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IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

November 14, 2019 Session

PAMELA D. STARK v. JOE EDWARD STARK

**Appeal from the Circuit Court for Shelby County
No. CT-002958-18 Robert Samuel Weiss, Judge**

No. W2019-00650-COA-R3-CV

(Filed Jan. 31, 2020)

This is an appeal from an order finding the appellant in civil contempt and ordering her incarcerated until she agreed to remove a social media post. The appellant was incarcerated for four hours before she purged herself of contempt by agreeing to remove the post. On appeal, the appellant challenges the civil contempt finding. Because the appellant has purged herself of civil contempt and was released from incarceration, we deem the issue moot and dismiss this appeal.

**Tenn. R. App. P. 3 Appeal as of Right;
Appeal Dismissed**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY W. ARMSTRONG, J., joined.

Pamela D. Stark, Memphis, Tennessee, Pro Se.

Melissa C. Berry, Memphis, Tennessee, for the appellee, Joe Edward Stark.

OPINION

I. FACTS & PROCEDURAL HISTORY

After a five-year marriage, Pamela Stark (“Wife”) filed a complaint for divorce from her husband, Joe Stark (“Husband”) on June 29, 2018. Wife is an attorney and filed her complaint pro se. Husband is a sergeant with the Memphis Police Department.

Tennessee Code Annotated section 36-4-106(d) states that when a petition for divorce is filed and served, the following temporary injunction is in effect against both parties:

(3) An injunction restraining both parties from *harassing*, threatening, assaulting or abusing the other and from *making disparaging remarks about the other . . . to either party’s employer*.

Tenn. Code Ann. § 36-4-106(d)(3) (emphasis added). The parties are permitted to apply to the court “for further temporary orders, an expanded temporary injunction, or modification or revocation of this temporary injunction.” Tenn. Code Ann. § 36-4-106(d)(6).

Husband filed an answer and counter-complaint for divorce. Wife amended her complaint to add “interspousal tort” claims against Husband, including battery and intentional infliction of emotional distress. Wife alleged that she was injured during a physical altercation with Husband days before the complaint for divorce was filed.

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On January 15, 2019, Husband filed a petition for a restraining order. Husband alleged that he had recently become aware of a Facebook post made by Wife on December 14, 2018, in which she publicly posted allegations regarding Husband and the alleged incident of domestic violence between them. Husband claimed that Wife's post also disparaged the Memphis Police Department and its investigation of the incident. Husband asserted that Wife's dissemination of these allegations in a public forum would cause him immediate and irreparable injury, including but not limited to loss of employment, demotion, or damage to his reputation within the department. As such, Husband asked the trial court to enter a restraining order directing Wife to remove the Facebook post and to cease and desist from making any future comments, orally or on social media, that might jeopardize his employment or impugn his reputation with the police department. Husband sought an award of attorney's fees incurred in bringing the petition for a restraining order.

Wife filed a response to the petition in which she alleged that her post was critical of the Memphis Police Department, not Husband. She also argued that the restraining order sought by Husband would infringe on her "constitutional rights." The trial court held a hearing on Husband's petition for a restraining order on February 7, 2019. At the outset, counsel for Husband explained that Husband was basically asking the trial court to extend the existing statutory injunctions to specifically address public posts on social media or communication with Husband's employer that would

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have a detrimental effect on his reputation or employment. Husband submitted as exhibits the Facebook post made by Wife and also an email Wife had sent to the mayor of Memphis about the incident. In the Facebook post, Wife claimed to be “a recent victim of domestic violence at the hands of a Memphis Police Officer,” and she criticized the handling of the investigation. Husband testified that his co-workers at the police department saw the Facebook post before he did. He explained that he and Wife have many mutual friends on the social media site because Wife worked as a prosecutor. Husband testified that a special prosecutor from another city was appointed to conduct an investigation regarding the alleged incident of domestic violence involving him and Wife.

Wife’s four-page email to the mayor likewise claimed that she was a victim of domestic violence at the hands of Husband and a victim of misconduct by the Memphis Police Department. She identified her husband by name and rank and described her version of the physical altercation between them and the events that followed. Wife asked the mayor to “look into this before it goes further.” Husband testified that the city mayor is considered his ultimate boss and employer. He opined that Wife’s social media post and email to the mayor constituted harassment and brought his reputation into question.

Wife did not testify but repeated her argument that she had an absolute right to criticize the police department. At the conclusion of the hearing, the trial judge informed Wife that the problem with her

argument was the existence of the automatic injunction prohibiting her from “making disparaging remarks about the other [spouse] . . . *to either party’s employer.*” See Tenn. Code Ann. § 36-4-106(d)(3) (emphasis added). The trial judge acknowledged Wife’s “freedom of speech” argument but emphasized that her email did not convey some general concern about police corruption but instead was in direct reference to Husband. He explained that the references to Husband were “off limits.” The trial judge then orally ruled that the Facebook post had to be removed that same day and that Wife would not be permitted to make further allegations on social media or have communication with Husband’s employer.

The following exchange occurred between the trial judge and Wife:

The Court: That post shall be removed today, and a mandatory injunction will go into effect that there will be no communication with employers. There is a special prosecutor involved in this case. That special prosecutor will deal with this Court. Whatever allegations have been made, we’ll deal with that in due course. But at this point involving making any further allegations in social media is completely inappropriate and is being enjoined.

Ms. Stark: Well, Your Honor, I will just with all candor to the Court say you

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might as well take me into custody right now. I have contacted the FBI as well as having contacted the mayor of Memphis to try and get this addressed. I am saying that I am a victim of corruption from the Memphis Police Department, and I am going to pursue every course of action I have and –

The Court: Ms. Stark, are you going to remove that post, yes or no?

Ms. Stark: I am not.

The Court: Officer Houston, take her into custody. We'll stand in recess.

(Short break.)

The Court: Ms. Stark, please stand. Are you going to comply with this Court's orders?

Ms. Stark: No, I'm not.

The Court: All right. I'm making a finding that you are in direct contempt of court by willfully refusing to comply with this Court's orders. You will be held in the – you will be held in custody until such time that you decide that you want to change your position and you apologize to this Court. We'll stand in recess until that time.

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Wife was held in custody for four hours before she agreed to remove the Facebook post and was released.

Thereafter, the trial court entered its written order granting Husband's petition for a restraining order. The trial court entered a separate written order finding Wife in direct civil contempt. The order states that at the end of the hearing on the petition for a restraining order, "in open Court, [Wife] advised that the Court may as well [] find her in Contempt as she was not going to take the Facebook post of December 14, 2018 down which had just been ordered." The court noted that it then asked Wife directly whether she was going to abide by the court's order, to which she responded, "No." As such, the order states, the trial court found Wife in direct contempt of court, and she was immediately taken into custody. According to the order, Wife was ordered to be held in custody until she agreed to remove the Facebook post, and after being held in custody for four hours, she agreed to remove the post as ordered. Therefore, the written order states that Wife had already purged her contempt. Wife timely filed a notice of appeal.

II. ISSUES PRESENTED

Wife presents the following issues, which we have slightly restated, in her brief on appeal:

1. Whether the trial court erred by issuing a restraining order involving matters which were not subject to adjudication or final judgment in the

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pending divorce and interspousal tort case before the court;

2. Whether the trial court erred in finding sufficient proof under Tennessee Rule of Civil Procedure 65.04 to establish either a right or an immediate and irreparable injury, loss, or damage to warrant the restraining order;
3. Whether the trial court erred in issuing a restraining order without employing the proper constitutional analysis associated with Wife's infringed rights;
4. Whether the trial court erred in conducting summary contempt proceedings to impose sanctions for direct civil contempt; and
5. Whether the trial court erred in imposing contempt sanctions before the court's order was actually violated.

In his posture as appellee, Husband asserts that Wife's issues on appeal must be limited to those challenging the contempt order, not the restraining order entered in the context of the underlying divorce action, which remains pending in the trial court.

III. DISCUSSION

At the outset, we address the issue raised on appeal by Husband. Husband argues that Wife has only perfected an appeal from the order of contempt, and therefore, the issues she can raise on appeal must be limited to those presenting proper challenges to the contempt order. We agree with Husband in this regard.

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“Contempt proceedings are sui generis and are incidental to the case out of which they arise.” *Baker v. State*, 417 S.W.3d 428, 435 (Tenn. 2013) (citing *Doe v. Bd. of Prof’l Responsibility*, 104 S.W.3d 465, 474 (Tenn. 2003)). The term “sui generis” means “[o]f its own kind or class; unique or peculiar.” *Black’s Law Dictionary* (11th ed. 2019). “The contempt proceeding may be ‘related to the underlying case but independent from it.’” *Ballard v. Cayabas*, No. W2016-01913-COA-R3-CV, 2017 WL 2471090, at *2 (Tenn. Ct. App. June 8, 2017) (quoting *Green v. Champs-Elysees, Inc.*, No. M2013-00232-COA-R3-CV, 2014 WL 644726, at *7 (Tenn. Ct. App. Feb. 18, 2014)).

A contempt proceeding “often stems from an underlying proceeding that is not complete.” *Doe*, 104 S.W.3d at 474. However, “[a] judgment of contempt fixing punishment is a final judgment from which an appeal will lie.” *Hall v. Hall*, 772 S.W.2d 432, 436 (Tenn. Ct. App. 1989) (citing *State v. Green*, 689 S.W.2d 189 (Tenn. Crim. App. 1984)). A contempt judgment “becomes final upon entry of the judgment imposing a punishment therefore.” *State ex rel. Garrison v. Scobey*, No. W2007-02367-COA-R3-JV, 2008 WL 4648359, at *4 (Tenn. Ct. App. Oct. 22, 2008) (citing *Green*, 689 S.W.2d at 190). The contempt ruling must be appealed within thirty days. *Blakney v. White*, No. W2018-00617-COA-R3-CV, 2019 WL 4942436, at *4 (Tenn. Ct. App. Oct. 8, 2019). “‘It matters not that the proceedings out of which the contempt arose are not complete.’” *Moody v. Hutchison*, 159 S.W.3d 15, 31 (Tenn. Ct. App. 2004) (quoting *Green*, 689 S.W.2d at 190). “An order that

imposes punishment for contempt ‘is a final appealable order in its own right, even though the proceedings in which the contempt arose are ongoing.’” *Ballard*, 2017 WL 2471090, at *2 (quoting *Coffey v. Coffey*, No. E2012-00143-COA-R3-CV, 2013 WL 1279410, at *5 (Tenn. Ct. App. Mar. 28, 2013)).

Here, Wife filed a notice of appeal within thirty days of the trial court’s contempt order. Accordingly, she has properly perfected an appeal from the contempt order. However, the divorce case in which the restraining order was entered remains pending. In considering Wife’s issues, we must bear in mind that this is an appeal from the contempt order, not an appeal from the restraining order. *See Garrison*, 2008 WL 4648359, at *4 (reviewing the contempt issues presented on appeal separately “as distinct from the remainder of the appeal” and dismissing the remainder of the appeal for lack of a final judgment).

Because this is an appeal from the contempt order, Wife is limited in her ability to raise issues regarding the restraining order. Wife argues that she can also challenge the restraining order, noting that one of the essential elements of a civil contempt finding is that the court order alleged to have been violated must have been a “lawful” order. *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 354 (Tenn. 2008). However, in this context:

A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties. An order is not

rendered void or unlawful simply because it is erroneous or subject to reversal on appeal. Erroneous orders must be followed until they are reversed.

Id. at 355 (internal citations omitted). For these reasons, we emphasize that the limited issue before this Court is whether the trial court erred by holding Wife in civil contempt.

The Tennessee Supreme Court has explained civil contempt as follows:

Civil contempt is remedial in character and is applied when a person refuses or fails to comply with a court order. [*State v.*] *Beeler*, 387 S.W.3d [511, 520 (Tenn. 2012)]. A civil contempt action is brought to force compliance with the order and thereby secure private rights established by the order. *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 510 (Tenn. 2005) (citing *Robinson v. Air Draulics Eng'g Co.*, 214 Tenn. 30, 377 S.W.2d 908, 912 (1964)). When a trial court orders imprisonment after finding civil contempt, the confinement is remedial and coercive in nature, designed to compel the contemnor to comply with the court's order. Consequently, compliance with the order will result in the contemnor's immediate release from confinement. *Id.* at 511. It has long been said that in a civil contempt case, the contemnor "carries the keys to his prison in his own pocket." *State ex rel. Anderson v. Daugherty*, 137 Tenn. 125, 191 S.W. 974, 974 (1917).

Baker, 417 S.W.3d at 435-36.¹ “Beyond the ‘civil’ or ‘criminal’ classification, contempt is also categorized as ‘direct’ or ‘indirect.’” *Id.* at 436 n.7. “Contempt can be further classified as direct or indirect depending on whether the misbehavior occurred in the court’s presence.” *In re Brown*, 470 S.W.3d 433, 443 (Tenn. Ct. App. 2015). “Direct contempt is based on acts committed in the presence of the court[.]” *Id.* at 443-44.

In the case before us, the trial court held Wife in direct civil contempt and ordered her incarcerated until she agreed to remove the Facebook post. Wife was in custody for approximately four hours before she agreed to remove the post and was released. Thus, Wife has purged herself of contempt.

This Court has repeatedly held that issues raised on appeal regarding civil contempt findings are moot if the contemnor has already purged himself or herself of contempt by the time the issue reaches this Court. “A case, or an issue in a case, becomes moot when the parties no longer have a continuing, real, live, and substantial interest in the outcome.” *Hooker v. Haslam*, 437 S.W.3d 409, 417 (Tenn. 2014). For instance, in *Simpkins v. Simpkins*, 374 S.W.3d 413, 417 (Tenn. Ct.

¹ Unlike civil contempt, “[s]anctions for criminal contempt are generally both punitive and unconditional in nature, designed to punish past behavior, not to coerce directly compliance with a court order or influence future behavior.” *Baker*, 417 S.W.3d at 436. Criminal contempt is often regarded as a crime. *Id.* “[W]hen a court imposes a definite term of confinement for conduct constituting criminal contempt, the contemnor cannot shorten the term by agreeing not to continue in the behavior that resulted in his confinement.” *Id.*

App. 2012), a husband was found in civil contempt for failure to pay health insurance premiums and failure to provide proof of life insurance. On appeal to this Court, the husband argued that the trial court erred by finding him in civil contempt without finding that he had the ability to comply with the orders he allegedly violated. *Id.* Because the husband had already “cured his contemptuous conduct” by paying the premiums and providing proof of insurance, we held that “the issue of civil contempt is moot.” *Id.* at 418.

In *Pfister v. Searle*, No. M2000-01921-COA-R3-JV, 2001 WL 329535, at *2 (Tenn. Ct. App. Mar. 28, 2001), the trial court found a mother in civil contempt and ordered her jailed until she delivered the parties’ child for visitation. The mother was released when the child was produced the next day. *Id.* at *4. On appeal, the mother argued that the evidence did not support a finding that she willfully violated the order because it was confusing. *Id.* We held that “because the [mother] complied with the court’s order to produce her child, thereby purging her civil contempt, that judgment is now moot, and we decline to address it.” *Id.* at *1. “The validity of the trial court’s order finding her in civil contempt [was] moot.” *Id.* at *4. *See also In re A.G.*, No. M2007-0799-COA-R3-JV, 2009 WL 3103843, at *5 (Tenn. Ct. App. Sept. 28, 2009) (concluding that a mother’s challenge to her sentence for criminal contempt was moot when she had already served the sentence and it was “unclear what meaningful relief lies within the power of this court to give her at this point”); *Boggs v. Boggs*, No. M2006-00810-COA-R3-CV,

2007 WL 2353156, at *5 (Tenn. Ct. App. Aug. 17, 2007) (deeming the appellant's arguments regarding two civil contempt findings moot where the appellant paid the amount ordered and was released from custody).

"Generally, whether a claim is moot involves a question of law that this Court will review de novo." *Huggins v. McKee*, 500 S.W.3d 360, 375 (Tenn. Ct. App. 2016) (citing *All. for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005)). "The general rule remains that appellate courts 'should dismiss appeals that have become moot regardless of how appealing it may be to do otherwise.'" *Hooker*, 437 S.W.3d at 417 (quoting *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Co.*, 301 S.W.3d 196, 210 (Tenn. 2009)). However, even if a case may have become moot, "before dismissing it a court should consider whether to exercise its discretion to apply one of the recognized exceptions to the mootness doctrine." *Id.* The Tennessee Supreme Court has identified "a limited number of exceptional circumstances that make it appropriate to address the merits of an issue notwithstanding its ostensible mootness[.]" *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013). Those "exceptional circumstances" are:

- (1) when the issue is of great public importance or affects the administration of justice;
- (2) when the challenged conduct is capable of repetition and evades judicial review;
- (3) when the primary dispute is moot but collateral consequences persist; and
- (4)

when a litigant has voluntarily ceased the challenged conduct.

Id. (citing *Lufkin v. Bd. of Prof'l Responsibility*, 336 S.W.3d 223, 226 (Tenn. 2011)).

The only exception arguably relevant in this case is “when the primary subject of the dispute has become moot but collateral consequences to one of the parties remain.” *Hooker*, 437 S.W.3d at 417-18. This exception is “applicable in the court’s discretion.” *Id.* The court “may refrain from dismissing an appeal as moot when collateral consequences remain following the dismissal of the appeal.” *Hudson v. Hudson*, 328 S.W.3d 863, 865-66 (Tenn. 2010). This exception to the mootness doctrine applies if “prejudicial collateral consequences” are shown to exist. *Id.* at 866. “Such collateral consequences can include the continued effect of an order that has expired or is invalid.” *Id.*

In the case at bar, members of this Court asked Wife at oral argument why this appeal should not be dismissed as moot when Wife had purged herself of contempt and been released from incarceration. Wife argued that the issue of contempt was not moot because (1) the contempt finding was a “blight” on her record, (2) the contempt finding might be used against her in the divorce trial, and (3) an issue of attorney’s fees had been reserved in the trial court.

We begin with her argument regarding attorney’s fees. In *Dockery v. Dockery*, No. E2009-01059-COA-R3-CV, 2009 WL 3486662, at *2 (Tenn. Ct. App. Oct. 29, 2009), we considered whether a husband’s appeal

challenging his contempt conviction was moot when he had already completed his jail sentence. In addition to the jail sentence, the husband was also ordered to pay the wife's attorney's fees. *Id.* *2 at n.2. As such, we held that his "entire appeal" was not moot, but any challenge to the length of his sentence was moot because it no longer presented a justiciable controversy. *Id.* at *2 n.2, *10. Unlike *Dockery*, however, the trial court in this case did not order Wife to pay Husband's attorney's fees in connection with the finding of contempt. As we noted in a related appeal of a recusal motion Wife filed in this case, "Following the trial court's oral ruling on the motion for restraining order, Wife essentially invited the trial court to find her in contempt after stating that she would not follow the trial court's order." *Stark v. Stark*, No. W2019-00901-COA-T10B-CV, 2019 WL 2515925, at *10 (Tenn. Ct. App. June 18, 2019). Thus, Husband never filed a petition for contempt or sought attorney's fees in connection with contempt. The trial court's order granting Husband's petition for a restraining order reserved a ruling on his request for attorney's fees *in connection with his request for a restraining order*. As a result, it is not necessary to address the contempt finding on appeal due to any outstanding issue regarding attorney's fees, which was present in *Dockery*.

Wife's arguments regarding the "blight" on her record and the possible use of the contempt order in the divorce trial are likewise unconvincing.² Another

² This was a short-term marriage with no children, and neither party requested alimony.

panel of this Court rejected a similar argument in *Bradford v. Bradford*, No. 86-262-II, 1986 WL 2874, at *2 (Tenn. Ct. App. Mar. 7, 1986). The appellant was no longer incarcerated under the court's contempt order but insisted that the issues on appeal were not moot because he "may continue to suffer consequences as a result" of the contempt finding. *Id.* The appellant argued that the contempt finding might be used against him in a custody matter or a subsequent contempt proceeding. *Id.* We found that argument "highly speculative." *Id.* This Court was "not persuaded that the finding of contempt may still have 'some practical effect' in the future which would keep defendant's case from being moot." *Id.*

Additionally, in *State v. Jenkins*, No. C/A 157, 1989 WL 124950, at *1 (Tenn. Ct. App. Sept. 13, 1989), an individual was held in contempt for failure to submit to paternity blood testing but purged himself of contempt by submitting to the blood test. On appeal, we held that "[his] challenges to the contempt order are moot since no meaningful relief can be rendered." *Id.* Quoting a case from Maryland, the dissenting judge in *Jenkins* suggested that the issue was not moot because the contempt order would remain in court records "for all to see." *Id.* at *2. Although recognizing that the contempt order "may not ever be utilized" and that its "effect beyond mere existence is not known, and may be none," the dissent took the position that the mere existence of a contempt order was enough to give substance to the appeal. *Id.* However, the majority opinion was to the contrary. Thus, Tennessee courts have not

recognized the type of vague and speculative interests asserted by Wife as sufficient “prejudicial collateral consequences.”³

³ We recognize that in some jurisdictions, special exceptions have been created in cases involving attorneys held in criminal contempt. *See, e.g., Johnson v. State*, 306 Ga. App. 844, 846 (2010) (explaining the general rule that an appeal of a criminal contempt order is moot upon the contemnor’s release from jail, but in Georgia, “an exception to this rule has been made in cases involving an attorney”); *see also Nakell v. Attorney Gen. of N. Carolina*, 15 F.3d 319, 322-23 (4th Cir. 1994) (distinguishing a case involving “a layperson not subject to professional discipline” from one involving an attorney who could face possible discipline as a result of a criminal contempt conviction); *Matter of Betts*, 927 F.2d 983, 988 (7th Cir. 1991) (“In the case of an attorney convicted of criminal contempt of court, the conviction may have collateral consequences, such as action by the state attorney registration and disciplinary authority.”)

However, a civil contempt order “does not entail the kind of collateral consequences that a criminal conviction entails.” *S.E.C. v. Res. Dev. Int’l*, 291 F. App’x 660, 665 (5th Cir. 2008); *see also U.S. v. Johnson*, 801 F.2d 597, 600 (2d Cir. 1986) (stating that collateral legal consequences “are difficult to establish as to a civil contempt”). The Florida Court of Appeals declined to dismiss an attorney’s appeal of a *criminal* contempt conviction as moot in *Keezel v. State*, 358 So. 2d 247, 248-49 (Fla. Dist. Ct. App. 1978), recognizing the “adverse legal consequences” flowing from the criminal conviction. However, the Court declined to apply the same rule to an attorney who was only found in *civil* contempt in *O’Connor v. O’Connor*, 415 So. 2d 902, 903 (Fla. Dist. Ct. App. 1982), deeming his appeal moot. The Court distinguished *Keezel* and found its reasoning “not persuasive in this civil contempt matter, wherein the appellant is an attorney.” *Id.* at n.1. Here, Wife was only held in civil contempt, rather than criminal contempt, and she did not present any argument on appeal regarding the possibility of disciplinary action, so we decline to find any collateral consequences based on her status as an attorney.

Absent a showing by Wife of specific prejudicial collateral consequences resulting from the trial court's finding of contempt, we decline to apply the collateral consequences exception to the mootness doctrine. *See Hudson*, 328 S.W.3d at 866 (dismissing an appeal as moot because the father "ha[d] not shown that we should refrain from dismissing his appeal as moot" by describing "prejudicial collateral consequences necessary to invoke this exception to the mootness doctrine").

IV. CONCLUSION

For the aforementioned reasons, this appeal is dismissed. Costs of this appeal are taxed to the appellant, Pamela Stark, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE

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IN THE COURT OF APPEALS OF
TENNESSEE AT JACKSON

PAMELA D. STARK v. JOE EDWARD STARK

Circuit Court for Shelby County

No. W2019-00650-COA-R3-CV

ORDER

(Filed Sep. 6, 2019)

On August 21, 2019, Appellee Joe Edward Stark filed a “Second Motion to Dismiss” in which he requests this Court dismiss all claims related to a Temporary Restraining Order entered by the trial court on February 13, 2019. The Appellee claims that the only final judgment properly before this Court on appeal is the March 29, 2019 order on contempt, and therefore the Appellant erred in raising as her first three issues in her brief claims related to the temporary restraining order. The Appellee requests that this Court dismiss the first three issues presented by the Appellant and limit the appeal to issues related to the order on contempt.¹ The Appellee’s motion fails to specify efforts to contact adverse counsel or whether there is opposition to the motion but otherwise complies with Tennessee Rule of Appellate Procedure 22.

¹ As presented, the Appellee’s request more closely resembles a Motion to Strike.

On August 28, 2019, the Appellant filed a timely Response in opposition to the Motion to Dismiss. The Appellant asserts multiple reasons for not granting the partial dismissal of the appeal, including arguments that the Notice of Appeal notices both the temporary restraining order and the contempt order, the assertion of constitutional claims, and the practical observation that review of the order on contempt necessarily requires review of the underlying restraining order.

After reviewing the motion and response, and after consideration of Rules of Appellate Procedure and applicable Tennessee law, the Court declines to strike the identified portions of the Appellant's brief. Such arguments are best reserved for full consideration by the Court as part of the entire case on appeal. Moreover, because a legal determination of the role the temporary restraining order plays in the review of the final judgment appealed is a proper issue for the Court to address on appeal, a partial dismissal at this time would be premature and inadvisable.

Upon due consideration, the motion is respectfully denied. **It is SO ORDERED.**

PER CURIAM

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IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

PAMELA D. STARK v. JOE EDWARD STARK

**Circuit Court for Shelby County
No. CT-002958-18**

No. W2019-00650-COA-R3-CV

ORDER

(Filed May 15, 2019)

On May 2, 2019, Appellee Joe Edward Stark filed a motion requesting that the Court dismiss the appeal for lack of subject matter jurisdiction. As grounds for dismissal, the Appellee claims that the March 29, 2019 order appealed is not a final order. To support this assertion, the Appellee argues that the order appealed is an interlocutory order addressing a petition for direct civil contempt, but does not adjudicate all the claims or rights of the parties in the pending divorce proceeding. As such, argues the Appellee, the order appealed fails to meet the requirements of Tennessee Rules of Appellate Procedure 3 and therefore this Court lacks subject matter jurisdiction to entertain the appeal. The Appellee also requests that this Court deem the appeal frivolous and award him attorney fees and costs. The Appellee's motion fully complies with the requirements of Tennessee Rule of Appellate Procedure 22.

The Appellant filed a response in opposition to the motion to dismiss on May 5, 2019. The Appellant claims that this Court does have jurisdiction over the appeal. The Appellant supports this claim by arguing the order appealed addressed a restraining order and corresponding contempt order, both of which are incidental to, and independent from, the case out of which it arose. As such, argues the Appellant, the order appealed is a final judgment and must be timely appealed.

This Court has previously held that:

[A] contempt proceeding is sui generis and is considered incidental to the case out of which it arises, and often stems from an underlying proceeding that is not complete. The contempt proceeding may be related to the underlying case but independent from it. Thus, [a] judgment of contempt fixing punishment is a final judgment from which an appeal will lie. The judgment of contempt becomes final upon entry of the judgment imposing a punishment therefore. It matters not that the proceedings out of which the contempt arose are not complete. An order that imposes punishment for contempt is a final appealable order in its own right, even though the proceedings in which the contempt arose are ongoing.

Ballard v. Cayabas, 2017 WL 2471090, at *2 (Tenn. Ct. App. June 8, 2017) (internal citations removed).

The record in this case has not been filed. Accordingly, this Court is unable to review the order appealed

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to determine if it imposes punishment for contempt. Therefore the Court cannot, at this time, determine if the order appealed is a final order or interlocutory order. As such, dismissal at this time would be premature and unwise.

Upon due consideration, the motion is respectfully denied. Further, this Court declines to hold that the appeal is frivolous. **It is SO ORDERED.**

PER CURIAM

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**IN THE CIRCUIT COURT OF TENNESSEE FOR
THE THIRTEENTH JUDICIAL DISTRICT
AT MEMPHIS, SHELBY COUNTY**

PAMELA DIANE STARK,

Plaintiff/Respondent,

vs.

No. CT-002958-18

Division VIII

JOE EDWARD STARK,

Defendant/Petitioner.

ORDER ON DIRECT CIVIL CONTEMPT

(Filed Mar. 29, 2019)

THIS CAUSE came on to be heard on the 7th day of February, 2019, before the Honorable Robert S. Weiss, Judge of Division VIII of the Shelby County Circuit Court on the on the Court's *sua sponte* finding Respondent, Pamela Diane Stark, in Contempt, based on the statements of Respondent and the record as a whole, from all of which the Court finds as follows:

1. That following the hearing on the Petition for Restraining Order Pursuant to Tennessee Rules of Civil Procedure Rule 65.03 on February 7, 2019 in open Court, Ms. Stark advised that the Court may as well as find her in Contempt as she was not going to take the Facebook post of December 14, 2018 down which had just been ordered.

2. The Court then asked whether she was going to abide by the Court's Order to which she said "No."

3. Ms. Stark was immediately ordered to be taken into custody for direct contempt of Court.

4. Ms. Stark was ordered to be held in custody until such time that she agreed to remove the Facebook post in question.

5. Only after consultation with counsel and being in custody for four (4) hours did Ms. Stark agreed to remove the Facebook post as previously ordered.

**IT IS THEREFORE ORDERED, ADJUDGED
AND DECREED:**

1. That the Respondent, Pamela Stark, is found to be in Direct Contempt of Court however has purged her Contempt.

/s/ Robert S. Weiss
JUDGE

3/29/19
DATE

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CERTIFICATE OF SERVICE

I certify that I have this 29 day of ~~February~~ March 2019 hand-delivered a copy of this order to counsel for each of the parties affected or to the parties themselves if not represented by counsel.

/s/ A. Wells

DEPUTY CLERK

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTEENTH JUDICIAL DISTRICT
AT MEMPHIS

PAMELA DIANE STARK,

Plaintiff/Respondent,

vs.

No. CT-002958-18

Division VIII

JOE EDWARD STARK,

Defendant/Petitioner.

**ORDER ON PETITION FOR RESTRAINING
ORDER PURSUANT TO TENNESSEE
RULES OF CIVIL PROCEDURE RULE 65.03**

(Filed Feb. 13, 2019)

THIS CAUSE came on to be heard on the 7th day of February, 2019 before the Honorable Robert S. Weiss, Judge of Division VIII of the Circuit Court of Shelby County, Tennessee on the Petition for Restraining Order Pursuant to Tennessee Rules of Civil Procedure Rule 65.03 filed January 15, 2019, testimony of Petitioner, arguments of counsel for Petitioner and argument of the Respondent and on the record as a whole, the Court finds as follows:

1. The parties were married on May 28, 2013 and separated on June 18, 2018.

2. During the course of the marriage there have been two other Complaints for Divorce filed which were both voluntarily dismissed after about seven months.

3. Subsequent to filing the original Complaint for Divorce, Wife sought leave and filed an Amended Complaint for Divorce to add allegations of Interspousal Tort on November 28, 2018.

4. At the time of the filing of the Complaint for Divorce the Notice to the Parties of Mandatory Injunctions Issued was also filed which provided, in part, as follows:

(3) Each party is restrained from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other in the presence or to either party's employer.

(6) This injunction shall not preclude either party from applying to the Court for further temporary orders, and expanded injunction or modifications or revocation of this temporary injunction.

5. In spite of the injunctions Ms. Stark contacted Petitioner's direct supervisor in the Memphis Police Department and sent correspondence to Mayor Strickland, his overall supervisor.

6. In addition Ms. Stark posted a message on Facebook on December 14, 2018 critical of the Memphis Police Department and referencing an allegation of domestic assault against her Petitioner.

7. The allegations of assault have been referred to a special prosecutor and are being addressed through the proper channels.

8. Ms. Stark is aware of the potential effect on the allegations and the public posting of same on his reputation and his employment.

9. That the sole purpose of making the post and contacting his employer was to harass the Petitioner directly in contravention of the mandatory injunction.

10. Ms. Stark put on no defense proof only arguing that she had a right to post the statements.

**IT IS THEREFORE, ORDERED, ADJUDGED
and DECREED that:**

1. The Petition for Restraining Order Pursuant to Tennessee Rules of Civil Procedure Rule 65.03 is granted.

2. The Respondent, Pamela Stark, shall remove the December 14, 2018 Facebook post immediately.

3. The Respondent, Pamela Stark, shall be further enjoined from making any other public allegations against the Petitioner, Joe Stark, on social media (on any platform) or to his employer which may affect Petitioner's reputation or employment.

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4. Petitioner's prayer for attorney's fees is reserved.

/s/ Robert S. Weiss

HONORABLE
ROBERT S. WEISS

Date: 2/13/19

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above order was mailed, postage prepaid, to the parties of record at the addresses shown in the file, or, if they were represented, to their attorney of record at his or her last known address.

/s/ A. Wells

COURT CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY,
TENNESSEE FOR THE THIRTIETH
JUDICIAL DISTRICT AT MEMPHIS

PAMELA STARK,

Plaintiff,

vs.

Case No. CT-002958-18

JOSEPH STARK,

Defendant.

BE IT REMEMBERED that the above-captioned
cause came on for hearing, on this, the 7th of February,
2019 before Judge Robert Weiss, when and where the
following proceedings were had, to wit:

[2] APPEARANCES

For the Plaintiff:

MS. PAMELA STARK
Attorney at Law
201 Poplar Avenue
Memphis, TN 38103
(901) 488-5817

For the Defendant:

MS. MICHELLE CRAWFORD
MS. REBECCA A. BOBO
Attorneys at Law
Rogers, Berry, Chesney & Cannon, PLLC
5050 Poplar Avenue
Suite 1616
Memphis, TN 38157
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[4] PROCEEDINGS

(WHEREUPON, the above-captioned matter was heard in open court as follows:)

THE COURT: All right. On the Stark matter, we are here regarding the petition for a restraining order that was filed back in January. Are we ready to go?

MS. STARK: I'm ready, Judge.

MS. CRAWFORD: Your Honor, we have some housekeeping stuff to take care of ahead of time, if that's okay. We're currently scheduled for trial on March 7th, but the depositions that Ms. Stark is wanting to take have not occurred yet. We're still trying to get those scheduled. And so we've agreed to continue the trial that's set March 7th, but we weren't ready to get a date yet until we get discovery further along. So we just wanted to see if that was permitted by the Court.

THE COURT: Okay. All right. When are – I mean, are the depositions scheduled at this point?

MS. CRAWFORD: We've exchanged some dates.

[5] MS. STARK: Judge, I think we've agreed on some dates as far as Mr. Stark's deposition. However, the City of Memphis has filed a motion to quash all the other depositions I have requested taking – notice taking, and there is a motion to compel filed. I'll

need to get with the city attorney's office to set a hearing date on that, so I can't set those yet.

THE COURT: Okay. But has the motion to quash been scheduled yet?

MS. CRAWFORD: I don't believe the City has scheduled it to my knowledge.

MS. STARK: Judge, my understanding was the way the rule is written now that I have to file motion to compel and then schedule that. The onus comes to me. I filed that motion, I believe, yesterday, and I will contact the city attorney's office about a convenient date.

THE COURT: Okay.

MS. CRAWFORD: The other matter, Your Honor, Ms. Berry had a medical procedure last week, which is why she isn't here today. She is working from the office-with just - court appearances are more difficult. But she asked that I present the Order on the motion for protective order regarding [6] deposition witnesses of Sergeant Mote, Anthony Mullins, Daniel Cordero and James Erwin. Deposition of witness Regina Williamson and deposition of husband, from the hearing held January 25th. It's my understanding that she provided a copy of this Order to Ms. Stark, and Ms. Stark was not in agreement with its contents, so I would invite Ms. Stark to prepare her own competing Order and present those to the Court.

THE COURT: Okay.

MS. STARK: That's fine, Your Honor. I'll prepare a competing Order. I do not agree with several of the things that are listed in that Order.

THE COURT: That's fine. Give me your proposed Order, Ms. Stark. When are you going to be able to get your proposed Order to me?

MS. STARK: I'll certainly have it by Monday if not by tomorrow, Judge.

THE COURT: That's fine.

MS. CRAWFORD: Your Honor, I guess the only issue is whether you want to hear proof on this or legal arguments or how you want to proceed with the petition for the restraining order.

THE COURT: It's your petition, so . . .

MS. CRAWFORD: Basically, Your Honor, [7] we're just asking to extend the existing injunction in place to include public posts on social media websites. The existing injunction regarding that is in play here is each party is restrained from harassing, threatening, assaulting or abusing the other and for making disparaging remarks about the other in the presence or to either party's employer.

There have been facebook posts. I don't think that that's in dispute that facebook posts were made. A letter was sent to the mayor. I don't think those are in dispute.

We're simply asking that the injunction currently in place be broadened to also include making posts on

social media, in a public forum and sending written communications to the employer or making statements about our client's employer that have a detrimental effect on his reputation and his job. And I'm happy to put my client on to testify.

THE COURT: Ms. Stark, I mean . . .

MS. STARK: Your Honor, I don't see any basis for extending any Order to say that I cannot make disparaging remarks about Mr. Stark's employer. That is not before this Court. It is clear political commentary.

If you look at TCA Section 36-3-618, the [8] purpose of the domestic victims bill of right specifically states that the legislature enacted that because law enforcement has a history of not treating domestic violence appropriately. Between that and the fact that the day before I made that comment, which is nothing more than political commentary, there was yet again another police shooting, and it was brought back to the media attention of the propriety of the Memphis Police Department investigating their own. This is also something that is currently before the city council as to whether it's appropriate for the Memphis Police Department to investigate their own in these types of situations.

And lastly this Monday, Judge, this very Monday another police officer was arrested for domestic violence and the media –

THE COURT: Well, but Ms. Stark, explain to me the benefit that you're posting this in conjunction with this divorce.

MS. STARK: Judge, this –

THE COURT: Again, I mean, I'll go back and look at 36-3-618, but the problem is is that you're both under a mutual restraining order that is concurrent with this divorce being filed. That there shall not be any disparaging remarks about either of [9] you to anyone.

MS. STARK: Judge, the disparaging remarks were not about Mr. Stark. It was about the Memphis Police Department and their behavior. To say that this Court has the right to extend that restraining order to keep me from making disparaging remarks about the powers and the actions of our government far exceeds the jurisdiction of this Court or the action that's before this Court. The remark was not against Mr. Stark.

THE COURT: All right. Have a seat. Put on your client.

MS. CRAWFORD: Your Honor, I would call Joseph Stark to the stand.

* * *

JOSEPH STARK,

was called as a witness and having first been duly sworn testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. CRAWFORD:

Q. Can you state your name for the record, please?

A. Joe Stark.

[10] Q. And what is your current address?

A. 397 Enquirer Court Number 104 Cordova, Tennessee 38018.

Q. How long have you lived at that residence?

A. Since June.

Q. Of 2018?

A. Of 2018. Yes, ma'am.

Q. And what do you do for a living, Mr. Stark?

A. I work for the Memphis Police Department.

Q. How long have you worked for the Memphis Police Department?

A. 31 years.

Q. What is your job title there?

A. I'm a sergeant in cold case homicide.

Q. Can you speak up a little bit?

A. Okay.

Q. And what is your relationship to Pamela Stark?

A. That's my wife.

Q. When were you married?

A. In May of 2013.

Q. And you separated this most recent time, you said, in June of 2018?

A. Yes, ma'am.

Q. Have you separated before?

[11] A. Twice. Yes, ma'am.

Q. Okay. When were those separations?

MS. STARK: Objection to relevancy.

THE COURT: Overruled.

BY MS. CRAWFORD:

Q. When were those separations?

A. I believe it was 2016 and '17, I believe.

Q. All right. For the separation in 2016, how long did that last?

A. I think it was 10 or 11 months.

Q. And what about 2017?

A. I think it was nine months.

Q. So you have been separated this most recent time since June?

A. Yes, ma'am.

Q. Do you know when the divorce was filed this most recent time?

A. That would have been like the 26th of June. I think it was nine days after I left.

Q. Okay. Has Ms. Stark filed for divorce before?

A. Twice.

Q. Twice before. Did she amend that divorce Complaint?

A. I don't believe so. Not that I –

[12] Q. The existing divorce Complaint?

A. On the previous one or this one?

Q. This one?

A. Yes. Yes.

Q. Why did she amend that divorce Complaint?

A. She added torts of I think battery, emotional abuse and that I promised to pay off her student loans.

Q. Okay. We haven't represented you the entire time; is that correct?

A. No, ma'am. You haven't.

Q. Who represented you before?

A. Tracey Malone.

Q. All right. Why is she not representing you now?

A. I got a call from her that said that she could not – she did not have the time to deal with my wife because of the –

MS. STARK: Objection to hearsay.

THE COURT: What's the relevance of why Ms. Malone is not representing her?

MS. CRAWFORD: Your Honor, it goes to harassment. We're trying to establish a pattern of Ms. Stark's behavior and the harassment and the intimidation of Mr. Stark through this lawsuit, [13] through the depositions, through the notices, through everything that's been filed.

MS. STARK: Your Honor, I would say that's all outside the purview of this restraining order. The restraining order is very specific into a facebook post. None of the other things are before this Court.

THE COURT: Go ahead.

BY MS. CRAWFORD:

Q. Why did Ms. Malone withdraw?

A. She said she didn't have time to deal with my wife and that she was sorry, but she can't handle all the e-mails because she's got other clients. She can't spend all of her time with Ms. Stark.

Q. And your wife is representing herself in this matter?

A. Yes.

Q. Has your wife done anything to harass you since the filing of the divorce in this case?

A. Well, other than the filing of the divorces, she has notified my lieutenant, subpoenaed my lieutenant to her house to give a deposition and wanting paperwork on a ongoing investigation. And she was wanting to take those depositions at her house. She's got three other officers that she [14] wanted to depose of at her house, and she wants me to have a deposition at our house, which I do not feel comfortable with based on her allegations that are –

THE COURT: All right. I've already dealt with that, Mr. Stark, so . . .

THE WITNESS: Okay.

THE COURT: Go ahead.

A. I found where her account was in my cell phone where she could know where I'm at 24/7.

BY MS. CRAWFORD:

Q. Tell me about that. What did you discover about your cell phone?

A. Her account was in my cell phone.

Q. Okay. What did that allow her to do?

A. Well, they weren't sure. If she has passwords to my e-mail, she can read my e-mail, or she knows where I'm at 24/7. It's the GPS.

Q. When did you find out about that?

A. It's been about three months ago, four months ago.

Q. Have you corrected that since?

A. Yes. I got a message from Ms. Stark right after it happened that she had tried to take it out, but she couldn't get it out because of the security in my phone.

[15] Q. Okay.

A. I had to move into – well, when I moved, I moved into a gated community so that she would not have access to my vehicle or me unless I knew she was coming.

Q. Why did you do that?

A. Well, I've had previous experience where I've woken up, come outside and my vehicle's gone. And I've had her show up at my apartment and asked her to leave at which time she told me, make me. So in those experiences, I got in a gated community. That's where I moved to. But that's basically most of it.

Q. And this is a short-term marriage?

A. Yes, five years. And we haven't even been – we were together a couple of years before the marriage.

Q. Okay. Do you have any children?

A. I have three of my own, and she has three of her own.

Q. No minor children together?

A. No children together.

Q. Do you have any assets together?

A. We have a house together in Midtown and a Jeep Cherokee.

[16] Q. That's it?

A. Yes. I might add that just – I know there's another deposition she's wanting to take of Ms. Williamson in Missouri that could be done over the phone.

THE COURT: Mr. Stark, we've already got that addressed, so . . .

THE WITNESS: All right.

BY MS. CRAWFORD:

Q. When did you discover the facebook post that is in question here?

A. I don't know exactly when it was. But I know that people in the homicide office had it before I did.

Q. So your coworkers have seen it?

A. Oh, yes.

Q. Do you and Ms. Stark have mutual friends and mutual coworkers?

A. Oh, yes.

Q. Via facebook?

A. Yeah. Being that I'm a police officer and she's a prosecutor, we have lots of mutual friends.

Q. So statements made on her facebook page could be seen by your employer and your coworkers?

A. One of my coworkers made a like or whatever [17] on facebook of her post, so I know that homicide knew about it before I did.

Q. All right. I'm going to pass forward a document. Do you recognize that, Mr. Stark?

A. Yes. This is her post.

Q. Okay. And what's the date on the post?

A. December 14th, 2018.

Q. At what time?

A. 11:07 p.m.

Q. Okay. Can you read for me that second paragraph?

A. "Being in charge of the investigation, they decided what, if anything, is done, documented or collected as they investigate one of their own with no one watching over their shoulder."

Q. Keep going.

A. "I speak now as a recent victim of domestic violence all the hands of – at the hands of a Memphis police officer. I can attest to exactly how wide the thin blue line can get. Do not get me wrong. I understand it. Who among us would want to hang one of their own out to dry. This is even more so for the brotherhood of blue. However it is even more devastating. Why do you

turn – who do you turn to when those whom – I can't make that out – want [18] to serve and to protect enforce the law don't."

Q. Okay. Has Ms. Stark been deemed a victim of domestic violence in any report that you're aware of?

A. No.

Q. Is there currently an ongoing investigation regarding allegations that you have made towards Ms. Stark and Ms. Stark has made towards you?

A. Yes.

Q. Have those – has there been any resolution to that ongoing investigation?

A. No.

Q. Was a special prosecutor appointed to investigate that?

A. Yes.

Q. Okay. So that's outside –

A. Shelby County.

Q. – the Memphis Police Department and Shelby County; is that correct?

A. No. Memphis Police Department is investigating.

Q. Who is the special prosecutor?

A. Jennifer McEwen.

Q. She's not out of Shelby County?

A. She's in Trenton.

Q. Okay. The language of "victim of domestic [19] violence at the hands of a Memphis police officer," did you take that as a referral to you?

A. She's only married to one police officer, so that's . . .

MS. CRAWFORD: Your Honor, I would like to mark this as Exhibit 1.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 1.)

BY MS. CRAWFORD:

Q. Mr. Stark, I'm handing you another document. Do you recognize this document?

A. Yes.

Q. What is this?

A. This is a letter to the mayor of Memphis.

Q. Okay. Who's it from?

A. Pamela Stark.

Q. And this was actually filed in this court case, correct?

A. Yes.

Q. On January 25th, 2019?

A. Yes.

Q. This e-mail is rather lengthy, but are you named by name in this e-mail to the mayor?

A. Yes, I am.

Q. Are there implications or does Ms. Stark [20] allege that there is corruption in the Memphis Police Department in this e-mail?

A. Yes.

Q. Does she reference the incident that is currently being investigated as the basis for the alleged corruption?

A. Yes.

Q. And she specifically names you as her husband?

A. Yes.

MS. CRAWFORD: Your Honor, I would like to mark this as the next exhibit.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 2.)

BY MS. CRAWFORD:

Q. Mr. Stark, is the mayor your direct boss?

A. Direct boss?

Q. Or up the chain?

A. He's the boss of my bosses.

Q. So would you consider the mayor to be an employer?

A. Yes.

Q. The allegations that Ms. Stark has made against you on facebook and to the mayor, has that affected your reputation with your employer?

[21] A. I think it brings it into question.

Q. Do you have concerns that it could cause any issues with your continued employment with Memphis Police Department?

A. Yes.

Q. Do you feel that the actions of Ms. Stark have been harassing?

A. Yes.

Q. Do you think she's done it to intimidate you?

A. Yes.

Q. Has this caused you emotional distress and problems with work?

A. Yes.

Q. Are you asking the Court to issue a restraining order to prohibit Ms. Stark from making public statements on public forums via facebook and other things about you and your employer?

A. Yes.

Q. Are you asking the Court to order her to remove the existing facebook post?

A. Yes.

MS. CRAWFORD: Your Honor, I have no further questions at this time.

THE COURT: Cross.

[22] CROSS EXAMINATION

QUESTIONS BY MS. STARK:

Q. Mr. Stark, what account are you saying that of your wife's is in your cell phone? You just testified that you found out that your wife's account was in your cell phone and that it allowed her to track you with GPS. What account was that?

A. It was a – I'm not sure exactly what account because it was the Itech people that took it out.

Q. Which Itech people?

A. Dennis and I don't know the other guy that comes in.

Q. Are those members of the Memphis Police Department, or is that a private company?

A. No. That's Memphis Police Department. They're on the floor of the homicide. I took it to them because my phone kept acting weird and heating up. And they asked me, well, who's Pam. I said that's my wife. Oh, well, her account's in your phone.

Q. And you didn't ask them what account?

A. No.

Q. And I'm sorry. What was the nature of the – did you say e-mail or text message that you received from your wife about this account?

[23] A. Yeah. You told me that you couldn't get the account – you tried to take the account – the next day after it was taken out, which letting me know that you were following everything. That you could not get the account out. You tried to. You could not get the account out because it's secured on my phone.

Q. What account did I say I couldn't get out because of security?

A. I'm not sure what account it was.

Q. Do you remember the exact text message or the day?

A. No. But I could find it, I think.

Q. Is it a text message or an e-mail?

A. I'm not sure.

Q. And you're not sure what day?

A. No.

Q. And you're saying that Mrs. Stark did not say what account she was talking about?

A. I knew what account she was talking about because you just – you sent it to me the day after the account was taken out.

Q. I'm asking you if in the communication from your wife, did she say what account she was talking about?

[24] A. I don't remember the exact wording.

Q. You didn't look at that in preparation for this hearing?

A. No.

Q. Did you turn that over to your attorney in preparation for this hearing?

MS. CRAWFORD: Objection. That calls for attorney/client privilege.

THE COURT: Sustained.

MS. STARK: Nothing further, Judge.

THE COURT: Anything further?

MS. CRAWFORD: Nothing further, Your Honor.

THE COURT: All right. Mr. Stark, you may step down. Any further proof?

MS. CRAWFORD: No, Your Honor. We rest.

THE COURT: Ms. Stark?

MS. STARK: No, Your Honor. Just argument.

THE COURT: All right.

MS. CRAWFORD: Your Honor, there's a current injunction in place. That injunction states that it's restraining both parties from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in [25] the presence of any children of the parties or to the – either party's employer.

Ms. Stark, I believe, in her opening statement said that she had the right for political speech about the Memphis Police Department. However, every statement that she has made with facebook, with her e-mail to the mayor, they've not only been about the Memphis Police Department, but it's also been in conjunction with her husband, her husband's name or at least enough words to reference her husband have been associated with both of those.

She is alleging corruption based on something that is currently under investigation. And this has an effect on my client. It affects his reputation in his position as a Memphis police officer. And it affects the employer's – it affects the employer.

Ms. Stark is making allegations that because of this divorce and because of Mr. Stark's position that the Memphis Police Department is doing something corrupt. That most certainly would cause injury to my

client, and if he were to be fired in an effort to avoid any sort of scandal that Ms. Stark is alleging.

Especially with the fact that there is an open investigation, a special prosecutor has been appointed, we are asking the Court to order Ms. Stark [26] to remove the existing facebook post and to prohibit her from making any disparaging remarks about Mr. Stark or the Memphis Police Department's alleged corruption on any public forum, any social media or to anyone as the injunction requires.

MS. STARK: Judge, I have an absolute right under the Constitution and every law in this state to make allegations about mistreatment by the Police Department and their investigation. I have an absolute right to make allegations that I have been a victim of corruption from the Police Department. And for you to rule otherwise is far outside this divorce proceeding.

Everything that has been brought before this Court including the letter to the mayor is my attempt to get somebody to look at what the Memphis Police Department has done. And I have an absolute right to do that, Judge. An absolute right.

THE COURT: Counsel, here's the problem. You're under a mutual restraining order. You are. Notwithstanding that any other – when you filed your Complaint, the restraining order was put into place. And that included not to make any disparaging comments to an employer. The mayor is his employer. Bottom line.

[27] You can sit there and argue that you have a freedom of speech, and – but the moment you sat there and said in this letter referencing your husband, that changed it. That was about him. It wasn't about a general concern about police corruption.

The fact that, you know, another police officer was arrested yesterday or last week or last month, if you want to sit there and rant about that, have at it. But if you're going to make references to your husband, about your husband, about your situation, then that is off limits. Bottom line.

That post shall be removed today, and a mandatory injunction will go into effect that there will be no communication with employers. There is a special prosecutor involved in this case. That special prosecutor will deal with this Court. Whatever allegations have been made, we'll deal with that in due course. But at this point involving making any further allegations in social media is completely inappropriate and is being enjoined.

MS. STARK: Well, Your Honor, I will just with all candor to the Court say you might as well take me into custody right now. I have contacted the FBI as well as having contacted the mayor of Memphis [28] to try and get this addressed. I am saying that I am a victim of corruption from the Memphis Police Department, and I am going to pursue every course of action I have and –

THE COURT: Ms. Stark, are you going to remove that post, yes or no?

MS. STARK: I am not.

THE COURT: Officer Houston, take her into custody.

We'll stand in recess.

(Short break.)

THE COURT: Ms. Stark, please stand. Are you going to comply with this Court's orders?

MS. STARK: No, I'm not.

THE COURT: All right. I'm making a finding that you are in direct contempt of court by willfully refusing to comply with this Court's orders. You will be held in the – you will be held in custody until such time that you decide that you want to change your position and you apologize to this Court. We'll stand in recess until that time.

MS. CRAWFORD: Your Honor, I did have an affidavit of attorney's fees regarding this hearing that I would like –

THE COURT: I'll reserve that at this [29] time.

MS. CRAWFORD: Thank you, Your Honor.

MS. STARK: Judge, I won't have that Order probably by Monday.

THE COURT: That's fine.

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(WHEREUPON, the foregoing proceedings were
concluded at 11:42 a.m.)

[Reporter's Certificate Omitted]

**IN THE CIRCUIT/CHANCERY
COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, SHELBY COUNTY**

PAMELA DIANE STARK,	}	
	}	
Plaintiff/Wife,	}	
	}	
v.	}	Docket No.
	}	<u>CT-002958-18</u>
JOE EDWARD STARK,	}	Div VIII
	}	
Defendant/Husband	}	

**NOTICE TO THE PARTIES OF
MANDATORY INJUNCTIONS ISSUED**

(Filed Jun. 29, 2018)

Pursuant to T.C.A Section 36-4-106, the following injunctions are issued against each party effective at the filing of this Complaint for Divorce:

(1) Each party is restrained and enjoined from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing of any marital property without the consent of the other party or an order of this Court. Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall

maintain records of all expenditures, copies of which shall be available to the other party upon request.

(2) Each party is restrained and enjoined from voluntarily canceling, modifying, terminating, assigning, or not allowing to lapse for nonpayment of premiums, any insurance policy, including but not limited to life, health, disability, homeowners, renters and automobile, without the consent of the other party or an order of the court. "Modifying" includes any change in beneficiary status.

(3) Each party is restrained from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other in the presence or to either party's employer.

(4) Each party is restrained and enjoined from hiding, destroying or spoiling, in whole or in part, any evidence electronically stored or on computer hard drives or other memory storage devices.

(5) The provisions of Section 36-6-101(a)(3) shall be applicable upon fulfillment of the requirements of subsection (d) of this act.

(6) This injunction shall not preclude either party from applying to the Court for further temporary orders, and expanded injunction or modifications or revocation of this temporary injunction.

(7) This temporary injunction remains in effect against both parties until the Final Decree of Divorce or Order of Legal Separation is entered, the petition is

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dismissed, the parties reach agreement or until the Court modifies or dissolves the injunction.

Jimmy Moore, Circuit Court Clerk
Donna L. Russell, Chancery Court
Clerk & Master

By: /s/ Donna Russell D.C.

Date: June 29, 2018

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IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

PAMELA D. STARK v. JOE EDWARD STARK

**Circuit Court for Shelby County
No. CT-002958-18**

No. W2019-00650-SC-R11-CV

ORDER

(Filed Aug. 10, 2020)

Upon consideration of the application for permission to appeal of Pamela Diane Stark and the record before us, the application is denied. In addition, the Motion Electronic Frontier Foundation for leave to file brief as amicus curiae is granted.

PER CURIAM

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

PAMELA D. STARK,)	
Plaintiff,)	
)	
v.)	Case No.
ROBERT WEISS,)	2:19-cv-02406-JTF-tmp
Tennessee Circuit)	
Court Judge,)	
Defendants.)	

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION TO GRANT
DEFENDANT'S MOTION TO DISMISS AND
DENYING PLAINTIFF'S OBJECTION TO
THE REPORT AND RECOMMENDATION**

(Filed Nov. 27, 2019)

Before the Court is Defendant, Tennessee Circuit Court Judge, Robert Weiss' Motion to Dismiss, which was filed on July 12, 2019. (ECF No. 9.) Pursuant to Administrative Order 2013-05, this case, including Defendant's Motion, was referred to the Magistrate Judge for management of all pretrial matters. Plaintiff Pamela Stark filed a pro se Response to Defendant's Motion on July 22, 2019. (ECF No. 10.) Defendant filed his Reply on August 1, 2019. (ECF No. 12.) That same day, the Magistrate Judge entered a Report and Recommendation, suggesting that this Court grant Defendant's Motion to Dismiss. (ECF No. 11.) Plaintiff filed

an Objection to the Report and Recommendation on August 12, 2019 (ECF No. 13), to which Defendant responded on August 26, 2019 (ECF No. 14).

For the following reasons, the Court finds that the Magistrate Judge's Report and Recommendation should be ADOPTED and Defendant's Motion to Dismiss GRANTED.

LEGAL STANDARD

Congress passed 28 U.S.C. § 636(b) "to relieve some of the burden on the federal courts by permitting the assignment of certain district court duties to magistrates." *United States v. Curtis*, 237 F.3d 598, 602 (6th Cir. 2001). Pursuant to the provision, magistrate judges may hear and determine any pretrial matter pending before the Court, except various dispositive motions. 28 U.S.C. § 636(b)(1)(A). Regarding those excepted dispositive motions, magistrate judges may still hear and submit to the district court proposed findings of fact and recommendations for disposition. 28 U.S.C. § 636(b)(1)(B). Upon hearing a pending matter, "the magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1); *see also Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). Any party who disagrees with a magistrate's proposed findings and recommendation may file written objections to the report and recommendation. Fed. R. Civ. P. 72(b)(2).

The standard of review that is applied by the district court depends on the nature of the matter considered by the magistrate judge. *See Baker*, 67 F. App'x at

310 (citations omitted) (“A district court normally applies a ‘clearly erroneous or contrary to law’ standard of review for nondispositive preliminary measures. A district court must review dispositive motions under the *de novo* standard.”). Upon review of the evidence, the district court may accept, reject, or modify the proposed findings or recommendations of the magistrate judge. *Brown v. Bd. of Educ.*, 47 F. Supp. 3d 665, 674 (W.D. Tenn. 2014); 28 U.S.C. § 636(b)(1). The court “may also receive further evidence or recommit the matter to the [m]agistrate [j]udge with instructions.” *Moses v. Gardner*, No. 2:14-cv-2706-SHL-dkv, 2015 U.S. Dist. LEXIS 29701, at *3 (W.D. Tenn. Mar. 11, 2015). A district judge should adopt the findings and rulings of the magistrate judge to which no specific objection is filed. *Brown*, 47 F. Supp. 3d at 674.

FINDINGS OF FACT

Plaintiff advanced no specific factual objections. Therefore, the Court adopts and incorporates the proposed findings of fact in this case as provided by the Magistrate Judge in his Report and Recommendation. (ECF No. 11, 1–4.)

ANALYSIS

Plaintiff alleges that Defendant Judge Weiss’ findings and ruling set forth in his Order on Petition for Restraining Order (the “Ruling”), which he entered during Plaintiff’s divorce proceeding in state court, violated 42 U.S.C. § 1983 and Plaintiff’s federal

constitutional rights under the First and Fourteenth Amendments. (ECF No. 1.) Specifically, Plaintiff contends it was an “unlawful exercise of judicial power” for Defendant to require the removal of Plaintiff’s Facebook post and to enjoin her from “making any other public allegations against the Petitioner, Joe Stark, on social media (on any platform) or to his employer which may affect Petitioner’s reputation or employment.” (*Id.*) (quoting ECF No. 1-10, 3.) Plaintiff claims that these enjoinders amounted to “prior restraint,” which violate her constitutional rights, and she seeks relief from this Court declaring the same. (*Id.* at 12.) Defendant argues that Plaintiff’s claim should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction because the *Rooker-Feldman* doctrine bars the Court’s review. (ECF No. 9.)

The *Rooker-Feldman* doctrine prevents an unfavorable state-court decision from being appealed to a lower federal court. *Lance v. Dennis*, 546 U.S. 459, 466, 126 S. Ct. 1198, 1202, 163 L. Ed. 2d 1059 (2006). The United States Supreme Court is the only federal court that has jurisdiction to correct or modify state-court judgements. *Gottfried v. Med. Planning Servs., Inc.*, 142 F.3d 326, 330 (6th Cir. 1998) (citing *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 150, 68 L. Ed. 362 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 474, 103 S. Ct. 1303, 1310, 75 L. Ed. 2d 206 (1983); 28 U.S.C. § 1257). Even if a state-court decision was wrong, the Supreme Court has explained, “that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely

appellate proceeding.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1522, 161 L. Ed. 2d 454 (2005) (quoting *Rooker*, 263 U.S. at 416). To determine whether the *Rooker-Feldman* doctrine is applicable, the district court must ask “whether the ‘source of injury’ upon which plaintiff bases his federal claim is the state court judgment.” *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008) (quoting *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006)). If the state-court decision is identified as the source of injury, then a federal district court cannot assert jurisdiction—*i.e.*, the claim is barred by the *Rooker-Feldman* doctrine. *Id.* at 368-69 (plaintiff’s claim that the state of Michigan violated his First and Fourteenth Amendment rights by denying his application to practice law in the state was a “direct attack” on a state-court decision and was thus, barred by *Rooker-Feldman*). The proper application of this doctrine requires the court to pay careful attention to the relief sought by the federal-court plaintiff. *Hood v. Keller*, 341 F.3d 593, 597 (6th Cir. 2003).

In her Response to Defendant’s Motion to Dismiss, Plaintiff argues she “is not seeking a review of Defendant’s Ruling,” but rather, seeking declaratory relief against the “future application” of those rulings as it pertains to her constitutional rights and ability to seek redress if they are violated. (ECF 10, 3.) (citing *Hood v. Keller*, 341 F.3d 593, 598 (6th Cir. 2003) (“Where the litigant is challenging the constitutionality of a rule that was applied to him but is not asking to correct or revise the determination that he violated the rule,

Rooker-Feldman is no obstacle to the maintenance of [the] suit.”). Plaintiff reiterates that her action seeks to address “only future application” of Defendant’s Ruling, which, she argues, does not require this Court to “overturn, undo, or revise” the Ruling in any way. (*Id.*) Plaintiff makes the same argument in her Objection to the Magistrate Judge’s recommendation. Plaintiff argues that her claim, like the claim in *Hood*, seeks “prospective relief” against “future application” of a state-court decision, which is “suis generis” or independent from the divorce action pending in state court. (ECF No. 13.) The Court disagrees.

As the Magistrate Judge explained at length in his Report, Plaintiff’s reliance on *Hood* and similar cases is misguided. (ECF No. 11, 7-10.) In *Hood*, the Sixth Circuit held that the *Rooker-Feldman* doctrine did not apply where a plaintiff challenged the constitutionality of a state rule but did not seek to set aside his state conviction under the rule. *Hood*, 341 F.3d at 599. The federal relief *Hood* sought was “independent” from the state-court judgment, which gave the district court jurisdiction over the claim. *Id.* See also *Brent v. Wayne Cty. Dep’t of Human Servs.*, 901 F.3d 656, 674 (6th Cir. 2018), cert. denied, 139 S. Ct. 1551, 203 L. Ed. 2d 714 (2019) (internal quotations and citations omitted) (“[W]hile the *Rooker-Feldman* doctrine does not bar a plaintiff from attempting to clear away an allegedly unconstitutional state-law policy going forward, it does prevent a plaintiff from seeking relief against the discipline imposed upon him by application of an allegedly unlawful policy in the past.”).

Plaintiff's Complaint requests:

[T]his honorable Court grant her declaratory relief by finding that Judge Weiss' findings and Order on Petition for Restraining Order entered on February 13, 2019 violates the constitutional rights of Plaintiff as guaranteed under the First and Fourteenth Amendments of the United States Constitution.

(ECF No. 1, 12.) Based on the plain language of Plaintiff's request for relief, the Magistrate Judge concluded that Plaintiff, "is not seeking prospective relief from the application of an unconstitutional statute or rule; instead, she asks the court to find that the February 13 Order is unconstitutional." (ECF No. 11, 10.) The Court agrees with the Magistrate Judge's assessment that Plaintiff's "source of injury" is Judge Weiss' unfavorable ruling. (*Id.*); *Lawrence*, 531 F.3d 364, 368. It is clear, from the language of her Complaint, that Plaintiff is asking this Court to provide relief against discipline imposed upon her by the state-court's decision and is not, contrary to her arguments, seeking to prevent the future application of an unconstitutional state rule. *Id.* Any review of Plaintiff's constitutional claims would therefore, require review of the state-court decision. *Patmon v. Michigan Supreme Court*, 224 F.3d 504, 510 (6th Cir. 2000). To grant Plaintiff's request would effectively overturn Judge Weiss' ruling. Thus, Plaintiff's Action For Declaratory Relief, as presented in this case, is precisely what the *Rooker-Feldman* doctrine prohibits. (ECF No. 11, 10.) Plaintiff claim for relief may be brought before Tennessee's appellate courts or

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the United States Supreme Court, but it cannot be brought here.

CONCLUSION

After *de novo* review, the Court hereby **ADOPTS** the Magistrate Judge's Report and Recommendation, **GRANTS** Defendant's Motion to Dismiss for lack of jurisdiction, and **DENIES** Plaintiff's Objections thereto.

IT IS SO ORDERED on this 27th day of November 2019.

s/ John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
United States District Court

**IN THE CIRCUIT COURT OF
SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS**

PAMELA DIANE STARK,

Plaintiff/

Counter-Defendant,

v.

JOE EDWARD STARK,

Defendant/

Counter-Plaintiff.

Docket No.

CT-002958-18

Division VIII

**PETITION FOR RETRAINING ORDER
PURSUANT TO TENNESSEE RULES
OF CIVIL PROCEDURAL RULE 65.03**

(Filed Jan. 25, 2019)

COMES NOW, the Defendant/Counter-Plaintiff, Joe Edward Stark, hereinafter "Husband," and pursuant to Tennessee Rules of Civil Procedure 65.03 files this his Petition for Restraining Order. In support of said Motion, Husband would show unto the Court the following:

1. Plaintiff/Counter-Defendant, Pamela Diane Stark, hereinafter "Wife," filed her Complaint for Divorce on June 29, 2018. Wife filed her Complaint for Divorce and has proceeded throughout the pendency of this divorce *pro se*. Wife is an Assistant District

Attorney General with the Shelby County District Attorney General's Office.

2. On August 2, 2018, Husband filed his Answer to Complaint for Absolute Divorce.

3. On August 13, 2018, Husband filed his Amended Answer and Counter Complaint for Divorce.

4. On November 28, 2018, Wife filed her Amended Complaint for Divorce and Interspousal Tort Action after receiving leave of this Court allowing her to amend her Complaint.

5. Husband is currently a homicide detective employed by the Memphis Police Department.

6. On or about June 17, 2018, an incident occurred at the parties' marital residence and Wife has alleged that during said incident Husband committed domestic violence against her.

7. On or about January 4, 2019, Husband became aware that on December 14, 2018, Wife publicly posted her allegation regarding Husband on Facebook and disparaged the Memphis Police Department's internal handling and investigation of said case. See Exhibit A attached hereto.

8. Husband would submit that Wife's allegation and her dissemination of her allegations, specifically on such a public forum, will cause immediate and irreparable injury, loss, and/or damage to Husband, including, but not limited to, resulting in Husband losing

his job, being demoted, and/or Husband's reputation being tarnished with the Memphis Police Department.

9. Therefore, Husband would request that this Court enter an immediate temporary Restraining Order ordering Wife or any agent on her behalf or at her direction to immediately remove the said post attached as Exhibit A from all social media sites and refrain from, cease and desist making any future written comments or posts on social media, including, but not limited to, Facebook, or oral comments which may jeopardize Husband's employment and/or which may impugn Husband's reputation with the Memphis Police Department. Husband would further request that upon hearing on this Petition that the Court extend the Restraining Order indefinitely.

10. Husband would state that he has incurred attorney fees in bringing this Petition and would request the Court award him his reasonable and necessary expenses and fees incurred in bringing this Petition.

WHEREFORE, PREMISES CONSIDERED,
Husband prays the following:

1. That this Court issue an immediate temporary Restraining Order ordering Wife or any agent on her behalf or at her direction to immediately remove the said post attached as Exhibit A from all social media sites and refrain from, cease and desist making any future written comments or posts on social media, including, but not limited to, Facebook, or oral comments which may jeopardize Husband's employment and/or

which may impugn Husband's reputation with the Memphis Police Department.

2. That this Court set this Petition for a hearing;

3. That upon hearing in this matter that this Court extend the temporary Restraining Order indefinitely.

4. That the Court order Wife to pay Husband's attorney fees involved in having to file and present this said Petition to the Court.

5. For such other relief, both general and specific, which in the premises appears and is proper.

Respectfully submitted,

**ROGERS BERRY CHESNEY
& CANNON, PLLC**

/s/ Melissa C. Berry
Melissa C. Berry (BPR #19967)
Rebecca A. Bobo (BPR #31996)
Attorney for Plaintiff/Wife
5050 Poplar Avenue, Suite 1616
Memphis, Tennessee 38157
901-755-5994
901-755-8714 (fax)

[Oath Omitted]

FIAT

~~To The Clerk of the Court:~~

~~Immediately issue a Restraining Order ordering Wife or any agent on her behalf or at her direction to immediately remove the said post attached as Exhibit A from all social media sites and refrain from, cease and desist making any future written comments or posts on social media, including, but not limited to, Facebook, or oral comments which may jeopardize Husband's employment and/or which may impugn Husband's reputation with the Memphis Police Department.~~

Set a hearing on the restraining order on Thursday, the 7th day of February, 2019, at 10:00 a.m./p.m.

IT IS SO ORDERED.

/s/ Robert S. Weiss
JUDGE

DATE: 1/15/10

TIME: 10:30 am

[Exhibits Omitted]

**IN THE CIRCUIT COURT OF
SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL
DISTRICT AT MEMPHIS**

PAMELA DIANE STARK,

Plaintiff/

Counter-Defendant,

vs.

JOE EDWARD STARK,

Defendant/

Counter-plaintiff.

Docket No.

CT-002958-18

Division VIII

**HUSBAND'S PETITION FOR CIVIL AND
CRIMINAL CONTEMPT AND FOR DETERMI-
NATION OF RESERVED ATTORNEY FEES**

(Filed Jul. 17, 2019)

COMES NOW the Defendant/Counter-Plaintiff, JOE EDWARD STARK, hereinafter referred to as "Husband" and files this his Petition for Civil and Criminal Contempt and for Determination of Reserved Attorney Fees, and in support thereof respectfully represents to the Court the following, to wit:

1. Plaintiff/Counter-Defendant, Pamela Diane Stark, hereinafter "Wife," filed her Complaint for Divorce on June 29, 2018. Wife has proceeded throughout the pendency of this

divorce *pro se*. Wife is a licensed attorney in the State of Tennessee, and, until approximately mid-February 2019, was an Assistant District Attorney General with the Shelby County District Attorney General's Office. Husband is currently a homicide detective employed by the Memphis Police Department.

2. Pursuant to Tennessee Code Annotated §36-4-106, simultaneously with the filing of the Complaint, the mandatory and temporary mutual injunctions were issued to both parties, which provide in pertinent part:

Plaintiff and Defendant are commanded to be restrained and enjoined from the following acts effective upon the filing of the Complaint for Divorce . . . Harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer.

3. On January 15, 2019, Husband through counsel filed his Petition for Restraining Order Pursuant to Tennessee Rules of Civil Procedure Rule 65.03 and supporting Affidavit.
4. On February 7, 2019, the Court held a hearing on said Petition for Restraining Order.
5. On February 13, 2019, the Court issued the Order on Petition for Restraining Order Pursuant to Tennessee Rules of Civil Procedure Rule 65.03, which provides in pertinent part as follows:

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The Respondent, Pamela Stark, shall remove the December 14, 2018 Facebook post immediately; and

The Respondent, Pamela Stark shall be further enjoined from making any other public allegations against the Petitioner, Joe Stark, on social media (on any platform) or to his employer which may affect Petitioner's reputation or employment; and

Petitioner's prayer for attorney's fees is reserved.

6. On March 29, 2019, this Court entered its Order on Direct Civil Contempt.
7. Shortly after Wife removed the Facebook post as ordered by the Court on February 7, 2019, Wife replaced the post originally with a GIF post in its place depicting a woman shushing in the finger to lips motion, and later with a photo of a woman with her mouth sown shut. See Exhibit 1 attached hereto.
8. Husband would show that since the hearing on February 7, 2019, and since the Court's orders of February 13, 2019, and March 29, 2019, Wife has engaged in a knowing and willful course of conduct to violate said orders and continues to reference her domestic violence allegations against Husband in the context of his employment by the Memphis Police Department and her allegations about the corruption in the Memphis Police Department.

CRIMINAL CONTEMPT.

9. On June 27, 2019, an article authored by Philip Jackson, entitled "*Former prosecutor: Memphis police 'destroyed my career' after domestic assault involving officer*" was published in the Commercial Appeal, which features photographs and statements obtained through interviews with Wife, attached hereto as Exhibit 2.
10. Husband would show that The Commercial Appeal Article constitutes willful, knowing, criminal contempt of this Court's orders.

CIVIL CONTEMPT

11. Husband would also show that Wife has also continued to post on social media in violation of this Court's orders, that each such act constitutes willful, knowing civil contempt of this Court's orders, and that Wife should be fined and/or incarcerated until she purges her contempt by removing all such posts from social media.
12. Husband would show that at all times Wife has been physically and mentally capable of complying with the orders of this Court and that she has shown reckless regard for the orders of this Court.
13. Husband would show that he has incurred attorney fees and suit expenses in bringing this Petition and would request that Wife be ordered to pay said fees and expenses and that a judgment in an amount certain be entered

against her for same. Husband would also ask the Court to assess attorney fees and suit expenses that have been reserved by prior orders of this Court as it pertains to the hearing from February 7, 2019, and the Husband's seeking and enforcement of the Petition for Restraining Order.

WHEREFORE, PREMISES CONSIDERED, Husband prays:

1. That this Petition be filed in this matter and that the Court issue a Scire Facias on the charges of contempt.
2. That this Petition be properly served upon Wife requiring her to plead or otherwise answer this Petition.
3. That this Court set this Petition for an evidentiary hearing.
4. That this Court find Wife guilty of each proven count of willful civil contempt of the Court's orders and require Wife to be incarcerated pending her purging her contempt through removal of all social media posts in violation of this Court's orders.
5. That this Court find Wife guilty of each proven count of willful criminal contempt of this Court's orders, and fine and/or incarcerate her to the fullest extent of the law.
6. That the Court award Husband his suit expenses and attorney fees incurred in this matter, and order Wife to pay same as and for a judgment against

her in an amount certain. That the Court also assess attorney fees and suit expenses that have been reserved by prior orders of this Court as it pertains to the hearing from February 7, 2019, and the Husband's seeking and enforcement of the Petition for Restraining Order.

7. For any other relief, both specific and general, which in the premises appears and is proper.

Respectfully submitted,

**ROGERS BERRY CHESNEY
& CANNON, PLLC**

/s/ Melissa C. Berry

Melissa C. Berry (BPR #19967)
Michelle S. Crawford (BPR #26619)
Attorney for Plaintiff/Wife
5050 Poplar Avenue, Suite 1616
Memphis, Tennessee 38157
901-755-5994
901-755-8714 (fax)

[Certificate Of Service Omitted]

[Oath Omitted]

FIAT AND NOTICE OF HEARING

TO THE CLERK OF THE CIRCUIT COURT OF
SHELBY COUNTY, TENNESSEE:

**Issue the Scire Facias on Charges of Con-
tempt prayed for above.**

Set the foregoing for a hearing on Friday, the 16
day of August, 2019, at 10 o'clock A. M., in the Circuit
Court of Shelby County, Tennessee for the Plaintiff/
Wife, **PAMELA DIANE STARK**, to appear and defend
this matter.

/s/ Robert S. Weiss

JUDGE ROBERT S. WEISS

DATE: 7/17/19

WARNING

**This petition places you in jeopardy of being
found in Criminal contempt of this court's or-
der(s). Each incident of contempt can result in
your incarceration in jail for contempt.**

**As to Criminal contempt, pursuant to Tenn.
Code Ann. 29-9-101, et. seq., you have certain con-
stitutional rights of a criminally accused person
including but not limited to, the right not to tes-
tify against yourself, the right to counsel, and
the presumption of innocence.**

[Exhibits Omitted]
