
**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
EASTERN GRAND DIVISION**

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

DANNY HALE,)
 Claimant,)
))
v.))
))
STATE OF TENNESSEE,)
 Defendant.)

2015 DEC 30 A 9:33

**Claims No. T20141330
Regular Docket**

ORDER DISMISSING CLAIM

**I
Introduction**

This case involves the death of Tammy Hale Releford (Tammy) who was murdered by her husband, Terry Lee Releford on May 19, 2013, in Chattanooga, Tennessee. Releford had been in the custody of the Tennessee Department of Correction (TDOC) since 1998 after pleading guilty to several counts of rape and kidnapping and also conspiracy to commit murder. He was approximately 19 years old at the time and spent 15 years in TDOC custody before his release on May 21, 2012. Releford met Tammy at a bar in Cleveland, Tennessee shortly after his release in the spring of 2012, and they married soon after on August 20, 2012. The proof suggests that Releford moved into the home occupied by Tammy and her two daughters, ages 8 and 15, the same night he met her.

Initially, Releford appeared to be a good provider, husband and step-father. This was a good development in Tammy's life since although she was only 35 years old at the time of her death, she had been married four times and also been involved with men she did not marry. It appears that several of these relationships were either physically or mentally abusive.

Tammy was pregnant with Releford's child which was due to be delivered days after the date of her death.

The family actually made a trip to Florida in late March of 2013. However, after their return to Tennessee, something in the home went horribly wrong since on May 19, 2013, Releford strangled and bludgeoned Tammy –beyond recognition – to death and also raped her eldest daughter. A few days later he committed suicide in a motel in northern Georgia after being surrounded by law enforcement officers.

Mr. Danny Hale, Tammy’s father, brings this suit on behalf of her two daughters and invokes the Commission’s jurisdiction under Tenn. Code Ann. § 9-8-307(a)(1)(E).¹

Mr. Hale’s claim against the State now centers around his contention that TDOC failed to make sure, prior to Releford’s release, that the 1998 Judgments against him were amended to reflect a requirement of lifetime community supervision provided for in Tenn. Code Ann. § 39-13-524 which reads as follows:

(a) In addition to the punishment authorized by the specific statute prohibiting the conduct, a person shall receive a sentence of community supervision for life who, on or after:

(1) July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, or § 39-13-522;

(2) July 1, 2010, commits a violation of § 39-13-531; or

(3) The applicable date as provided in subdivision (a)(1) or (a)(2) attempts to commit a violation of any of the sections enumerated in subdivision (a)(1) or (a)(2).

(b) The judgment of conviction for all persons to whom subsection (a) applies shall include that the person is sentenced to community supervision for life.

(c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed

¹ Earlier in the life of this case, the Commission dismissed the case against the State to the extent it alleged negligence on the part of the Bradley County District Attorney General or the Criminal Court of Bradley County on the basis of judicial and prosecutorial immunity.

upon the person by the court or upon the person's release from regular parole supervision, whichever first occurs.

(d)(1) A person on community supervision shall be under the jurisdiction, supervision and control of the department of correction in the same manner as a person under parole supervision. The department is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from the person's committing a new sex offense, as well as promoting the rehabilitation of the person.

(2) The department is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision similar to the fee imposed by § 40-28-201. To the extent possible, the department shall set the fee in an amount that will substantially defray the cost of the community supervision program. The department shall also establish a fee waiver procedure for hardship cases and indigency.

Mr. Hale alleges that TDOC's failure to ensure that Releford's release was conducted consistent with this provision breached a duty the State owed Tammy, and that this was the cause in fact and legal cause of her death on May 19, 2013.

II The Nature of the Tennessee Claims Commission and Its Power to Award Damages

The Tennessee Claims Commission Act represents an advance in the law which grants persons who believe they have been injured by State government an opportunity to have their grievances decided by an impartial tribunal. An understanding of what this Commission can and cannot do is worth discussing in this case.

Article 1, Section 17 of the Constitution of Tennessee provides as follows:

Section 17. That all courts shall be open; every man, for an injury done him and his lands, goods, person or reputation, shall have remedy by due course of law and right and justice administered, without sale, denial or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct. (Emphasis supplied.)

The General Assembly also enacted statutory law which reiterates the concept of the

sovereign immunity of this State. Tennessee Code Annotated, Section 20-13-102(a) reads as follows:

20-13-102. Actions Against State Prohibited. – (a) No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel employed for the state. See also *Brewington v. Brewington*, 387 SW2d 777, 778-779 (1965).

However, in 1984, the General Assembly made a significant change to the law of sovereign immunity with the enactment of The Tennessee Claims Commission Act, Tennessee Code Annotated, Section 9-8-301, *et seq.* In Tennessee Code Annotated, Section 9-8-307(a)(1), the Legislature set out very clearly those areas in which the State has relinquished its immunity to the financial extent permitted by other provisions of that Act.

An adjunct principle to the State’s decision, through its Legislature, to partially waive its sovereign immunity rights is the rule that statutes waiving immunity, because they are in derogation of the common-law, must be strictly construed. *State ex Rel Walker v. Cook*, 106 S.W.2d 858, 860 (1937); *Stokes v. University of Tennessee*, 737 S.W.2d 545, 547 (Tenn. Ct. App., 1987); *Daley v. State*, 869 S.W.2d 338 (Tenn. Ct. App. 1993).

The Supreme Court has made it abundantly clear that if a particular cause of action is not enumerated in Tennessee Code Annotated, Section 9-8-307, *et seq.*, this Commission does not have jurisdiction since sovereign immunity has been waived only in the areas set out therein.² *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

“Pursuant to [this] constitutional power to provide for suits against the [S]tate, the

² Briefly, the Commission did have jurisdiction of cases involving alleged negligent deprivation of constitutional rights. However, in 1989, the words “or constitutional” were deleted from Tenn. Code Ann. § 9-8-307(a)(1)(N). See *Shell v. State*, 893 S.W.2d 416, 418-420 (Tenn. 1995).

legislature created the Tennessee Claims Commission in 1984 to hear and adjudicate certain monetary claims against the State of Tennessee.” *Stewart*, 33 S.W.3d at 790.³ However, the Claims Commission’s “jurisdiction is limited only to those claims specified in Tennessee Code Annotated, Section 9-8-307(a). If a claim falls outside of the categories specified in Section 9-8-307(a), then the [S]tate retains its immunity from suit, and [the] claimant may not seek relief”⁴ *Id.*

“[T]he entire statutory purpose of the Tennessee Claims Commission Act is to establish the state's liability in tort based on the traditional tort concepts of duty and the reasonably prudent persons' standard of care.” *Lucas*, 141 S.W.3d at 130. The statute, however, works as a limitation on liability; it provides, “For causes of action arising in tort, the [S]tate shall only be liable for damages up to the sum of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence.” *Id.* (quoting Tenn. Code Ann. § 9-8-307(e)). Moreover, “[t]he [S]tate may assert any and all defenses, including common law defenses, [and] any absolute common law immunities available.” *Id.*

“The courts of this [S]tate have [also] held that any statute granting jurisdiction to hear a claim against the [S]tate must be strictly construed, as any such statute is in derogation of the common law rule of sovereign immunity.” *Stewart*, 33 S.W.3d at 790; *see also State ex Rel Walker v. Cook*, 106 S.W.2d 858, 860 (1937); *Daley v. State*, 896 S.W.2d 338, 340 (Tenn. Ct. App. 1993); *Stokes v. University of Tennessee*, 737 S.W.2d 545, 546 (Tenn. Ct. App., 1987); and *Beare Company v. Olsen*, 711 S.W.2d 603, 605 (Tenn. Ct. App. 1986). However, the legislature

³ “An enabling statute that grants a court subject matter jurisdiction to hear claims against a state will likewise constitute an explicit legislative waiver of sovereign immunity.” *Colonial Pipeline Company* at fn. 17.

⁴ “We are not concerned in this case with the separate statutory development of the limited abrogation of sovereign immunity made applicable to cities and counties by the Tennessee Governmental Tort Liability Act [since t]his act is not and never has been applicable to the State of Tennessee or its agencies and departments.” *Lucas*, 141 S.W.3d at 126 (citing *Tenn. Dep't of Mental Health v. Hughes*, 531 S.W.2d 299 (Tenn. 1975)).

amended Section 9-8-307(a) in 1985 to reflect “its intention as to the jurisdictional reach of the Claims Commission” *Id.* at 791. The provision established “the intent of the general assembly that the jurisdiction of the Claims Commission be liberally construed to implement the remedial purposes of this legislation.” Tenn. Code Ann. § 9-8-307(a)(3). Therefore, “courts [must] defer to this expressed intention in cases where the statutory language legitimately admits of various interpretations.” *Stewart*, 33 S.W.3d at 791. This “policy of liberal construction of statutes, however, only requires th[e] court to give ‘the most favorable view in support of the petitioner’s claim,’ and . . . ‘does not authorize the amendment, alteration[,] or extension of its provisions beyond [the statute’s] obvious meaning.” *Id.* (quoting *Pollard v. Knox County*, 886 S.W.2d 759, 760 (Tenn. 1994); *Brady v. Reed*, 212 S.W.2d 378, 381 (Tenn. 1948)). A liberal construction in favor of jurisdiction should be given “only so long as (1) the particular grant of jurisdiction is ambiguous and admits of several constructions, and (2) the ‘most favorable view in support of the petitioner’s claim’ is not clearly contrary to the statutory language used by the [g]eneral [a]ssembly.” *Stewart*, 33 S.W.3d at 791.

III Procedural History in this Case

The pleadings in this case are important.

On April 1, 2014, Mr. Hale filed a Notice of Claim with the Division of Claims Administration (DCA). That claim alleged “... negligence committed by assistant district attorneys in failing to procure and enter appropriate Orders which were required, and which would have mandated lifetime supervision and monitoring of Terry Lee Releford”.

Attached to that Notice of Claim was a Complaint, compliant with Tenn. R. Civ. P. Rules 8 and 10, which sets out in greater detail the allegations found in the Notice of Claim. The allegations of negligence are directed at “... members of the Bradley County District Attorney’s

Office professional staff” and invoke in paragraph 5, Commission jurisdiction over the claim under Tenn. Code Ann. § 9-8-307(a)(1)(E). In paragraph 9, Mr. Hale alleges that mistakes by the Bradley County District Attorney General’s (DAG) office resulted in the omission in the sentencing documents signed by the Bradley County Circuit Court of any requirement for lifetime supervision of Mr. Releford as required by Tenn. Code Ann. § 39-13-524. Paragraph 9 alleges that such supervision in cases like those for which Mr. Releford was sentenced, was “... necessary to protect the public from the released defendant committing a new sex offense, as well as promoting the rehabilitation of the person”.

On June 30, 2014, Mr. Hale’s claim was transferred from the DCA to the Commission since the DCA had been unable to resolve it within the statutory 90 day period found in Tenn. Code Ann. § 9-8-402(c).

On August 29, 2014, the State filed a Motion to Dismiss along with a supporting Memorandum of Law in which it argued that the State was shielded from liability in this case based on the doctrine of absolute judicial immunity. Alternatively, the State argued that Mr. Hale had failed to state a viable claim under Tenn. Code Ann. § 9-8-307(a)(1)(E) or for that matter under any jurisdictional provision found in Tenn. Code Ann. § 9-8-307(a)(1).

On September 24, 2014, Mr. Hale responded to the State’s Motion to Dismiss and additionally tendered a Motion for Leave to Amend asking to be permitted to add six paragraphs to his original Complaint. In his Motion, Mr. Hale alleges *inter alia*, that the Tennessee Department of Correction (TDOC) knew that Terry Lee Releford was a threat to society, and further, that it had notice that on release, he would not be subject to the requirements of Tenn. Code Ann. § 39-13-524 requiring lifetime monitoring and supervision.

The State then filed a Reply in support of its Motion to Dismiss and a Response opposing

Mr. Hale's Motion to amend his original complaint.

On March 9, 2015, following oral argument in Chattanooga on the State's Motion to Dismiss, the Commission signed an Order denying the State's motion.⁵

In our Order, the Commission ruled that Mr. Hale's claim was not viable under Tenn. Code Ann. § 9-8-307(a)(1)(N) since Tenn. Code Ann. § 39-13-524 did not provide for a private right of action. Additionally, the Commission ruled that the State was immune from liability based on any acts or omissions by the office of the Bradley County DAG or the Bradley County Circuit Court because of the doctrine of judicial immunity.

However, the Commission also ruled that Hale's claim should not be dismissed at that time since "... there still remain[ed] an issue of whether liability can be found against the State under Tenn. Code Ann. § 9-8-307(a)(1)(E) for alleged negligent care, custody, or control of Releford" because he was released from TDOC custody without the requirements of Tenn. Code Ann. § 39-13-524 being applied to him although the Department had full knowledge that the judgments and sentencing documents in his criminal cases were inaccurate and deficient, and that Releford was a dangerous individual who refused to enter into any sort of counseling or treatment while in its custody".

The Commission went on to write that there were also serious questions involving cause in fact and legal or proximate cause as well as potential comparative negligence on the part of Mr. Hale's daughter, Tammy.

The Claimant's previously filed Motion to Amend Complaint was also granted in that Order.

⁵ On page 5 that Order, in the first full paragraph, there are two typographical errors. In the sixth line, the word "not" should not have been inserted between the words "does" and "provide". In the ninth line, the reference should be to Tenn. Code Ann. § 9-8-307(a)(1)(N) rather than Tenn. Code Ann. § 9-8-307(a)(1)(E).

However, it was not until October 26, 2015, a few days before trial, that Mr. Hale filed an Amended Complaint. That Amended Complaint adopted by reference the original Complaint and alleged further that TDOC realized as early as 2004 and 2005 that Releford's original criminal Judgments were deficient because of their omission of any reference to Tenn. Code Ann. § 39-13-524, and that in fact TDOC had written the office of the Bradley County DAG on two occasions in an attempt to amend the original sentencing judgments. The Amended Complaint went on to allege that in February of 2012 records reflect that TDOC was aware that Releford's term of imprisonment was going to expire in May of that year but failed to make any effort to obtain corrected judgments from the Bradley County court system which would include references to the requirements of Tenn. Code Ann. § 39-13-524.

These omissions, according to Mr. Hale, brought this claim within the Commission's jurisdiction found in Tenn. Code Ann. § 9-8-307(a)(1)(E). His Amended Complaint goes on to allege that by virtue of its contacts with the Bradley County DAG's office, TDOC undertook a duty to obtain corrected judgments before Releford was released. That complaint also alleges that TDOC was fully aware of the fact that Releford was a violent criminal, and that its failure to make sure that he was subject to lifetime supervision and monitoring led directly to his daughter's death.

On November 3, 2015, the State filed an Answer to Mr. Hale's Amended Complaint in which it argues that this document varied substantially from the contents of his original Motion to Amend granted by us on March 9, 2015. However, the State answered the allegations set out in that Complaint and in particular in responding to paragraphs 17 and 18 it argued that the sentencing judge could not merely *sua sponte* amend the original Judgments to include lifetime supervision without affording Releford an opportunity to withdraw his guilty plea and stand trial.

In support of that position, the State cited *Ward v. State*, 315 S.W. 3d. 461, 474-476 (Tenn. 2010). The State also argued that any award in Claimant's favor should be reduced or even barred by Tammy Hale Releford's own comparative negligence in failing to check Releford's criminal background through the State of Tennessee's Sex Offender Registry thus subjecting both her and her two children to the actions of a dangerous criminal.

This case was tried on November 4, 2015. The matter of this Amended Complaint was taken up then by the Commission. We stated at the time that we would reserve ruling on whether to accept the filing of the Amended Complaint.

IV Relevant Statutory Provisions

At the center of this dispute are the following provisions from Tenn. Code Ann. § 39-13-524:

(a) In addition to the punishment authorized by the specific statute prohibiting the conduct, a person shall receive a sentence of community supervision for life who, on or after:

(1) July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, or § 39-13-522;

...

(b) The judgment of conviction for all persons to whom subsection (a) applies shall include that the person is sentenced to community supervision for life.

(c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon the person by the court or upon the person's release from regular parole supervision, whichever first occurs.

(d)(1) A person on community supervision shall be under the jurisdiction, supervision and control of the department of correction in the same manner as a person under parole supervision. The department is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from the

person's committing a new sex offense, as well as promoting the rehabilitation of the person. (Emphasis supplied)

As the Historical and Statutory Notes to this section note, the Act became effective on July 1, 1996. Releford's crimes occurred on August 13 and December 1, 1997, and he pled guilty to those offenses on March 3, 1998.

Under Tenn. Code Ann. §40-35-209(e)(1), the office of the District Attorney General has the responsibility of assuring that the judgment forms in criminal proceedings have been filed with the Clerk of the court. That provision from the Code reads in relevant part as follows:

(e)(1) After the defendant is sentenced, the district attorney general shall complete and file within thirty (30) days the uniform judgment document for the conviction that is signed by all parties; but if not signed by the parties, the clerk shall make a copy of the document available to the parties before entry by the court, which shall indicate for each offense the following:

(A) The type of offense for which the defendant was charged and convicted and the sentence imposed;

...

(G) Whether the defendant was sentenced as a one hundred percent (100%) offender pursuant to § 40-35-501(i);

...

(O) Whether the sentence runs concurrently or consecutively with any other sentence;

(P) The amount, if any, of pretrial jail credit awarded pursuant to § 40-23-101; (Emphasis supplied)

Of course, pursuant to Tennessee Rule of Criminal Procedure 32(f) after a sentence is imposed and before it becomes final 30 days later, the sentencing court may set aside a judgment of conviction and permit a defendant to withdraw his plea in order to avoid a manifest injustice. Tennessee Rule of Criminal Procedure 32(f) reads as follows:

Tenn. R. Crim. P., Rule 32

(f) Withdrawal of Guilty Plea.

(1) Before Sentence Imposed. Before sentence is imposed, the court may grant a motion to withdraw a guilty plea for any fair and just reason.

(2) After Sentence But Before Judgment Final. After sentence is imposed but before the judgment becomes final, the court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice.

Tenn. Code Ann. § 40-35-501 in subsections (a)(4), (h)(3), (i)(2)(F), (l)(2), and (r) read respectively in relevant part as follows:

(a)(4) No inmate shall be released under this section until at least ten (10) days after receipt of all sentencing documents by the department and ten (10) days after the department has sent notice of the release eligibility dates to the district attorney general and the appropriate sheriff, jail administrator, workhouse superintendent or warden.

...

(h)(3) Nothing in this subsection (i) shall be construed as affecting, amending or altering § 39-13-523, which requires child sexual predators, aggravated rapists, child rapists and multiple rapists to serve the entire sentence imposed by the court undiminished by any sentence reduction credits.

...

(i)(1) There shall be no release eligibility for a person committing an offense, on or after July 1, 1995, that is enumerated in subdivision (i)(2).

...

(2) The offenses to which subdivision (i)(1) applies are:

...

(F) Aggravated rape;

...

(l) (2) In addition to the punishment authorized by this section, a person sentenced under § 39-13-518 shall, upon release, receive a sentence of community supervision for life pursuant to § 39-13-524.

...

(r) Notwithstanding any other law to the contrary, the department is responsible for calculating the sentence expiration date and the release eligibility date of any felony offender sentenced to the department and any felony offender sentenced to confinement in a local jail or workhouse for one (1) or more years.

Tenn. Code Ann. § 41-2-109(1). Superintendents; care of prisoner; powers and duties states the following:

It is the duty of the superintendent to:

(1) Discharge each prisoner as soon as the prisoner's time is out, or upon order of the board of commissioners;

V Significant Case Law

There are several important legal principles which may come into play in making a decision in this claim.

First of all, there is a significant dispute between the parties as to whether the claim should or can be considered under Tenn. Code Ann. § 9-8-307(a)(1)(E) or Tenn. Code Ann. § 9-8-307(a)(1)(N). Those provisions read as follows:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101, falling within one (1) or more of the following categories:

...

(E) Negligent care, custody and control of persons;

...

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service

commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

It is well established that in a case brought pursuant to subsection N, a claimant must point to a provision in a particular statute which expressly grants him a private right of action against the State.

For example, in *Madkins v. Tennessee*, No. E2001-03002-COA-R3-CV, 2002 WL 1162238 (Tenn. Ct. App. 2002) the Claimant had been convicted of the crime of attempted felony murder. However, a 1999 decision from our Supreme Court held that such an offense did not exist in Tennessee. Consequently, Madkins filed a claim for damages and based his case on alleged violations of four separate provisions from the Code. Predictably, the Commission dismissed the claim and that decision was affirmed by the Court of Appeals on the ground that none of the Code sections on which Mr. Madkins based his claim provided for a private cause of action against the State in the event that they were violated.

In a subsequent civil case, *Byrd v. State*, 150 S.W. 3d. (Tenn. Ct. App., 2004) janitorial workers at a state operated clinic in West Tennessee alleged that they had been sexually harassed by a doctor and another individual. Part of their complaint alleged a violation of Tenn. Code Ann. § 4-21-701 which prohibits malicious harassment. Again, our Court of Appeals ruled that the claim was not viable under Subsection N since Tenn. Code Ann. § 4-21-701 did not expressly confer the possibility of a private right of action against the State.

A 2015 decision from the Court of Appeals, *Mosley v. State*, No. W2014-01307-COA-R3-CV, 2015 W.L. 3971883 (Tenn. Ct. App., 2015) involved a prisoner who alleged that he remained in the custody of TDOC for longer than he should have because the expiration date on his sentence had been incorrectly calculated. He alleged that the State had been negligent in its

care, custody, and control of him and that by incarcerating him for longer than it should have, it violated Tenn. Code Ann. § 40-35-501(i)(L) and Tenn. Code Ann. § 40-23-101(c). The State argued that Mr. Mosley's allegations brought his claim within the parameters of subsection N rather than subsection E of the Act in that he alleged that officials had improperly applied the above referenced sections. The State characterized Mr. Mosley's attempt to bring his claim under subsection E as a "recast[ing] of the true nature of the claim".

The Court of Appeals made the following observation regarding the nature of Claimant Mosely's case:

Mr. Mosley's claim is clearly predicated on the State's alleged failure to comply with certain statutes concerning the calculation of his sentence and the application of certain sentence-reducing credits.

In its decision, the *Mosley* court also cited the well-known decision of *Draper v. State*, No. E2002-20722-COA-R3-CV, 2003 W.L. 22092544 (Tenn. Ct. App., 2003) as being another case in which the "State's duty stemmed solely from a statute ... [and thus] fell within the ambit of Subsection (a)(1)(N)". Again, because Mr. Mosley did not cite any statute which provided him with a private right of action for its violation, the claim was not viable under subsection N.

In *Draper*, the Eastern Section of the Court of Appeals had before it a case in which the allegation was that a failure of an employee of the Tennessee Department of Children's Services to investigate alleged abuse resulted in the wrongful death of a child.⁶ The plaintiff mother characterized her claim as one alleging negligent care, custody, and control properly brought under subsection E. In addressing that argument Judge Franks wrote the following:

Finally, while plaintiff argues that control, care, and custody should have been exercised pursuant to the statutes dealing with dependent and neglected children and DCS' ability to effect a removal in those

⁶ A complaint was also brought against a group of radiologists and a hospital in Kingsport based on the same fact pattern.

situations, this is, in essence, an argument that the state owed a duty to protect Bryanna, and that by failing to comply with its own statutes regarding child abuse, plaintiff now has a private right of action for this failure. This argument falls within the ambit of Tenn.Code Ann. § 9-8-307(a)(1)(N), which reads:

*3 Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision that the general assembly expressly conferred a private right of actions in favor of the claimant against the state for the state's violation of the particular statute's provisions; (Emphasis supplied)

We have held that an individual cannot state a cause of action based upon the deprivation of a statutory “right” without pointing to express language in the statute which confers a private right of action in the individual's favor. See Tate v. State, 2003 WL 21026939 (Tenn. Ct.App. Apr 14, 2003); A'la v. State, 2002 WL 1838162 (Tenn.Ct.App. Aug. 13, 2002); Taylor v. State, 2001 WL 873470 (Tenn.Ct.App. July 31, 2001). The statutory scheme dealing with removal of abused children does not grant a private right of action within the statute for the state's failure to remove. Tenn.Code Ann. § 9-8-307(a)(1)(N) does not confer jurisdiction for the stated claim, and neither does Tenn.Code Ann. § 9-8-307(a)(1)(E). Plaintiff is couching a claim for deprivation of statutory rights as a claim of negligent care in an effort to avoid having to point to language in the statute which confers a right of action. We conclude there is no basis for jurisdiction pursuant to the statute, and we affirm the Commission's dismissing plaintiff's claim. (Emphasis supplied)

VI A Preliminary Matter

Claimant filed a Motion to Amend his original complaint in September, 2015. At trial, the State objected that the Amended Complaint it received on October 26, 2015, nine days before trial, contained allegations much different from what was set out in the Motion to Amend. The State contends that the allegations in the eventually filed Amended Complaint were tailored to match the ruling in the Order from the Commission entered on March 9, 2015. And in fact, the Claimant's case set out in the Amended Complaint is based on the actions or inactions of the

Tennessee Department of Correction (TDOC) rather than anything done by officials in Bradley County.

According to the State, the discovery which ensued after the Commission's March Order addressed matters discussed in that Order. Although the State agreed that it was not surprised by the issues addressed in discovery, it contended that nevertheless, the Amended Complaint filed on the eve of trial did not track the earlier Motion to Amend filed by the Claimant. The State on the day of the trial argued that a "large legal issue" regarding the concept of duty was raised during the course of pre-trial discovery and by Claimant's' pre-trial brief and consequently, it requested that the duty issue be addressed before an actual trial in this matter commenced (Tr. 10).⁷

The issue the State raised pre-trial was the nature of the alleged duty owed by TDOC.

Claimant argued that the discovery process yielded information leading to the allegations set out in the Amended Complaint.

The Commission agreed to permit both parties to argue their positions regarding the presence or absence of a duty owed to Claimant and their deceased daughter.

The State argued that the duty issue boiled down to what the Bradley County District Attorney General's (DAG) office did or did not do (Tr. 16). The State contended that in this situation TDOC did not have authority to change Releford's sentence. According to the State, under *Cantrell v. Easterling*, 346, S.W. 3d, 445 (Tenn. 2011), TDOC did not have authority to correct errors in judgments (Tr. 19). The State agreed that Releford, at the time of his guilty pleas, had done so without knowing that he would be placed under lifetime community

⁷ There were 352 pages of testimony in this case. References to that testimony will be to the respective page number where it is found: (Tr. __). Additionally, there were seven exhibits filed. References to those exhibits will be as follows: (Exh. __, T __).

supervision (Tr. 21). The State then observed that the error was in the actions of the DAG's office and potentially the Bradley County Criminal Court. *Id.* Thus the State insisted that there was no legal duty owed by TDOC in those circumstances. The State went on to argue that although the damages were not available in those circumstances, potential sanctions against those involved with the paperwork were available (Tr. 22-23).

The duty at issue here, the State observed, was that of the office of the DAG and not TDOC. The State also pointed out that nothing in the law empowered TDOC to retain custody of Releford after he served his sentence, day for day (Tr. 24).

Additionally, the State contended that under the authority of *Ward v. State*, 315 S.W. 3d, 461 (Tenn. 2010) it was problematic whether the original sentencing documents could be amended to reflect a statutory requirement of lifetime community supervision under Tenn. Code Ann. § 39-13-524. The State went on to argue that if lifetime community supervision was to be added to Mr. Releford's sentence, he would have had to have had an opportunity to request a new trial on the ground that his guilty plea was uninformed and should be overturned (Tr. 28-29).

Given the fact that, under *Ward* it would have been necessary to send Releford's original guilty plea back to the Bradley County Criminal Court where he would be offered an opportunity to withdraw his plea and enter a new plea or actually go to trial on the charges, his eventual murder of Tammy Hale Releford would stretch the boundaries of legal or proximate cause. Under those circumstances, it argues that it would become "even more vague or problematic that you could create some sort of duty on the Department of Correction that it failed and that its failure ultimately resulted in Tammy's death" (Tr. 31).

Because of the absence of any duty owed to Tammy H. Releford, and now her heirs, the

State renewed its Motion to Dismiss (Tr. 32).

The Claimant, in a Response, addressed the concept of duty (Tr. 33-34). The Claimant agreed that the office of the DAG bore some degree of comparative fault (Tr. 34). As statutory support for their contention that TDOC owed a duty to Claimant, Claimant relied on Tenn. Code Ann. § 9-8-307(a)(1)(E) of the Claims Commission Act (Tr. 25). Claimant argued that this provision from the Act is in fact a wrongful death statute. Additionally, Claimant relied on Tenn. Code Ann. § 40-35-501 in their duty analysis for the proposition that TDOC had a duty to review and then calculate release eligibility dates and sentence expiration dates (Tr. 35-36).

The question of duty is one of law, argued the Claimant. In support of its duty argument, the Claimant cited *Satterfield v. Breeding*, 266 S.W. 3d, 347 (Tenn. 2008). In that connection, the Claimant insist that the Commission must hear the proof to determine whether or not TDOC's actions or inactions posed an unreasonable or foreseeable risk of harm to Mrs. Releford (Tr. 37-38).

Factually, Claimant argued that for 15 years, TDOC had the care, custody, and control of Mr. Releford based on sentences for three counts of aggravated rape and attempted first degree murder imposed against him, following guilty pleas, in 1998. The sentencing judgments at the time of his guilty pleas were sent to TDOC (Tr. 39). Under Tenn. Code Ann. § 40-35-501, TDOC's sentence management department had the responsibility of reviewing judgments regarding individuals sent into its custody. *Id.* Claimant argues that two weeks after Releford came into TDOC custody, errors in his sentencing documents were discovered. Six months later TDOC sent a letter to the Bradley County DAG's office regarding problems with one of the original judgments. An amendment, to that judgment was issued in February of 1999. That amendment, however, did not address the omission of the lifetime supervision provision from

the judgment. It dealt with credit for jail time which Mr. Releford had served (Tr. 40). The failure of the sentence management division at TDOC, according to Claimant, resulted from its failure to pick up the omission of the lifetime community supervision provision at that same time (Tr. 41).

Five years later in 2003, TDOC wrote the sentencing judge a letter which has never been recovered, and in 2005, the individual in charge of the sentence management unit at TDOC, Ms. Lee, whose deposition is of record in this case, wrote the office of the Bradley County DAG rather than the sentencing judge, setting out the deficiencies in the sentencing document (Tr. 42).

Claimant argues that at that point, TDOC “undertook a duty”. Claimant argued that TDOC was negligent in not making sure that the incorrect judgments were corrected to reflect the lifetime supervision requirement. *Id.* Claimant argued that TDOC has a statutory duty under Tenn. Code Ann. § 40-35-501 to review judgments (Tr. 43-45).

The Commission noted that under Tenn. Code Ann. § 9-8-307(a)(1)(N), there was no specific language in Tenn. Code Ann. § 39-13-524 giving Claimant a private right of action (Tr. 44). Claimant agreed that this was the case, but that nevertheless, Tenn. Code Ann. § 9-8-307(a)(1)(E) provided them with a cause of action. The private right of action required by Tenn. Code Ann. § 9-8-307(a)(1)(N) is found in subsection E according to the Claimant.

Claimant argued that there was negligence in failing to amend the sentencing judgments of 1998; and further in 2004 and 2005, there was further negligence on the part of TDOC by virtue of the failure of its sentencing management unit to follow up with the office of the Bradley County DAG to make sure that office took steps to have the original judgments amended to reflect a lifetime supervision requirement (Tr. 46). Claimant alleges that the State cannot even show that the Bradley County DAG’s office even got the letters of inquiry from TDOC’s

sentence management unit sent in 2005.

Additionally, Claimant argues that as late as February of 2012, three months before Releford's release, TDOC was aware that he was going to be out of their custody, and there was no order obtained requiring him to remain under lifetime community supervision (Tr. 49). Claimant contends that all TDOC had to do at that point was to "pick up the phone and call the DA office" in order to alert General Estes' office that Releford was about to be released without any requirement he participate in lifetime community supervision. This was an "omission" and "glaring negligence" by TDOC according to the Claimant (Tr. 50-51).

Claimant argues that during the 15 years Releford was in the custody of TDOC, it committed "multiple acts of negligence and omissions" and that TDOC's actions or inactions "created an unreasonable and foreseeable risk of harm to persons" (Tr. 51).

Claimant argues that had the Bradley County DAG been advised of the "glaring" omission from Releford's sentencing document by TDOC, Tammy Releford would not have died. Claimant categorizes these alleged failures on the part of TDOC as constituting a "comedy of errors". According to Claimant, these failures breached a duty owed by the State through TDOC to make sure a lifetime supervision requirement was included in the judgments, or alternatively that TDOC breached a duty assumed by the State (Tr. 52).

The Commission took this issue under advisement and proof was then presented by both parties.

VII The Proof

Deposition of Torye Lee, Tennessee Department of Correction

The deposition of Torye Lee was introduced as Exhibit 1.⁸ Certain exhibits to her testimony were introduced and those exhibits are attached to Ms. Lee's deposition.

Ms. Lee's deposition was taken for proof on September 29, 2015. Ms. Lee has worked for TDOC for 28 years and began there in 1988 after she finished Business College (Dep., P. 6-7). She worked her way up through the TDOC bureaucracy and at the time of her deposition had been appointed Manager of the Sentence Computation Unit (Dep., P. 9).

In that position, Ms. Lee is involved in making sure documents received from trial courts are entered into the TDOC system within 10 days of their receipt (Dep., P.10). The Sentence Computation Unit at TDOC falls under the jurisdiction of Sentence Management Services (Dep., P. 11). Another branch named Sentence Information handles correspondence including reports regarding sentence expiration, parole, and probation. It also handles inquiries made to TDOC (Dep., P. 12). Sentence Computation actually computes when a prisoner may be eligible for parole (Dep., P. 13). A prisoner sentenced to TDOC custody is entered into the department's records by processing through the Sentence Computation Unit (Dep., P. 15). The sentencing documents must be inputted into the system by the Unit within 10 days of receipt 16). The information entered is used to "calculate out an offender's [release] dates" (Dep., P. 17). Ms. Lee testified that her department does "...a lot of research trying to figure out how the offender's time is supposed to be calculated" (Dep., P. 19-20). Ms. Lee stated that the information put in the system cannot be changed, and if there is a mistake, her personnel contact the sentencing court

⁸ References to Ms. Lee's deposition testimony will be to Dep., P. __

(Dep., P. 21). If any of the information provided to the Unit is illegal, a letter is sent (Dep., P. 21). Sometimes the Unit will send letters to the courts stating that what is in the orders is not in accordance with the statute, but it is entered into the system that way. The Unit also advises that corrected judgments may be sent in from the court (Dep., P. 21-22).

After a letter is sent to the court, there is no specific follow-up procedure to determine whether or not the changes have been made or that the information has actually been received or that further written requests must be made. At TDOC, Ms. Lee stated, no specific follow up process had been set up to make sure verification requests had been complied with (Dep., P. 22-23).

Corrected judgments will not be calculated if the Unit has not received the requested information from the trial court (Dep., P. 22). The analysts in the Unit maintain a “problem folder” for sentencing issues which may arise (Dep., P. 23). There are four analysts for the entire department. *Id.* An analyst is charged with following up with requests for information from the sentencing court. *Id.*

Candace Whisman is director of Sentence Management and is Ms. Lee’s superior. Ms. Lee testified that “[t]he Court has to order ... community supervision” (Dep., P. 28). Ms. Lee stated that once an inmate “expires his sentence, the parole board picks up supervision”. *Id.* Ms. Lee was able to identify the letter she wrote to District Attorney General Estes on Sept 23, 2005 (Dep., P. 31). The letter to Mr. Estes was written some seven years after Releford was sentenced. Ms. Lee testified that prior to entering her current position, this sort of letter was sent to judges (Dep., P. 32). She stated that “[t]he judges never responded”. *Id.* Consequently, she began sending letters to both the judges and district attorney generals. She recalls that the judges asked her why they were receiving the letters. They “couldn’t fix the judgments” on their own (Dep., P.

32).

In 2005 she started re-sending the letters which had previously been sent to judges when the supervision statute came into effect in July, 1996. She wanted to fix sentences before prisoners' expiration dates had passed (Dep., P. 33). She believes that the lifetime supervision statute became effective on July 1, 1996. She pulled all prisoner files dealing with these issues and began re-sending letters previously sent to judges to DAGs (Dep., P. 34).

In Releford's case, she believes that he had more than one count requiring lifetime supervision and none of the judgments in his file were correct. *Id.* Ms. Lee did not recall if she had sent a letter to Judge Ross in Releford's case (Dep., P. 35), though she believes that a letter was sent to him. She does not have a copy of the actual paperwork that went to Judge Ross (Dep., P. 35-36). A copy of any letter sent to Judge Ross may have been put on film but perhaps placed in the wrong file (Dep., P. 36). Ms. Lee confirmed that she believes that a letter was sent to the trial judge on January 7, 2004, as stated in the State's Answers to Interrogatories. The notation that a letter had been written to a judge was found on TDOC computers (Dep., P. 38). Her September 23, 2005, letter to DAG Estes was motivated by a conversation she had with another DAG during which he asked her why correction letters were being sent to judges (Dep., P. 39). Ms. Lee began re-sending letters when she was appointed acting manager in July of 2003 (Dep., P. 39-40). Ms. Lee testified that she wrote General Estes because the judgments against Releford did not provide for lifetime supervision. Ms. Lee stated that the triggering crimes for lifetime supervision are set out in Tenn. Code Ann. § 39-13-524.

TDOC's computer system flags files with deficiencies, such as Releford's, as being illegal or incomplete (Dep., P. 34).

The word "illegal" in TDOC phraseology means that the judgment does not follow Tenn.

Code Ann. § 39-13-524 (Dep., P. 45). Ms. Lee testified that the letter is sent to the DAG because TDOC could not put information “in our system that way” (Dep., P. 47). Ms. Lee stated that she never received a response to her letter from the office of the Bradley County DAG (Dep., P. 47). Additionally, she did not follow up on the letter. *Id.* There is no follow-up procedure in such a situation (Dep., P. 48). Ms. Lee testified that she did not know why TDOC did not have a procedure for following up if a DAG did not respond to a letter like she sent (Dep., P. 48).

On March 3, 1998, Releford plead guilty to five separate counts of which one or more should have required mandatory lifetime community supervision (Dep., P. 50-51). At the time, there was no location on the judgment form indicating that the prisoner would be placed on lifetime supervision. The forms were later modified to reflect that status (Dep., P. 51). Previously, lifetime supervision would have been written in as a Special Condition (Dep., P. 52).

Exhibit 5 to Ms. Lee’s deposition is a screenshot from a TDOC computer of a statement that “Conviction Class Is Invalid For Conviction Offense” in Case No. 97-416. This printed out after all of the information regarding the prisoner was loaded into the computer (Dep., P. 53-54). Illegal or incomplete information on the form resulted here because of information provided to TDOC by the court (Dep., P. 54). In this particular notation, relating to count 5 of the guilty plea involving a charge of conspiracy to commit first degree murder, Ms. Lee did not understand why an illegal/incomplete notation had shown regarding that aspect of the guilty plea (Dep., P. 54-55). She then looked at a September 3, 1998, letter from Sentence Communication Services advising General Estes of the problem with the judgment in the conspiracy to commit murder guilty plea. A Ms. Whisman wrote General Estes stating that it was the intent of her office to “obey the records of the Court”, and that an Amended Judgment would be necessary to reflect what the court had actually ordered (Dep., P. 56). She does not know whether General Estes

complied with the inquiry from Ms. Whisman (Dep., P. 57). She went on to testify that in 1998 she did not believe that the lack of lifetime supervision provision was noted in TDOC's computer system, and that consequently, the system did not create a letter stating that the judgment was illegal or incomplete. Consequently, hand-written letters were necessary since the computer system would not act in the event of illegal/incomplete and therefore deficient judgment (Dep., P. 57-58). Ms. Lee testified that the lifetime supervision statute was adopted in 1996, and that it took some time for the computer experts to incorporate those changes into TDOC computer systems (Dep., P. 57-58). Consequently, hand-written letters were prepared rather than computer generated correspondence (Dep., P. 58). In 1998, technicians loaded the judgments into the computer system, and the system would in turn notify of an incomplete or illegal judgment (Dep., P. 59).

Ms. Lee then reviewed documents from a separate Bradley County criminal case No. 98-046. These documents, as did the earlier documents from Bradley County Criminal Court Case No. 96-416, dealt with Terry Releford (Dep., P. 60).

Exhibit 7 to Ms. Lee's deposition represents judgments in docket No. 98-046 which resulted in subsequent documents, marked as Exhibit 8, indicating that the indictment class for the judgments in Exhibit 7 were actually less than the class of crimes of which Mr. Releford had been convicted (Dep., P. 62).

As a result of the letter sent to General Estes on September 23, 1998, (Exhibit 9 to Ms. Lee's Deposition) an amended judgment was signed by Judge Ross on February 16, 1999, in connection with Mr. Releford's conviction for aggravated kidnapping in case No. 98-046. The judgment was amended to require Releford to serve 100% of his sentence because he was a violent offender.

Additionally, Exhibit 10 to Ms. Lee's deposition shows that on August 9, 1999, Judge Ross signed an Amended Judgment in Case No. 98-046 reflecting that Releford would have to serve 100% of a 12-year sentence for aggravated kidnapping.

Another amendment reflected a change in Case No. 97-416 from a requirement that Releford serve 30% of his sentence to an order that he serve 100% of his sentence because of the nature of the crime. An earlier amendment to that judgment gave him appropriate jail time credit (signed March 22, 1999) while the second amendment raised the required amount of service before release from 30% to 100% (Dep., P. 66-67) (See generally, Exhibits 4, 7, and 10).

Ms. Lee did not know why the DAG would amend judgments in 1998 (sic 1999) but not in 2005 when a request to modify judgment was sent to General Estes to require lifetime supervision because of the nature of Releford's crimes (Dep., P. 67).

To the best of Ms. Lee's knowledge, she does not know why there was no internal policy or procedure at TDOC for following up on an un-responded-to request to a DAG for an amendment to an earlier judgment (Dep., P. 68). Ms. Lee testified that there was no such procedure, and that they "just had to more or less keep calling for Amended Judgments" (Dep., P. 69). However, there was not a formalized procedure for follow-up. *Id.* If the computer "kicked out" an indication that the sentencing document was illegal or incomplete, the policy of TDOC was to attempt to obtain a corrected order (Dep., P. 71).

A policy is a written procedure at TDOC while an unwritten procedure is merely an understanding of the way things had to be done in order to get an offender's time properly calculated (Dep., P. 71-72). In 1998, TDOC's computer system was not configured so that it would "kick ... out" judgment orders to be amended to include lifetime supervision (Dep., P. 75). Ms. Lee testified that an individual on community supervision would be monitored by the

Board of Parole (Dep., P. 79). Further, she does not believe that Releford's file was ever "flagged" to indicate that he was the subject of lifetime supervision.

Deposition of Derrick Scofield, Commissioner of the Tennessee Department of Correction.

The deposition of Derrick Scofield was introduced as Exhibit 6.⁹

Commissioner Scofield's deposition for proof was taken on September 29, 2015. He has been head of the Tennessee Department of Correction (TDOC) since January 15, 2011 (Dep., P. 5). In that position, he supervises 6,500 employees and has custody of some 20,000-21,000 institutionalized inmates. Additionally, TDOC supervises another 80,000 former prisoners who are on probation or parole (Dep., P. 7).

Prior to 2012 or 2013, there existed in Tennessee a separate Board of Probation and Parole. However, in 2012 or 2013 Commissioner Scofield testified his Department assumed responsibility for supervision of probationers and parolees while the Board of Pardon retained responsibility for reviewing the granting of parole and clemency matters (Dep., P. 8). Since that time, the Board of Parole has not had responsibility for prisoners on probation. *Id.* Commissioner Scofield testified that legal jurisdiction over prisoners remains with the sentencing court (Dep., P. 9). Supervision of prisoners on probation or parole is with TDOC (Dep., P. 8).

In May of 2013, Commissioner Scofield received a letter from Chattanooga State Representative Gerald McCormick inquiring into the circumstances of Terry Lee Releford's release from TDOC custody. Following receipt of that letter, one of Commissioner Scofield's deputies investigated the facts surrounding Releford's release and eventually determined that an employee named Candace Whisman could provide details regarding that matter. The results of a departmental investigation were that the Department "did what we were supposed to do" (Dep.,

⁹ References to Commissioner Scofield's deposition testimony will be to Dep., P. __

P. 12-13). Commissioner Scofield testified that if his department became aware that a prisoner was supposed to be on community supervision for life and the paperwork was not indicative of that, officials would contact the District Attorney General in charge of the prosecution about the omission (Dep., P. 13).

According to TDOC's investigation of Releford's release, Commissioner Scofield testified that he should have been supervised for life (Dep., P. 14-15).

Commissioner Scofield testified that as of July 1, 2012, effective January 1, 2013, the responsibility for supervision of released offenders "transferred to the Department of Corrections (sic)" (Dep., P. 17).

Application of Tenn. Code Ann. § 39-13-524 mandates lifetime supervision and "...conditions of community supervision ... necessary to protect the public from the person committing a new sex offense" and requires an evaluation of the risk posed by the prisoner and needs necessary in connection with his supervision in the community (Dep., P. 17-18).

In his responsive letter to Representative McCormick, Commissioner Scofield wrote that while in prison, Releford had a number of disciplinary infractions, and that TDOC had attempted to obtain a corrected judgment from the sentencing court reflective of the requirement of lifetime community supervision (Dep., P.19-20). The Commissioner testified that it was his understanding that TDOC had sent two letters to the prosecuting District Attorney General in an attempt to obtain a corrected judgment (Dep., P. 20). Once those letters were sent, Commissioner Scofield was not aware of any follow-up efforts by TDOC (Dep., P. 21). The Commissioner testified that he did not know why TDOC had done nothing further to obtain a corrected order (Dep., P. 21-22).

Commissioner Scofield also told Representative McCormick that Releford had refused

participation in any sort of mental health treatment programs while incarcerated (Dep., P. 22). The Commissioner also testified that at the time TDOC requested an Amended Order from the District Attorney General's Office, supervision of a prisoner upon release would have been with the Board of Probation and Parole (Dep., P. 23).

Commissioner Scofield testified that when Releford was released, TDOC was aware that an Amended Judgment had not been obtained (Dep., P. 23). He stated that in 2012, the Department did not have any policies or procedures in place addressing a situation in which an Amended Judgment had been requested but not received (Dep., P. 24).

Commissioner Scofield then addressed an email exchange dated February, 2012, between TDOC employees David Harris and Pamela Sims (Dep., P. 25). Commissioner Scofield agreed that TDOC was aware three months before Releford's release that community supervision requirements were not contained on the documents from the sentencing court (Dep., P. 26).

In 2012 the Board of Pardon and Parole was a separate entity from the Department of Correction (Dep., P. 27). That Board was not a cabinet level agency. *Id.*

Prior to his deposition, Commissioner Scofield was not aware of the intra-agency communication which took place 90 days before Releford was released (Dep., P. 30). He testified that TDOC is not "into the sentencing business" (Dep., P. 31), but he agreed that when it becomes aware of a deficient court order, it reaches out to District Attorney Generals in order to obtain amended documentation. *Id.* When questioned about the responsibility of TDOC to at least try to get an amended judgment, Scofield testified that statutorily it is not the responsibility of his department (Dep., P. 33). It was his testimony that it was not a "legal duty" of TDOC to obtain an amended order regarding Releford (Dep., P. 33-34).

He was then questioned about TDOC's responsibility if it undertakes a corrective action

but does not complete the effort (Dep., P. 34-35).

Claimant's counsel advised the Commissioner that other aspects of Releford's sentencing order were corrected earlier by Amended Judgments, and that in 2004 and 2005 letters were written by TDOC addressing the absence of a lifetime supervision requirement in Releford's 1998 sentencing documents (Dep., P. 35). Prior to his deposition, Commissioner Scofield had not seen these letters. *Id.* Commissioner Scofield testified that a corrected amended judgment was never received in response to the 2005 letter from TDOC to the Bradley County District Attorney General's Office (Dep., P. 36). Additionally, he went on to testify that even though 90 days before Releford's release, TDOC employees had noted the absence of the community supervision requirement in the judgment from the sentencing court, the State of Tennessee, through TDOC, did not bear responsibility or have a duty to go further in obtaining an amended order (Dep., P. 37). He explained that the Bradley County District Attorney General's office was notified at least twice before Releford's release of the deficiency, and accordingly, TDOC had performed its duty. That would also be true in light of the February 2012 intra-TDOC communication between Ms. Sims and Mr. Harris.

Commissioner Scofield stated that he did not have an opinion as to whether again in February, 2012, TDOC should have attempted to contact the Bradley County District Attorney General about Releford's release without the requirement of community supervision (Dep., P. 40).

Commissioner Scofield agreed that had Releford been under lifetime supervision the State would have had some responsibility to monitor him (Dep., P. 40). He also testified that had an amended judgment been obtained in Releford's case, it would have been for the Board to fashion the terms of his release. At that point he would have been under "parole supervision"

(Dep., P. 42-43). After his release, Releford would have been followed by a probation or parole officer (Dep., P. 43). That officer would have monitored Releford “to be sure he complied with the conditions” of his release (Dep., P. 44). Commissioner Scofield believes that the State met its responsibilities with regard to Ms. Hale even though the judgments were incorrect (Dep., P. 46).

In 2012, Pamela Sims, author of Exhibit 3 to his deposition, worked for either the Department of Corrections (sic) or the Board of Probation and Parole (Dep., P. 47). The Commissioner could not “define” which entity she worked for. *Id.*

Testimony of Vicki Hale, mother of Tammy H. Releford

Vicki Hale was the first live witness. The victim’s parents had been married for 44 years at the time of the trial (Tr. 61). Mrs. Hale testified that her daughter was 35 years old when she died (Tr. 62). Tammy graduated from high school in Hamilton County and had two children, one who is now 17 and a second who is 10 (Tr. 63). Mrs. Hale testified that her daughter had “several marriages and several relationships” (Tr. 64). The mother testified that her daughter began working when she was 16 years old and worked a great deal in the pizza industry. At the time of her death, she was in college training to be a teacher (Tr. 64-65).

When Tammy met Releford, she was living in her paternal grandmother’s home (Tr. 65). Although Mrs. Hale was not sure that Releford was living with her daughter, his truck was always in the driveway (Tr. 68). Tammy’s two daughters were living there at the time also. Mrs. Hale testified that her daughter was very protective of her daughters and in fact on one occasion “called the cops on [her]”. *Id.* That time Mrs. Hale told her daughter she was unable to keep the youngest child. Tammy then told her mother that she was going to leave the child with an individual who did not believe in medicine. This person was an ex-sister-in-law. Mrs. Hale testified that the child was running a fever at the time. Her daughter wanted the ex-sister-in-law

to care for the child until she returned from a double shift at work. This frightened Mrs. Hale, and she refused to take the young child to that person's home (Tr. 69). Mrs. Hale then locked herself in the child's bedroom and told her daughter that the baby was staying with her. Subsequently, Tammy called the police and they told Mrs. Hale that either she return the child to her daughter or they would arrest her (Tr. 69-70). Mrs. Hale testified that her daughter worked quite a bit and participated in everything her children were involved in at school (Tr. 71).

Mrs. Hale testified that her relationship with her daughter was "generally good". She stated that her husband had a better relationship with Tammy than did she (Tr. 71). Mrs. Hale also testified that her relationship with her daughter had become closer during the last several years. *Id.*

After her daughter married Releford, Tammy seemed to be happy and her youngest daughter called Releford "daddy" in light of the fact that she did not have a father figure in her life. Releford worked for a period of time in the plumbing business (Tr. 72).

After the marriage, at one point Tammy came to her mother and told her that Releford had previously been in legal trouble. Her mother inquired as to whether her granddaughters were safe, and Tammy assured her that they were (Tr. 72-73). Her daughter told her that she trusted Releford and believed everything he said. At the time this information was imparted by Tammy to her mother, she was pregnant with Releford's child (Tr. 76). In fact at the time of her death, she was nine months pregnant. *Id.* Mrs. Hale spoke with her daughter either the day of her murder or the previous day (Tr. 77). Tammy's delivery of Releford's child was scheduled to be induced. Mr. and Mrs. Hale were to return to Chattanooga from a cruise trip of four to five days before their daughter's labor was to be induced the following Thursday (Tr. 77-78).

Introduced as Exhibit 3 was a photograph of Releford, Claimant's daughter and her two

children made three months before Releford murdered her while they were on vacation in Florida (Tr. 78-79).

Mrs. Hale testified that her daughter seemed to believe that Releford was the sweetest man she had ever been with, and she was very happy (Tr. 79). Mrs. Hale testified that to her knowledge, Tammy felt safe with Releford. She testified that Releford's prior troubles with the law were viewed by her daughter as childhood indiscretions involving the pregnancy of a young woman. Her daughter seemed happier than she had ever been (Tr. 80).

It was Mrs. Hale's understanding that her daughter was strangled by Releford. He then hit her and consequently "we could not even recognize her" (Tr. 81). Mrs. Hale testified that if she had known the truth about Releford's background, she would have made sure he was out of their lives (Tr. 82). On cross-examination, Mrs. Hale testified that her daughter had dropped out of high school but had obtained a GED (Tr. 83). Mrs. Hale agreed that her daughter had had a number of relationships with men and that "... some of them did not end well". Mrs. Hale stated that when she first began noticing her daughter send text messages on a frequent basis to someone she later discovered was Releford, he was not living in her daughter's home. However, eventually they did move in together (Tr. 85).

Her daughter told her that she and Releford had gone to the courthouse to obtain a marriage license, and that as they were leaving they decided to go back in and find a preacher to marry them (Tr. 86). They married on the spur of the moment (Tr. 86-87). Mrs. Hale testified that she had cared for her daughter's children since the time they were born (Tr. 87). In the days prior to her murder, Mrs. Hale's daughter appeared to be happy and safe. Nothing appeared to be wrong with her relationship with Releford at that time (Tr. 89-90).

Perhaps only three months intervened between meeting Releford and her daughter's

marriage to him (Tr. 90).

Testimony of Kevin Walker

Mr. Walker was 45 years old at the time of trial and had grown up in Chattanooga. He subsequently played football at Florida State where he was on a full scholarship. Unfortunately, he suffered a career ending injury. Since then he has worked in the food service industry and prepared taxes for a living (Tr. 93). He and Tammy worked together, and she and the children would visit him in his home. At one point, their apartments were “back to back” (Tr. 95). They also participated together in a dart league. *Id.* Occasionally, she would drive him because he is visually disabled (Tr. 95-96).

Mr. Walker testified that Tammy was a “great mother” and always put her children first. She was cautious about who she would permit around her daughters. She would do background checks on individuals who came into her life since her children’s fathers caused her problems (Tr. 96). Tammy Hale also worked for Mr. Walker in his tax preparation business and as a pizza delivery driver (Tr. 96-97).

He became aware that Tammy had met Releford in 2012. Later, he became aware that Tammy was contacted by a woman she did not know after having posted a photograph on her Facebook page (Tr. 97). Tammy did not know who this person was and asked Mr. Walker to find out who she was and why she was contacting her. Eventually, the woman called Tammy and she turned out to be Mr. Releford’s daughter. Tammy was confused and did not believe the woman since she could not find any supporting information.

Tammy told Mr. Walker that Releford was “a great guy”, and that he treated her well. Eventually, Releford told Tammy that he did not want her working for Mr. Walker anymore because he believed it was improper for them to spend eight hours together because something

intimate might be going on. He became jealous (Tr. 100-101).

Mr. Walker assured the Commission that he did not have a romantic relationship with Tammy Releford (Tr. 101).

Mr. Walker testified that Tammy was “very finicky” about who was around her children and always ran background checks. Mr. Walker also testified that he had “Googled” Releford and did not find anything (Tr. 102). Additionally, Walker testified that Tammy Releford checked her husband’s background and found nothing. Mr. Walker stated that the fact that Tammy did not discover any information regarding her husband being on probation was important since for once she was actually happy in a relationship, and it made her anxious that something might disturb that mindset (Tr. 104). She believed Releford when he told her he was not on probation. *Id.*

Under questioning from the Commission, Mr. Walker stated that he did not check the TDOC website and that his search was confined to Google (Tr. 105). He testified that that was the sort of background check he and Tammy did on people who worked for them. *Id.* Mr. Walker testified that a big concern for Mrs. Releford was her children’s safety (Tr. 113). He testified regarding relationships Tammy had with a man named Eric and Tammy’s prior husband, Steve Nelson. Mr. Walker characterized Tammy’s breakup with Eric as “hard” (Tr. 116). He testified that Tammy married Mr. Nelson “a few months after” breaking up with Eric. Tammy had a difficult relationship with Mr. Nelson also (Tr. 117-118). After their breakup, Mr. Nelson began stalking Tammy at her place of employment (Tr. 118).

Eventually, Mr. Walker and Tammy began working together some four to five days per week, seven and one half hours per day (Tr. 119). In February of 2013, Tammy, at Releford’s request, came to Mr. Walker’s home and retrieved all of her belongings because her husband told

her that she had to leave (Tr. 120). Mr. Walker also testified that Releford would answer Tammy's phone every time he called her (Tr. 122).

Mr. Walker testified that in May of 2013, he received a number of random phone calls from an unknown number but it turned out to be Tammy (Tr. 124). He believes that it was the number at a commercial tax preparation firm where she was then working. *Id.*

Mr. Walker testified that prior to Tammy's relationship with Releford, he would generally see her children both days on weekends (Tr. 126). They called him "Shrek". *Id.*

Mr. Walker conceded that when he did a Google search on Releford, he did not know his first name and could not spell his last name (Tr. 128). He also agreed that he had never checked the Tennessee Sex Offender Registry using Releford's actual name (Tr. 129). Mr. Walker testified that he believed Tammy died in May 2013.

When Tammy received the phone call from the unknown individual regarding Releford, she told Mr. Walker that she was planning on leaving him when school was finished for the year (Tr. 130-131). Apparently Releford was serving as an assistant coach for Tammy's youngest child's soccer team. *Id.* There was a discussion about leaving Releford about two weeks before Tammy's death (Tr. 131). Mr. Walker also testified that Tammy did not share the information she obtained in the phone call from the stranger with her family. *Id.* Mr. Walker also stated that he advised Tammy to leave Releford following the call from his daughter (Tr. 132).

Testimony of Belinda Duncan

Ms. Duncan is Tammy's maternal aunt. Ms. Duncan testified she knew Tammy her entire life. According to her, her niece was an excellent mother and her children were the world to her. She does not believe that her niece would have had Terry Releford anywhere close to her children had she known about his history (Tr. 143). She was not aware of the relationship her

niece had with Releford until they had married, and she found out that Tammy was pregnant. She believes that initially their relationship was “perfect” and she had seen him interact with her niece and her children at ballgames. *Id.* Releford fooled her completely. *Id.*

Ms. Duncan testified that she knew nothing about Releford’s background until her niece was five or six months pregnant. Ms. Duncan stated that she did not know whether her niece knew about Releford’s past (Tr. 145). Just prior to her murder, since Tammy’s parents were out of town on a cruise, she stayed in close contact with her pregnant niece. She spoke with her at 5:30pm on the Saturday of or the day before the actual murder (Tr. 146). At that time, Tammy was ready to have the baby because she was uncomfortable. The last time Ms. Duncan saw her niece was at her own daughter’s home. Her daughter was giving Tammy “baby stuff” and she appeared to be extremely happy. *Id.* On the day of the actual murder, Ms. Duncan spoke with Tammy at 11am and 5:15pm. When Ms. Duncan’s sister could not contact her daughter, Ms. Duncan and her husband went to a point some two miles from Tammy’s. Her sister called and said it had been confirmed that Tammy was dead (Tr. 148). She also testified that Releford never answered calls directed to Tammy’s cell phone (Tr. 149).

She also testified that Tammy’s parents loved her and she loved them, and that her daughters were her world. *Id.* She does not believe that you could have asked for a better mother. *Id.*

Testimony of Danny Hale, father of Tammy Hale Releford

Danny Hale worked for a number of years for manufacturing companies in Chattanooga but is now retired (Tr. 160). Tammy began her work life in the pizza business. Her brother was an assistant manager at Papa John’s and got her a first job with that company. *Id.* Eventually, Tammy convinced her father to purchase a pizza business in Chattanooga which they opened in

December of 2004. However, that business closed in 2007 when Mr. Hale “ran out of money” (Tr. 161). She left the family’s pizza business when she and her brother began “growling at each other”. At that point, she had also had her first child. *Id.* Her oldest daughter’s father is a Mr. Streeter (Tr. 162).

Mr. Hale testified that his daughter was a very protective mother. He stated that he did not always approve of her choice in men. *Id.*

The first time he became aware that his daughter was involved with Terry Releford was when he saw him at his granddaughter’s ball tournament. This occurred sometime between April and June of 2012 (Tr. 163). He testified that his daughter and Releford appeared to get along well, and that he was “good with the kids”. He appeared to Mr. Hale to have a good work ethic and provided well for his daughter and the children. Mr. Hale saw nothing that would “throw up a flag” that there was some problem with him (Tr. 164-165).

At the time, Tammy was living in Mr. Hale’s mother’s home with her two daughters. Releford “moved in with [Tammy] quick”, but exactly when, Mr. Hale did not know (Tr. 165). At one point, Releford convinced everyone in the family to put a free iPhone application on their individual devices. This application was known as Life360. The application enables individuals to know where other people are at all times (Tr. 167).

Mr. Hale testified that his daughter felt safe with Releford after information regarding him appeared on the Life360 application. *Id.* This development occurred in late 2012 or early 2013. *Id.*

According to Mr. Hale, his daughter felt happier with Releford than she had been with her other friends and husbands (Tr. 169). As her pregnancy advanced, Releford would accompany her to doctors’ visits. He appeared to be happy since he was about to have a child. *Id.*

Mr. Hale did not know that Releford had spent 15 years in prison in connection with multiple accounts of aggravated rape until his daughter was murdered. *Id.* He knew nothing about Releford being on probation. *Id.*

After his daughter's death, Mr. Hale searched several internet sites in an attempt to learn more about Releford. Nothing appeared on those sites (Tr. 170).

He testified that if he had been aware of Releford's background, he would have gotten his daughter and granddaughters away from him. He believes his daughter would have gotten away from Releford if she had known the facts about his background. *Id.*

Mr. Hale first learned of his daughter's death when he received a phone call advising that there had been a murder of a pregnant woman in a home on Lovell Road (Tr. 171). He then contacted the Florida Highway Patrol, and they verified that there had been a murder at the Lovell Road address but could not provide a victim's name. However, a State Trooper met the Hales and escorted them to a freeway which is as far as he was permitted to go. The trooper said that he would call ahead to Georgia and see if they had someone who could escort someone through that state (Tr. 173).

When Mr. Hale arrived at Tammy's home, an officer would not permit him to enter the house and he was advised that his oldest granddaughter had been taken to a hospital and the younger girl to a friend's home (Tr. 174).

A next door neighbor at the address said that the older granddaughter came to his home at 7am "screaming and crying" and told him what had happened to her. The neighbor and his wife went into the home and took the younger child out the front door. His wife was a nurse and found Tammy face down in a bed and her body was already cold (Tr. 175).

Releford fled Chattanooga on Saturday morning but returned to Georgia, just outside

Chattanooga, on Monday morning to a motel where he was surrounded and then committed suicide by gunshot. *Id.*

Mr. Hale testified that he and his wife will miss their daughter and their daughter's children will miss not having a mother (Tr. 176).

On cross examination Mr. Hale testified that he lost \$200,000+ on his family pizza business. He said "yes" too many times to Tammy (Tr. 178).

Additionally, he helped his daughter financially when she needed a loan (Tr. 179). This was true even when she was living with Releford. Mr. Hale said that they did not always pay rent on the house.

Mr. Hale was not aware that his daughter and Releford were growing cannabis in the home (Tr. 180). Additionally, at some point in her life Tammy was in a hospital for mental health problems of which Mr. Hale was not aware until he received a call. *Id.* In fact, Tammy had a bipolar disorder of which he was unaware until advised of the problem by physicians (Tr. 181).

At his pre-trial deposition, Mr. Hale had stated that sometimes his daughter and Releford paid the rent but most of the time they did not. *Id.*

Tammy left home when she was 16 but from time to time she could not live on her own, and would return to her parent's home. Mr. Hale testified that his daughter "always had our place as a safe haven" (Tr. 183).

Tammy said nothing to her father regarding whether it would be alright for Releford to move into his mother's home with her (Tr. 185). Mr. Hale did not check Mr. Releford's background when he moved into the home. He and his wife thought their daughter had "found a pretty good one this time". *Id.*

In 1997, Tammy Hale married James Streeter after which she left home and decided to do things her own way (Tr. 186). She had a child with Streeter, and they remained together for six or seven years. Streeter began drinking and Tammy Hale got away from him. *Id.* They divorced.

Mr. Hale went on to testify that his daughter then married a man named Nelson by the end of the year and around the beginning of the ensuing year, they divorced. It was his understanding that the marriage involved “some tax thing that [Nelson] was trying to get around”. *Id.*

With regard to his daughter’s first husband, James Streeter, Mr. Hale testified that it took him “a good while to grow up and finally become a man” (Tr. 187). Mr. Hale was told that on the day of his daughter’s death, Streeter was too intoxicated to pick up his daughter Dava. *Id.* Mr. Hale stated that, prior to his daughter’s death, Streeter did not work much but after that, they had a talk and Mr. Hale told him that it was time to grow up and take care of his daughter. He went on to state that since that time, Streeter has done better and become a decent fellow. He went on to state that at one point Streeter had been willing to grant custody of Dava to him and his wife.

Tammy had also lived with an individual named Van Katz who Mr. Hale testified “was just about the definition of a bum” (Tr. 188). Tammy finally ended the relationship with Katz when he attempted to get her to register a truck in her name which was from Louisiana and she found out that he was in trouble (Tr. 188-189).

With regard to Tammy’s husband Steve Nelson, Mr. Hale testified that he had three children one of whom had a serious medical problem (Tr. 189).

Mr. Hale testified that when he put the app Releford had suggested on the phone, he was advised that the alert over Tammy’s address was there because Releford was charged with

statutory rape when he was a minor. Releford told her that the female involved had gotten pregnant and that her parents prosecuted but that there was no probation. They were never told how long he had served on that charge (Tr. 192-193). Mr. Hale went on to state that based on the explanation Releford gave to his daughter, he concluded that if in fact the charges had been serious, he would not have been permitted to be around children at all or would have been on “probation or something” (Tr. 194).

Mr. Hale agreed that when he found out that Releford was on the Sex Offender Registry, he did not call the TDOC, the police, or the Tennessee Bureau of Investigation. In fact, he did nothing further to investigate and “took [Releford] at what he said”. Further, since there was nothing Releford was required to do, he did not believe he was on any kind of probation. *Id.*

It was Mr. Hale’s opinion that his daughter should have been notified “if she was marrying someone like that”. *Id.*

Testimony of James T. Streeter, Tammy Hale’s former husband, and the father of her oldest daughter

Mr. Streeter works in the sign, graphics, and printing business in Chattanooga and has three children and another on the way.

His daughter Dava was almost 18 at the time of the trial (Tr. 201).

Mr. Streeter and Tammy Hale were married in June of 1997 and divorced in 2002. Mr. Streeter characterized his ex-wife as a good wife and mother with a fun spirit who had done a great deal of work with her oldest daughter Dava, who is gifted (Tr. 202). Streeter claimed that following the divorce, he and Tammy were still able to be friends and work together to raise their daughter.

Mr. Streeter testified that generally there were never any real problems with exercising

visitation privileges or modifying them (Tr. 203). Mr. Streeter was aware that his ex-wife developed relationships with other men after they divorced and tried not to interfere with inquiries that were too intrusive. He was aware that she had begun a relationship with Terry Releford (Tr. 204). He stated that his ex-wife appeared to have been “smitten” with Releford (Tr. 205). The first time he met Releford, the impression of him was favorable (Tr. 206). He was not clear on whether or not Releford was living from the start with his ex-wife but he did go on to state that “they got real close real fast” (Tr. 207). Nothing about Releford alarmed or concerned Streeter. *Id.*

Streeter was not concerned that Releford was living in the same house as his daughter. His daughter did not indicate that there was anything amiss in her home (Tr. 208-209). He knew that his ex-wife and her children had been on a vacation as a family with Releford (Tr. 209). Prior to his ex-wife’s death, Mr. Streeter received some information about Releford’s criminal background.

Mr. Streeter reiterated his position that his initial interaction with Releford raised no red flags (Tr. 215), and reiterated his observation that his ex-wife was happy in her relationship with him. *Id.* Mr. Streeter’s interactions with Releford led him to conclude that, he was “a decent guy” (Tr. 219).

Streeter testified that the man who bound and raped his daughter and beat his ex-wife beyond recognition was someone he had never met (Tr. 220).

Mr. Streeter’s opinion was that the day Tennessee “sanctioned [his ex-wife’s and Releford’s] marriage”, it knew he was in the home with his daughter and her half-sister (Tr. 222). Mr. Streeter went on to state that a couple of weeks prior to her death, Tammy’s state of mind was good (Tr. 226). Streeter continued to insist that neither his ex-wife nor his daughter

had expressed concerns about Releford. However he was perplexed as to why, if there were people who knew what kind of individual Releford was, his ex-wife and daughter would have to express concerns or ask questions about him (Tr. 230). He went on to state that if his ex-wife had been afraid she would have said so. *Id.*

Mr. Streeter believed that the basis for this lawsuit was that the State had measures which applied when an individual was released from incarceration that were not taken in this case.

Mr. Streeter went on to testify that both he and his ex-wife should have had “full disclosure” regarding Releford’s past crimes (Tr. 237). He did not know what measures the State of Tennessee took to notify the public of the location of sex offenders in their community. *Id.* He agreed that he had never checked the Sex Offender Registry (Tr. 238). Mr. Streeter believed that when Releford and his ex-wife went to obtain a marriage license, that was the point at which it would have been easier to notify “all parties” of his sex offender status (Tr. 240). Mr. Streeter testified that he is not an alcoholic (Tr. 244). He denied that he was too intoxicated on the day of Tammy’s murder to pick up Dava and Bailey. *Id.*

Mr. Streeter testified that the first person his ex-wife had a relationship had after their divorce was an Eric McClendon (Tr. 247). Actually the first person she had a relationship with after their divorce was a Lindsay Norton. *Id.*

Tammy married Mr. Norton (Tr. 248). When Steve Nelson married Tammy, he lived in the same home with her and Mr. Streeter’s daughter (Tr. 250). He did not observe anything of concern regarding Mr. Nelson (Tr. 251). Mr. Streeter testified that he knew Eric McClendon, and he also moved in with his daughter and Tammy. He did nothing to check Mr. McClendon out. Tammy never told Mr. Streeter that she was frightened of her eventual husband, Steve Nelson (Tr. 253). He had never been told that she had gone to a friend’s house and knocked on the door

while living with Nelson (Tr. 254). He also was aware that his ex-wife had had a relationship with an individual named Van Katz and he did not check Katz out. *Id.* He also testified that he had never observed any tattoos on Releford (Tr. 255).

Mr. Streeter stated that he did not have any particular concerns with any of the men his ex-wife had been involved with. *Id.* He agreed that he did not do anything to check Releford out (Tr. 256). He did not believe that it was necessary. *Id.* Mr. Streeter agreed that he had never put Mr. Releford's name in a Google search engine to check him out (Tr. 257). He testified that the State knew what Mr. Releford had been doing for the past 15 years. *Id.*

His ex-wife called Mr. Streeter and told him that Mr. Releford had a piece of information he wanted to share with only him (Tr. 259). Mr. Streeter went on to testify that his ex-wife relayed to him the information Mr. Releford wanted him to have. At that point, his ex-wife and Releford were married and the information he was given by his ex-wife did not cause him any alarm (Tr. 261).

Mr. Streeter did not know his ex-wife's friend Kevin Walker (Tr. 262). The conversation Tammy had with Mr. Streeter regarding Mr. Releford took place in October or November of 2012 or perhaps even December of that year (Tr. 264).

VII A Discussion of Basic Principles of Tort Law in Tennessee

Since this is a negligence case, the starting point of our analysis, should the allegations be analyzed under Tenn. Code Ann. § 9-8-307(a)(1)(E), must acknowledge the five classic elements of such a claim to-wit: 1) a duty of care owed by the Defendant; 2) Conduct by the Defendant falling below that standard; 3) An injury or loss; 4) Cause in fact; and 5) Proximate or legal cause. *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 355 (Tenn. 2008).

“[T]he imposition of a legal duty reflects society's contemporary policies and social

requirements, [and] the concept of duty ‘is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection.’ ” *Biscan v. Brown*, 160 S.W.3d 462, 479 (Tenn. 2005) (quoting *Bradshaw v. Daniel*, 854 S.W.2d 865, 868 (Tenn. 1993), quoting W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 53 at 358 (5th ed.1984)). Determining whether a possible risk is unreasonable to the extent that it gives rise to a duty requires the Commission to balance the “foreseeable probability and gravity of harm posed by [a] defendant’s conduct” with “the burden upon defendant to engage in alternative conduct that would have prevented the harm.” *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995). In working through this balancing process, we can take into account, and possibly others, the following factors:

the foreseeable probability of the harm or injury occurring; the possible magnitude of the potential harm or injury; the importance or social value of the activity engaged in by defendant; the usefulness of the conduct to defendant; the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and the relative safety of alternative conduct. *McCall*, 913 S.W.2d at 153.

In *West v. East Tennessee Pioneer Oil Co.*, 172 S.W.3d 545 (Tenn. 2005), our Supreme Court said the following:

The duty owed to the plaintiffs by the defendant is in all cases that of reasonable care under all of the circumstances. *Doe v. Linder Const. Co.*, 845 S.W.2d 173, 177 (Tenn.1992). Whether the defendant owed the plaintiffs a duty of care is a question of law to be determined by the court. *Burroughs v. Magee*, 118 S.W.3d 323, 327 (Tenn.2003); *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89; *Coln*, 966 S.W.2d at 39.

If a defendant fails to exercise reasonable care under the circumstances, then he or she has breached his or her duty to the plaintiffs. The term reasonable care must be given meaning in relation to the circumstances. *Linder Const. Co.*, 845 S.W.2d at 178; *McCormick v. Waters*, 594 S.W.2d 385, 387 (Tenn.1980).

Reasonable care is to be determined by the risk entailed through probable dangers attending the particular situation and is to be commensurate with the risk of injury. *551 *Linder Const. Co.*, 845 S.W.2d at 178. Thus, legal duty has been defined as the legal obligation owed by a defendant to a plaintiff to conform to a reasonable person standard of care for the protection against unreasonable risks of harm. *Burroughs*, 118 S.W.3d at 329; *Staples*, 15 S.W.3d at 89; *McCall*, 913 S.W.2d at 153; *see also* Keeton, *supra*, § 53.

..... “The plaintiff must show that the injury was a reasonably foreseeable probability, not just a remote possibility, and that some action within the [defendant's] power more probably than not would have prevented the injury.” *Tedder v. Raskin*, 728 S.W.2d 343, 348 (Tenn.Ct.App.1987).

We employ a balancing approach to assess whether the risk to the plaintiff is unreasonable and thus gives rise to a duty to act with due care. *Burroughs*, 118 S.W.3d at 329; *Staples*, 15 S.W.3d at 89. This Court has held that a risk is unreasonable, “‘if the foreseeable probability and gravity of harm posed by defendant's conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm.’ ” *Burroughs*, 118 S.W.3d at 329 (quoting *McCall*, 913 S.W.2d at 153). *Id.* at 550-551.

Thus, a core issue in any negligence action is determining whether the Defendant has engaged in a sort of behavior which caused unreasonable danger to the Claimant. A determination as to whether the Defendant has exercised reasonable care to avoid such dangers must be made with regard to the circumstances in which the defendant operated. “Reasonable care is to be determined by the risk entailed through probable dangers attending the particular situation and is to be commensurate with the risk of injury.” *Usher v. Charles Blalock & Sons, Inc.*, 339 S.W.3d 45, 62 (Tenn. Ct. App. 2010) (quoting *West v. East Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 550 (Tenn. 2005). In turn, determining whether a defendant acted reasonably requires the Commission to also study whether the risk which caused the damages was foreseeable.

Then Judge Koch, in *Hodge v. State*, No.M2004-00137-COA-R3-CV, 2006 WL

36905 (Tenn. Ct. App.), discussed the legal concept of foreseeability. He wrote there:

Foreseeability is the test of negligence, ... because no person is expected to protect against harms from events that cannot be reasonably anticipated or that are so unlikely to occur that the risk, although recognizable, would commonly be disregarded. ... Thus, determining whether the State has exercised reasonable care under the circumstances Depends on the foreseeability of the risk involved.

A risk of injury is foreseeable if a reasonable person could foresee the probability that injury will occur. ... To recover in a negligence action, the plaintiff must show that the injury was a reasonably foreseeable probability, not just a remote possibility, and that the defendant could have taken some action to prevent the injury. ... Foreseeability does not require awareness of the precise manner in which an injury takes place, but rather a general awareness that injuries similar to those actually sustained could occur. *Id.* at *3 (internal citations omitted).

However, establishing that a defendant has breached a duty owed to claimants by not taking reasonable measures to avoid a foreseeable risk does not automatically ensure the success of a claim. Claimants must also prove that the acts of the defendant were the cause in fact and the legal or proximate cause of their injuries. In fact, our Supreme Court has held that "... no negligence claim can succeed unless the [claimant] can first prove that the defendant's conduct was the cause in fact of the [claimant's] loss." *Waste Management, Inc. of Tenn. v. South Central Bell Telephone*, 15 S.W.3d 425, 430 (Tenn. Ct. App. 1997). Further, although cause in fact and legal or proximate cause are "very different concepts," the two are inextricably intertwined in any negligence case. *Id.* "Causation in fact refers to the cause and effect relationship that must be established between the defendant's conduct and the plaintiff's loss before liability for that particular loss will be imposed." *Id.* The *Waste Management* court also observed that our "... courts have consistently recognized that conduct cannot be the cause in fact of an injury when the injury would have occurred even if the conduct had not taken place." *Id.*

In assessing whether cause in fact has been established, the fact finder must undertake "

... a common sense analysis of the facts that lay persons can undertake as competently as the most experienced judges.” *Waste Management*, 15 S.W.3d at 430. In making that determination, we have been directed to utilize the “but for” test articulated by Dean Prosser which provides as follows:

[t]he defendant's conduct is a cause in fact of the event if the event would not have occurred but for that conduct; conversely, the defendant's conduct is not a cause of the event, if the event would have occurred without it. *Id.* at 431 (citing W. Page Keeton, *Prosser and Keeton on the Law of Torts*, § 41, at 266 (5th ed.1984)). (Emphasis added).

Applying this test has proved difficult in situations where two or more independent causes produce an injury which one of them alone could not have produced. In that situation our courts have involved a second test- the “substantial factor” test -in resolving the cause in fact issue. That test, set out in the Restatement (Second) of Torts, states:

The actor's negligent conduct is a legal cause of harm to another if

(a) his conduct is a substantial factor in bringing about the harm, and

(b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in harm. *Id.* (citing Restatement (Second) of Torts § 431 (1965)).

This substantial factor test, according to the *Waste Management* court, has not been a “panacea for all causation in fact problems.” *Id.* Rather than supplanting the “but for” test in the cause in fact analysis, the “substantial factor” test utilizes the “but for” causation principle “as an essential part of the causation in fact analysis.” *Id.* Citing the Restatement (Second) of Torts § 432 (1965), the court in *Waste Management* stated that “except in circumstances where two independent causes produced an injury that neither of them could have produced alone ..., [an] actor’s negligent conduct is not a substantial factor in bringing about harm to another if the harm

would have been sustained even if the actor had not been negligent.” *Id.* at 421.¹⁰

Once the cause in fact requirement has been met, Claimants must then address the issue of legal or proximate cause. Whether a determination of legal or proximate cause has been established requires a policy determination as to what the boundaries for legal liability should be “using mixed considerations of logic, common sense, justice, policy, and precedent.” *Waste Management*, 15 S.W.3d at 430. A well-known three part test has evolved for identifying legal or proximate cause:

1. The tortfeasor’s conduct must have been a “substantial factor” in bringing about the harm being complained of;
2. There is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm;
3. The harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence. *See McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991).

It is possible in this case that considerations of comparative negligence and comparative fault may come into play. Under Tennessee’s system of modified comparative fault developed by and after the Supreme Court’s decision in *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992), the fault or negligence of the plaintiff in causing the event must be less than the fault of the defendant. A consideration here is the effect of any negligence on the part of Tammy Hale Releford which might diminish the recovery her father seeks in this case.

¹⁰ Apparently, according to the *Waste Management* court, while the substantial factor test may be used in the cause in fact analysis, it remains the predominant short hand test in the legal or proximate cause determination. When to use either analysis, according to the Supreme Court is “left to the trial courts who must select the legal principles most applicable to the facts of each particular case.” *Id.* at 432.

In *Eaton v. McClain*, 891 S.W.2d 587 (Tenn. 1994), the Supreme Court set out several considerations for the fact finder to consider in reaching its assessment of the percentages of comparative fault attributable to each party:

[T]he percentage of fault assigned to each party should be Dependent upon all the circumstances of the case, including such factors as: (1) the relative closeness of the causal relationship between the conduct of the defendant and the injury to the plaintiff; (2) the reasonableness of the party's conduct in confronting a risk, such as whether the party knew of the risk, or should have known of it; (3) the extent to which the defendant failed to reasonably utilize an existing opportunity to avoid the injury to the plaintiff; (4) the existence of a sudden emergency requiring a hasty decision; (5) the significance of what the party was attempting to accomplish by the conduct, such as an attempt to save another's life; and (6) the party's particular capacities, such as age, maturity, training, education, and so forth. *Id.* at 592.

In the context of a case where comparative fault/negligence considerations might come into play, the Western Section Court of Appeals said the following in *Herbert v. Brazeale*, 902 S.W.2d 933 (Tenn. Ct. App. 1995):

As this court reads *McIntyre*, it is clear that under the comparative fault system a defendant may be held liable only for his or her proportionate share of a judgment, and that the [fact finder] must assess the percentage of negligence of all parties potentially responsible for the injuries or damages involved. *Id.* at 941.

IX Decision

The actual circumstances of the death of Tammy Hale Releford, and her unborn child Olivia, are horrifying. The proof shows that Tammy was strangled and beaten to death by her husband, Terry Lee Releford. The Commission described Releford as a “monster” at trial. That observation was extremely charitable.

This claim is brought by Tammy’s father, Danny Hale, on behalf of her two surviving children. The proof is quite clear that the children are exceptional and are now being well cared

for by Tammy's ex-husband and her parents. There is however, disturbing proof in this record which compels the Commission to acknowledge that in certain respects, Tammy had a pronounced tendency to put herself in difficult and dangerous circumstances.

For example, she left home at age 16 and by the time of her death, had already been married four times. Additionally, she had relationships with other men which did not result in marriage. Too frequently, it seems, her male/female relationships eventually involved physical or mental abuse.

The proof also shows that on one occasion when Tammy's mother became concerned about a caregiver who was taking care of one of Tammy's children and expressed her displeasure to Tammy, she actually called law enforcement officers to retrieve the oldest child from Mrs. Hale and threatened to have her arrested.

The proof also shows that only a very few months after Releford was released from TDOC custody, Tammy went on a blind date with him and actually took him to her home that first evening. Quite possibly he took up permanent residence with Tammy that night or very shortly thereafter. Further, a little over two months later in August of 2012, Tammy married Releford at the courthouse in Chattanooga on the same day on which she and her future husband had initially gone there only to obtain a marriage license. The proof also reveals that Claimant had actually invested \$200,000+ in a pizza business which was operated by Tammy and her brother. However, eventually, Tammy had a dispute with her brother, Adam. She left the business which eventually failed causing an obvious financial blow to her father. Mr. Hale acknowledged at trial that perhaps at times he had been too generous and lenient with Tammy.

The proof also shows that at some point in late 2012 or early 2013, Tammy became aware that Releford had some sort of sexual offense conviction in his background, but she

accepted his explanation that he had impregnated a young girl as a teenager which resulted in a prosecution for statutory rape. Although the proof shows that Tammy was computer literate and owned a laptop, there is no indication that she accessed Tennessee's Sex Offender Registry in order to determine the circumstances of Releford's conviction and whether he was actually telling her the truth about what had taken place earlier in his life.

The original claim in this case was directed at the offices of the Bradley County DAG and Criminal Court. It alleged that the paperwork from Releford's guilty pleas in 1998 to very serious charges did not include language assigning Releford to lifetime community supervision in light of the nature of the crimes to which he pled guilty. It was this failure to include the requirements set out in Tenn. Code Ann. § 39-13-524 which formed the basis of Mr. Hale's original complaint.

However, when the Commission signed an Order on March 4, 2015, granting the State's Motion to Dismiss the claim as it related to those two entities based on long established principles of judicial and prosecutorial immunity, Claimant then apparently took to heart the observations made by the Commission in its Order that there might still be a viable cause of action in this case under Tenn. Code Ann. § 9-8-307(a)(1)(E). The thinking behind the Commission's observation in its Order was that perhaps the State might be liable if TDOC had released Releford without making sure the Judgments from the Bradley County Criminal Court were amended to reflect the lifetime supervision requirement of Tenn. Code Ann. § 39-13-524.¹¹

Taking his cue from the Commission's March Order, Mr. Hale then filed a Motion for Leave to Amend in which he sought to include in his original complaint new paragraphs 33-38 in

¹¹ The Commission also commented in its Order that when TDOC made some efforts to have the Judgments corrected between 1998 and 2012, it assumed a duty to make sure Releford's Judgments were corrected.

which he alleged negligence on the part of TDOC for the alleged failure just discussed. This motion was filed on September 24, 2014.

However, the Amended Complaint Mr. Hale eventually filed with the Commission on October 26, 2015, some nine days before the scheduled trial in this matter, was much more than an amendment to his original complaint. The Amended Complaint sets out in great detail claims against the State based on TDOC's alleged failure to obtain amended orders from the Bradley County Circuit Court which included language requiring lifetime community supervision under Tenn. Code Ann. § 39-13-524 before it released Releford in May of 2012, shortly before he met and married Tammy Hale.

That Amended Complaint alleges Commission jurisdiction under Tenn. Code Ann. § 9-8-307(a)(1)(E) which of course deals with situations in which Claimants assert negligent care, custody, or control of individuals by the State. In his Amended Complaint, Mr. Hale, seemingly relying on what the Commission had written in its Order Denying State's Motion to Dismiss of March 4, 2015, argued that TDOC was guilty of negligence since it had released Releford after he had fully served his entire 15 year sentence, knowing that the trial court Judgments against him were incomplete since they did not require lifetime community supervision because of the nature of the crimes for which he had been convicted; and secondly, by communicating with the trial court and the Bradley County DAG's office, TDOC had somehow assumed a duty to correct the trial court's omissions.

The variance between what Mr. Hale originally alleged and what is requested in his September, 2014, Motion for Leave to Amend and what was eventually filed with the Commission on October 26, 2015, is stark.

In short, Mr. Hale's original complaint, as filed, was directed at the office of a DAG and

a criminal court, whereas by the time this claim got to trial, Mr. Hale had shifted gears and sued the State because of alleged actions or inactions on the part of TDOC.

In *Barrett v. Chesney*, W. 2014-01921-COA-R9-CV, 2015 WL 5679922 (Tenn. Ct. App., 2015) Judge Armstrong wrote the following:

In *Hutchings*, Judge (now Justice) Kirby writing for this Court, draws a distinction between a filing of an amendment to a complaint and the filing of an amended complaint as those distinct actions bear on the question of venue. An ‘amended complaint’ complete in itself without adoption or reference to original supersedes and destroys the original complaint as a pleading while an ‘amendment’ to a complaint merely modifies the existing complaint, which remains before the trial court as modified. *Id.* at *5

Had the State not agreed, under questioning from the Commission on the day of trial, that it had had an opportunity to investigate the issues raised in Mr. Hale’s Amended Complaint during the discovery process, this case would have gone no further on November 4, 2015, since the Amended Complaint now before the Commission involves matters far different from what Mr. Hale alleged in his original complaint and in his Motion to Amend that same document.

In fact, in the original complaint, Mr. Hale made allegations which could be construed as absolving TDOC from any responsibility concerning his daughter’s death. For example in paragraph 9 of that document, Mr. Hale alleged that the failure of the Bradley County DAG to correct Releford’s sentencing orders meant that TDOC “... was not authorized to supervise [him] upon his release from prison ...”. Further, in paragraph 26, Mr. Hale alleged that TDOC had been “... prevented from performing its function due to the negligence of the Defendant”. Under those allegations, the negligent parties would have been the offices of the Bradley County DAG and Criminal Court and not TDOC.

These variations in what Claimant originally alleged and what he attempted to prove at trial, although clever, do seem to illustrate the difficulty Mr. Hale encountered in attempting to

fit this horrible fact pattern into a viable claim under the limited waiver of sovereign immunity found in the Tennessee Claims Commission Act. Nevertheless, at trial Claimant argued that Tenn. Code Ann. § 9-8-307(a)(1)(E), one of the subsections of a Code provision which defines our jurisdiction, provided the “statutory private right of action” required by Tenn. Code Ann. § 9-8-307(a)(1)(N) for this claim to proceed before us.

That position is not well taken.

The Commission should have dismissed this claim in its totality early on since clearly Mr. Hale’s case is undeniably based on an allegation that TDOC did not comply with an alleged duty to make sure that the community supervision requirements of Tenn. Code Ann. § 39-13-524 were included in Judgments resulting from Mr. Releford’s 1998 guilty pleas. Tenn. Code Ann. § 39-13-524 categorically does not provide for a “private right of action” against any governmental entity in the State of Tennessee which might allegedly have failed in its duty to ensure that community supervision language was included in the judgments levied against criminals convicted of certain crimes. Such language is simply not there, and thus there is simply no viable claim in this case against the State, via TDOC, because of the absence of lifetime supervision in Terry Releford’s sentencing documents.

This is important because as pointed out above, at page 5, the Tennessee Claims Commission Act is in derogation of the State’s common law immunity against suit and therefore must be strictly construed. Viewed in that fashion, it is clear that Mr. Hale’s case is built around Tenn. Code Ann. § 39-13-524 and given the fact that the General Assembly has not provided for a private cause of actions for the miss or non-application of that statute’s provisions, this claim is just not sustainable under the Act.

Therefore this claim must be **DISMISSED**.

However, assuming Mr. Hale is correct and that we could consider his claim under Tenn. Code Ann. § 9-8-307(a)(1)(E), we do not believe such a claim could ever be successful.

There are several reasons for that conclusion.

First, when Releford was released from prison on May 19, 2012, supervision and control of persons placed on community supervision was under the jurisdiction of the Tennessee Board of Probation and Parole, a governmental agency separate and apart from TDOC.

The Board of Probation and Parole was legislatively created in 1998 and went into effective operation on July 1, 1999. See Tennessee Blue Book 2011-2012, at pages 222 and 372. However, Tenn. Code Ann. § 39-13-524(d)(1) was amended by 2012 Pub. Acts, c. 727, §5, effective July 1, 2012, (with full implementation to be accomplished on or before January 1, 2013) to transfer supervision from the Board to TDOC.

Thus, when Releford was released by TDOC, responsibility for community supervision resided with the Board. In fact for perhaps the entire period Releford was incarcerated, the community supervision program was under the aegis of the Board and not TDOC.

Claimant has never made any allegations against the State based on anything the Board may or may not have done.

Secondly, there was a considerable amount of proof at trial that beginning perhaps as early as 2003 and 2005, TDOC personnel instituted correspondence with the presiding judge and the prosecuting DAG pointing out that language addressing the Tenn. Code Ann. § 39-13-524(d)(1) requirement was not present in Releford's sentencing Judgments. The proof shows further that there was no response from the judge which is not surprising since once the originally entered Judgments become final, the criminal court lost jurisdiction over the matter and could not, *sua sponte*, amend those orders. See *State v. Robinette*, No. E 2014-01688-CCA-

R3-CD, 2015 WL 45065 at * 2.

Why the DAG's office in Cleveland did not respond to the TDOC inquiries is unknown. The record shows that shortly after the guilty pleas were originally entered, at the request of TDOC record keeping personnel, the original Judgments were amended to reflect that Releford had to complete his entire 15 year sentence before he was eligible for release and to give him proper credit for days he was in jail prior to his guilty pleas.

But these were all record keeping functions on the part of TDOC carried out by an executive department component to assist the judicial branch in implementing a law, i.e. Tenn. Code Ann. § 39-13-524, as enacted by the General Assembly

However, by alerting the judicial system to an error made during its processes, TDOC in no fashion assumed a duty to Tammy and the Claimant here.

Article 2, Sections 1 and 2 of the Tennessee Constitution provide, *inter alia*, that “the legislative branch [has] the authority to make, order, and repeal [the laws], the executive ... to administer and enforce, and the judicial ... to interpret and apply”. *State v. McCoy*, 459 S.W. 3d. 1, 8 (Tenn. 2014) quoting *Underwood v. State*, 529 S.W. 2d. 45, 47 (Tenn. 1975) quoting *Richardson v. State*, 125 S.W. 664, 668 (1910). In this instance, TDOC performed its record keeping function, and it would have been up to the judicial system, through its prosecutorial branch, to attempt to amend Releford's sentencing Judgments though that would have been problematic, as pointed out by the State, in light of the Supreme Court's decision in *Ward v. State*, 315 S.W. 3d 461, 475-6 (Tenn. 2010).¹²

Although the Commission is convinced that this claim cannot go forward under our

¹² Of course as the court observed in *Sherwood*, “[t]he making and keeping of records of court proceedings requires the cooperative action of the judicial, the legislative, and the executive branches of government”. *Id.* at 47. Nevertheless, this does mandate the conclusion that it was within the power of TDOC to force the amendment of Releford's criminal judgments.

jurisdictional grant found in Tenn. Code Ann. § 9-8-307(a)(1)(E) involving alleged negligent care, custody, and control of a person and that Tenn. Code Ann. § 9-8-307(a)(1)(N) is clearly applicable in the context of the facts before us, for purposes of argument we will briefly consider the matter under subsection E.

At the outset of this decision, we discussed in some detail the five formal core requirements that must be proved by a claimant in any negligence case filed with us.

Here, the most important of those five would be showing that TDOC breached a duty owed to Tammy and that the breach was the proximate or legal cause of her death. As also discussed earlier, in order for us to find that an alleged duty to Ms. Hale – Releford was breached, we would have to find that Releford’s actions on May 21, 2013, were more than a remote possibility. The case law discussed above requires that Mr. Hale prove his daughter’s death was a reasonably foreseeable probability to TDOC. See *Tedder v. Raskin*, 728 S.W. 2d. 48 (Tenn. Ct. App. 1987), *McCall v. Wilder*, 913 S.W. 2d. 153 (Tenn. 1995).

In this case, even if we consider Mr. Hale’s allegations under subsection E, the proof regarding breach of duty falls far short of meeting that standard. For though Releford may have been released by TDOC in May of 2012 it was not required to be involved in his lifetime of community supervision since as discussed above, on his date of release, it was the Tennessee Board of Probation and Parole, and not TDOC, which bore responsibility for the requirements found in Tenn. Code Ann. § 39-13-524. Furthermore, it stretches credulity to argue that either TDOC or the Board of Probation and Parole could have reasonably foreseen that Tammy would meet Releford and take him to the home where she and her daughters lived the very same day they met; that she would marry that individual a little over two months later; and that she would remain in the home with him after having been told by Releford that he had an earlier conviction

for statutory rape; that a bright and computer literate individual such as Tammy would not check Releford's background further after having been advised by him of the statutory rape charge; and finally that TDOC could have foreseen there was a reasonable probability – not just a mere possibility – that he would brutally murder both Tammy and his unborn daughter. Although, as discussed, subsection E clearly does not apply here, if it did, it is difficult to accept that TDOC, as a mere record keeper at the time, could have reasonably foreseen that anything it did as a part of its administrative function would result in the grotesque events of May 19, 2013, much less cause them.

Of course, Terry Lee Releford's sentences from the Bradley County Criminal Court should have included the requirements set out in Tenn. Code Ann. § 39-13-524. However, the community supervision requirement found in that statute is directed toward preventing convicted sex offenders from "committing a new sex offense". Tragically, what was involved are dual murders and not sex offenses. Although Releford's earlier convictions did involve charges involving violence, the statute on which Mr. Hale bases his claim is directed at preventing the recurrence of sexually based offenses by those convicted previously of that sort of crime.

Thus under a subsection E analysis we do not believe, for the reasons just discussed, that Mr. Hale has proved by a preponderance of the evidence that the events of May 19, 2013, were a reasonably foreseeable probability to TDOC employees at the time it complied with Tenn. Code Ann. § 41-2-109(1) and released Releford from its custody after he completed his sentence day for day.

The same sort of foreseeability considerations are part and parcel for proving proximate of legal cause, or what Justice Koch has called the "...test of negligence...". See *Hodge v. State*, supra.

The three part test for establishing legal or proximate cause discussed in *McClennahan v. Cooley*, supra, at 775 includes a requirement that “the harm giving rise to [the] action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence”. *Id.* at 775. Although, obviously Releford’s conduct on May 19, 2013 was the overwhelming substantial factor in the deaths of both his wife and his daughter, we cannot conclude that TDOC’s alleged failure to have Mr. Releford’s 1998 judgments modified to include a lifetime community supervision provision (a power which theoretically resided only with the sentencing court on motion of the Bradley County district Attorney General. See *Ward v. State*, supra at page 18) would have led to the alarming events which obviously took place at the Releford’s residence. The many factors which concluded with the deaths of Tammy and her daughter are just too attenuated for us to conclude that TDOC’s actions – *vis-à-vis* Releford – were a substantial factor in their deaths.

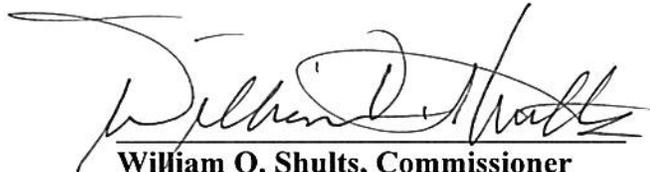
Finally, earlier in this decision we discussed briefly the concept of comparative negligence. Had this case gone to trial under subsection E, certainly Tammy Releford’s own actions as detailed earlier might well have warranted a significant assignment of fault to her.

X Conclusion

This claim is properly considered only under Tenn. Code Ann. § 9-8-307(a)(1)(N) and there is no private right of action provided for in Tenn. Code Ann. § 39-13-524. Since there is not a private right of action in that Code provision, the Commission does not have jurisdiction of this claim, and therefore it must be **DISMISSED**. Assuming *arguendo* that the claim could be considered under Tenn. Code Ann. § 9-8-307(a)(1)(E), the proof offered does not establish by a preponderance of the evidence that TDOC breached any duty it arguably owed Tammy or that such a breach was the legal cause of her death.

In closing, the Commission observes that Tammy Lee Releford's death was a monumental tragedy for her parents and her children. No one could argue whatsoever with that proposition. That goes without saying. However, under the limited waiver of sovereign immunity which the General Assembly has embodied in the Tennessee Claims Commission Act, we simply cannot make an award in this case and it must be and is **DISMISSED**.

Entered the 28th day of December, 2015.



William O. Shults, Commissioner
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CERTIFICATE

I certify that a true and exact copy of the foregoing Order has been transmitted to the following:

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On this the 30th day of December, 2015.

Paula Merrifield
Paula Merrifield, Clerk of the Commission