings alone.” *Milcrofton Util. Dist. of Williamson Cty. v. Non Potable Well Water, Inc.*, No. M2018-01431-COA-R3-CV, 2019 Tenn. App. LEXIS 227, at *5-6 (Ct. App. May 10, 2019) (citing *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002)). In filing a motion to dismiss, the defendant ““admits the truth of all of the relevant and material allegations contained in the complaint. but . . . asserts that the allegations fail to establish a cause of action.”” *Id.* at *6 (citing *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005))). While courts “must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences,” a court “should grant a motion to dismiss...when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.” *Id.* (internal citations and quotation marks omitted).

III. ARGUMENT

A. Plaintiffs' Claims Are Not Properly Filed as a Petition for a Writ of Certiorari

“The *exclusive method* of review for a beer board’s denial of a beer permit is the statutory writ of certiorari set forth in Tennessee Code Annotated section 57-5-108.” *Boyd's Creek Enters.,*

362 S.W.3d at 603-04 (citing Tenn. Code Ann. § 57-5-108(d), (f) (Supp. 2010)) (emphasis added); see also *Suleiman v. City of Memphis Alcohol Comm'n*, 290 S.W.3d 844 (Tenn. Ct. App. 2008). Thus, any “party aggrieved by the action of a beer board has the *sole remedy* of having [the] same reviewed, either in the circuit or chancery court, by statutory writ of certiorari, with a trial de novo, as a substitute for an appeal.” *Hickman Cty. Legislative Body v. Hickman Cty. Beer Bd.*, No. 86-229-II, 1987 Tenn. App. LEXIS 2489, at *3 (Tenn. Ct. App. Feb. 4, 1987) (quoting *Cantrell v. DeKalb County Beer Board*, 213 Tenn. 568, 572, 376 S.W.2d 480, 482 (1964)) (emphasis in original). The fact that “the party’s sole remedy is statutory writ of certiorari... cannot be circumvented by the filing of [a different] action.” *Id.* at *3-4. Therefore, any appeal of a beer board action filed as a complaint, rather than as a petition for a writ of certiorari, must be dismissed. *Id.* (dismissing plaintiffs’ complaint against local beer board as it was filed as a declaratory judgment action instead of as a writ of certiorari).

Although a deficiency in the formal requirements of a petition for writ of certiorari is not always fatal, if “there is no dispute that a petition for writ of certiorari is the proper procedural vehicle” then compliance with Tenn. Code Ann. § 27-8-106 is mandatory, “and failure to comply with those requirements deprive[s] the trial court... of subject matter jurisdiction to conduct any judicial review.” *Town of Collierville v. Town of Collierville Bd. of Zoning*, No. W2016-02032-COA-R3-CV, 2017 Tenn. App. LEXIS 378 (Ct. App. May 31, 2017) (dismissing petition filed against local zoning board as the petition filed did not contain an oath and verification in compliance with Tenn. Code Ann. § 27-8-106, but rather contained a standard “respectfully submitted” signature).

Here, Plaintiffs filed a “Complaint” rather than the required petition for a writ of certiorari. Furthermore, Plaintiffs’ Complaint does not contain an oath and verification as required by

Tenn. Code Ann. § 27-8-106. Accordingly, Plaintiffs have failed to state a claim within any Tennessee court's subject matter jurisdiction – necessitating dismissal of this action.

B. Plaintiffs' Complaint is Time-Barred

At the outset, by their own allegation, Plaintiffs' application for a beer license was denied approximately four (4) years ago. (Compl. ¶ 4). Thus, irrespective of the procedural vehicle Plaintiffs chose to bring this action, their claims are time barred as the Complaint was filed significantly outside of the 60-day limitations period for challenging a beer board action through a writ of certiorari. Indeed, pursuant to Tenn. Code Ann. § 27-9-102, an aggrieved party must file a petition for a writ of certiorari "within sixty (60) days from the entry of the [challenged] order or judgment." *Grigsby v. City of Plainview*, 194 S.W.3d 408, 411 (Tenn. Ct. App. 2005). This requirement "that a petition for writ of certiorari be filed within sixty days of entry of a final judgment is [intended] 'to promote the timely resolution of disputes by establishing filing deadlines that will keep cases moving through the system.'" *Id.* at 412 (quoting *Hickman v. Bd. of Paroles*, 78 S.W.3d 285, 289 (Tenn. Ct. App. 2001)). Ultimately, since "[t]he sixty day time limit is jurisdictional...the 'failure to file a writ within this period precludes review of such decisions by the courts.'" *Id.* (quoting *Johnson v. Metropolitan Gov't for Nashville Davidson County*, 54 S.W.3d 772, 774 (Tenn. Ct. App. 2001)); *see also* *Town of Collierville*, 2017 Tenn. App. LEXIS 378 ("Failure to file the petition within this time limit results in the challenged judgment becoming final, which deprives a reviewing court of jurisdiction over the matter") (internal citations omitted).

Here, accepting Plaintiffs' allegation that the denial occurred four years ago as true, it is self-evident that their claim is time-barred.

C. Defendants Have Not Been Properly Served

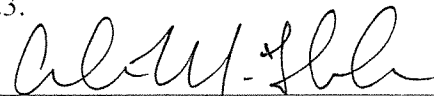
Pursuant to Tenn. R. Civ. P. 4.04(7), service shall be made “[u]pon a county, by delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county court clerk.” It is well-established that “[s]ervice of process must strictly comply with Rule 4 of the Tennessee Rules of Civil Procedure.” *In re Beckwith Church of Christ*, No. M2015-00085-COA-R3-CV, 2016 Tenn. App. LEXIS 716, at *9 (Ct. App. Sep. 23, 2016) (citing *Hall v. Haynes*, 319 S.W.3d 564, 571 (Tenn. 2010); *Watson v. Garza*, 316 S.W.3d 589, 593 (Tenn. Ct. App. 2008)). Strict compliance is vital as “service of process is not a merely perfunctory act but has constitutional dimensions.” *Id.* at *10 (internal citations and quotation marks omitted).

Here, a copy of the summons was served upon Mr. Van Shaver (“Mr. Shaver”). (Summons 1). Mr. Shaver is neither the chief executive officer of Loudon County, nor is he the county attorney or county clerk. Thus, Plaintiffs have failed to properly serve Defendants.

IV. CONCLUSION

For all of the forgoing reasons, Plaintiffs’ Complaint should be dismissed because: (1) the Complaint was not properly filed as a petition for a writ of certiorari; (2) the claims are time-barred; and (3) Defendants were not properly served.

Respectfully submitted this 16th day of June 2023.



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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2023, a true and correct copy of the foregoing **Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint** was served via First Class U.S. Mail, postage prepaid, and addressed to:

Errol W. Keith
200 Oologila Place
Loudon, TN 37774

Attorney for the Plaintiffs



Andrew M. Hale