

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE, PART I

SEAN SMITH,)
Petitioner,)
v.) Case No. 24-0074-I
TENNESSEE DEPARTMENT OF)
FINANCE & ADMINISTRATION,)
DIVISION OF TENNCARE; and)
STEPHEN SMITH, DIRECTOR OF)
TENNCARE, in his official capacity,)
Respondents.

**RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION FOR ACCESSIBLE JUSTICE**

Respondents, the Tennessee Department of Finance & Administration, Division of TennCare (“TennCare”) and Stephen Smith, Director of TennCare (“Director”) (jointly “Respondents”), by and through counsel, herein respond in opposition to Petitioner’s *Motion for Accessible Justice* (“Motion”). Petitioner requests “for the Court to provide the relief required and make Justice Accessible.” Not only is the requested relief extraordinarily vague, but to the extent Petitioner seeks the appointment of counsel, the right to an attorney is not an enumerated right to private citizens for civil cases, and is not required by the Americans with Disability Act (“ADA”). Tennessee Court Systems, *Judicial ADA Policy* – “What kinds of assistance cannot be provided?”, www.tncourt.gov (last updated 2024), <https://www.tncourts.gov/administration/human-resources/ada-policy>. Nor is such relief otherwise warranted. Therefore, Petitioner’s Motion should be denied.

BACKGROUND

Petitioner filed his *Complaint and Petition for Judicial Review* on January 27, 2024, and an *Amended Complaint and Petition for Judicial Review* on April 7, 2024. Respondents filed a Motion to Dismiss on April 23, 2024, that is set to be heard on May 17, 2024. On April 24, 2024, upon being served with Respondents' Motion to Dismiss, Petitioner filed a *Motion for Accessible Justice* requesting that "the Court to provide the relief required to make Justice Accessible to Mr. Smith" and for this Court to "DEFEND THE DISABLED." In his Motion, Petitioner outlines his process to litigate this case and the effort it takes him to do so. He also describes the various unsuccessful ways he has attempted to find an attorney who will represent him in this litigation. While Respondents sympathize with Petitioner, we respond in opposition due to the lack of relief requested in his Motion.

ARGUMENT

I. Petitioner is Not Entitled to the Appointment of Counsel.

Although Petitioner's motion is somewhat opaque, Respondents understand the Motion as requesting the Court to appoint counsel for Petitioner. *See Motion at 25* ("One could thereby infer that it would be a reasonable accommodation for the Court to provide disabled adults whose fundamental rights are being violated by the State a competent attorney."). Specifically, Petitioner seems to request appointment of counsel as an ADA accommodation. *Id.* at 3 (indicating that Petitioner requested the Administrative Office of the Courts ADA Coordinator to appoint counsel).

Appointment of counsel as an ADA accommodation in this case is not required or warranted. The Judicial ADA Policy for the Tennessee Courts makes clear that "the appointment of an attorney to represent a party to a civil case *cannot be required.*" (Motion, Ex. A4). This policy is well grounded in Tennessee law. "[T]here is no absolute right to counsel in a civil case."

Bell v. Todd, 206 S.W.3d 86, 92 (Tenn. Ct. App. 2005). “Unlike indigent defendants in criminal cases, indigent civil litigants possess neither the constitutional nor the statutory right to appointed counsel.” *Hessmer v. Miranda*, 138 S.W.3d 241, 245 (Tenn. Ct. App. 2003). Rather, appointment of counsel in a civil case is “justified only by exceptional circumstances.” *Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993). No such circumstances are presented here. Indeed, Petitioner fails to explain how his alleged disabilities put him at more disadvantage than a standard pro se party, and the Court’s ADA assistance cannot “change the basic nature of the judicial system.” Tennessee Court Systems, *Judicial ADA Policy* – “What kinds of assistance cannot be provided?” www.tncourt.gov (last updated 2024), <https://www.tncourts.gov/administration/human-resources/ada-policy>.

Petitioner does not establish a basis for appointing counsel under either the Tennessee or Federal Constitutions or the ADA, and his Motion must be denied.

II. Petitioner Does Not State with Particularity the Relief He is Requesting.

To the extent Petitioner seeks relief other than appointment of counsel, such relief is not adequately defined such as to give Respondents fair opportunity to respond. Petitioner moves the Court to “make Justice Accessible to Mr. Smith and other disabled adults in Tennessee” and to “DEFEND THE DISABLED.” Motion, p. 27. Such relief is, on its face too vague to identify the requested relief. Pursuant to the Davidson County Chancery Local Rules, “motions shall clearly state with particularity the grounds therefore and shall set forth the relief or order sought as required by Tenn. R. Civ. P. 7.02.” L.R. 26.04(a). The Tennessee Rules of Civil Procedure also require that a motion “shall set forth the relief or order sought.” Tenn. R. Civ. P. R. 7.02(1). “Although [Tennessee courts] construe pleadings and motions liberally, parties must still abide by the particularity requirement of Tenn. R. Civ. P. 7.02(1).” *Just. v. Nelson*, No.

E201802020COAR3CV, 2019 WL 6716300 at *5 (Tenn. Ct. App. Dec. 10, 2019). Accordingly, Petitioner, even though pro se, should be required to

CONCLUSION

For the foregoing reasons, Petitioner's *Motion for Accessible Justice* must be denied.

Respectfully Submitted,

JONATHAN SKRMETTI
ATTORNEY GENERAL & REPORTER

/s/ Haylie C. Robbins

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this motion, memorandum in support, and all attached exhibits have been served via email and electronic filing on May 2, 2024, upon the following recipients:

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