IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PEPPER BLACK AND S. BRAD DOZIER, *Plaintiffs-Appellants,* *v.* THERESA BALDWIN, *Defendant-Appellee.*	§ § § § § § § § § §	M2024-00151-SC-R7-CV Circuit No.: 74CC1-2022-CV-247

APPELLEE'S RESPONSE IN OPPOSITION TO APPELLANTS' TENNESSEE RULE OF APPELLATE PROCEDURE 7 MOTION FOR REVIEW

I. INTRODUCTION

The Plaintiffs have moved this Court for review of a discretionary trial court order requiring them to post a cash bond to secure the judgments against them. *See* Appellants' Mot. for Review. Undisclosed by the Plaintiffs' motion, though, are at least two case-dispositive facts:

1. That by fraudulently transferring her assets to evade judgment execution, Plaintiff Black triggered a legal default on the subject property that deprives it of its value as security; and

2. That Plaintiff Black herself testified during the hearing below that she was "not" opposed to depositing a cash bond with the trial court, *see* **Ex. 1** (Tr. of Oct. 4, 2024 Proceedings) at 47:7–16—precisely what she now complains the trial court erred by ordering.

For these reasons and several others, this Court should affirm.

II. FACTS

On July 18, 2024, the trial court entered its final order denying the Plaintiffs' Rule 59 motion to alter or amend. *See* **Ex. 2** (Jul. 18, 2024 Order Denying Mot. to Alter or Amend). The effect of the order was to make executable within thirty days two preceding money judgments entered against the Plaintiffs, which total roughly $156,773.00.

Plaintiff Dozier is deeply in debt and owes the IRS "a couple hundred thousand" dollars. *See* **Ex. 1** at 41:13–18. Thus, he has no known collectible assets and, in all likelihood, he will never satisfy the judgments entered jointly and severally against him. *Id.*

As for Plaintiff Black: she candidly admits that she does not want Ms. Baldwin to collect her judgments. *See id.* at 41:23–42:1 ("Q. You don't want Ms. Baldwin to collect this judgment, do you?" . . . Plaintiff Black: "Of course not."). Toward that end, on August 5, 2024—using documents prepared for her by Plaintiff Dozier (who is an oft-disciplined attorney)—Plaintiff Black fraudulently transferred "all assets of every kind and description and wheresoever situated which [she] presently own[s]" into a self-settled trust called "The Southern Spice Living Trust." *See* Appellants' Mot. for Review at 55.[1] The same day, the Plaintiffs prepared and executed a quitclaim deed fraudulently conveying Plaintiff

[1] The Appellants' Motion for Review appends as exhibits documents that themselves have exhibits appended, which in some cases are filed collectively. Thus, to promote clarity, Ms. Baldwin will simply pincite the page of the comprehensive document. Thus, although the document cited here is Ex. 3 to Ms. Baldwin's opposition below, which in turn is appended as part of Collective Exhibit B to the Appellants' motion, Ms. Baldwin has simply cited it as page "55."

Black's real property to the Southern Spice Living Trust in consideration of "One Dollar." *Id.* at 62.

After the Plaintiffs made these fraudulent transfers—none of which Plaintiff Black disclosed in response to execution-related discovery, which she never answered, **Ex. 1** at 17:24–18:9—the Plaintiffs declined to secure Ms. Baldwin's judgments. Thus, after 30 days expired, Ms. Baldwin was permitted to begin judgment execution, and Ms. Baldwin levied Plaintiff Black's bank account. As noted above, though, Plaintiff Black does not want Ms. Baldwin to collect her judgments. *See id.* at 41:23–42:1. Thus, the Plaintiffs concocted a scheme to claw back the levied funds while preventing any further execution.

To achieve their goals, on September 12, 2024, the Plaintiffs transferred *back* to Plaintiff Black the real property that they had just fraudulently transferred out of her name the month before. *See* Appellants' Mot. for Review at 66–67. The next day, Plaintiff Black executed a Declaration attesting that the value of her real property—which she neglected to disclose had just been through two fraudulent transfers in five weeks—was sufficient to secure Ms. Baldwin's judgments. *See id.* at 18. Then, based on Plaintiff Black's Declaration, the Plaintiffs filed a "Motion for Stay and Approval of Bond and Surety" that sought: (1) to use the property as security to stay judgment execution; and (2) an order "releasing any funds which may have been paid to the clerk" in connection with Ms. Baldwin's bank levy. *Id.* at 16.

The Plaintiffs' motion then came before the trial court for hearing. At hearing, Plaintiff Black made several admissions that are relevant

to—and dispositive of—the Appellants' pending motion.

First, Plaintiff Black admitted that she doesn't want Ms. Baldwin to collect her judgments. **Ex. 1** at 41:23–42:1.

Second, Plaintiff Black admitted that she had neither contacted nor received permission from her mortgage lender to transfer her real property into a self-settled trust. *See id.* at 21:5–20.

Third, Plaintiff Black admitted that she had not obtained her lender's written permission before transferring her real property as her mortgage lender's deed of trust requires, which triggered a right to foreclose on the property at her lender's sole option, *id.* at 22:3–23:22—something that Plaintiff Black "did not know[,]" *id.* at 46:17–21.

Fourth, Plaintiff Black testified that she is not opposed to depositing a cash bond with the court to secure Ms. Baldwin's judgments as Ms. Baldwin requested—something that Plaintiff Black claimed she had been planning to do and was "in the process of doing" anyway:

Q. Are you opposed to taking out a HELOC and depositing the --

A. I am not. That's -- that's --

Q. -- cash with the Court?

A. -- what I -- that's -- that's literally what I was in the process of doing when -- and I was working with Wilson Bank & Trust, so I'm going to have to work with someone else because all of my money was taken out of my accounts. So we were literally within two weeks from getting that.

Q. You were about to secure this judgment?

A. Yes, I was, to put it on deposit with the Court so that --

Id. at 47:7–19.

After hearing, the trial court noted in its oral ruling that "at the very end of Ms. Black's testimony, it was addressed that perhaps she was in the process of acquiring -- going through a HELOC to get the funds to place with the Court as a cash bond to secure the judgment in full, which is what the Court's going to order be done." *Id.* at 53:3–8. The trial court also found that the Plaintiffs had engaged in fraudulent transfers and that the majority of Plaintiff Black's testimony (in which she generally denied attempting to evade judgment execution) was not credible. *See id.* at 54:5–58:25. The trial court then entered a written order memorializing its oral ruling and ordered a stay of execution upon the Plaintiffs depositing a cash bond representing 125% of the judgment due. *See* Appellants' Mot. for Review at 5–6. The trial court's written order expressly stated that it was entered "for the reasons stated by the Court in the transcript of the Parties' hearing, which are incorporated into this Order by reference[.]" *Id.* at 5.

Afterward, the Plaintiffs appealed the trial court's ruling. The Court of Appeals then denied the Plaintiffs' motion for review, stating:

> The appellants have filed a Tennessee Rule of Appellate Procedure 7 motion for review of the trial court's October 22, 2024 order requiring the appellants to post a cash bond in the amount of $195,966.00 as a condition of a stay of execution pending appeal.
>
> Having reviewed the motion and supporting documents, we find no grounds to reverse the trial court's decision.
>
> It is, therefore, ordered that the Motion for Review is denied.

Appellants' Mot. for Review at 79. The Appellants now appeal once more.

III. STANDARD OF REVIEW

Tennessee Rule of Civil Procedure 62.03 provides that a trial court "*in its discretion* may suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as to bond or otherwise as it deems proper to secure the other party." *Id.* (emphasis added). Thus, the relief deemed necessary to secure another party pending appeal is a matter entrusted to the trial court's "discretion." *Id.*; *see also Young v. Young*, 971 S.W.2d 386, 393 (Tenn. Ct. App. 1997); *Wade v. Wade*, 897 S.W.2d 702, 719 (Tenn. Ct. App. 1994) ("The granting of temporary support pending the appeal was within the discretion of the trial court and will not be disturbed on appeal."). Such discretionary trial court decisions are reviewed on appeal for abuse of discretion. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

IV. ARGUMENT

A. THE PLAINTIFFS HAVE NOT COMPLIED WITH TENNESSEE RULE OF APPELLATE PROCEDURE 7.

Appellate courts routinely deny Tennessee Rule of Appellate Procedure 7 motions when movants have not complied with Rule 7's requirements. *See, e.g., Stark v. Stark*, No. W2020-01692-COA-R3-CV, 2022 WL 1744695, at *5 (Tenn. Ct. App. May 31, 2022) ("we denied Wife's motion for failure to comply with Rule 7 of the Tennessee Rules of Appellate Procedure."); *McCarter v. McCarter*, No. E2013-00890-COA-R3CV, 2014 WL 6736305, at *4 (Tenn. Ct. App. Dec. 1, 2014) ("In an order entered May 31, 2013, this Court denied Wife's motion for immediate review as not in compliance with Tennessee Rule of Appellate Procedure

7."); *Trigg v. Church*, No. E2017-01834-COA-R3-CV, 2018 WL 3217244, at *3 (Tenn. Ct. App. July 2, 2018) ("We denied the Motion for Review for failing to comply with Rule 7 of the Tennessee Rules of Appellate Procedure."); *John-Parker v. Parker*, No. E201401338COAR3CV, 2016 WL 2936834, at *2 n.2 (Tenn. Ct. App. May 17, 2016) ("Both motions were denied for failure to comply with Tenn. R. App. P. 7."). Here, the Plaintiffs' motion should similarly be denied for failure to comply with Rule 7's requirements.

Tennessee Rule of Appellate Procedure 7 includes several requirements. Among them, movants must state "the facts relied on" by the trial court and include "the substance of the order[.]" *Id.*

Here, the Plaintiffs submitted the trial court's order as part of their motion. *See* Appellants' Mot. for Review at 5. But by its express terms, the trial court's order "incorporated . . . by reference" "the reasons stated by the Court in the transcript of the Parties' hearing[.]" *See id.* Nevertheless, the Plaintiffs' motion omits "the facts relied on" by the trial court as stated in the transcript of the Parties' hearing. *But see* Tenn. R. App. P. 7. The Plaintiffs also omit from their motion the transcript of the Parties' hearing itself, thereby depriving this Court of the opportunity to learn the full "substance of the order[.]" *Id.*

In these ways, the Plaintiffs have failed to comply with Rule 7. Thus, as in similar cases of non-compliance, the Plaintiffs' motion should be denied. *See supra*.

B. THE PLAINTIFFS HAVE NOT ARGUED THAT THE TRIAL COURT ABUSED ITS DISCRETION.

"A court abuses its discretion when it causes an injustice to the

party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Lee Med., Inc.*, 312 S.W.3d at 524. Nowhere in the Plaintiffs' motion do they argue with any specificity that any of these standards is met. *See generally* Appellants' Mot. for Review. Further, to the extent that any of the Plaintiffs' citationless and conclusory pronouncements about why they dislike the trial court's reasoning relate to any of these grounds for relief, such arguments should be rejected as undeveloped and skeletal. *See Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010).

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION.

The Plaintiffs assert that it is "baseless and immaterial" that the trial court found they engaged in a fraudulent transfer. *See* Appellants' Mot. for Review at 2–3. But given that the unchallenged facts here—as found by the trial court and detailed in the incorporated hearing transcript—overwhelmingly support the trial court's finding that the Plaintiffs engaged in a fraudulent transfer, it is difficult to imagine how the Plaintiffs could believe that the trial court's finding that they engaged in a fraudulent transfer could be "baseless." *Id.*

The Plaintiffs' only argument on the point appears to be that "Ms. Black testified that the trust was merely an estate planning device that did not protect the property from her creditors[.]" *See id.* at 2. But the trial court did not find credible Plaintiff Black's testimony about her sudden need for estate planning that included transferring all of her

assets into a self-settled trust roughly two weeks after a money judgment against her became final. *See id.* at 6. At any rate, it plainly *is not true* that transferring her real property out of her own name and into a self-settled trust weeks before judgment execution could issue did not protect the property from her judgment creditors, who could not lawfully execute on property that Plaintiff Black no longer owned unless they discovered her fraudulent transfer and unwound it.

Given that the trial court's finding that the Plaintiffs engaged in a fraudulent transfer had basis, then, the Plaintiffs are left with a claim that their fraud is "immaterial." Appellants' Mot. for Review at 3. But the Plaintiffs' fraud *is* material, because it triggered Plaintiff Black's mortgage lender's right to foreclose on her real property at her lender's sole option. *See* **Ex. 1** at 22:3–23:22. Thus, at any moment, Plaintiff Black's mortgage lender has the right to order the property sold, thereby undermining its value as security. Given that the Plaintiffs have already proven that they are willing to transfer the property fraudulently in order to evade execution, the Plaintiffs also simply cannot be trusted not to do it again—particularly given that Plaintiff Black has candidly admitted that she does not want Ms. Baldwin to collect her judgment. *Id.* at 41:23–42:1 ("Q. You don't want Ms. Baldwin to collect this judgment, do you?" . . . Plaintiff Black: "Of course not.").

None of this is necessary to find that the trial court did not abuse its discretion, though. That is because *Plaintiff Black herself* testified that she was not even opposed to depositing a cash bond with the trial court to secure Ms. Baldwin's judgments: something that Plaintiff Black claimed she had been planning to do and was "in the process of doing"

anyway. *Id.* at 47:7–19.

In its ruling below, the trial court explicitly relied on this testimony from Plaintiff Black. *Id.* at 53:3–8 ("at the very end of Ms. Black's testimony, it was addressed that perhaps she was in the process of acquiring -- going through a HELOC to get the funds to place with the Court as a cash bond to secure the judgment in full, which is what the Court's going to order be done."). But now—having testified under oath that she had no problem depositing a cash bond to secure Ms. Baldwin's judgments—Plaintiff Black asserts that the trial court erred by ordering her to do exactly that. *See generally* Appellants' Mot. for Review.

The Plaintiffs' claims are unpersuasive, for three reasons.

First, litigants are forbidden from changing their positions between the trial court and appeal, which is what Plaintiff Black is now seeking to do. *See Lowe v. Smith*, No. M2015-02472-COA-R3-CV, 2016 WL 5210874, at *13 (Tenn. Ct. App. Sept. 19, 2016) ("Tennessee law is well-settled that it is inappropriate to allow a party to take one position regarding an issue in the trial court, and then 'change its strategy or theory in midstream, and advocate a different ground or reason in this Court.'") (cleaned up; collecting cases).

Second, because the Plaintiffs are unable to fraudulently transfer or otherwise dissipate cash that has been deposited with the court, the trial court appropriately ordered such relief—relief that is necessary to secure Ms. Baldwin's judgments against any future fraud that the Plaintiffs might otherwise be tempted to commit to prevent Ms. Baldwin from executing.

Third, the Plaintiffs completely overlook how favorable to them the trial court's order was. Given that the Plaintiffs fraudulently transferred their assets, "thereby endangering satisfaction of the judgment[,]" the trial court would have been well within its rights to deny them a stay entirely and allow Ms. Baldwin to execute immediately. *Cf.* Tenn. R. Civ. P. 62.01 ("The party in whose favor judgment is entered may also obtain execution or take proceedings to enforce the judgment prior to expiration of the 30-day period if the party against whom judgment is entered is about fraudulently to dispose of, conceal or remove his or her property, thereby endangering satisfaction of the judgment."). Nevertheless, because both Ms. Baldwin and Plaintiff Black told the Court that they agreed that a cash bond deposited with the court would be acceptable, *compare* Appellants' Mot. for Review at 32 (Ms. Baldwin arguing that the Plaintiffs should be required to "deposit a cash bond with the Clerk of Court to secure Ms. Baldwin's judgment in full"), *with* **Ex. 1** at 47:7–19 (Plaintiff Black testifying she was not opposed to securing the judgment wish a cash bond), the trial court granted the Plaintiffs a stay of execution on agreed conditions that were proper to secure Ms. Baldwin. *See* Tenn. R. Civ. P. 62.07 (empowering trial courts "to stay proceedings on any other terms or conditions as the court deems proper.").

To be clear: The Plaintiffs do not now challenge the trial court's order granting them a stay, which is *what they sought*. Nor do they challenge the amount of the trial court's ordered appeal bond, *which they proposed*. Instead, the Plaintiffs argue only that the trial court erred by ordering bonded relief *that Ms. Black herself testified she was willing to*

provide, rather than allowing the Plaintiffs to "secure" Ms. Baldwin's judgment pending appeal by using a twice-fraudulently-transferred property that is now subject to foreclosure.

Under these circumstances, as the Court of Appeals correctly determined, the trial court did not err at all, much less abuse its wide discretion to enter a stay order "upon such terms as to bond or otherwise as it deems proper to secure the other party." Tenn. R. Civ. P. 62.03. Thus, the trial court's judgment—which was well within its discretion—should not be disturbed.

V. CONCLUSION

For the foregoing reasons, the Court of Appeals' judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st of November, 2024, a copy of the foregoing was served via the Court's electronic filing system, via email, and/or via USPS mail, postage prepaid, to the following parties:

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