

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

CLATA RENEE BREWER; JAMES)
HAMMOND; THE TENNESSEE)
FIREARMS ASSOCIATION, INC.;)
MICHAEL P. LEAHY; STAR NEWS)
DIGITAL MEDIA, INC.; THE)
TENNESSEAN; RACHEL WEGNER;)
and TODD GARDENHIRE in his)
individual capacity;)

Petitioners,)

vs.)

METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY;)

Respondent,)

PARENTS OF MINOR COVENANT)
STUDENTS JANE DOE AND JOHN)
DOE; THE COVENANT SCHOOL;)
and COVENANT PRESBYTERIAN)
CHURCH)

Intervenors.)

Case No. 23-0538-III
CONSOLIDATED

****controlling case****

ORDER GRANTING INTERVENTION OF THE PARENTS OF MINOR
COVENANT STUDENTS JANE DOE AND JOHN DOE PURSUANT TO TENNESSEE
RULE OF CIVIL PROCEDURE 24.02

This matter came to be heard by this Honorable Court on May 22, 2023, upon Covenant School Parents' Motion to Intervene and upon their Motion for an expedited hearing regarding the same. Counsel for the consolidated Petitioners and Respondent were present for the hearing. Argument from the movant Covenant School Parents (hereinafter referred to as "Parents"), the consolidated named Petitioners, and the Respondent was given and has been considered by the Court. Having analyzed the law, read the briefs in opposition, and considered the argument of all counsel, this Court is of the opinion that the Motion to Intervene by the specific Parents of children *enrolled* and *present* at the Covenant School on the date of March 27, 2023, referred to in their Motion as the Covenant School Parents, is well taken and should be **GRANTED**.

PSEUDONYM PLEADING

This particular class of potential Intervenors stand in a unique position stepping into the shoes of their minor children, whose identities are always handled with great care under Tennessee jurisprudence. They wish to present their legal arguments and position regarding an open area of the law that has not been clearly developed regarding the juxtaposition of the constitutional rights of the crime victim and the access to public records, particularly of a purported open criminal investigation. There is strong precedent in Tennessee law for protecting the identities of minors who are the subject of litigation. Tennessee Code Annotated § 37-1-153 limits the scope of persons who have access to juvenile court files and records. It further allows for punishment by criminal contempt for when the files and records of the juvenile court are publicly disclosed. ("Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the files and records of the juvenile court, including the child's name and address. A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.") *Tenn. Code Ann.* § 37-1-153(d)(2). Civil actions in Tennessee also

treat the identity of minor children with care by allowing *both* children and parents to plead under a pseudonym in order to protect a child's identity where the child is a victim of a crime. *See Doe v. Goodwin*, 254 S.W.3d 428, 429 (Tenn. Ct. App. 2007)(“Jane Doe is the custodial parent of John Doe....”) In this case, the public identification of the parents' names in this action would in essence be the same as the public identification of minor children who are victims of a crime which has received intense public interest. Therefore, this Court, in its discretion, finds that pseudonym pleading is appropriate in this matter to protect the identities of the minor victims.

This class of Intervenor shall hereby be referred to in these proceedings as the **Parents of Minor Covenant Students Jane Doe and John Doe** (hereinafter known as “Parents”). As a matter of procedure for the record, the Parents made an oral motion for pleading pursuant to a pseudonym at the hearing. To comply with the rules of Court the Parents are hereby **ORDERED** to file an affidavit in compliance with Local Rule 6.04 **UNDER SEAL**, pursuant to a **NOTICE OF FILING**, with the Chancery Court Clerk & Master. This affidavit must detail “specific facts explaining why anonymity of the party is necessary and facts sufficient to overcome the presumption of public access to the identities of litigants,” in accordance with the language of the Rule. Parents are further **ORDERED** in the affidavit, to certify that their minor child was enrolled and present at the Covenant School on the day of March 27, 2023. One comprehensive affidavit for this specific class of Parents shall suffice. Parents are **ORDERED** to refrain from including identifying information other than a certification as set forth above and the facts as set forth in the Rule. Such Notice of Filing shall be submitted Under Seal to the Clerk by May 26, 2023 at 4:00 P.M.

**GROUND FOR INTERVENTION PURSUANT TO TENNESSEE RULES OF
CIVIL PROCEDURE 24.02**

In analyzing the open records requests submitted by the Petitioners, the affidavits submitted by the Respondents, the law on intervention and standing, our Tennessee Constitution, the Victim's Bill of Rights, and the scant law in Tennessee and other jurisdictions on this particular issue, the Court concludes that this precise question is a matter of first impression for Tennessee Courts. Due to the assertion of an open criminal police investigation by Metropolitan Nashville Police Department ("MNPD"), the Parents on behalf of their minor children are entitled, pursuant to the Tennessee Rules of Procedure, to permissively intervene to preserve any rights they may have on behalf of the minor children who were victims of this incident but not at the age of majority to assert their own claims.

Further, this Court finds the arguments articulated by the Parents and Respondents regarding specific private information, personal to the minor students Jane Doe and John Doe, which may have been collected at the scene of the crime and which the Court has not yet had the opportunity to review, to be an additional basis for permissive intervention. The broadest request made by Petitioners asks for the entire MNPD investigative file on this matter, including but not limited to photos and video footage of the incident. The Respondent has submitted key affidavits which state that minor students Jane Doe and John Doe were victims of a crime, and that at this juncture this is an ongoing and active criminal investigation which may lead to prosecution.

Tennessee Rule of Civil Procedure 24.02 provides for permissive intervention in certain situations. "Upon timely motion any person may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when a movant's claim or defense and the main action have a question of law or fact in common." Tenn. R. Civ. P. 24.02. In the absence of

express statutory authority, determining whether a party is entitled to judicial relief “requires the court to decide whether the party has a sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf.” *Shelby Cnty. Deputy Sheriff's Ass'n v. Gilless*, 972 S.W.2d 683, 685 (Tenn. Ct. App. 1997).

At this stage, the Parents’ claims regarding the application of the Tennessee Public Records Acts (“TPRA”) and the documents and materials in the possession of MNPD hinge on the interpretation of the Victim’s Bill of Rights and Article I, § 35 of the Tennessee Constitution, which implicate common questions of law and fact to the parties in the present action regarding the requested disclosure of the contents of the MNPD file. With a high profile incident such as this, where there are several minor victims, an assertion of an open and active criminal investigation, a known deceased assailant, and a request for the records pertaining to the purportedly active investigation, there is little law, statutory or otherwise, on what the rights of those victims should be when it comes to the public access to the records and/or open investigative file. In his dissent in *Tennessean v. Metro. Government of Nashville*, Justice Wade contends that the application of the Victim’s Bill of rights to the TPRA warrants consideration regardless of whether the records are temporarily exempt from disclosure pursuant to Tennessee Rule of Criminal Procedure 16. *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 881 (Tenn. 2016). This Court agrees with Justice Wade that this open question of law warrants consideration.

The Parents have asserted that should the documents and material be released to the Petitioners, the minor children would sustain a palpable and distinct injury, which would be caused by the release of certain file contents, and that their interests and injury can be addressed by this Court in its final determination on what parts of the investigative file, if any, are to be ultimately

released in this case. *Shelby Cnty*, 972 S.W.2d at 685. The Parents also argue an interest in seeking to protect information which was collected at the scene by MNPD.

Based on the foregoing, this Court finds that the Parents, on behalf of minor students Jane Doe and John Doe, as victims of a crime, have a sufficient personal stake in the outcome of this litigation and thus this Court finds they have the requisite standing to intervene in this action. Jane Doe and John Doe were victims of a crime and thus have standing to intervene to assert their rights, if any, at this juncture. As such, the Parents moving on their behalf meet the requirements for permissive intervention pursuant to Tenn. R. Civ. P. 24.02. Therefore, the Parents' Motion to Intervene is **GRANTED**.

In analyzing the procedural rule as well as the unique posture of this TRPA case, this Court is of the opinion that the TRPA does not contemplate the pleadings nor procedure of a typical lawsuit. *See Tennessee Code Annotated* 10-7-501, et seq. While Tennessee Rule of Civil Procedure 24.03 requires that an intervenor file a pleading, it does not require a "complaint" specifically.

In *Branch v. Warren*, our Supreme Court has held the following regarding the rules of civil procedure,

"The policy of our law has long favored amendments. Section 198, Caruthers' History of a Lawsuit, Eighth Edition (1963) reads, in pertinent part as follows: Under the very liberal rules allowing amendments, the court may admit material amendments at any stage of the proceedings. The Supreme Court of Tennessee has said: 'It is a downright violation of principles, and of good sense, to determine any case otherwise than on its merits, and it is a great imputation upon judges that so many statutes of jeofails have been needful to place common sense upon her native seat, from which she has been driven by technicalities.'"

Branch v. Warren, 527 S.W.2d 89, 91 (Tenn. 1975).

Therefore, the Court will allow the Parents to provide a brief which sets forth their claims and/or defenses regarding the matters pending before the Court. The Parents are **ORDERED** to

comply with the briefing schedule outlined in the Scheduling Order. The Court holds that the submission of this brief will satisfy the procedural requirement of Tenn. R. Civ. P. 24.03 that a pleading be filed.

IT IS SO ORDERED.

/s/ I'Ashea L. Myles

P'ASHEA L. MYLES

CHANCELLOR, CHANCERY COURT PART III

cc via U.S. Mail, efileing or fax as applicable to:

Douglas R. Pierce
KING & BALLOW
315 Union Street, Suite 1100
Nashville, TN 37201
dpierce@kingballow.com
Counsel for Clata Renee Brewer

Nicholas R. Barry
**AMERICA FIRST LEGAL
FOUNDATION**
611 Pennsylvania Avenue, Suite 231
Washington, D.C. 20003
Nicholas.barry@aflegal.org

*Counsel for Michael Patrick Leahy and Star
News Digital Media, Inc.*

Rocklan W. King III
F. Laurens Brock
ADAMS AND REESE LLP
1600 West End Avenue, Suite 1400
Nashville, TN 37203
rocky.king@arlaw.com
larry.brock@arlaw.com

*Counsel for Proposed Intervenor,
Covenant Presbyterian Church*

Wallace W. Dietz, Director, Dept. of Law
Lora Fox
Cynthia Gross
Phylinda Ramsey
**METROPOLITAN GOVERNMENT OF
NASHVILLE & DAVIDSON COUNTY**
Metropolitan Courthouse
1 Public Square, Suite 108
Nashville, TN 37210
wally.dietz@nashville.gov

John I. Harris III
SCHULMAN, LEROY & BENNETT PC
3310 West End Avenue, Suite 460
Nashville, TN 37201 jharris@slblawfirm.com
jharris@slblawfirm.com
*Counsel for James Hammond and Tennessee
Firearms Association, Inc*

Robb S. Harvey
Quynh-Anh D. Kibler
HOLLAND & KNIGHT LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
robb.harvey@hkklaw.com
qa.kibler@hkklaw.com

*Counsel for The Tennessean, Rachel Wegner,
and Todd Gardenhire*

Peter F. Klett Autumn L. Gentry
DICKINSON WRIGHT PLLC
424 Church Street, Suite 800
Nashville, TN 37219
pklett@dickinsonwright.com
agentry@dickinsonwright.com

Nader Baydoun
BAYDOUN & KNIGHT, PLLC
5141 Virginia Way, Suite 210
Brentwood, TN 37027
nbaydoun@baydoun.com

*Counsel for Proposed Intervenor, The
Covenant School*

Eric G. Osborne
William L. Harbison
Christopher S. Sabis
C. Dewey Branstetter
Ryan T. Holt
Micah N. Bradley
Frances W. Perkins
Hunter C. Branstetter
William D. Pugh