

Courtspeak: Rhetorical Effects of Our Grammatical Choices¹

Sentence Lifts

As law clerks and staff attorneys, we are all constant editors, both of our own writing and the writing of our colleagues. Even when not formally editing, we are probably reading with an editor's eye. To be effective, it can help to think of three editing levels: (1) correcting errors, (2) choosing between options based on audience and consistency, and (3) choosing between options based on rhetorical effect. Our task is more complicated than these levels would seem to indicate because we are generally considering all three levels simultaneously and, in editing others' work, may also be considering how to preserve the author's tone and voice. To add one more layer of sophistication, we must constantly preserve something I am calling "Courtspeak": the voice of the Court, often written in a style unique to a particular judge and yet necessarily consistent with the Court as a whole.

The following are sentences lifted from various documents that have crossed my desk as a judicial law clerk. I originally drafted a few of them, and in all cases, I have redacted or changed identifying features as needed to preserve confidentiality, protect innocent writers, and occasionally insert additional editing concerns. Take a look at each sentence as if your task were to edit it. What change or changes might you suggest? (It is okay to say none.) Would your answer be any different if you were proofreading your own draft instead of editing someone else's draft? Try keeping the three levels and Courtspeak considerations described above in mind as you decide. No citation errors have been purposefully included. The double-spacing below is intended to give you room to edit the sentences, take notes, and doodle.

1. Moreover, Mr. Stevens' counsel's readiness at trial to discuss the time periods relevant to statutory and common law adverse possession, as well as prescriptive easement, and to quote our Supreme Court's decision in *Cumulus*, 226 S.W.3d 366, demonstrate that counsel was aware of the potential defense and, in fact, engaged in a counter-defense without raising an objection.

¹ Title derived from Martha Kolln & Loretta Gray, *Rhetorical Grammar: Grammatical Choices, Rhetorical Effects*, 8th ed. (New York: Longman, 2016).

2. Each of these orders or pleadings bear certificates of service demonstrating that copies were sent to the defendant's address via the United States Postal Service.
3. The Tennessee Supreme Court has held that a Memphis food-service employee may not file a lawsuit against her employer for distributing tips in a way that violates Tennessee's tip statute, because the law does not allow a private party to file suit for a violation. *See Hardy v. Tournament Players Club at Southwind, Inc.*, 513 S.W.3d 427, 429-30 (Tenn. 2017).
4. The father has appealed, asserting, among other things, that the trial court erred by finding that the child had resided with the mother for 205 days per year during the time period of June 1, 2013, through May 31, 2017, because the child resided with the mother's stepmother on weekdays while attending high school.
5. Trespass, assault, and other torts were alleged.
6. Father testified, however, that no visitation was offered to him on weekends.
7. The defendant also filed a motion for summary judgment, averring that because the corporation never transferred the shares of capital stock to the plaintiff on the vesting date, the plaintiff's cause of action accrued in 1999, rendering the plaintiff's present action time-barred by the applicable statute of limitations.

8. Father testified that he did not visit the Child between February 20, 2018 and late November 2019 due to the visitation fee.
9. Although the plaintiff acknowledges that the defendant was not the decedent's treating physician, it is asserted that a special relationship arose because of the personal relationship between the defendant and the decedent.
10. In no event shall the youngest child's parenting time be effected.
11. The Child's bond with his foster family, coupled with Father's persistent housing and substance abuse issues and Father's incarceration at the time of trial, support the trial court's conclusion that termination of Father's parental rights was in the Child's best interest.
12. The court found that Mr. Jones did not exercise the power of attorney to make any changes to the ownership status of the checking account and that therefore, no presumption of undue influence was created as to that account.
13. The trial court noted that if Ms. Jones was seeking "redress for the underlying convictions," she could petition for habeas corpus relief.

14. The trial court in its memorandum opinion relied on the amended version of Tennessee Code Annotated § 35-1-113(g)(9)(A) which became effective on March 23, 2016. *See* 2016 Tenn. Pub. Acts, Ch. 636 § 5 (S.B. 2531).
15. Father contends that the trial court erred by modifying the permanent parenting plan (1) without making a specific finding that a material change in circumstance affecting the Child had occurred, (2) without properly weighing the statutory best interest factors contained in Tennessee Code Annotated § 36-6-106, and (3) without an assessment of the statutory limiting factors on co-parenting time provided in Tennessee Code Annotated § 36-4-406.
15. *See* Tenn. Code Ann. § 55-8-136 (2020) (requiring exercise of due care).
16. While the plaintiff was walking from her vehicle to the building, she tripped on a buckled area of the asphalt surface that was the same color as the rest of the parking lot and was severely injured.
17. This Court explained that a “jurisdictional pleading,” such as a complaint or notice of appeal, that was not properly signed pursuant to Tennessee Rule of Civil Procedure 11.01 was a nullity and could not serve to toll the expiration of the jurisdictional time limitation. *See Beard v. Branson*, No. M2014-01770-COA-R3-CV, 2016 WL 1705290, at *1 (Tenn. Ct. App. Apr. 26, 2016) (op. on reh’g).

18. During the first day of trial that was a Friday, the guardian *ad litem* announced in open court the Child's request that she be allowed to speak with the trial court judge in private.
19. Pursuant to Tennessee Rule of Appellate Procedure 13(b), and based on the jurisdictional question acknowledged by the appellees, this Court reviewed the record for this appeal after briefing was complete to determine whether subject matter jurisdiction existed to hear this appeal.
20. The officer exited her vehicle to approach the obviously-intoxicated defendant.
21. The trial court judge found that there was sufficient evidence to support the jury's verdict.