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# IN THE COURT OF APPEALS OF TENNESSEE MIDDLE SECTION, AT NASHVILLE

LYNNE S. CHERRY, et al.,	§	
$Plaintiffs ext{-}Appellees,$	§ §	
v.	§ §	M2022-00218-COA-R10-CV
DEL FRISCO'S GRILLE OF	§ §	Williamson County Circuit Court
TENNESSEE, LLC, et al.,	§ 8	Case No.: 2019-361
$Defendants\hbox{-}Appellants.$	§ §	

# RESTRAINED NON-PARTY MARY GRACE ANDERSON'S PETITION FOR WRIT OF CERTIORARI TO VACATE THE WILLIAMSON COUNTY CIRCUIT COURT'S UNCONSTITUTIONAL AND VOID PRIOR RESTRAINT

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Counsel for Non-Party Petitioner Mary Grace Anderson

Date: February 23, 2022

## I. INTRODUCTION

This Petition concerns a categorically unconstitutional, ex-parte prior restraint against protected speech. Compounding the illegality, the Circuit Court for Williamson County issued the offending prior restraint against a non-party over whom the Circuit Court lacked any plausible jurisdiction. A copy of the challenged order—a *Mandatory Injunction and Temporary Restraining Order* that compels non-party "Mary Grace Anderson [to] immediately remove, delete, and otherwise take down any and all statements made regarding the Plaintiffs' [sic], Plaintiffs [sic] counsel, and the law firm of Schell and Oglesby LLC"—is attached to this Petition as **Exhibit #1**. *See id.* at 1–2, ¶ 3.

For the reasons detailed below, the Circuit Court's ex parte prior restraint against Ms. Anderson is facially unconstitutional, overbroad, and void for lack of jurisdiction. Further, as a non-party to this action, Ms. Anderson has no other plain, speedy, or adequate remedy available to dissolve the Circuit Court's patently illegal order other than a writ of certiorari. *See* Tenn. Code Ann. § 27-8-101. Accordingly, this Court should:

- 1. Grant Ms. Anderson's petition for a writ of certiorari;
- 2. Vacate and dissolve—as both unconstitutional and void for lack of jurisdiction—the Circuit Court's Feb. 19, 2022 *Mandatory Injunction and Temporary Restraining Order* against her;
- 3. Order that the scheduled March 3, 2022 hearing contemplated by that order be cancelled pending resolution of this Petition; and
  - 4. Reassign this case to a different judge upon remand.

## II. FACTS

On February 19, 2022, non-party Mary Grace Anderson received the following e-mail from attorney Elizabeth Russell, who represents the Plaintiffs in this action:

From: Elizabeth Russell <erussell@franklin.legal>

Date: February 19, 2022 at 1:59:33 PM CST

To: graciie121@gmail.com Subject: Restraining Order

Ms. Anderson:

See the attached injunction and restraining order. You are ordered to immediately remove / delete any statements, reviews, or comments regarding my clients, me, and my law firm. You are restrained from any further related conduct.

Failure to comply with this court order could result in further sanctions subject to the Court's discretion.

You will be served by private process server and you are ordered to appear in court on **March 3, 2022 at 9:00am**.

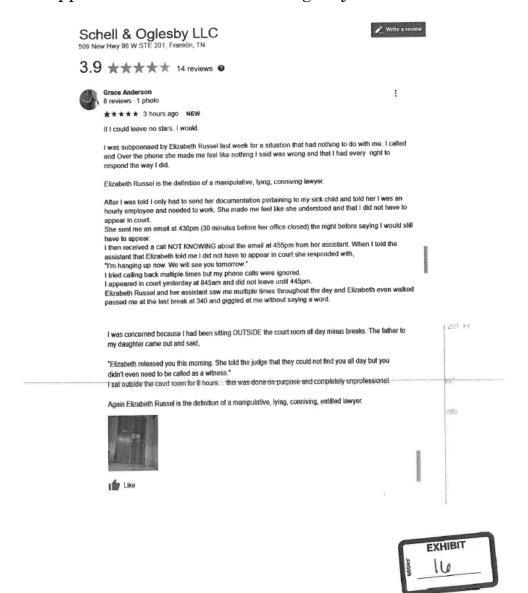
If you have questions I suggest you hire a lawyer.

Elizabeth A. Russell Partner, Attorney at Law

## See Exhibit #2.

Appended to Plaintiffs' counsel's missive were: (1) the Williamson County Circuit Court's February 19, 2022 Mandatory Injunction and Temporary Restraining Order, see Exhibit #1, and (2) the Plaintiffs' Ex Parte Emergency Rule 65 Motion for Mandatory Injunctive Releif [sic] and Temporary Restraining Order, see Exhibit #3, upon which the February 19, 2022 injunction and temporary restraining order was based.

As relevant to Ms. Anderson, the ex parte order requires that "Mary Grace Anderson immediately remove, delete, and otherwise take down any and all statements made regarding the Plaintiffs' [sic], Plaintiffs [sic] counsel, and the law firm of Schell and Oglesby LLC . . . . *Id.* at 1–2, ¶ 3. The order apparently arises from Plaintiffs' counsel's upset about the following negative Google review that Ms. Anderson posted about her, which was appended to Plaintiffs' "Emergency Motion" as Exhibit #16:



**Exhibit #3** at 46 (Ex. 16); *id.* at 8–9 (complaining about Google review).

## III. LEGAL STANDARD

Pursuant to Tenn. Code Ann. § 27-8-101:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

Id.

Here, Ms. Anderson has been subjected to an ex parte prior restraint enjoining and compelling her to remove her constitutionally protected speech, see Ex. 1—an order that is patently illegal on its face. The order also arises out of a case in which Ms. Anderson has no role as a party and is not subject to the Williamson County Circuit Court's jurisdiction at all, rendering the order in excess of the jurisdiction that the Circuit Court has been conferred. Further, as a non-party and non-intervenor, the appellate rights afforded by the Tennessee Rules of Appellate Procedure—which apply to "parties" and intervenors, see Tenn. R. App. P. 3(i)—have no application to Ms. Anderson. As a result, a writ of certiorari is proper. See Tenn. Code Ann. § 27-8-101; Tenn. Code Ann. § 27-8-102(a)(2) ("Certiorari lies: . . . (2) Where no appeal is given[.]").

## IV. ISSUES PRESENTED AND STANDARD OF REVIEW

This Petition presents two straightforward questions of law for this Court's review.

*<u>First*</u>, this Petition seeks resolution of whether the Williamson County Circuit Court's ex parte prior restraint censoring and forbidding

Ms. Anderson's constitutionally speech abridges the First Amendment. This Court's review of that narrow question presents an atypical de novo standard of review. See P&G v. Bankers Tr. Co., 78 F.3d 219, 227 (6th Cir. 1996) ("the standard of review is different. The decision to grant or deny an injunction is reviewed for abuse of discretion. [] We review First Amendment questions de novo.") (citing Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485 (1984)).

<u>Second</u>, this Petition seeks resolution of whether the Circuit Court's ex parte injunction against Ms. Anderson—a non-party who is not under subpoena—is void for lack of jurisdiction. This Court's review of that question is de novo as well. *See State v. L.W.*, 350 S.W.3d 911, 915 (Tenn. 2011) ("A determination of jurisdiction is a question of law, which we review de novo with no presumption of correctness.") (citing *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn.2000)).

## V. ARGUMENT

A. THE WILLIAMSON COUNTY CIRCUIT COURT'S EX-PARTE PRIOR RESTRAINT AGAINST MS. ANDERSON VIOLATES THE FIRST AMENDMENT.

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Neb. Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976). "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963) (collecting cases). "Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints." Alexander v. United

States, 509 U.S. 544, 550 (1993).

To impose a prior restraint against pure speech, a "publication must threaten an interest more fundamental than the First Amendment itself. Indeed, the Supreme Court has never upheld a prior restraint, even faced with the competing interest of national security or the Sixth Amendment right to a fair trial." P&G, 78 F.3d at 226–27. A negative Google review of a thin-skinned lawyer falls at least marginally below the publication of the Pentagon Papers in terms of evaluating these interests. See N.Y. Times Co. v. United States, 403 U.S. 713, 714 (1971). See also L. Offs. of David Freydin, P.C. v. Chamara, 24 F.4th 1122 (7th Cir. 2022) (holding that negative reviews about lawyer were inactionable).

Indeed, far from threatening any constitutional interest, Ms. Anderson's Google review is an obvious exercise of the rights protected by the Constitution. See, e.g., Nandigam Neurology, PLC v. Beavers, No. M2020-00553-COA-R3-CV, 2021 WL 2494935, at \*13 (Tenn. Ct. App. June 18, 2021) (affirming that posting a negative Yelp! Review "was an exercise of Defendant's right of free speech"). Further, even if the innocuous Google review at issue were capable of being construed as defamatory (it is not), defamation could never be enjoined on a preliminary basis anyway. See Hill v. Petrotech Res. Corp., 325 S.W.3d 302, 311 (Ky. 2010) (holding that preliminary injunctions may never issue in defamation cases, and noting that "while the rule may temporarily delay relief for those ultimately found to be innocent victims of slander and libel, it prevents the unwarranted suppression of speech of those who are ultimately shown to have committed no defamation, and

thereby protects important constitutional values."); List Indus. Inc. v. List, No. 2:17-CV-2159 JCM (CWH), 2017 WL 3749593, at \*3 (D. Nev. Aug. 30, 2017) ("[A] preliminary injunction poses a danger that permanent injunctive relief does not: that potentially protected speech will be enjoined prior to an adjudication on the merits of the speaker's or publisher's First Amendment claims.") (cleaned up); Balboa Island Vill. Inn, Inc. v. Lemen, 156 P.3d 339, 347 (Cal. 2007), as modified (Apr. 26, 2007) (same) (citing DVD Copy Control Assn., Inc. v. Bunner, 75 P.3d 1 (Cal. 2003) (conc. opn. of Moreno, J.). Further, where—as here—issues of public concern pertaining to the judicial process are involved, even a post-adjudication injunction may be constitutionally impermissible. See Sindi v. El-Moslimany, 896 F.3d 1, 33 (1st Cir. 2018) (noting that an "[a]n injunction that prevents in perpetuity the utterance of particular words and phrases after a defamation trial" may still be unconstitutional even after the words and phrases have been found defamatory, because "[b]y its very nature, defamation is an inherently contextual tort," and "[w]ords that were false and spoken with actual malice on one occasion might be true on a different occasion or might be spoken without actual malice.").

Further still, the scope of the prior restraint imposed by the Williamson County Circuit Court goes far beyond proscribing speech that could plausibly be deemed unprotected. Instead, it also forbids the publication of "any and all" unmistakably non-defamatory, constitutionally-protected "statements made regarding the Plaintiffs' [sic], Plaintiffs [sic] counsel, and the law firm of Schell and Oglesby LLC

Prior restraints against speech do not just harm speakers, either. They also abridge the public's right to hear what a speaker has to say in this case, statements about how a lawyer has behaved and wielded the judicial subpoena power. See, e.g., Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, 425 U.S. 748, 756 (1976) ("Where a willing speaker exists, "the protection afforded [by the First Amendment] is to the communication, to its source and to its recipients both."); United States v. Playboy Ent. Grp., Inc., 529 U.S. 803, 812 (2000) ("To prohibit this much speech is a significant restriction of communication between speakers and willing adult listeners, communication which enjoys First Amendment protection."). For that reason and others, "[a] court's equitable power to grant injunctions should be used sparingly, especially when the activity enjoined is not illegal, . . . and when it is broader than necessary to achieve its purposes." Kersey v. Wilson, No. M2005-02106-COA-R3-CV, 2006 WL 3952899, at \*8 (Tenn. Ct. App. Dec. 29, 2006) (citing Earls v. Earls, 42 S.W.3d 877 (Tenn. Ct. App. 2000); Terry v. Terry, M1999-01630-COA-R3-CV, 2000 WL 863135 (Tenn. Ct. App. June 29,

2000) (perm. app. denied Jan. 8, 2001)).

For all of these reasons, prior restraints like the Williamson County Circuit Court's are categorically unconstitutional. As such, by issuing such the challenged prior restraint forbidding constitutionally protected speech, the Circuit Court "is acting illegally," and Ms. Anderson has "no other plain, speedy, or adequate remedy" to remedy that illegality. See Tenn. Code Ann. § 27-8-101. Accordingly, an immediate writ of certiorari vacating and dissolving the order should issue to prevent an extended adjudication that would itself inflict irreparable injury. See, e.g., Connection Distrib. Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998) ("it is well-settled that 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)); Newsom v. Norris, 888 F.2d 371, 378 (6th Cir. 1989) ("The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief."). See also Young v. Giles Cnty. Bd. of Educ., 181 F. Supp. 3d 459, 465 (M.D. Tenn. 2015) ("Under case law applicable to free speech claims, the loss of First Amendment freedoms, for even minimal periods of time, is presumed to constitute irreparable harm." (quotation omitted)).

# B. THE CIRCUIT COURT'S EX-PARTE PRIOR RESTRAINT IS VOID FOR LACK OF JURISDICTION OVER MS. ANDERSON.

"A lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties." *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 355 (Tenn.

2008) (collecting cases). By contrast, "an order entered without either subject matter jurisdiction or jurisdiction over the parties is void . . . ." *Id*.

Here, because Ms. Anderson is not a party to this action whose only role in it was as a non-party witness, the Circuit Court had no conceivable jurisdiction to order her to do anything. As the style of this case and the Circuit Court's own *Mandatory Injunction and Temporary Restraining Order* reflect, Ms. Anderson is not a party to this case, which is between Plaintiffs "Lynne S. Cherry and Brenton A. Cherry," on the one hand, and Defendants "Del Frisco's Grille of Tennessee, LLC and Del Friscos Restaurant Group, Inc.," on the other. *See* Exhibit #1, at 1. Thus, the Circuit Court has no jurisdiction over Ms. Anderson arising from any summons or claim.

Instead, Ms. Anderson's only role in this case was as a tangential non-party witness. Accordingly, the full extent of the Circuit Court's jurisdiction over her arose from a subpoena. As the Plaintiffs' own ex parte Motion repeatedly reflects, though, Ms. Anderson "was released from the subpoena . . . ." See Exhibit #3 at 6–7, ¶ 23 ("Sometimes after 1:00pm, counsel for Plaintiffs determined that, based on the testimony which had been received by the Court, that she could release Ms. Anderson from her subpoenaed appearance. After confirming with Defendants' counsel that they did not require Ms. Anderson's testimony and that they agreed she could be released, Plaintiffs' counsel instructed her associated [sic], Megan McGill, to find Ms. Anderson and let her know that she was released from the subpoena and that she could leave the courthouse."). See also id. at ¶ 24 ("Ms. Anderson . . . was released from

her subpoenaed appearance"); id. at ¶ 25 ("Ms. Anderson . . . had been released from her subpoena"). Thus, the Circuit Court had—and has—no ongoing jurisdiction over her whatsoever.

Given these circumstances, the Circuit Court has no jurisdiction none—over Ms. Anderson at all, and any order issued against her is necessarily void. The purported authority underlying the Circuit Court's unconstitutional ex parte prior restraint arises from Tennessee Rule of Civil Procedure 65.04. See id. Exhibit #3 at 1 (seeking relief "pursuant to Rule 65 of the Tennessee Rules of Civil Procedure"), id. at 9 (seeking relief pursuant to "Tenn. R. Civ. P. 65.04"). However, Tennessee Rule of Civil Procedure 65.04 is not a freestanding source of authority that enables trial courts to enjoin anyone on earth. Instead, Tenn. R. Civ. P. 65.04 permits relief only against a "party," which Ms. Anderson decidedly is not. See Tenn. R. Civ. P. 65.04(1) ("No temporary injunction shall be issued without notice to the adverse party.") (emphasis added); Tenn. R. Civ. P. 65.04(2) ("A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.") (emphases added); Tenn. R. Civ. P. 65.04(5) ("A temporary injunction becomes effective and binding on the party enjoined when the order is entered. It shall remain in force until modified or dissolved on motion or until a permanent injunction is granted or denied.") (emphasis added).

Under these circumstances, the Circuit Court's ex parte prior restraint is void for lack of any jurisdiction—either subject matter or personal—over Ms. Anderson at all. Ms. Anderson's Petition for a writ of certiorari should be granted; the offending order entered against her should be vacated and dissolved; and this Court should order that the scheduled March 3, 2022 hearing be cancelled pending resolution of this Petition as a consequence.

## C. THIS COURT SHOULD ORDER THAT THIS CASE BE REASSIGNED UPON REMAND.

This Court "may . . . order reassignment of a case to a different judge in the exercise of the court's inherent power to administer the system of appeals and remand." *Culbertson v. Culbertson*, 455 S.W.3d 107, 157 (Tenn. Ct. App. 2014) (cleaned up). Reassignment may be warranted where it "is advisable to maintain the appearance of justice[.]" *Rudd v. Rudd*, No. W2011-01007-COA-R3CV, 2011 WL 6777030, at \*7 (Tenn. Ct. App. Dec. 22, 2011). It is also warranted in "the rare case" where a judge steadfastly adheres to an erroneous view or "will not follow the requisite standards and procedures in rendering a decision . . . ." *Biggs v. Town of Nolensville*, No. M2021-00397-COA-R3-CV, 2022 WL 41117, at \*6 (Tenn. Ct. App. Jan. 5, 2022) (quoting *Rudd*, 2011 WL 6777030, at \*7).

Here, the extraordinary breadth and scope of the Williamson County Circuit Court's illegal ex parte prior restraint against Ms. Anderson's constitutionally protected speech merits reassignment. Issuing a speech-based prior restraint enjoining—and affirmatively compelling the subject of the order to remove—such plainly protected speech is so unfathomably unconstitutional that the appearance of justice alone requires reassignment upon remand. That the unconstitutional prior restraint was issued against a non-party over whom the Circuit Court lacked any plausible jurisdiction makes the order all the more unbelievable. Reassignment to a different judge upon remand is warranted as a consequence.

## VI. STATEMENT OF THE RELIEF SOUGHT

This Court should:

- 1. Grant Ms. Anderson's petition for a writ of certiorari;
- 2. Vacate and dissolve—as both unconstitutional and void for lack of jurisdiction—the Circuit Court's Feb. 19, 2022 *Mandatory Injunction and Temporary Restraining Order*;
- 3. Order that the scheduled March 3, 2022 hearing contemplated by that order be cancelled pending resolution of this Petition; and
  - 4. Reassign this case to a different judge upon remand.

## VII. APPENDIX OF EXHIBITS

The non-party Petitioner has appended the following three exhibits to this Petition:

- 1. The Williamson County Circuit Court's Feb. 19, 2022

  Mandatory Injunction and Temporary Restraining Order (Exhibit #1);
- 2. The Feb. 19, 2022 email transmitted by Plaintiffs' counsel to non-party Petitioner Anderson (**Exhibit #2**); and
  - 3. The Plaintiffs' Ex Parte Emergency Rule 65 Motion for

Mandatory Injunctive Relief and Temporary Restraining Order, inclusive of sixteen (16) exhibits appended to that Motion (Exhibit #3).

## VIII. CONCLUSION

For the foregoing reasons, restrained non-party Mary Grace Anderson's petition for a writ of certiorari to vacate the Williamson County Circuit Court's unconstitutional and void prior restraint should be granted.

Respectfully submitted,

By: /s/ Daniel A. Horwitz

DANIEL A. HORWITZ, BPR #032176

LINDSAY SMITH, BPR #035937

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NASHVILLE, TN 37209

daniel@horwitz.law
lindsay@horwitz.law
(615) 739-2888

Counsel for Non-Party Petitioner Mary Grace Anderson

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## CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2022, a copy of the foregoing was sent via the Court's electronic filing system, via UPS mail, and/or via email to the following parties or their counsel:

Elizabeth Russell Schell & Oglesby, LLC 509 New Highway 96 West Suite 201 Franklin, Tennessee 37064 erussell@franklin.legal

Counsel for Plaintiffs

Wesley Clark, #32611 Frank Brazil, #34586 Brazil Clark, PLLC 2901 Dobbs Ave. Nashville, TN 37211 615-984-4681 615-514-9674 (fax) wesley@brazilclark.com

Counsel for Defendants

By: /s/ Daniel A. Horwitz

Daniel A. Horwitz, BPR #032176

## TENN. CODE ANN. § 27-8-106 STATEMENT

Pursuant to Tenn. R. Civ. P. 72, I declare upon personal knowledge under penalty of perjury before the Judges of this Court that this Petition's allegations are true and correct, and that this is the first application for the writ.

/s/ Mary Grace Anderson

Date: February 23, 2022

WILLIAMSON COUNTY

IN THE CIRCUIT COURT FOR V	VILLIAMSON COL	JNTY, TENNÉSSEET COURT
AT F	RANKLIN	2022 FEB 19 PM 12: 59
LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiffs,	)	ENTERED ORIGINAL
V.	) Case	No. 2019-361
DEL FRISCO'S GRILLE OF TENNESSEE, LLC and DEL FRISCOS RESTAURANT GROUP, INC	) ) ) )	

## MANDATORY INJUNCTION AND TEMPORARY RESTRAINING ORDER

THIS CAUSE came on to be heard upon *Verified Motion for Mandatory Injunction* and *Temporary Ex Parte Restraining Order*. Based upon the averments contained therein, the Court ORDERS as follows:

- 1. Plaintiffs' Verified Motion for Mandatory Injunctive Relief and Temporary Ex Parte
  Restraining Order against Defendants, Defendants, agents, and Mary Grace
  Anderson is hereby **GRANTED**.
- Defendants, Defendants' agents, and Mary Grace Anderson shall be enjoined and restrained from further retaliation, intimidation, and harassment of the Plaintiffs, their counsel, or the law firm of Schell & Oglesby of any kind and in any form. pending further Orders of this Court.
- A mandatory injunction shall immediately issue which orders that the Defendants,
   Defendants agents, and Mary Grace Anderson immediately remove, delete, and
   otherwise take down any and all statements made regarding the Plaintiffs',

Document received by the TN Court of Appeals.

Plaintiffs counsel, and the law firm of Schell & Oglesby LLC as same present immediate and irreparable harm to these parties on a continued and ongoing basis.

4. This matter shall be set for hearing on March 3, 2022 at 9:00 A.M. (a.m.) p.m.

IT IS SO ORDERED.

ENTERED this the /8 day of FSVS, 2021 at 480 a.m. p.m.

THE HONORABLE MICHAEL BINKINEY, JUDGE

Michael W. Binkley Circuit Court Judge/Chancellor 21st Judicial District, Division III

From: Elizabeth Russell <erussell@franklin.legal> Date: February 19, 2022 at 1:59:33 PM CST

To: graciie121@gmail.com Subject: Restraining Order

Ms. Anderson:

See the attached injunction and restraining order. You are ordered to immediately remove / delete any statements, reviews, or comments regarding my clients, me, and my law firm. You are restrained from any further related conduct.

Failure to comply with this court order could result in further sanctions subject to the Court's discretion.

You will be served by private process server and you are ordered to appear in court on March 3, 2022 at 9:00am.

If you have questions I suggest you hire a lawyer.

### Elizabeth A. Russell

Partner, Attorney at Law

509 New Highway 96 West

Suite 201

Franklin, Tennessee 37064

(615) 550-2800 telephone

(615) 550-2807 facsimile

erussell@franklin.legal

## 2 attachments



Injunction and Temp Restraining Order.pdf 2282K

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IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE  AT FRANKLIN  CIRCUIT COURT				
LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiff,	2022 FE PORIGINAL  Case No. 2019-361-D			
v.	) Jury Demanded			
DEL FRISCO'S GRILLE OF TENNESSEE, LLC and DEL FRISCOS RESTAURANT GROUP, INC Defendants.	Michael W. Binkley, Judge 022 FEB 19			
EX PARTE EMERGENCE				

Come now the Plaintiffs, by and through counsel, and pursuant to Rule 65 of the Tennessee Rules of Civil Procedure requests that this Honorable Court issue a a mandatory injunction compelling Defendants, their agents, and Mary Grace Anderson to remove all statements made regarding Plaintiffs, their counsel, or counsel's law firm from the internet and anywhere else they may be found and to issue a temporary restraining order restraining and enjoining them from further retaliatory, intimidating, harassing conduct meant to harm their reputations, business, and standing in the community as well as further obstruct these lawful proceedings. In support thereof, Plaintiffs show as follows:

## FACTUAL BACKGROUND

- After three prior settings, this case was set for hearing and heard by this Honorable Court on Thursday, February 17, 2022, on Plaintiffs' Motion for Sanctions due to Spoliation of Evidence.
- In preparation for said hearing, Plaintiffs, through counsel, issued subpoenas
   duces tecum to secure witness testimony and documentary evidence to present
   before this Honorable Court in support of its Motion for Sanctions. Mary Grace

- Anderson was one of the individuals who received one of Plaintiffs' subpoenas, as was Defendants themselves, Del Frisco's Grille.
- 3. Mary Grace Anderson is a current employee of Defendant Del Frisco's Grille. While counsel for Defendants have stated they do not represent Ms. Anderson, the Defendants and their counsel have shared what they have called confidential attorney-client privileged information with Ms. Anderson and have also referred to as their "agent." This information was disclosed when Defendants provided information in advance of the February 17, 2022 hearing pursuant to Plaintiffs' subpoena duces tecum. Specifically, Defendants produced text correspondence to Ms. Anderson as well as email correspondence in which they forwarded Ms. Anderson the subpoena duces tecum issued by the Plaintiffs, along with information that was exchanged between the Defendants and their counsel. Exhibit 1 (a) Feb. 16, 2022 Email Correspondence from Counsel for Defendants, (b) Text Exchange with Defendants Counsel, Defendants, and Ms. Anderson.
- 4. When counsel for Plaintiffs' requested that Defendants provide the unredacted email correspondence, as a third party destroys the secrecy element required to protect attorney-client conversations from disclosure (See Pagliara v. Pagliara, No. M2019-01397-COA-R9-CV, 2020 Tenn. App. LEXIS 299 (Ct. App. June 29, 2020)), Defendants' counsel responded that Ms. Anderson was their agent and advised Plaintiffs' counsel to, essentially, be careful what she asked for. Plaintiffs' counsel presumed this to mean that Defendants' counsel had likely made unprofessional, disparaging, or immature remarks about her or, worse yet, was encouraging Ms. Andersons' disrespectful and obstructionist conduct.

From:

Frank Brazil <frank@brazilclark.com>

Sent:

Tuesday, February 15, 2022 9:22 PM

To: Cc: Elizabeth Russell Wesley Clark

Subject:

Re: Cherry v. Del Frisco's - Supplemental Subpoena Production

She was not included on the original conversation. Instead it was inadvertently and well after the fact forwarded to MGA. As a side, we don't represent her, but she is an Agent of our client.

It's an easily made mistake when conversations in a thread are grouped together. If it is still your position that you get to see what I wrote to my client, despite me explaining to you what happened and notwithstanding the fact that such inadvertent disclosures are routinely held not to waive the privilege, I'm sure you could take it up with the judge.

Of course if you or any attorney were to show me the proof I've shown you, I would not pry into their communications.

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Ave. Nashville, TN 37211 615-730-8619 615-514-9674

## See Exhibit 1(a)

- 5. Plaintiffs issued a subpoena duces tecum for Ms. Anderson following this case's previous setting on February 3, 2022 when Ryan Charabowski, former executive chef for Defendants and current boyfriend of Ms. Anderson and father of her child, failed to appear in court pursuant to Plaintiffs' subpoena for his testimony. Exhibit 2 Charabowski
- 6. Subpoena Duces Tecum
- 7. Mr. Charabowski represented to this Honorable Court and to counsel for Plaintiff that he would not be appearing on February 3, 2022, despite his subpoenaed presence, because had a sick child at home and was preparing to take her to Physicians Urgent Care Clinic.
- 8. This Court was gracious with Mr. Charabowski and simply requested that he provide counsel for both parties and the Court with a note from the urgent care

- clinic stating that he was, in fact, seen in their facility with his daughter on February 3, 2022.
- The Plaintiffs Motion for Sanctions was then reset to February 17, 2022 due to Mr.
   Charabowski's representations that he was unable to be present on February 3,
   2022. Exhibit 3 Agreed Order to Continue
- 10. On February 4, 2022 after multiple requests from Plaintiffs counsel, Mr. Charabowski provided Defendants' counsel with what he purported to be a doctor's excuse note from Physicians Urgent Care Clinic. Exhibit 4 Physicians Urgent Care Clinic Excuse Note
- 11. Plaintiffs had concerns regarding the veracity of said excuse note and in an effort to confirm the veracity of said note issued a subpoena *duces tecum* for Ms. Anderson, who is Mr. Charabowski's girlfriend and mother of his child, hoping that she could provide documentation that would lend credibility to Mr. Charabowski's excuse note. Specifically, Ms. Anderson was asked to bring all evidence which tended to show that her child had a doctor's appointment between January 23, 2022 and February 16, 2022. *Exhibit 5 Anderson Subpoena Duces Tecum*.
- 12. Ms. Anderson was served by private process server on February 9, 2022. She then began to contact both counsel for the Plaintiffs and counsel for Defendants by phone. Ms. Anderson was hostile and disrespectful when speaking with staff at counsel for Plaintiffs' office on several occasions prior to the hearing on February 17, 2022. Plaintiffs counsel finally spoke with Ms. Anderson and assured her that as long as she provided the subpoenaed documents her appearance in court could be waived and that Plaintiffs would release her from the subpoena.

- 13. Ms. Anderson produced the same doctors excuse note that was provided by Mr. Charabowski as the sole responsive document to the subpoena *duces tecum*. Exhibit 6 Anderson Email February 13, 2022
- 14. Counsel for Plaintiffs responded that she had not provided all of the documents that were requested and at that time Plaintiffs could not release Ms. Anderson from her subpoenaed court appearance. Plaintiffs counsel even offered to assist Ms. Anderson in retrieving the requested documents if she wanted to complete the HIPAA form completed by and provided by Plaintiffs counsel. Ms. Anderson did not respond. *Exhibit 7 Anderson Email February 14, 2022*.
- 15. Plaintiffs counsel heard nothing further from Ms. Anderson. Accordingly, on February 16, 2022 Plaintiffs counsel reminded Ms. Anderson by email that she was not released from the subpoena and would be required to appear in court on February 17, 2022. Exhibit 8 Anderson Email 1 February 16, 2022.
- 16. Thereafter, also on February 16, 2022, Counsel for Plaintiffs also instructed her paralegal, Tracie Hoss, to contact Ms. Anderson by phone and, if necessary, leave a detailed voicemail that her appearance in court was still required as she had not been released from the subpoena. Counsel for Plaintiffs further advised Ms. Hoss that Ms. Hoss should terminate the phone call if Ms. Anderson again became hostile, abusive, and disrespectful.
- 17. Ms. Hoss was able to reach Ms. Anderson by phone and detailed she would need to appear in court the following day pursuant to the subpoena she received. Ms. Anderson did become disrespectful again on the phone with Ms. Hoss. Ms. Hoss calmly stated that her call was to inform Ms. Anderson to appear in court and that she was going to hang up the phone due to Ms. Anderson's hostility. *Exhibit 9 Affidavit of Tracie Hoss*

- 18. Ms. Anderson sent Plaintiffs' counsel another email in which she misrepresented that Plaintiffs counsel had previously released her from her subpoenaed appearance in court. Exhibit 10 Anderson Email 2 February 16, 2022.
- 19. Ms. Anderson then began repeatedly calling Schell & Oglesby, LLC, Plaintiffs' counsels' law firm. Ginger Hicks, receptionist for Schell & Oglesby, was also instructed that she could terminate Ms. Anderson's phone calls if she was disrespectful, abusive, and/ or hostile during the call. Again, Ms. Anderson's behavior was disrespectful and hostile. Accordingly, Mrs. Hicks terminated the phone call by putting the calls to voicemail. *Exhibit 11 Affidavit of Ginger Hicks*
- 20. Plaintiffs counsel responded to Ms. Anderson's email and reminded her she had not been released from her subpoena and Plaintiffs counsel attached a copy of the email where Ms. Anderson was informed she was not released and would need to appear. Exhibit 12 Anderson Email 3 February 16, 2022
- 21.Ms. Anderson sent counsel for the Plaintiffs another email on the evening of February 16, 2022 in which Ms. Anderson called Plaintiffs' counsel a liar and that she "should not expect much else from a lawyer [. . .] [w]hen you don't really care as long as you win." Plaintiffs' counsel did not respond to Ms. Anderson's email.
  - Exhibit 13 Anderson Email 4 February 16, 2022
- 22. The parties appeared in court on Plaintiffs Motion for Sanctions on February 17, 2022. Ms. Anderson was also present and was excluded from the proceedings as she was a witness who was expected to give testimony at the hearing. The Court advised Ms. Anderson that she should remain nearby so that the parties could find her when it was time for her to testify in court.
- 23. Sometime after 1:00pm, counsel for Plaintiffs determined that, based on the testimony which had been received by the Court, that she could release Ms.

Anderson from her subpoenaed appearance. After confirming with Defendants' counsel that they did not require Ms. Anderson's testimony and that they agreed she could be released, Plaintiffs' counsel instructed her associated, Megan McGill, to find Ms. Anderson and let her know that she was released from the subpoena and that she could leave the courthouse. After attempting to locate Ms. Anderson, Miss McGill returned to the courtroom and informed Plaintiffs' counsel that she was unable to locate Ms. Anderson. *Exhibit 14 Affidavit of Megan McGill*.

- 24. An hour or so later, Mr. Charrabowski, who was testifying at the time, asked the Court if he would be finished and allowed to leave soon as either he or Ms. Anderson needed to pick their child up from her childcare center. Plaintiffs' counsel announced to the Court that Ms. Anderson should be available to pick up the child because she was released from her subpoenaed appearance, however, that they were unable to locate Ms. Anderson to inform her of same.
- 25. This Honorable Court instructed Mr. Charabowski that he could use his phone right then to call and/or text Ms. Anderson and let her know that she had been released from her subpoena and could leave the courthouse and pickup their child. Mr. Charabowski did appear to then text Ms. Anderson and convey that message.
- 26. After the hearing on Plaintiffs" Motion for Sanctions concluded and the parties left the courthouse, Ms. Hoss was notified that Ms. Anderson had left her a voicemail message for Plaintiffs' counsel at Schell & Oglesby, at approximately 4:41pm, which stated as follows:

"Hi. Uh. My name is Mary Grace Anderson, and I was trying to get a hold of Elizabeth and was sent to you. Um. I was in court from 9:00am till 5:00pm tonight and I'm confused as to why no one had told me that I had been released from this. And I sat here and waited, waited for something I am not involved in which I think is extremely

Document received by the TN Court of Appeals.

unfair. So, if I could get a call back that would be wonderful. My number is (615) 748-7702."

- 27. The following day, on February 18, 2022 Pam Morrow, office manager at Schell & Oglesby, LLC received a notification that a new Google review was posted for Schell & Oglesby. Mrs. Morrow read the review and, based on office-wide knowledge of Ms. Andersons conduct during these proceedings, suspected that the review was left by Ms. Anderson and emailed Plaintiffs' counsel and Tracie Hoss asking if the review was from Ms. Anderson. *Exhibit 15 Mrs. Morrows Email February 18, 2022.*
- 28. Plaintiffs' counsel accessed the review which does appear to be written by Ms.

  Anderson. The review can be reached by accessing this link

  <a href="https://g.co/kgs/czESsC">https://g.co/kgs/czESsC</a> and is also provided hereinbelow. Exhibit 16 Ms.

  Anderson's Google Review



I was concerned because I had been sitting OUTSIDE the court room all day minus breaks. The father to my daughter came out and said,

\*Efizabeth released you this morning. She told the judge that they could not find you all day but you didn't even need to be called as a witness.\*

I sat outside the court room for 8 hours, this was done on purpose and completely unprofessional

Again Elizabeth Russel is the definition of a manipulative, lying, conniving, entitled lawyer.





## **LAW**

A temporary, mandatory injunction may be granted "during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual." <u>Tenn. R. Civ. P. 65.04</u>

Circuit courts have all the powers of a court of equity to issue injunctions and other extraordinary process. <u>Tenn. Code Ann. §§ 29-1-105, 29-1-106</u>. "Every court has the power to ... [c]ompel obedience to its judgments, orders, and process ....." <u>Id.</u> § 16-1-102(3).

Harm is considered to be "irreparable harm for purposes of request for preliminary injunction if monetary damages cannot be calculated with reasonable degree of certainty or will not adequately compensate injured party." AmeriGas Propane, Inc. v. Crook, 1993, 844 F.Supp. 379.

Courts weigh the following factors when considering a request for a temporary injunction: (1) the threat of irreparable harm to the plaintiff, (2) the balance between this harm experienced by the plaintiff and the harm that granting an injunction would

inflict on the defendant, (3) the plaintiff's likelihood of success on the merits, and (4) the public interest. *Denver Area Meat Cutters & Emps. Pension Plan ex rel. Clayton Homes, Inc. v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

Plaintiffs, their counsel, and the law firm of Schell & Oglesby are concerned that if Defendants, Defendants agents, and/or Mary Grace Anderson receive notice of these requests prior to the Court entering a temporary injunction that the Defendants, their agents, and/or Mary Grace Anderson will further retaliate and engage in actions meant to intimidate, harass, and harm the Plaintiffs, their counsel, and Schell & Oglesby. The balance between the potential harm Plaintiffs are experiencing and the injury that granting the injunction would inflict on Defendants weighs in favor of the Court granting injunctive relief. Furthermore, Plaintiffs have a substantial likelihood of success on the merits in this matter given the clear efforts of the Defendants and/or their agents to retaliate, intimidate, and harm the reputations of Plaintiffs and their counsel. Public interest supports the grant of this temporary injunction as Defendants and/or their agents conduct is egregious and this Court cannot tolerate parties who intentional obstruct its lawful proceedings. A Rule 65 Affidavit is filed contemporaneously with this filing.

## CONCLUSION

Plaintiffs and their counsel are concerned that should the Defendants and their agents receive notice of this motion before the Court enters a temporary restraining order that there will be additional, and perhaps more severe, attempts by the Defendants and their agents to retaliate and intimidate Plaintiffs and their counsel. Plaintiffs, counsel for Plaintiffs and the law firm of Schell & Oglesby LLC are requesting relief from this Honorable Court as follows:

**FIRST** that this matter be heard and an order be entered on an emergency and ex parte basis.

**SECOND** that this Court immediately issue a mandatory injunction, contemporaneously filed, directing that Ms. Anderson and the Defendants remove this review and all others which Plaintiffs and their counsel may not now be aware of.

**THIRD** that this Court issue a temporary restraining order, contemporaneously filed, which restrains and enjoins Defendants, Defendants agents, and Ms. Anderson from further retaliation, intimidation, and harassment of any kind and in any form.

**FOURTH** that this Honorable Court set a hearing on the Temporary Restraining Order to determine whether it should be converted into a permanent injunction.

FIFTH that this Honorable Court take notice of these facts which have occurred following the Plaintiffs Motion for Sanctions and that the conduct and behavior of the Defendants and their agents be considered by the Court when it determines whether the sanction of default judgment is appropriate. Plaintiffs have zero confidence than ongoing discovery efforts, much less preparation for trial, can be conducted without continued obstructionism, retaliation, intimidation, and/or harassment. Counsel for the Plaintiffs and her law firm are experiencing ongoing immediate and irreparable harm to their reputation, business, ability to earn a living, and standing in the community. The harm experienced is so severe that it is impossible to calculate monetary damages which would be sufficient to compensate Plaintiffs' counsel and her law firm. Without intervention by this Court, this immediate and irreparable harm will continue and Plaintiffs' counsel and her law firm's reputations, business, and standing in the community will be permanently damaged.

SIXTH that Plaintiffs, their counsel, and the law firm of Schell and Oglesby LLC be awarded all of their attorneys fees and costs associated with bringing this matter

before the Court.

And, **FINALLY**, that Plaintiffs and their counsel be awarded any and all other relief to which they may be entitled.

Respectfully submitted:

Elizabeth A. Russell – BPR # 032468 Schell & Oglesby LLC 509 New Highway 96 West Suite 201 Franklin, TN 37064 PH (615) 550-2800

PLAINTIFFS REQUEST TO BE HEARD ON AN EX PARTE EMERGENCY BASIS ON THIS MOTION FOR INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER AS THEY ARE EXPERIENCING, AND WILL CONTINUE TO EXPERIENCE, IMMEDIATE AND IRREPARABLE HARM AS A RESULT OF THE CONTINUED AND ONGOING

erussell@franklin.legal Attorney for Plaintiffs

THIS IS THE PLAINTIFFS FIRST REQUEST FOR EXTAORDINARY RELIEF

CONDUCT OF THE DEFENDANTS' AND/OR THEIR AGENTS

## Elizabeth Russell

From:

Frank Brazil <frank@brazilclark.com>

Sent:

Tuesday, February 15, 2022 9:22 PM

To: Cc: Elizabeth Russell

Subject:

Wesley Clark Re: Cherry v. Del Frisco's - Supplemental Subpoena Production

She was not included on the original conversation. Instead it was inadvertently and well after the fact forwarded to MGA. As a side, we don't represent her, but she is an Agent of our client.

It's an easily made mistake when conversations in a thread are grouped together. If it is still your position that you get to see what I wrote to my client, despite me explaining to you what happened and notwithstanding the fact that such inadvertent disclosures are routinely held not to waive the privilege, I'm sure you could take it up with the judge.

Of course if you or any attorney were to show me the proof I've shown you, I would not pry into their communications.

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Ave. Nashville, TN 37211 615-730-8619 615-514-9674

On Feb 15, 2022, at 21:11, Elizabeth Russell <erussell@franklin.legal> wrote:

Previous correspondence indicated Mary Grace Anderson is not a client. The privilege only applies to statements made in confidence. When there is another, non-client party included in on the conversation, there is no privilege. (See *Pagliara v. Pagliara*, No. M2019-01397-COA-R9-CV, 2020 Tenn. App. LEXIS 299 (Ct. App. June 29, 2020)).

Please forward the unredacted version. Thanks

### Elizabeth A. Russell

On Feb 15, 2022, at 8:30 PM, Frank Brazil <frank@brazilclark.com> wrote:

See attached the complete supplemental subpoena production.

Best,

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Avenue Nashville, TN 37211



From: Frank Brazil

Sent: February 15, 2022 20:28

**To:** Elizabeth Russell <erussell@franklin.legal> **Cc:** Wesley Clark <wesley@brazilclark.com>

Subject: Cherry v. Del Frisco's - Supplemental Subpoena Production

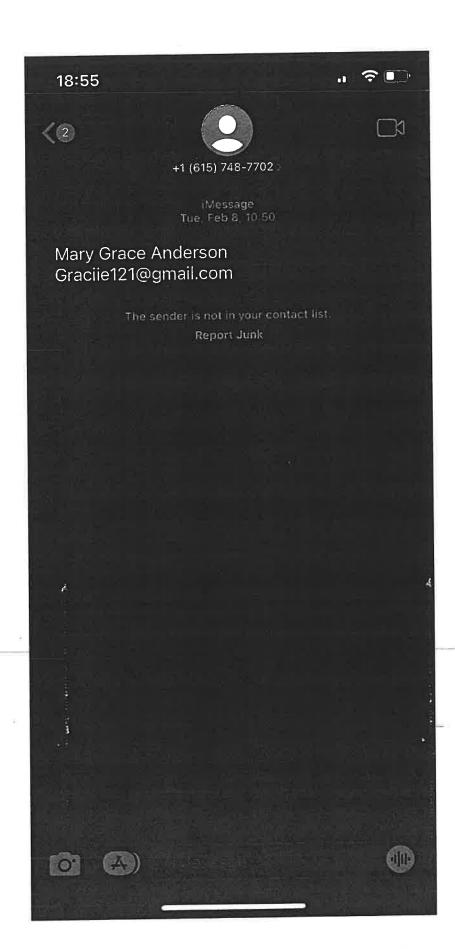
Elizabeth,

I'm attaching a supplement to our subpoena production.

Best,

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Avenue Nashville, TN 37211

<Supp. Subpoena Production.pdf>



EXHIBITION | DOCUMENTS

From:

Frank Brazil

To:

graciie121@gmail.com

Subject: Date: Fwd: Cherry v. Del Frisco"s February 8, 2022 12:27:36

Attachments:

image001.png

Letter to Brazil Clark 2.4.22.pdf

Anderson Subp DT for Feb 17th date ISSUED 2.3.22.pdf Anderson Subp to Appear for Feb 17th date 2.3.22.pdf

# See below.

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Ave. Nashville, TN 37211 615-730-8619

615-514-9674

# Begin forwarded message:

From: Frank Brazil <frank@brazilclark.com>

Date: February 4, 2022 at 18:14:00 CST

To: Sherra Boyd <sboyd@ldry.com>, JMcKay@ldry.com

Cc: Wesley Clark <wesley@brazilclark.com>

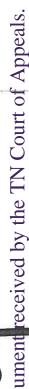
Subject: FW: Cherry v. Del Frisco's

Jeanette and Sherra,

Please see below the letter and subpoenas sent from opposing counsel today in <u>Cherry</u>.

REDACTED

REDACTED





Document received by the TN Court of Appeals.

Please let me know your thoughts. Thanks,

Frank Ross Brazil Brazil Clark, PLLC 2901 Dobbs Avenue Nashville, TN 37211 615-730-8619 615-514-9674-fax frank@brazilclark.com

From: Elizabeth Russell <erussell@franklin.legal>

Sent: February 4, 2022 17:06

To: Wesley Clark < wesley@brazilclark.com>; Frank Brazil < frank@brazilclark.com>

Subject: Cherry v. Del Frisco's

Wes and Frank:

I've attached a letter and a few more subpoenas.

Let me know your thoughts once you've had a chance to review.

Thanks,

Liz

Elizabeth A. Russell Partner, Attorney at Law 509 New Highway 96 West

Document received by the TN Court of Appeals.

Suite 201
Franklin, Tennessee 37064
(615) 550-2800 telephone
(615) 550-2807 facsimile
erussell@franklin.legal

STATE OF TENNESSEE WILLIAMSON COUNTY CIRCUIT COURT (CIVII)

# **SUBPOENA**

(To Appear) / Reissue

CASE FILE NUMBER 19CV-361

DEFENDANTS

PLAINTIFFS DEL FRISCO'S GRILLE OF TENNESSEE, LLC et al LYNNE S. CHERRY & BRENTON A. CHERRY V. TO: Ryan Charabowski c/o Frank R. Brazil & Wesley Clark Brazil Clark, PLLC

2901 Dobbs Ave. Nashville, Tennessee 37211

[Brazil/Clark Phone (615) 730-8619]

You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. If you fail to obey this subpoena, you may be held in contempt, punishable by a fine of up to \$50.00 and/or imprisonment for up to 10 days.

THE FAILURE TO SERVE A WRITTEN OBJECTION WITHIN TWENTY-ONE DAYS OF SERVICE OF THE SUBPOENA WAIVES ALL OBJECTIONS TO THE SUBPOENA, EXCEPT THE RIGHT TO SEEK THE REASONABLE COST FOR PRODUCING BOOKS, PAPERS, DOCUMENTS, ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THINGS.

PAPERS, D	OCUMEN'	TS, ELECTRONICALLY STORED INFO	DRMATION, OR TANGIBLE TIME
TIME: 9:0	00am	DATE: February 3, 2022	ITEMS TO BRING:
PLACE Williamson County Circuit Civil Count 135 Fourth Ave. South Franklin, Tennessee 37064 PH: (615) 790-5454			The requirements of T.C.A. 45-10-106 have been met.               Additional List Attached
	tiffs o : Elizabe 509 Ne Frankli	pelng Issued on behalf of defendant. Ith A. Russell -Attorney at Law Isw Hwy 96 West — Ste 201 In, TN 37064 (615) 550-2800	DATE ISSUED: 1-12-22  By:  Circuit Court Clerk Cally Put Di
-		REIU	IRN ON SERVICE
1. do 2. o b 3. o DATE OF SIGNAT	I certify to bove by I failed to because I acknow F SERVICE TURE OF W	that on the date indicated below  Emri   to Byan Chara  o serve a copy of this subpoena	bpoena on the date Indicated below. STATE OF TENNESSEE
		For ADA assistance, pleas	e call ADA coordinator: 931 (2007)

# ent received by the TN Court of Appeals.

# IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE AT FRANKLIN

LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiff,	)	
v.	) ) )	Case No. 2019-361
DEL FRISCO'S GRILLE OF TENNESSEE, LLC and DEL FRISCOS	)	
RESTAURANT GROUP, INC Defendants.	)	

# AGREED ORDER

This cause came to be heard the 3rd day of February 2022 upon Motion for Sanctions filed by the Plaintiff and the Defendants' response thereto. Ryan Charabowski, the Defendants' former executive chef, was subpoenaed by the Plaintiffs to appear at said hearing and give testimony. At the call of the docket, counsel for Defendants indicated that they had contacted Mr. Charabowski on the evening of February 2, 2022, and that Mr. Charabowski confirmed he would be present the following morning on February 3, 2022, to give testimony at the hearing on Plaintiffs' motion. However, counsel for Defendants further detailed that they received a phone call from Mr. Charabowski the morning of February 3, 2022, and Mr. Charabowski stated he had a sick child at home that he would be caring for all day and that the child had an appointment to be seen by either her pediatrician or at an urgent care facility.

This Honorable Court made inquiry into the circumstances related to Mr. Charabowski's inability to appear at the hearing for which he had been subpoensed and instructed counsel for the Plaintiffs to contact Mr. Charabowski and request that he provide documentation confirming that he and his child had, in fact, attended a doctor's appear

the morning of February 3, 2022, so that the Court could excuse his absence. The Court further requested that Plaintiffs' counsel ascertain whether Mr. Charabowski could obtain childcare and appear for the hearing later in the afternoon on February 3, 2022. The Court asked that Plaintiffs' counsel report back to the Court following her telephone conversation with Mr. Charabowski.

After contacting Mr. Charabowski, Plaintiffs' counsel confirmed that Mr. Charabowski agreed to provide documentation of his child's doctor's appointment so that his absence could be excused. Plaintiffs' counsel further announced that Mr. Charabowski indicated that, even if the hearing was delayed until later in the afternoon on February 3, 2022, he would not be able to attend the hearing then either as his child's mother was scheduled to work on February 3, 2022, from 9:00am until 6:00pm and no one else was available to provide childcare. Accordingly, the parties agreed that this matter should be reset and continued for February 17, 2022, at 9:00am and that counsel for Plaintiffs would have a subpoena reissued and served on Mr. Charabowski securing his attendance for the February 17, 2022, hearing date.

# Accordingly, it is ORDERED, ADJUDGED, and DECREED as follows:

- 1. Ryan Charabowski will provide documentation from his child's medical provider evidencing that his child had an appointment the morning of February 3, 2022, and that Mr. Charabowski and his child attended the appointment.
- 2. If Mr. Charabowski fails to provide documentation from his child's medical provider this Court will reconsider whether Mr. Charabowski's absence from the February 3, 2022, hearing warrants further action from the Court including, but not limited to, this Court issuing an Order for Mr. Charabowski to appear and show cause as to why this Court should not hold him in contempt.

Document received by the TN Court of Appeals.

- 3. The parties will submit an agreed order resetting and continuing the hearing on Plaintiffs' Motion for Sanctions to February 17, 2022, at 9:00am.
- 4. Counsel for Plaintiffs will have a subpoena for Mr. Charabowski's attendance at the February 17, 2022, hearing reissued and will serve same on Mr. Charabowski prior to the rescheduled hearing date.
- 5. All other matters are hereby RESERVED.

It is, therefore, SO ORDERED.

**APPROVED FOR ENTRY BY:** 

Elizabeth Russell BPR 32468 **Johnson and Street, PLLC** 509 New Highway 96 West Suite 201 Franklin, TN 37064

(615) 550-2800 telephone

(615) 550-2807 facsimile

Email: <u>erussell@franklin.legal</u>
Attorney for the Plaintiffs

Wesley Clark/ with permission by ER #032468

Frank Ross Brazil
Wesley Clark
Brazil Clark, PLLC
2901 Dobbs Ave.
Nashville, Tennessee 37204
(615) 730-8619 telephone
(615) 514-9674 facsimile
Email: frank@brazilclark.com
wesley@brazilclark.com

Attorney for Defendants

Case Title:

LYNNE CHERRY (et. al) vs DEL FRISCO'S GRILLE OF TENNESSEE, LLC (et. al)

Case Number:

19CV-361

Type:

**ORDER** 

SO ORDERED

Michael W. Binkley

# **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing ORDER

has been delivered to:

## **Electronic Notification:**

Elizabeth Russell for LYNNE CHERRY Email: Elizabeth Russell erussell@franklin.legal Address: Elizabeth Russell 509 New Highway 96 West, Suite 201 Franklin, TN 37064

Frank Brazil for DEL FRISCO'S GRILLE OF TENNESSEE, LLC Email: Frank Brazil frank@brazilclark.com Address: Frank Brazil 414 Union Street, Suite 901 Nashville, TN 37219

# **Traditional Mail:**

**BRENTON CHERRY** 

DEL FRISCO'S RESTAURANT GROUP, INC

on 02/09/2022

Anne Ridens

Circuit Court Clerk/Deputy Clerk

ocument received by the TN Court of Appeals.

EXHIBIT

2022 STATE OF TENNESSEE WILLIAMSON COUNTY CIRCUIT COURT (Civil)

# **SUBPOENA**

TO APPEAR

CASE FILE NUMBER 19CV-361

LYNNE S. CHERRY & BRENTON A. CHERRY V. DEL FRISCO'S GRILLE OF TENNESSEE, LLC et al MARY GRACE ANDERSON, employee of Del Frisco's Grille TO:

c/o Frank R. Brazil & Wesley Clark Brazil Clark, PLLC

2901 Dobbs Avenue

Nashville, Tennessee 37211 [Brazil/Clark Phone (615) 730-8619]

You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. If you fall to obey this subpoena, you may be held in contempt, punishable by a fine of up to \$50.00 and/or imprisonment for up to 10 days.

THE FAILURE TO SERVE A WRITTEN OBJECTION WITHIN TWENTY-ONE DAYS OF SERVICE OF THE SUBPOENA WAIVES ALL OBJECTIONS TO THE SUBPOENA, EXCEPT THE RIGHT TO SEEK THE REASONABLE COST FOR PRODUCING BOOKS, PAPERS,

DOCUMENTS, ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THINGS. ITEMS TO BRING: DATE: February 17, 2022 TIME: 9:00am All communication with Ryan Charabowski, or any other individual/ entity affiliated with Del Frisco's Grille, related to **PLACE** Williamson County Circuit Civil Court this subject litigation, plaintiffs, and/or any accident/ incident occurring at Del Frisco's Grille involving the floors 135 Fourth Ave. South Franklin, Tennessee 37064 and/or conditions of the floors. All documentation evidencing medical appointments scheduled and/or attended for minor child Harley for the time period of January 23, 2022 through February 16, 2022. The requirements of T.C.A. 45-10-106 have been met. □ Additional List Attached DATE ISSUED: This subpoena is being issued on behalf of By: o defendant. ☑ Plaintiffs Attorney: Elizabeth A. Russell -Attorney at Law 509 New Hwy 96 West - Ste 201 Franklin, TN 37064 Phone: (615) 550-2800 RETURN ON SERVICE Check one: (1. Or 2. are for the return of an authorized officer or attorney; an attorney's return must be sworn to; 3. Is for the witness who will acknowledge service and requires the witness's signature.) the TN'Court o I certify that on the date Indicated below I served a copy of this subpoena on the witness stated above by\_\_\_ o I failed to serve a copy of this subpoena on the witness 2. because o I acknowledge being served with this subpoena on the date indicated below. DATE OF SERVICE: SIGNATURE OF WITNESS, OFFICER OR ATTORNEY: \_\_\_\_\_ Signature of Notary Public or Deputy Clerk: \_\_\_\_\_ Commission Expires: \_\_\_\_\_

For ADA assistance, please call ADA coordinator: 931-729 522 If you have a distribution

require assistance, plea

Call 615.709 5

From:

Grace Anderson < graciie121@gmail.com>

Sent:

Sunday, February 13, 2022 12:32 PM

To:

Elizabeth Russell

**Subject:** 

Re: Subpoena Information--Follow Up Email Coming

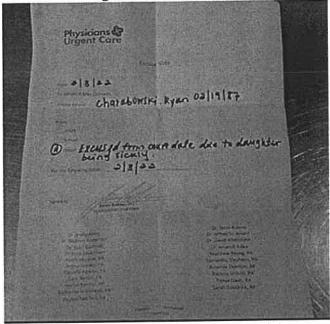
# Good afternoon Elizabeth,

I have nothing regarding the actual case. No text conversations, emails, or recorded conversations ect..

This is the doctors note pertaining to Ryan Charabowski missing court due to our daughter Harley being sick.

I have called multiple times today trying to get copies of bill / invoice / and receipt.

As soon as I can get an actual call back I will email over.



Thank You again for being understanding of this situation and me having nothing to do with the actual case.

**Grace Anderson** 

(615)748-7702





From:

Elizabeth Russell

Sent:

Monday, February 14, 2022 3:35 PM

To:

**Grace Anderson** 

Subject:

RE: Subpoena Information--Follow Up Email Coming

Attachments:

HIPAA Release for Harley co Mary Grace Anderson FEB 2022.docx

If its helpful we can send over a request for it. I have attached a very limited HIPAA release. If you can give us her last name, the last 4 digits of social, and her date of birth and then sign at the bottom (it can be done electronically on your phone if needed) we can submit and receive billing information from that day.

At this time—We can't release you from the subpoena until we have that information. Once we have it I think we will have everything we need. Please let me know if you want to complete the HIPAA form for us to obtain the billing invoice. I have attached it to this email.

From: Grace Anderson < graciie 121@gmail.com>

Sent: Sunday, February 13, 2022 12:32 PM
To: Elizabeth Russell <erussell@franklin.legal>

Subject: Re: Subpoena Information--Follow Up Email Coming

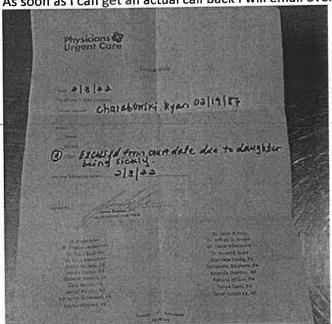
Good afternoon Elizabeth,

I have nothing regarding the actual case. No text conversations, emails, or recorded conversations ect..

This is the doctors note pertaining to Ryan Charabowski missing court due to our daughter Harley being sick.

I have called multiple times today trying to get copies of bill / invoice / and receipt.

As soon as I can get an actual call back I will email over.



Thank You again for being understanding of this situation and me having nothing to do with the actual case.

Grace Anderson (615)748-7702



1

From:

Elizabeth Russell

Sent:

Wednesday, February 16, 2022 4:28 PM

To:

graciie121@gmail.com

Subject:

You must appear in court

# Ms. Anderson:

I am not able to release you from the subpoena to appear in court. Your appearance in court tomorrow will be required. The hearing will be at 9:00am at the Williamson County Courthouse, 135 4<sup>th</sup> Avenue South, Franklin TN 37064. The courtroom will be on the second floor. It will most likely be in Courtroom D, but look for the courtroom that has Judge Michael Binkley listed on the door as the judge.

My office is open until 5:00pm if you have any questions. Otherwise, I will see you tomorrow at the courthouse.

# Elizabeth



Elizabeth A. Russell Partner, Attorney at Law 509 New Highway 96 West Suite 201 Franklin, Tennessee 37064 (615) 550-2800 telephone (615) 550-2807 facsimile erussell@franklin.legal

received by the TN Court of Appeals.

# Document received by the TN Court of Appeals.

# IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE AT FRANKLIN

LYNNE S. CHERRY, and	)
BRENTON A. CHERRY	)
Plaintiffs,	)
V.	) Case No. 2019-361
DEL FRISCO'S GRILLE OF	)
TENNESSEE, LLC and DEL FRISCOS	)
RESTAURANT GROUP, INC	)
Defendants.	)

# **AFFIDAVIT**

# STATE of TENNESSEE COUNTY of WILLIAMSON

Before me, the undersigned authority, personally appeared Tracie Hoss with whom I am personally acquainted, and who being first duly sworn, deposes and says:

- 1. I am an adult citizen of Williamson County, Tennessee, and am currently employed as a paralegal by Schell & Oglesby, LLC, 509 New Hwy 96 West, Suite 201, in Franklin, Tennessee.
- Elizabeth A. Russell, counsel for the Plaintiffs in this matter, is a partner at Schell
   Oglesby, LLC.
- 3. On February 7, 2022, Ms. Russell asked me to submit for issuance, a Subpoena to Mary Grace Anderson.
- 4. The subpoena was served on Ms. Anderson by process server on February 9, 2022.



- 5. Later that same day, Ms. Anderson called the office of Schell & Oglesby, LLC. I spoke to Ms. Anderson when she called. I first asked her if she was represented by an attorney, and she advised that she was not.
- 6. Ms. Anderson stated to me that she did not understand why she was being served with a subpoena as she had nothing to do with the subject incident. Additionally, she stated to me that she works from 9am to 6pm, Monday thru Friday, and therefore, there is no possible way she can appear in court on February 17, 2022, at 9:00am.
- 7. I told Ms. Anderson that I would give her message to Ms. Russell, and that either Ms. Russell or I would get back to her.
- 8. On Thursday, February 10, 2022, Ms. Russell spoke with Ms. Anderson by telephone. She advised Ms. Anderson that if she would provide a billing statement from Physician's Urgent Care regarding her daughter's visit to the clinic on February 3, 2022, that she would consider releasing her from the subpoena for appearance on February 17, 2022 at 9:00am. Ms. Anderson agreed and said she could provide the requested document via email.
- 9. Ms. Anderson did provide a document, however, it was not the billing statement/invoice that Ms. Russell had requested, instead it was the same hand-written note that had been previously provided by Mr. Charabowski from Physician's Urgent Care. This was an excuse note for Mr. Charabowski for employment purposes and was not the billing statement/invoice Ms. Russell had requested.
- 10. On February 16, 2022, I received a call from Ms. Anderson wanting to know if what she had provided will satisfy Ms. Russell so that she would not need to appear on February 17<sup>th</sup>.

- 11. I checked with Ms. Russell, and she advised that Ms. Anderson had not provided the requested information even though they had previously spoken by telephone and Ms. Russell had followed up that telephone conversation with an email, which she stated Ms. Anderson never replied to.
- 12. Ms. Anderson was still on hold on the phone, so I spoke to her and advised her that she needed to appear in court on February 17, 2022 because Ms. Russell had not received the document she requested.
- 13. At that point, Ms. Anderson became hostile, raised her voice, and spoke in a disrespectful manner such that I could not even understand what she was saying. I told Ms. Anderson I was going to hang up now and end this phone call, which I did. Ms. Russell had previously instructed me that I was not required to continue the phone conversation if Ms. Anderson became disrespectful, abusive, or hostile and that I could state that I was ending the phone call and hang up.
- 14. Ms. Anderson promptly called our firm back and spoke to our receptionist. I understand that she was put through to voicemail after making repeated calls.
- 15. On the afternoon of the hearing, February 17, 2022, at 4:41pm, Ms. Anderson called our law firm, asked to speak to Ms. Russell, and Ms. Russell's calls are directed to my voicemail. I was unavailable at the time therefore Ms. Anderson's call went to my voicemail where she left another message. I forwarded that message to Ms. Russell.

FURTHER, THE AFFIANT SAITH NOT.

Tracie Hoss

Appeals.
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Sworn to, and subscribed before me, on this day of february, 2022.

NOTARY PUBLIC

My Comm. Exp. 07/17/2023

My Comm. Exp. 07/17/2023

My Comm. Exp. 07/17/2023

From:

Grace Anderson < graciie121@gmail.com>

Sent:

Wednesday, February 16, 2022 5:03 PM

To:

Elizabeth Russell

Subject:

Re: You must appear in court

# Elizabeth,

I did try to call but was hung up on.

I am scheduled to work at 9am. I will not be able to appear in court. If you would like to call me since I was already told by you that I did not have to appear in court since this has nothing to do with me.

If you need documentation for my shift at work I'd be happy to send to you.

Thank you.

**Grace Anderson** (615)748-7702

On Feb 16, 2022, at 4:27 PM, Elizabeth Russell <erussell@franklin.legal> wrote:

# Ms. Anderson:

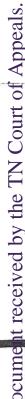
I am not able to release you from the subpoena to appear in court. Your appearance in court tomorrow will be required. The hearing will be at 9:00am at the Williamson County Courthouse, 135 4th Avenue South, Franklin TN 37064. The courtroom will be on the second floor. It will most likely be in Courtroom D, but look for the courtroom that has Judge Michael Binkley listed on the door as the judge.

My office is open until 5:00pm if you have any questions. Otherwise, I will see you tomorrow at the courthouse.

# Elizabeth



Elizabeth A. Russell Partner, Attorney at Law 509 New Highway 96 West Suite 201 Franklin, Tennessee 37064 (615) 550-2800 telephone (615) 550-2807 facsimile erussell@franklin.legal



# ocument received by the TN Court of Appeals.

# IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE AT FRANKLIN

LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiffs,	)
v.	) Case No. 2019-361 )
DEL FRISCO'S GRILLE OF	)
TENNESSEE, LLC and DEL FRISCOS	)
RESTAURANT GROUP, INC	)
Defendants.	)

# **AFFIDAVIT**

STATE of TENNESSEE )
COUNTY of WILLIAMSON )

Before me, the undersigned authority, personally appeared Ginger W. Hicks with whom I am personally acquainted, and who being first duly sworn, deposes and says:

- 1. I am an adult citizen of Williamson County, Tennessee, and am currently employed as the receptionist of the law firm of Schell & Oglesby, LLC, located at 509 New Hwy 96 West, Suite 201, in Franklin, Tennessee.
- 2. Elizabeth A. Russell, counsel for the Plaintiffs in this matter, is a partner at Schell & Oglesby, LLC.
- 3. On Wednesday, February 16, 2022, at approximately 4:55pm, Ms. Anderson called our office. She was very hostile when I answered the phone. She stated she was just hung up on and would like to speak with someone who would not hang up on her. I then asked who she was



speaking with, and she said she didn't know but that she had previously been told she did not need to appear in court on the 17th. She continued to say that she could not be in Court because she absolutely could not miss work. She further stated that if she was required to miss work, then she wanted someone to pay her for her time.

- I asked her to hold please. Then at that time, Tracie Hoss, came to the front desk 5. reception area and told me Ms. Anderson was disrespectful with her on the phone and to put her through to her voicemail, which I did.
- Immediately afterward, Ms. Anderson called back twice, and I was instructed to not 6. answer due to her continued hostile behavior. Ms. Anderson again was sent to voicemail.
- I then advised attorney Elizabeth Russell and her paralegal, Tracie, of the phone call from 7. Ms. Anderson.
- On February 17, 2022, Ms. Anderson again called our office shortly after 4:30pm asking 8. to speak to Ms. Russell. I put her call through to Ms. Russell's paralegal's voicemail so she could leave a message for Mr. Russell.

FURTHER, THE AFFIANT SAITH NOT.

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Sworn to, and subscribed before me, on this 18th day of Lobertain

ed by the TN Court of Appeals.

My Comm. Exp. 07/17/2023

2

From:

Elizabeth Russell

To:

Grace Anderson

Subject:

RE: You must appear in court

Date:

Wednesday, February 16, 2022 6:01:00 PM

Attachments:

image001.png image003.png

# Ms. Anderson:

You will need to appear in court tomorrow. The consequences for failing to appear are on the face of the subpoena.

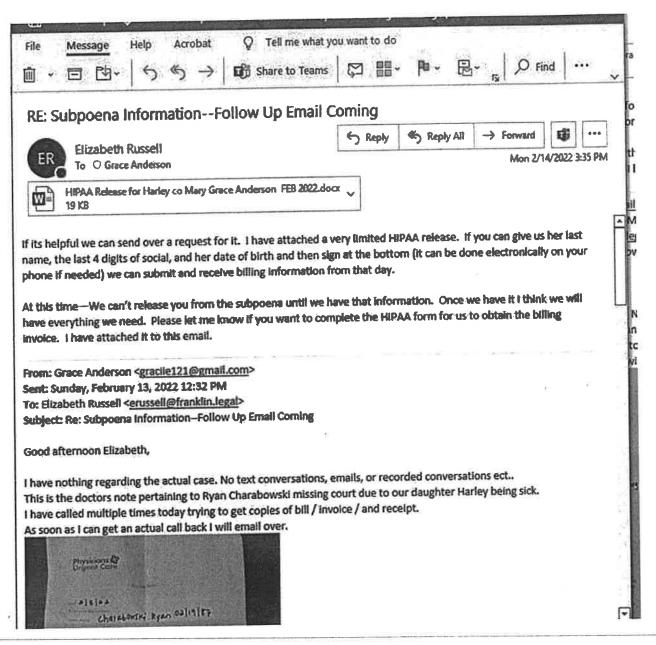
You were hung up on because you were extremely disrespectful when you spoke with several of our staff members, including my paralegal and our receptionist.

I never told you that you were released from appearing in court or that you did not have to appear in court. In fact, my last email to you on February 14, 2022 stated that I was unable to release you from the subpoena because I had not received the information requested. See below in red:

cument received by the TN Court of Appeals.

EXHIBIT COLUMNS





Again, you will need to appear in court tomorrow morning at 9:00am.

# Elizabeth

From: Grace Anderson <graciie121@gmail.com>
Sent: Wednesday, February 16, 2022 5:03 PM
To: Elizabeth Russell <erussell@franklin.legal>

Subject: Re: You must appear in court

## Elizabeth,

I did try to call but was hung up on.

I am stheduled to work at 9am. I will not be able to appear in court. If you would like to call me since I was already told by you that I did not have to appear in court since this has nothing to do with me. If you need documentation for my shift at work I'd be happy to send to you.

Grace Anderson (615)748-7702

On Feb 16, 2022, at 4:27 PM, Elizabeth Russell < erussell@franklin.legal > wrote:

# Ms. Anderson:

I am not able to release you from the subpoena to appear in court. Your appearance in court tomorrow will be required. The hearing will be at 9:00am at the Williamson County Courthouse, 135 4<sup>th</sup> Avenue South, Franklin TN 37064. The courtroom will be on the second floor. It will most likely be in Courtroom D, but look for the courtroom that has Judge Michael Binkley listed on the door as the judge.

My office is open until 5:00pm if you have any questions. Otherwise, I will see you tomorrow at the courthouse.

## Elizabeth



Elizabeth A. Russell
Partner, Attorney at Law
509 New Highway 96 West
Suite 201
Franklin, Tennessee 37064
(615) 550-2800 telephone
(615) 550-2807 facsimile
erussell@franklin.legal

From:

Grace Anderson < graciie121@gmail.com>

Sent:

Wednesday, February 16, 2022 9:17 PM

To:

Elizabeth Russell

Subject:

Re: You must appear in court

# Elizabeth,

Extremely rude? You have lied multiple times in your email.

I spoke to you directly and you even said you understood my situation.

I have nothing to do with this case and it is outrageous that I am even expected to have to be brought into this.

I have no information to bring forward to this drawn out case.

But I should not expect much else from a lawyer. When you don't really care as long as you win.

Grace Anderson (615)748-7702

On Feb 16, 2022, at 6:01 PM, Elizabeth Russell <erussell@franklin.legal> wrote:

### Ms. Anderson:

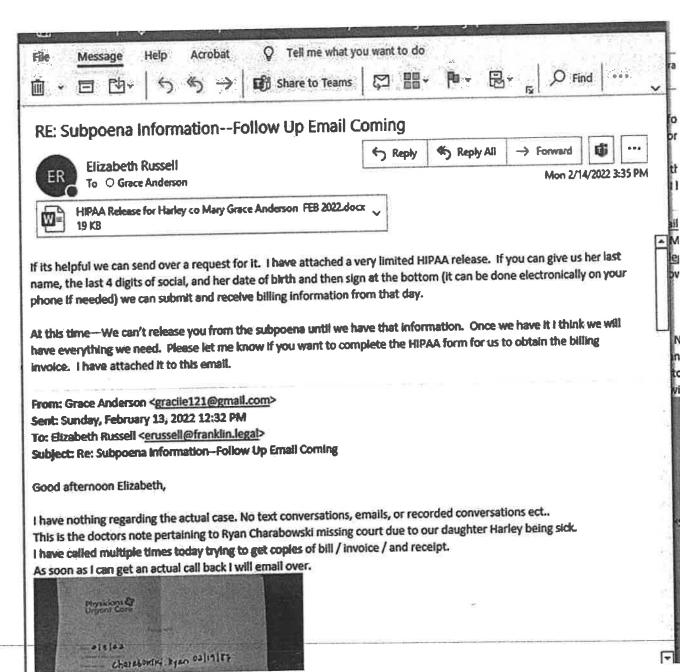
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I never told you that you were released from appearing in court or that you did not have to appear in court. In fact, my last email to you on February 14, 2022 stated that I was unable to release you from the subpoena because I had not received the information requested. See below in red:

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Subject: Re: You must appear in court

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Document received by the TN Court of Appeals.

If you need documentation for my shift at work I'd be happy to send to you. Thank you.

Grace Anderson (615)748-7702

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# Ms. Anderson:

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My office is open until 5:00pm if you have any questions. Otherwise, I will see you tomorrow at the courthouse.

## Elizabeth



Elizabeth A. Russell Partner, Attorney at Law 509 New Highway 96 West Suite 201 Franklin, Tennessee 37064 (615) 550-2800 telephone (615) 550-2807 facsimile erussell@franklin.legal

# Intreceived by the TN Court of Appeals.

# IN THE CIRCUIT COURT FOR WILLIAMSON COUNTY, TENNESSEE AT FRANKLIN

LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiffs,	) )	
v. *	) Case No. 2019-361 )	D)
DEL FRISCO'S GRILLE OF TENNESSEE, LLC and DEL FRISCOS RESTAURANT GROUP, INC Defendants.	) ) )	

# **AFFIDAVIT**

STATE of TENNESSEE )
COUNTY of WILLIAMSON )

Tennessee.

Before me, the undersigned authority, personally appeared Megan N. McGill with whom I am personally acquainted, and who being first duly sworn, deposes and says:

- 1. I am an adult citizen of Davidson County, Tennessee, and am currently employed as an associate attorney by Schell & Oglesby, LLC, 509 New Hwy 96 West, Suite 201, in Franklin,
- 2. Elizabeth A. Russell, counsel for the Plaintiffs in this matter, is a partner at Schell & Oglesby, LLC.
- 3. On February 17, 2022, I attended a hearing on Plaintiff's *Motion for Sanctions* to assist Elizabeth Russell in the above-captioned matter.



Document received by the TN Court of Appeals.

- 4. I was planning to take Mary Grace Anderson's testimony following Ms. Russell's taking Ryan Charabowski's testimony.
- 5. Near the conclusion of Mr. Charabowski's testimony, I conferred with Ms. Russell regarding whether we would need the testimony of Mary Grace Anderson. Together, we determined we did not.
- 6. At that time, I left Courtroom C to search for Ms. Anderson and release her from her subpoena. I was unable to find her at that time, so I returned to the courtroom for the remainder of the hearing.

FURTHER, THE AFFIANT SAITH NOT.

MÉGAN N. MCGILL

Sworn to, and subscribed before me, on this \_\_

day of

, 2022.

My Comm. Exp. 02.20-23

NOTARY PAUBLE COMMENTER OF STATE OF STA

From:

Pamela Morrow <p.b.morrow@icloud.com>

Sent:

Friday, February 18, 2022 7:26 AM Elizabeth Russell; Tracie Hoss

To: Subject:

Review

https://g.co/kgs/czESsC

Was this the manager from DelFriscos?

Anyway, just wanted you to be aware-

Magically broken into bits of matter and sent from my iPhone.

ent received by the TN Court of Appeals.

# Schell & Oglesby LLC

509 New Hwy 96 W STE 201, Franklin, TN



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3.9 \*\*\*\* 14 reviews •



**Grace Anderson** 8 reviews · 1 photo

★★★★ 3 hours ago NEW

If I could leave no stars. I would.

I was subpoenaed by Elizabeth Russel last week for a situation that had nothing to do with me. I called and Over the phone she made me feel like nothing I said was wrong and that I had every right to respond the way I did.

Elizabeth Russel is the definition of a manipulative, lying, conniving lawyer.

After I was told I only had to send her documentation pertaining to my sick child and told her I was an hourly employee and needed to work. She made me feel like she understood and that I did not have to appear in court.

She sent me an email at 430pm (30 minutes before her office closed) the night before saying I would still have to appear.

I then received a call NOT KNOWING about the email at 455pm from her assistant. When I told the assistant that Elizabeth told me I did not have to appear in court she responded with,

"I'm hanging up now. We will see you tomorrow."

I tried calling back multiple times but my phone calls were ignored.

I appeared in court yesterday at 845am and did not leave until 445pm.

Elizabeth Russel and her assistant saw me multiple times throughout the day and Elizabeth even walked passed me at the last break at 340 and giggled at me without saying a word.

I was concerned because I had been sitting OUTSIDE the court room all day minus breaks. The father to my daughter came out and said,

"Elizabeth released you this morning. She told the judge that they could not find you all day but you didn't even need to be called as a witness."

I sat outside the court room for 8 hours... this was done on purpose and completely unprofessional

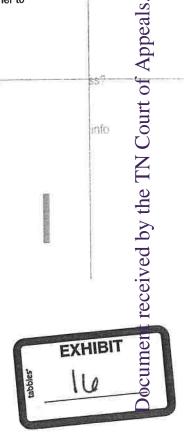
Again Elizabeth Russel is the definition of a manipulative, lying, conniving, entitled lawyer.





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info





# Grace Anderson

Local Guide · Level 3

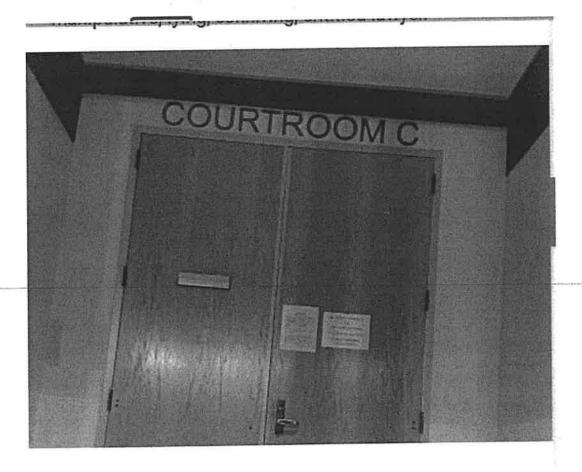
154 points >

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Reviews

**Photos** 



IN THE CIRCUIT COURT FO	OR WILLIAMSO AT FRANKLIN	N COUNTY, TENNESSEE JRT  2022 FEB 19 PM 12: 59
LYNNE S. CHERRY, and BRENTON A. CHERRY Plaintiffs,	)	ENTERED ORIGINAL
V.	)	Case No. 2019-361
DEL FRISCO'S GRILLE OF TENNESSEE, LLC and DEL FRISCO RESTAURANT GROUP, INC Defendants.	os ) )	

# RULE 65 AFFIDAVIT OF ELIZABETH A. RUSSELL

# STATE OF TENNESSEE **COUNTY OF WILLIAMSON**

- I, Elizabeth A. Russell, being first duly sworn, makes oath as follows:
- 1. I am an attorney licensed by the State of Tennessee and I represent Plaintiffs Lynne S. Cherry and Brenton A. Cherry in the above-styled matter.
- 2. I hereby certify pursuant to Rule 65 of the Tennessee Rules of Civil Procedure that notifying Defendants, their agents, and/or Mary Grace Anderson (as the Defendants agent) of this request for an ex parte restraining order prior to its submission to the Court will result in immediate and irreparable harm to Plaintiffs, myself, and my law firm as we are concerned they will engage in further efforts to intimidate, harass, and/or otherwise engage in obfuscation and obstructionism conduct which will cause further harm to our reputations and business and otherwise cause detrimental harm and obstructionism to this case.

**NOTARY PUBLIC** 

Elizabeth A. Russell

SWORN TO and subscribed before me this the whole and subscribed before me this the whole and subscribed before me this the whole continues of the subscribed before me this the whole continues of the subscribed before me this the subscribed before me this