

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

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| STACY JACOBSON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 22-0662-I |
| |) | |
| TENNESSEE DEPARTMENT OF |) | |
| CHILDREN’S SERVICES, |) | |
| |) | |
| Respondent. |) | |

**ORDER ON PLAINTIFF’S MOTION TO CONFIRM
RIGHT TO FILE AMENDED COMPLAINT, OR, IN THE
ALTERNATIVE, FOR LEAVE TO FILE AMENDED COMPLAINT**

This matter came before the Court on October 8, 2024, on Petitioner Stacy Jacobson’s *Motion to Confirm Right to File Amended Complaint or, in the Alternative, for Leave to Amend Complaint*, under Tennessee Rule of Civil Procedure 15.01. This case is on remand from the Tennessee Court of Appeals. Two days before a scheduled status conference to discuss the proceedings on remand, Petitioner filed a purported “Amended Complaint.” She now moves to “confirm” her ability to amend her complaint “as of right” or, alternatively, for leave to file the amended complaint under Rule 15.01. Respondent Tennessee Department of Children Services (“DCS”) objects to the amended complaint because as going beyond the scope of the Court of Appeals’ instructions on remand.

I. BACKGROUND

Jacobson filed a *Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access* under the Tennessee Public Records Act (“TPRA”), Tenn. Code Ann. § 10-7-505(b). She sought access to DCS’ “Case File No. 2020-008” and judicial review of its denial of access, plus attorneys’ fees and costs under the TPRA. DCS Case File No. 2020-008 concerns a

child fatality. Jacobson acknowledges that DCS posted a redacted version of this file on its website as required by Tenn. Code Ann. § 37-5-107(c)(4)(C), but she seeks the unredacted file, as well as four prior investigative files involving the deceased child and other children in the same household. Jacobson claims that the four other files are part of the “full case file” in Case No. 2020-008 and must be disclosed under Tenn. Code Ann. § 37-5-107(c)(4)(C).

The Court ordered DCS to appear and show cause why the Petition should not be granted. Although the TPRA does not require a formal written response to a petition, DCS filed a written response in this case. DCS stated that some adult family members of the deceased child have been indicted in the child’s death and criminal prosecutions are ongoing, as confirmed by the affidavit of the prosecuting attorney. *See* Def.’s Response, Ex. 1, Beacham Aff. DCS also submitted to the Court for *in camera* review the records sought by Jacobson. The Court reviewed the unredacted file in Case No. 2020-008, and four investigative files from 2006, 2008, 2009, and 2015, after which the Court conducted a hearing on the Petition.

In its final order, the Court identified the issue presented as whether the unredacted version of DCS’s Case File No. 2020-008 and the four investigative files are excepted from disclosure under the TPRA. Relying on the Tennessee Supreme Court’s holding in *Tennessean v. Metro. Gov’t of Nashville & Davidson Cnty.*, the Court concluded that Tenn. R. Crim. P. 16 barred disclosure of the requested records during the pendency of the criminal proceedings against the deceased child’s family members and any collateral challenges to the results of those proceedings. 485 S.W.3d 857 (Tenn. 2016). In that case, the Supreme Court reasoned that the public’s right of access to certain governmental information “must yield to the need to protect the rights of defendants accused of crimes in criminal proceedings and the integrity of the criminal justice system.” *Id.* at 874.

Having concluded that the requested records were protected from disclosure under Tenn. R. Crim P. 16 and the holding in *Tennessean v. Metro Gov't*, this Court did not reach the secondary issue of whether, absent the application of Tenn. R. Crim P. 16, the four investigative files, which included information about the deceased child's siblings, are part of Case No. 2020-008's "full case file" under Tenn. Code Ann. § 37-5-107(c)(4).

Jacobson appealed, and the Court of Appeals vacated this Court's decision. *Jacobson v. Tenn. Dep't of Children Servs.*, M2022-01610-COA-R3-CV, 2024 WL 982663 (Tenn. Ct. App. Mar. 7, 2024). The Court of Appeals agreed with this Court's ruling that, "to the extent the TPRA applies, Case File No. 2020-008 is protected from disclosure under the state law exception to the TPRA, specifically Rule 16," and the Tennessee Supreme Court's ruling in *Tennessean v. Metro Gov't* is "controlling, at least as it applies to Ms. Jacobson's TPRA claims." 2024 WL 982663, at *5-6. The Court of Appeals further found that the statute governing the confidentiality of DCS records, Tenn. Code Ann. § 37-5-107, was not at issue in *Tennessean*, and this Court failed to consider whether it applies to the requested records and, if so, to what extent. *Id.* Specifically, the Court of Appeals held:

[T]he trial court did not conduct a thorough analysis of the applicability of Tennessee Code Annotated § 37-5-107(c)(4) to the facts of this case. Accordingly, we find it appropriate to remand the issue presented to the trial court for further consideration in the context of Tennessee Code Annotated § 37-5-107(c)(4).

Therefore, we vacate the trial court's decision denying [Petitioner's] application to access the DCS records at issue and remand for further proceedings consistent with this opinion.

Id. at *8. The Court of Appeals further identified additional "remaining issues" on remand:

whether DCS was required to disclose its case files regarding the four previous investigations and whether Ms. Jacobson is entitled to recover her attorney's fees incurred in the trial court. We have determined these issues may be impacted by the trial court's decision following remand. Accordingly, we

vacate the trial court's rulings regarding these issues and remand them to the trial court for further consideration.

Id. The Court of Appeals denied Petitioner's request to recover her attorney's fees on appeal, and assessed the costs equally against the Petitioner and DCS. *Id.*

On remand, this Court set a status conference to discuss scheduling further proceedings. Two day before the status conference, and without leave of court or DCS' consent, Jacobson filed an amended complaint. The amended complaint removed Jacobson's claim for judicial review under the TPRA and added a new claim for declaratory and injunctive relief under Tenn. Code Ann. § 37-5-107(c)(4)(C) and § 1-3-121, seeking "to enforce her right of access to the full case files of child abuse or neglect fatality investigations maintained" by DCS. *See* Amended Compl., filed Aug. 7, 2024. At the status conference, DCS objected to the amendment. The parties agreed to a briefing schedule to address Jacobson's purported amendment before scheduling further proceedings on remand. Jacobson then filed her motion to confirm that she may amend her complaint as of right or, alternatively, by leave of Court under Rule 15.01. DCS opposes the motion.

III. ANALYSIS

Rule 15.01 provides that a "party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within 15 days after it is served. Otherwise, a party may amend the party's pleading only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires." Tenn. R. Civ. P. 15.01. In deciding whether to grant leave to amend, trial courts are to consider (i) the movant's undue delay in filing, (ii) lack of notice to the opposing party, (iii) bad faith of the moving party, (iv) repeated failure to cure deficiencies, (v) undue

prejudice to the opposing party, and (vi) futility of the amendment. *Merriman v. Smith*, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979). If the trial court denies the motion to amend, it must give a reasoned explanation for its action. *Henderson v. Bush Bros. & Co.*, 868 S.W.2d 236, 238 (Tenn. 1993).

The Court first addresses whether Jacobson may file an amended complaint “as a matter of course” under Rule 15.01. Jacobson argues that she can because DCS’ response to her original petition was not a “responsive pleading” for purposes of Rule 15.01. DCS did not respond to this argument.

Under the TPRA, a respondent may, but is not required, to file a “formal written response” to a petition for access to public records and for judicial review of the respondent’s denial of access. Tenn. Code Ann. § 10-7-505(b). The TPRA statute goes on to state that “the generally applicable period of filing such a response shall not apply in the interest of expeditious hearings” on the TPRA petition. In other words, the TPRA dispenses with the requirement of a responsive pleading, but allows such a response. Thus, the Court concludes that Jacobson may not file an amended pleading “as a matter of course” where, as here, the TPRA permits and DCS elected to file a written response to Jacobson’s TPRA petition. Jacobson must obtain either DCS’ consent or leave of court. DCS does not consent, requiring Jacobson to obtain leave of court.

In seeking the Court’s leave to amend, in the alternative, Jacobson states her amended complaint is meant “to tailor [her] operative pleadings to the issues remaining [on remand] and to add a claim for declaratory and injunctive relief” to prospectively address DCS’ “future releases of closed child abuse or neglect fatality investigative files. *See* Amend. Complt. (filed Sept. 11, 2024). DCS responds that the amended complaint exceeds the scope of the Court of Appeals remand, and the motion should be denied.

On remand, a trial court must act according to remand instructions given by the appellate court. *See Raleigh Commons, Inc. v. SWH, LLC*, 580 S.W.3d 121, 129 (Tenn. Ct. App. 2018). “[A] trial court on remand generally lacks the power to enter any other judgment, or consider or determine any other issue, that is not included in the direction for entry of judgment made by the appellate court. . . . Any proceedings on remand which are contrary to the directions contained in the mandate from the appellate court may be considered null and void.” *Id.* (quoting 5 Am. Jur. *Appellate Review* § 791). Trial courts’ failure to follow higher courts’ directives on remand would render the court system “chaotic in its operation and unstable and inconsistent in its decision[s].” *Id.* at 129-30 (quoting *Silvey v. Silvey*, E2003-00586-COA-R3-CV, 2004 WL 5008481, at *3 (Tenn. Ct. App. Mar. 16, 2004)).

This case was decided on the issues presented by Jacobson’s petition seeking judicial review of DCS’s denial of access to the redacted material in DCS’ Case No. 2020-008 and four investigative files under the TPRA and DCS statutes. The Court of Appeals reviewed the trial court’s order and issued its opinion vacating that decision and defining the issues to be considered on remand. Those issues include “the applicability of Tenn. Code Ann. § 37-5-107(c)(4) *to the facts of this case*,” whether the four investigative files are part of the “full” Case No. 2020-008 file, and whether Jacobson is entitled to her attorney’s fees under the TPRA. *Jacobson*, 2024 WL 982663, at *8 (emphasis added). The “facts of this case” are that Jacobson made a request for DCS’ records under the TPRA, and DCS denied that request asserting several exceptions to disclosure, including Tenn. R. Crim. P. 16. Jacobson’s amended complaint, however, deletes her request for judicial review of DCS’s denial of access to its records and purports to assert new, original claims for declaratory and injunction relief, including prospective injunctive relief as to DCS’s “future releases of closed child abuse or neglect fatality investigative files.”

The Court finds that the remand of this matter is limited to the issues specifically defined and as instructed by the Court of Appeals in its opinion. *See Raleigh Commons*, 580 S.W.3d at 129. While a remand does not necessarily preclude amendment of the pleadings on remand, the proposed amendment must be consistent with the remand directions. *See Bank of N.Y. Mellon v. Chamberlain*, 2022 WL 3026908, at *7-8 (Tenn. Ct. App. Aug. 1, 2022); *Freeman Indus., LLC v. Eastman Chem. Co.*, 227 S.W.3d 561 (Tenn. Ct. App. 2006). Here, the Court of Appeals' remand is not a general remand for further proceedings consistent with the appellate decision. Instead, the Court of Appeals' decision instructed this Court as to the issues to be addressed. *Jacobson*, 2024 WL 982663, at *5-6.

The Court has reviewed the purported amended complaint, and respectfully denies Jacobson's request for leave to amend. This case was filed seeking judicial review of the denial of a TPRA request. The Court decided that issue. That was the issue was presented and decided on appeal, and remanded for further consideration of Jacobson's TPRA request and DCS's denial of that request in the context of the applicability of § 37-5-107(c)(4) to the facts of this case. Jacobson's proposed amended complaint is recast as an original "Amended Complaint" seeking declaratory, injunctive, and prospective relief, which are separate and distinct remedies from the relief sought under the TPRA, and exceeds the scope of the Court of Appeals' remand.

IV. CONCLUSION

The Court concludes that Jacobson's proposed amended complaint exceeds the scope of the Court of Appeals' instructions on remand and, therefore, respectfully DENIES Petitioner's *Motion to Confirm Right to File Amended Complaint or, in the Alternative, for Leave to Amend Complaint*.

The Court directs the parties to contact the Part I Calendar Clerk, Ms. Julie Spencer, at juliespencer@jnsnashville.com, to schedule a status conference with the Court to discuss and establish a scheduling order for further proceedings consistent with the Court of Appeals instructions on remand.

IT IS SO ORDERED.

s/ Patricia Head Moskal

PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class, postage pre-paid, to the parties or their counsel named below.

Paul R. McAdoo, Attorney at Law
The Reporters Committee for Freedom
of the Press
6688 Nolensville Road, Suite 108-20
Brentwood, TN 37027
pmcadoo@rcfp.org

Rachel G. Appelt, Deputy Attorney General
Ryan Gallagher, Assistant Attorney General
Kristen Bell, Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 202077
Nashville, TN 37202
Rachel.Appelt@ag.tn.gov
Ryan.Gallagher@ag.tn.gov
Kristen.Bell@ag.tn.gov

s/ Julie Spencer
Deputy Clerk & Master

11/12/24
Date