IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
December 13, 2012 Session

DEBBIE WEST, Individually and as the Surviving Spouse of WILLIAM P. WEST, Deceased v. AMISUB (SFH), INC., d/b/a ST. FRANCIS HOSPITAL, ET AL.

Direct Appeal from the Circuit Court for Shelby County
No. CT-003211-11 Robert L. Childers, Judge

No. W2012-00069-COA-R3-CV - Filed March 21, 2013

PARTIAL DISSENT

ALAN E. HIGHERS, P.J., W.S., PARTIALLY DISSENTING

In this case, the majority concludes that the plaintiff's payment of $211.50 to the General Sessions Court clerk and her posting of an additional $250.00 cash bond satisfied the requirements of Tennessee Code Annotated section 27–5–103, and therefore, that the Circuit Court erred in *sua sponte* dismissing her appeal for lack of subject-matter jurisdiction. The majority further concludes, however, that the trial court properly granted summary judgment in favor of the defendants due to the plaintiff's failure to comply with the certificate of good faith requirement. I disagree with the majority's conclusion that the plaintiff satisfied the requirements of Tennessee Code Annotated section 27-5-103 so as to properly perfect her appeal from the general sessions court to the circuit court. I would find that the requirements of section 27-5-103 were not satisfied because the fee paid and the bond posted were insufficient to secure all costs incurred throughout the appeal, and, therefore, that the circuit court never acquired subject matter jurisdiction in the cause. Although I would rely upon divergent grounds, however, I fully concur in the majority's ultimate dismissal of the case.

In reaching its conclusion that the trial court erred in *sua sponte* dismissing the case for lack of subject matter jurisdiction, the majority relies upon the recent case of *Bernatsky v. Designer Baths & Kitchens, LLC*, No. W2012–00803–COA–R3–CV, 2013 WL 593911 (Tenn. Ct. App. Feb. 15, 2013). Because I believe *Bernatsky* is based upon a flawed premise, I respectfully disagree with this conclusion.

The *Bernatsky* majority finds it appropriate to overrule two previous decisions of this Court, which squarely address the issue presented in *Bernatksy*, and in which the Supreme Court recently denied permission to appeal: *Jacob v. Partee*, No. W2012–00205–COA–R3–CV, 2012 WL 3249605 (Tenn. Ct. App. Aug. 10, 2012) *perm. app. denied* (Tenn. Dec. 12, 2012) and *University Partners Development v. Bliss*, No. M2008–00020–COA–R3–CV, 2009 WL 112571 (Tenn. Ct. App. W.S. Jan. 14, 2009) *perm. app. denied* (Tenn. Aug. 17, 2009). In both *Jacob* and *University Partners*, this Court held that an appellant who sought to appeal from general sessions court to circuit court could not satisfy the bond requirements of Tennessee Code Annotated section 27–5–103 by merely remitting payment of the initial filing fee. In both cases, this Court reasoned that payment of the initial filing fee did not constitute giving "bond with good security" for "the cost of the cause on appeal[,]" and therefore, that the circuit court never acquired jurisdiction over the attempted appeal. *See Jacob*, 2012 WL 3249605, at *3; *Univ. Partners*, 2009 WL 112571, at *3. *In Jacob*, we expressly rejected the appellants' argument that section 27–5–103 was ambiguous. 2012 WL 3249605, at *2. Instead, we found that "[t]he requirements of a 'bond with good security' could not be more clear: an appeal bond which secures all costs incurred throughout the appeal, as opposed to an initial appeal filing fee, is required." *Id.* at *2.

Just two months after the Supreme Court denied permission to appeal in *Jacob*, however, a different panel of this Court, in an apparent effort to overcome perceived difficulties in securing a bond to cover circuit court costs, suddenly discovered ambiguities within section 27–5–103 which, in its opinion, necessitated consideration of copious amounts of legislative history. In fact, the *Bernatksy* majority suddenly located not one, but two, ambiguities within section 27–5–103.[1] First, the majority found that "the costs of the appeal" "'may refer to the costs of the entire appeal taxed at the conclusion of the litigation ... or it may simply refer to a 'fee' charged by the court to commence litigation.'" *Bernatsky*, 2013 WL 593911, at *6. Additionally, the majority found that section 27–5–103(a)'s use of the phrase "as hereinafter provided" created an ambiguity because, it reasoned, the phrase "could be a reference to giving further definition regarding any number of facts, such as the type of security given, the amount of the bond, whether the 'cost' is a designated cost for commencing or initiating that appeal or for all of the costs that will ever be incurred in the case, or some other factor entirely." *Id.*

Based upon these perceived ambiguities, the *Bernatsky* majority consulted the legislative history of the 1988 amendment to section 27–5–103. The majority noted that the amendment was a legislative response to the case of *Maddock, Kenny & Associates, Inc. v. Management Assistance and Service, Inc.*, 1986 WL 8811 (Tenn. Ct. App. Aug. 14, 1986), in which this

[1] It is significant that in the entire history of the statute, no court prior to *Bernatsky* had ever found an ambiguity.

Court held that a defendant appealing to circuit court was required to post a bond in the amount of the judgment rendered against him in the general sessions court. The majority acknowledged that the legislative discussion centered on whether a bond to cover the general sessions judgment against an appealing defendant was statutorily required. However, the majority held tight to this Court's statement in *Maddock* that "[i]n the case of an appealing plaintiff, the appeal bond, 'with good security,' must be in the minimum amount of $250 for costs[,]" and it insisted that the absence of legislative discussion regarding the plaintiff's appeal requirements necessarily indicated its conclusion that payment of the initial filing fee satisfied the requirements of 27–5–103.

Beyond the absence of legislative discussion regarding the amount of a plaintiff's bond, the *Bernatsky* majority clung to the concern of at least some legislators that requiring a bond in the amount of the judgment would create a detriment to the "working poor" and, in effect, foreclose the class' ability to bring an appeal. The majority then presumed that requiring an appeal bond to cover all of the court costs on appeal--which, of course, would not include the amount of the general sessions judgment--would likewise deprive would-be appellants of their day in court.

Finally, in discussing section 27–5–103's alleged ambiguity, the *Bernatsky* majority focused upon cases which, in considering other issues, merely referenced the payment of a sum certain, and it again focused on legislative inaction in the face of these judicial references.

The majority then concluded--in light of the absence of legislative discussion requiring the payment of a sum certain, some legislators' concerns regarding the working poor's ability to secure a bond covering a judgment, and legislative inaction following judicial references to a sum certain—that the requirements of section 27–5–103 are satisfied by the payment of an amount certain "to be determined 'as hereinafter provided[.]'" *Id.* at *12 (quoting Tenn. Code Ann. § 27–5–103(a)). It then determined that section 27–5–103's requirement that an appealing party "give bond with good security" could be satisfied either by remittance of a cash payment or the filing of a surety bond.

Finally, in an effort to determine the amount of the requisite payment or bond, the majority consulted Tennessee Code Annotated section 8–21–401. Because sections 27–5–103 and 8–21–401 both "relate to ... the commencement of an appeal from General Sessions court to Circuit court[,]" the *Bernatsky* majority concluded that "Section 8–21–401(b)(1)(C)(I) was intended by the legislature to dovetail with Section 27–5–103, to supply the amount of 'the costs of the appeal' that are to be secured by the statutory appeal bond." *Id.* at *17. However, the majority acknowledged that section 8–21–401 does not reference section 27–5–103, and therefore, it somehow found it appropriate to consider the legislative history of section 8–21–401.

The *Bernatsky* majority stated that section 8–21–401 was intended to address both a lack of uniformity in court costs and monies lost in uncollected court costs. According to the majority, the legislative history of section 8–21–401 revealed its sponsor's intention that court costs be paid in advance, eliminating the need for a cost bond. *Id.* at *18. Indeed, the majority stated that the bill sponsor and Judicial Council representatives had indicated that "the standardized amount of court costs was intended to be essentially inclusive of all costs to be charged in the litigation." *Id.* (footnote omitted). Thus, the *Bernatsky* majority concluded that "payment of the dollar amount in 'standard court cost' listed in Section 8–21–401(b)(1)(C)(i) at the time an appeal from General Sessions Court to Circuit Court is instituted fulfills the Section 27–5–103 appeal-bond requirement." *Id.* at *19.[2]

At the outset, I simply cannot agree with the conclusion that any portion of section 27–5–103 is ambiguous. This "ambiguity" issue was specifically raised and specifically rejected in the recent *Jacob* decision. Section 27–5–103 provides:

> (a) Before the appeal is granted, the person appealing shall give bond with good security, as hereinafter provided, for the costs of the appeal, or take the oath for poor persons.
>
> (b) An appeal bond filed by a plaintiff or defendant pursuant to this chapter shall be considered sufficient if it secures the cost of the cause on appeal.

As aptly explained in Judge Stafford's concurrence in Bernatsky:

> [T]he majority concludes that the statute "lacks precision" in that the phrase "as hereinafter provided" may refer to another statute to establish the costs of the appeal, specifically the later-enacted Tennessee Code Annotated Section 8–21–401. However, the later enactment of subsection (b) is not relevant to the inquiry of whether Tennessee Code Annotated Section 27–5–103 is ambiguous. Courts must only consider the statutory text in determining whether an ambiguity exists. *See Nye v. Bayer Cropscience, Inc.*, 347 S.W.3d 686, 694 (Tenn. 2011). Only if a statute is determined to be ambiguous may

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[2] The majority cites this section of the code in FN3 dealing with "standard court cost," but neither this section nor *any other part* of this statute changes, modifies or annuls the jurisdictional requirement of T.C.A. § 27-5-103, which governs the perfection of appeals from general sessions to circuit court and requires a "bond with good security . . . [to] secure [ ] the cost of the cause on appeal." Because payment of the standard court cost does not secure the cost of the appeal, clearly, section 27-5-103 requires something beyond the payment provided by section 8-21-401.

> the court then "consider matters beyond the statutory text, including public policy, historical facts relevant to the enactment of the statute, the background and purpose of the statute, and the entire statutory scheme. *Mills v. Fulmarque, Inc* ., 360 S.W.3d 362, 368 (Tenn. 2012) (citing *Lee Med., Inc.*, 312 S.W.3d at 527–28) (emphasis added). Thus, consideration of matters such as "historical facts preceding or contemporaneous with the enactment of the statute being construed ... [and] earlier versions of the statute" is only permitted once the statute is determined to be ambiguous. Am.Jur.2d Statutes § 64 n. 5 (citing *Lee Med., Inc.*, 312 S.W.3d at 527–28). However, "these non-codified external sources cannot provide a basis for departing from clear codified statutory provisions." *Mills*, 360 S.W.3d at 368. Disregarding the historical context of the amendment to Tennessee Code Annotated Section 27–5–103 and considering only the current statutory text, as I must at this stage in the analysis, I cannot conclude that there is an ambiguity in the statute at issue.
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> To hold that the simple phrase "as hereinafter provided" alone causes an ambiguity creates a forced interpretation at odds with the established rules of statutory construction. *See Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000) (holding that a court's job in interpreting a statute is to ascertain the intention of the legislature without employing a "forced or subtle interpretation that would limit or extend the statute's application"). Indeed, the Tennessee Supreme Court has held that "it is improper to take a word or a few words from its context and, with them isolated, attempt to determine their meaning." *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503 (Tenn. 2004). In this case, the majority seeks to find an ambiguity in the isolated phrase "as hereinafter provided," while ignoring the fact that the most natural interpretation of the statute's text requires us to hold that the "as hereinafter provided" language clearly refers to the following subsection of the statute.

Bernatsky, 2013 WL 593911, at *16; *Bernatsky*, 2013 WL 593911, at *24 (J. Stafford, concurring and seemingly partially dissenting).

Moreover, I cannot agree with the *Bernatsky* Court's finding that the phrase "costs of the appeal" renders section 27–5–103 ambiguous. In finding such ambiguity, the *Bernatsky* Court focused upon subsection (a)'s "costs of the appeal" without looking to subsection (b) for further clarification of the phrase. Read together, subsections (a) and (b) require that an appellant give "[a]n appeal bond" "with good security" to "secure[ ] the cost of the cause on appeal." Thus, the statute does not simply require that some unspecified "costs" be secured; it specifically requires that those "costs" secure the "cost of the cause on appeal." It is

elementary that a payment to commence an appeal-whether termed a "fee," a "cost," or a "bond" does not provide security for the "cost of the cause "—the "cause," of course, being the appeal. Thus, the plain language of section 27–5–103 requires a litigant appealing from a judgment in the general sessions court to file a bond for all of the costs of the appeal. The plain language of the statute does not place a monetary limit on the appeal bond. Because the costs of the appeal are unknown at the time of commencing the appeal, the statute clearly requires a bond in an undetermined amount. Therefore, by its plain language, the statute requires a bond for all the costs of the litigation in order to successfully perfect an appeal from the general sessions court.

In the absence of ambiguities within section 27–5–103, its legislative history may not properly be considered. *See Keen v. State*, ––– S.W.3d ––––, 2012 WL 6631245, at *12 (Tenn. 2012) (citations omitted) ("If the statutory language is clear and unambiguous, we apply the statute's plain language in its normal and accepted use. We need look no further than the statute itself, enforcing it just as it is written."). In any event, the legislative history of section 27–5–103 cited by the *Bernatsky* majority, is, in my opinion, less than compelling.

As was acknowledged by the *Bernatsky* majority, the 1988 amendment to section 27–5–103 was a legislative response to a decision by this Court to require a bond for the amount of the judgment[3]—an entirely different issue from that presented in *Bernatsky* and in the instant case. Moreover, the legislators apparently expressed concern regarding the "working poor's" potential inability to secure a bond for the amount of the judgment—as opposed to the amount of courts costs incurred throughout the appeal. The legislators' reasoning does not pour over as easily as the *Bernatsky* Court suggests. The requirement that a litigant secure a bond to cover all court costs incurred throughout the appeal—necessarily excluding the judgment amount—requires only a bond for a not-yet-known amount. It does not require an "unlimited" bond. A bonding company could easily issue a bond "securing all court costs"—the exact amount of which is unknown until the case is resolved.

Moreover, I find less-than-compelling the *Bernatsky* majority's reliance upon perceived legislative "acquiescence" in light of case law referencing payment of a sum certain. In *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706 (Tenn. Ct. App. 1989), cited by the *Bernatsky* majority, a city court defendant erroneously paid a $250.00 fee to the circuit court clerk -as opposed to the city court clerk—to appeal his case. On appeal, this Court held that

[3] The *Bernatsky* majority states that the legislature did not "indicate any intent to disturb the *Maddock* Court's holding that an appeal bond for costs in 'the minimum amount of $250' was sufficient under the statute to secure 'the costs of the appeal'" *Bernatsky*, 2013 WL 593911, at *8. However, the *Maddock* Court clearly envisioned that appealing plaintiffs would not simply file a $250 fee, as it stated that a defendant subject to a non-prosecuting plaintiff/appellant would be entitled to dismissal of the appeal and a judgment against the plaintiff " and his sureties on the appeal bond for costs." *Maddock*, 1986 WL 8811, at *2 (emphasis added).

filing the bond in the wrong court did not warrant dismissal; however, it found the appeal had not been perfected because the bond lacked a surety. *Id.* at 708. The Court, referencing section 27–5–103, stated, "We know of no case that says an appeal bond without a surety filed in the circuit court substantially complies with the statutory provisions governing appeals from inferior courts." *Id.*; *see also City of Maryville v. Scholem*, No. 03A01–9111–CV–401, 1992 WL 62007, at *2 (Tenn. Ct. App. E.S. Mar. 31, 1992) *perm. app. denied* (Tenn. Aug. 24, 1992) ("In the Red Boiling Springs case, the court found the appellant failed to properly perfect his appeal because he had no surety on the appeal bond as required by the statute."). Although the *Bernatsky* majority is correct that *City of Red Boiling Springs* refers to the payment of the $250 fee as a "bond," it nonetheless finds such is deficient unless a surety is included. Thus, *City of Red Boiling Springs* stands for the proposition that some type of bond beyond a fee payment is required-precisely what a different panel of this Court held in *Jacob v. Partee*. *See also Tejwani v. Trammell,* No. 02A01–9103–CV–00036, 1991 WL 136224, at *2 (Tenn. Ct. App. W.S. July 26, 1991) (mentioning a $250 sum, but requiring a surety). Simply put, I am more than skeptical that the cases relied upon by the *Bernatksy* majority—which mostly relate to other issues—in fact, support its contention that the legislature has acquiesced to mere payment of an initial filing fee.

However, I find it curious that the majority would rely so heavily upon purported legislative acquiescence, while all but ignoring our Supreme Court's recent implicit affirmance of our holding in *Jacob* which addressed the exact issues raised in *Bernatsky* and now in the instant case. *See Rose Const. Co., Inc. v. Raintree Dev. Co., LLC*, No. W2003–01845–COA–R3–CV, 2004 WL 2607766, at *2 (Tenn. Ct. App. Nov. 16, 2004) perm. app. denied (Tenn. May 9, 2004) (stating that a decision was "implicitly affirmed" when the Supreme Court denied application for permission to appeal).[4]

Finally, I disagree with the Bernatsky majority's reliance upon Tennessee Code Annotated section 8–21–401. As previously stated, 27–5–103 unambiguously requires a bond covering all appeal costs. Therefore, it is unnecessary to consider section 8–21–401 to determine the sum sufficient to satisfy the requirements of section 27–5–103. In any event, I would note that section 8–21–401 is clear on its face; it explicitly declares that the "[i]f a party ... pays costs at the time the services are requested, such payment shall be deemed to satisfy the requirement for security to be given for costs, pursuant to § 20–12–120." (emphasis added). Section 20–12–120 is not the cost bond requirement of Section 27–5–103. Applying the canon of construction "expressio unius est exclusio alterius," which holds that the expression

[4]To the same effect as *Jacob v. Partee*, see Atty. Gen. Op., No. 12–23, 2012 WL 682072, at *2 (Feb. 23, 2012). Neither the Attorney General nor the Supreme Court, in denying permission to appeal in *Jacob v. Partee*, noted any ambiguity in the statute.

of one thing implies the exclusion of others, the Court should infer that had the legislature intended for payment of section 8–21–401 costs to satisfy the requirements of section 27–5–103, it would have included specific language to that effect. *See Rich v. Tenn. Bd. of Med. Exam.*, 350 S.W.3d 919, 927 (Tenn. 2011).

Moreover, without a finding of ambiguity within section 8–21–401, the *Bernatsky* Court clearly lacked the authority to consider the statute's legislative history.[5] No matter what the bill sponsor or a representative of the Judicial Council—who is not a member of the General Assembly—may have said at the time of the statute's enactment, the legislature did not enact a statute in which payment of the sums contemplated in section 8–21–401 were deemed to satisfy the requirements of section 27–5–103. In holding this, the *Bernatsky* Court departed from the express language found in section 8–21–401.

Additionally, assuming that section 8–21–401's legislative history could be properly considered, the history does not fully support the *Bernatksy* Court's conclusions. According to the Court, the 2005 amendment to section 8–21–401 was conceived, in part, to address the problem of lost court costs revenue. In light of this purported mission, it is doubtful that the legislature would eliminate the appeal bond requirement, and simply allow upfront payment of the litigation commencement fee.

As expressed in *Jacob*, I believe that section 27–5–103 unambiguously requires an appeal bond which secures all costs incurred throughout the appeal, as opposed to payment of an initial appeal filing fee. Accordingly, I cannot subscribe to the conclusions reached in *Bernatsky* which underlie the majority's conclusion that the trial court erred in dismissing the instant case for lack of subject matter jurisdiction. However, because I believe that the case warranted dismissal for lack of subject matter jurisdiction, I concur in the result reached in this case.

ALAN E. HIGHERS, P.J., W.S.

[5]The *Bernatsky* court purportedly found an ambiguity in section 27–5–103. Section 8–21–401 is a separate statute entirely, found in a different title of the Code.

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AT JACKSON
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DEBBIE WEST, Individually and as the Surviving Spouse of WILLIAM P. WEST, Deceased v. AMISUB (SFH), INC., d/b/a ST. FRANCIS HOSPITAL, ET AL.

Direct Appeal from the Circuit Court for Shelby County
No. CT-003211-11 Robert L. Childers, Judge

No. W2012-00069-COA-R3-CV - Filed March 21, 2013

This is a medical malpractice case. The General Sessions Court granted the Defendants' motions to dismiss based on Plaintiff's failure to comply with the pre-suit notice and certificate of good faith requirements under the Tennessee Medical Malpractice Act ("TMMA"). Plaintiff timely sought a *de novo* appeal to Circuit Court, paid $211.50 to the General Sessions Court clerk, and paid an additional cash bound in the amount of $250.00. On appeal in Circuit Court, the Defendants filed motions for summary judgment based on Plaintiff's failure to comply with the TMMA. After raising the issue *sua sponte*, the Circuit Court concluded that it lacked subject matter jurisdiction to consider the appeal from the General Sessions Court because Plaintiff failed to file a surety bond as required under Tennessee Code Annotated section 27-5-103. Alternatively, the Circuit Court further concluded that, even if it had jurisdiction, the Defendants were entitled to summary judgment because Plaintiff failed to comply with the TMMA. Plaintiff appeals. Although we conclude that the Circuit Court erred in dismissing the appeal from General Sessions Court for lack of subject matter jurisdiction, we affirm the Circuit Court's grant of summary judgment in favor of the Defendants.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed in part, Affirmed in part and Remanded

DAVID R. FARMER, J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J., joined. ALAN E. HIGHERS, P.J., W.S., filed a partial dissent.

Barry J. McWhirter, Memphis, Tennessee, for the appellant, Debbie West.

Joseph M. Clark and Erika D. Roberts, Memphis, Tennessee, for the appellee, Imran Mirza, M.D.

Darrell E. Baker, Jr., Deborah Whitt, and M. Jason Martin, Memphis, Tennessee, for the appellee, Mark Mills, M.D.

W. Timothy Hayes, Jr. and Virginia P. Bozeman, Memphis, Tennessee, for the appellee, AMISUB (SFH), Inc.

Amanda Waddell, Memphis, Tennessee, for the appellee, Phillip D. Waldrup, M.D.,

J. Kimbrough Johnson, Memphis, Tennessee, for the appellee, Douglas Linville, M.D.

Tabitha F. McNabb, Memphis, Tennessee, for the appellee, Shoaib Qureshi, M.D.

OPINION

I. Background and Procedural History

On December 29, 2010, Debbie West ("Ms. West"), individually and as surviving spouse of William P. West, filed suit in the Shelby County General Sessions Court against AMISUB (SFH), Inc. d/b/a St. Francis Hospital, Imran Mirza, M.D., James J. Wang, M.D., Phillip D. Waldrup, M.D., Shoaib Qureshi, M.D., Douglas A. Linville, M.D., Terry L. Thompson, M.D., Mark Mills, M.D., James Thomas, M.D., and John Doe, M.D. (collectively as the "Defendants").[1] Ms. West asserted claims for medical malpractice and wrongful death arising out of the medical treatment received by her deceased spouse. Thereafter, the Defendants filed motions to dismiss arguing that Ms. West failed to comply with the pre-suit notice and certificate of good faith requirements under the TMMA. *See* Tennessee Code Annotated sections 29-26-121 and 29-26-122 (Supp. 2011).[2] In support of their motions, Defendants argued that Ms. West failed to file a copy of the pre-suit notice with the civil warrant, failed to file proof of service of the pre-suit notice with the civil warrant, failed to allege compliance with the pre-suit notice provisions in the civil warrant, and failed to file a certificate of good faith with the civil warrant. Furthermore, although Ms. West provided

[1]Although James J. Wang, M.D., Terry L. Thompson, M.D., and James Thomas, M..D. were originally named in the General Sessions Warrant, service of process was not accomplished as to these individuals and they never made an appearance before the General Sessions Court. Therefore, these individuals were never properly before the General Sessions Court, and the inclusion of their names as Defendants on appeal from the General Sessions Court to the Circuit Court was in error.

[2]This Court is aware that, effective April 23, 2012, the TMMA was amended, and the words "health care liability" were substituted for the word "malpractice" throughout the statute. 2012 Tenn. Pub. Acts, ch. 798, § 1-59. In this opinion, however, we cite to the version in effect at the time Ms. West filed her suit.

the Defendants with pre-suit notice letters prior to filing suit, the Defendants argued that the letters failed to comply with the TMMA for the following reasons: (1) the letters failed to list the addresses of the providers that received notice; (2) the HIPAA authorization did not include the names or identities of the persons or entities authorized to disclose Ms. West's medical records; and (3) the HIPAA authorization only permitted the limited use or disclosure of information and medical records regarding treatment from August 1, 2009 to present. After conducting a hearing on the motions, the General Sessions Court granted the Defendants' motions to dismiss based on Ms. West's failure to comply with the pre-suit notice and certificate of good faith requirements under the TMMA.

Ms. West timely sought a *de novo* appeal to the Circuit Court of Shelby County. Within ten (10) days of the General Sessions Court judgment, Ms. West filed a notice of appeal and paid $211.50 to the General Sessions Court clerk, and an additional cash bond in the amount of $250.00. On appeal in Circuit Court, the Defendants filed motions for summary judgment based on Ms. West's failure to comply with the pre-suit notice and certificate of good faith requirements under the TMMA. After filing responses to the Defendants' motions for summary judgment, Ms. West filed a Motion for Extension of Time in which to file a Certificate of Good Faith. Before ruling on the motions for summary judgment, the Circuit Court *sua sponte* raised the issue regarding whether or not it had subject matter jurisdiction to hear the appeal from General Sessions Court. After allowing the parties the opportunity to brief and argue the issue, the Circuit Court concluded that Ms. West's filing of a cash bond, as opposed to a surety bond, was insufficient to perfect her appeal from General Sessions Court under Tennessee Code Annotated section 27-5-103. Furthermore, the Circuit Court concluded that, even if it had jurisdiction, Ms. West failed to comply with the pre-suit notice and certificate of good faith requirements under the TMMA. Accordingly, the trial court entered its final order in which it dismissed the case for lack of subject matter jurisdiction, granted the Defendants' motions for summary judgment, and denied Ms. West's Motion for Extension of Time in which to file a Certificate of Good Faith. Ms. West timely filed a notice of appeal to this Court.

II. Issues Presented

Ms. West presents the following issues, as restated, for our review:

(1) Whether the Circuit Court erred in dismissing her case for lack of subject matter jurisdiction,

(2) Whether the Circuit Court erred in granting the Defendants' motions for summary judgment based on her alleged failure to comply with the pre-suit notice and certificate of good faith requirements under the TMMA,

and

(3) Whether the Circuit Court erred in denying her Motion for Extension of Time in which to file a Certificate of Good Faith.

III. Discussion

A. Subject Matter Jurisdiction

We begin our discussion by addressing whether the Circuit Court erred in dismissing the case for lack of subject matter jurisdiction based on Ms. West's failure to file a surety bond pursuant to Tennessee Code Annotated section 27-5-103. Subject matter jurisdiction involves a tribunal's lawful authority to adjudicate the controversy brought before it. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001). The subject matter jurisdiction of a tribunal in a particular case depends on the nature of the cause of action and the relief sought, *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn.1994); *SunTrust Bank v. Johnson*, 46 S.W.3d 216, 221 (Tenn. Ct. App. 2000), and can only be conferred on a tribunal by the Constitution of Tennessee, the common law, or a legislative act. *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). Since the determination of whether subject matter jurisdiction exists is a question of law, our standard of review is *de novo*, with no presumption of correctness given to the decision below. *Northland Ins. Co.*, 33 S.W.3d at 729 (citing *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999)).

Tennessee Code Annotated section 27-5-103, concerning appeals from general sessions court, provides that:

> (a) Before the appeal is granted, the person appealing shall give bond with good security, as hereinafter provided, for the costs of the appeal, or take the oath for poor persons.
>
> (b) An appeal bond filed by a plaintiff or defendant pursuant to this chapter shall be considered sufficient if it secures the cost of the cause on appeal.

Tenn. Code Ann. § 27-5-103 (2010). "'The requirement of a bond in order to perfect an appeal from an inferior court to the circuit court is not a formality. The appeal is not perfected without it.'" *Carter v. Batts*, 373 S.W.3d 547, 551 (Tenn. Ct. App. 2011), *perm. app. denied* (Tenn. Apr. 11, 2012) (quoting *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706, 708 (Tenn. Ct. App. 1989) (citing *Chapman v. Howard*, 71 Tenn. 363 (1879))).

Moreover, "'[t]he only way that a circuit court may acquire subject matter jurisdiction over a case litigated in a general sessions court is through the timely perfection of a *de novo* appeal.'" *Sturgis v. Thompson*, No. W2010-02024-COA-R3-CV, 2011 WL 2416066, at *3 (Tenn. Ct. App. June 13, 2011), *perm. app. denied* (Tenn. Sept. 21, 2011) (quoting *Discover Bank v. McCullough*, No. M2006-01272-COA-R3-CV, 2008 WL 245976, at *8 (Tenn. Ct. App. Jan. 29, 2008)).

Recently, in *Bernatsky v. Designer Baths & Kitchens, LLC*, No. W2012-00803-COA-R3-CV, 2013 WL 593911 (Tenn. Ct. App. Feb. 15, 2013), this Court addressed the issue of whether the payment of $211.50 to the General Sessions Court clerk satisfied the requirement to "give bond with good security . . . for the costs of the appeal" under Tennessee Code Annotated section 27-5-103. After determining that Section 27-5-103 was ambiguous, we construed that provision along with Section 8-21-401, and determined that giving a cash bond of $211.50, which included the $150.00 "standard court cost" for appeals from General Sessions Court,[3] satisfied the requirement in Section 27-5-103(a) to "give bond with good security . . . for the costs of the appeal." *Id.* at *19. In the case at bar, it is undisputed that Ms. West timely filed her notice of appeal, paid a cash bond of $211.50 to the General Sessions Court clerk, and further provided an additional $250.00 cash bond. As a result, Ms. West met her obligation under Section 27-5-103 to "give bond with good security . . . for the costs of the appeal." Therefore, in light of this Court's opinion in *Bernatsky*, we conclude that the Circuit Court erred in determining that it lacked subject matter jurisdiction based on Ms. West's failure to file a surety bond, and reverse the Circuit Court's dismissal of the appeal.

B. Certificate of Good Faith Requirement

Next, we must address whether the trial court erred in granting summary judgment in favor of the Defendants based on Ms. West's failure to comply with the certificate of good faith requirement under the TMMA.[4] A trial court's decision to grant or deny a motion for summary judgment presents a question of law. Our review is, therefore, *de novo* with no presumption of correctness. *Kinsler v. Berkline, LLC*, 320 S.W.3d 796, 799 (Tenn. 2010)

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[3]Tennessee Code Annotated § 8–21–401(b)(1)(C)(i) provides, in part, that:

> (C) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred fifty dollars ($150) at the institution of a case:
> (i) Appeals to the circuit . . . court from . . . general sessions court. . . .

[4]While Ms. West also takes issue with the trial court's grant of summary judgment based on her failure to comply with the pre-suit notice requirements under the TMMA, our discussion shall focus on her failure to comply with the certificate of good faith requirement because it is dispositive in this matter.

(citing *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004). As such, "we must freshly determine whether the requirements of Tenn. R. Civ. P. 56 have been met." *Hunter v. Brown*, 955 S.W.2d 49, 50–51 (Tenn. 1997) (citing *Gonzales v. Alman Constr. Co.*, 857 S.W.2d 42, 44–45 (Tenn. Ct. App. 1993)).

Tennessee Code Annotated section 29-26-122 requires the filing of a certificate of good faith in all medical malpractice cases:

> (a) In any medical malpractice action in which expert testimony is required by § 29–26–115, the plaintiff or plaintiff's counsel shall file a certificate of good faith with the complaint. If the certificate is not filed with the complaint, the complaint shall be dismissed, as provided in subsection (c), absent a showing that the failure was due to the failure of the provider to timely provide copies of the claimant's records requested as provided in § 29–26–121 or demonstrated extraordinary cause. The certificate of good faith shall state that:
>
> (1) The plaintiff or plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:
>
> (A) Are competent under § 29–26–115 to express an opinion or opinions in the case; and
>
> (B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident or incidents at issue, that there is a good faith basis to maintain the action consistent with the requirements of § 29–26–115; or
>
> (2) The plaintiff or plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:
>
> (A) Are competent under § 29–26–115 to express an opinion or opinions in the case; and
>
> (B) Believe, based on the information available from the medical records reviewed concerning the care and treatment of the plaintiff for the incident or incidents at issue and, as appropriate, information from the plaintiff or others with knowledge of the incident or incidents at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to the plaintiff or plaintiff's counsel; and that, despite the absence of this information, there is a good faith basis for maintaining the action as to each defendant consistent

> with the requirements of § 29–26–115. Refusal of the defendant to release the medical records in a timely fashion or where it is impossible for the plaintiff to obtain the medical records shall waive the requirement that the expert review the medical record prior to expert certification.

Tenn. Code Ann. § 29-26-122 (a) (Supp. 2011). "The failure of a plaintiff to file a certificate of good faith in compliance with this section shall, upon motion, make the action subject to dismissal with prejudice." Tenn. Code Ann. § 29-26-122(c).

It is undisputed that Ms. West failed to file a certificate of good faith in this matter. On appeal, however, Ms. West argues that she was not required to do so because she commenced her action in General Sessions Court by filing a civil warrant,[5] and Section 29-26-122(a) only requires the filing of a certificate of good faith when filing a "complaint." Accordingly, the outcome of this matter requires us to interpret Section 29-26-122(a).

The Tennessee Supreme Court recently summarized the applicable principles for matters involving statutory interpretation as follows:

> When dealing with statutory interpretation, well-defined precepts apply. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008). Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006).

Estate of French v. Stratford House, 333 S.W.3d 546, 554 (Tenn. 2011). Furthermore, "statutes must be construed 'with the saving grace of common sense.'" *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 (Tenn. 1979). The most important and compelling rule of statutory construction "is that the law be rendered intelligible and absurdities avoided." *Roberts v. Cahill Forge & Foundry Co.*, 184 S.W.2d 29, 31 (Tenn. 1944). Courts must avoid

[5] "A civil action in the general sessions courts is commenced by a civil warrant issued by the clerk . . . ." Tenn. Code Ann. § 16-15-716.

a construction that would defeat or frustrate the purpose of the statute or that "would work to the prejudice of the public interest." *State ex. rel. Maner*, 588 S.W.2d at 540 (citations omitted).

Section 29-26-122 clearly states that "[i]n *any medical malpractice action* in which expert testimony is required by § 29–26–115, the plaintiff or plaintiff's counsel shall file a certificate of good faith with the complaint." Tenn. Code Ann. § 29-26-122(a) (emphasis added). Also, at the time of the proceedings below, Section 29-26-101 defined "medical malpractice action" as "*any civil action*, . . . alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person, regardless of the theory of liability on which the action is based." Tenn. Code Ann. § 29-26-101(a)(1) (emphasis added). Moreover, Section 29-26-121 requires a plaintiff to provide at least sixty (60) days pre-suit notice "before the filing of a complaint based upon medical malpractice *in any court of this state*." Tenn. Code Ann. § 29-26-121(a)(1) (emphasis added). Although the TMMA does not define the word "complaint," Black's Law Dictionary defines "complaint" as "[t]he initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief." *Black's Law Dictionary* (9th ed. 2009); *see Christenberry Trucking & Farm, Inc. v. F & M Mktg. Services, Inc.*, 329 S.W.3d 452, 459 (Tenn. Ct. App. 2010) (Courts may "look to the dictionary as 'the usual and accepted source' for the 'natural and ordinary meaning' of the term.") (quoting *English Mountain Spring Water Co. v. Chumley*, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005)). Therefore, while we acknowledge that a plaintiff files a "civil warrant" in order to commence a civil action in General Sessions Court, *see* Tenn. Code Ann. § 16-15-716, we conclude that the certificate of good faith requirement under the TMMA applies to "any medical malpractice action" filed "in any court of this state," not only those actions commenced by filing a "complaint" in Circuit Court. To conclude otherwise would frustrate the purpose of the certificate of good faith requirement and allow a plaintiff to circumvent this mandatory requirement simply by filing a medical malpractice action in General Sessions Court. *See Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012) ("The essence of Tennessee Code Annotated section 29-26-122 is that a defendant receive assurance that there are good faith grounds for commencing such action."); *Kerby v. Haws*, No. M2011-01943-COA-R3-CV, 2012 WL 6675097, at *4 (Tenn. Ct. App. Dec. 20, 2012) ("The filing of a certificate of good faith indicating that an expert has reviewed the claims and has certified that they are taken in good faith 'satisfies the goal of attempting to ensure that suits proceeding through litigation have some merit.'") (quoting *Jenkins v. Marvel*, 683 F. Supp. 2d 626, 639 (E.D. Tenn. 2010)).

Finally, Ms. West argues that, even if she was required to file a certificate of good faith, she sufficiently demonstrated "extraordinary cause" to excuse her noncompliance. *See* Tenn. Code Ann. § 29-26-122(a) ("If the certificate is not filed with the complaint, the

complaint shall be dismissed, as provided in subsection (c), absent . . . demonstrated extraordinary cause."). Alternatively, Ms. West argues that she demonstrated "good cause" such that the trial court should have granted her Motion for Extension of Time in which to file a Certificate of Good Faith. *See* Tenn. Code Ann. § 29-26-122(c) ("The court may, upon motion, grant an extension within which to file a certificate of good faith . . . for other good cause shown."). Our review under either standard is abuse of discretion. *See Childs v. UT Med. Group, Inc.*, No. W2011-01901-COA-R3-CV, 2012 WL 3201933, at *8 (Tenn. Ct. App. Aug. 8, 2012), *perm. app. denied* (Tenn. Dec. 11, 2012).

Ms. West raises two points in support of her positions. First, Ms. West again relies on her mistaken belief that she was not required to file a certificate of good faith because she commenced her action by filing a civil warrant in General Sessions Court. Second, Ms. West cites Tennessee Code Annotated section 16-15-729 which provides:

> No civil case, originating in a general sessions court and carried to a higher court, shall be dismissed by such court for any informality whatever, but shall be tried on its merits; and the court shall allow all amendments in the form of action, the parties thereto, or the statement of the cause of action, necessary to reach the merits, upon such terms as may be deemed just and proper. The trial shall be de novo, including damages.

Tenn. Code Ann. § 16-15-729. Thus, according to Ms. West, her failure to file a certificate of good faith was a mere "informality" and her case could not be dismissed for that reason.

We find it unnecessary to address the differences between "extraordinary cause" and "good cause," as Ms. West failed to demonstrate either in this case. Ms. West's argument for failing to comply with the certificate of good faith requirement under the TMMA is based on her misinterpretation of the law. As we concluded, the certificate of good faith requirement under the TMMA applies with equal force in "any medical malpractice action" filed "in any court of this state." Moreover, Ms. West offers no explanation why, after her case was dismissed by the General Sessions Court for failing to comply with the certificate of good faith requirement under the TMMA, she waited until she was faced with the Defendants' motions for summary judgment in Circuit Court to file her Motion for Extension of Time in which to file a Certificate of Good Faith. Therefore, based on the record before us, we are unable to conclude the Circuit Court abused its discretion by refusing to excuse Ms. West's noncompliance with the certificate of good faith requirement. Furthermore, we find no abuse of discretion in the Circuit Court's denial of Ms. West's Motion for Extension of Time in which to file a Certificate of Good Faith. All other issues in this cause are pretermitted.

IV. Conclusion

For the foregoing reasons, we reverse the Circuit Court's dismissal of the appeal from General Sessions for lack of subject matter jurisdiction. We affirm the Circuit Court's grant of summary judgment in favor of the Defendants based on Ms. West's failure to comply with the certificate of good faith requirement under the TMMA, and also affirm the Circuit Court's denial of Ms. West's Motion for Extension of Time in which to file a Certificate of Good Faith. These holdings pretermit all other issues raised on appeal. Costs of this appeal are taxed one-half to Appellant, Debbie West, and her surety, and one-half to the Appellees, AMISUB (SFH), Inc. d/b/a St. Francis Hospital, Imran Mirza, M.D., Mark Mills, M.D., Phillip D. Waldrup, M.D., Douglas Linville, M.D., and Shoaib Qureshi, M.D., for all of which execution may issue if necessary.

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DAVID R. FARMER, JUDGE