

DAVID CARL DUNCAN, )  
 )  
 Plaintiff/Appellant, )  
 )  
 VS. )  
 )  
 BRENDA M. PAGE, )  
 CLERK AND MASTER, )  
 )  
 Defendant/Appellee. )

Appeal No.  
01-A-01-9601-CV-00019

Sumner Circuit  
No. 14194-C

**FILED**

**May 22, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CIRCUIT COURT OF SUMNER COUNTY  
AT GALLATIN, TENNESSEE

THE HONORABLE THOMAS GOODALL, JUDGE

DAVID CARL DUNCAN, #99054  
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Attorneys for Defendant/Appellee

AFFIRMED AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:  
TODD, P.J., M.S.  
KOCH, J.

## **MEMORANDUM OPINION**

The plaintiff below sued the Clerk and Master of Sumner County under Tenn. Code Ann. § 26-1-207 for failing to issue an execution. The Circuit Court of Sumner County granted the defendant's motion to dismiss under Rule 12.02(6), Tenn. R. Civ. Proc.

There are allegations in the complaint from which one could infer that one execution was sought, that it was properly issued, and that the sheriff returned the writ along with the money seized pursuant to the writ. The complaint does not allege that the plaintiff presented any other process to the Clerk and Master in the proper form for filing. Apparently, the plaintiff is under the impression that the Clerk and Master is under a continuing duty to seek and find assets of the judgment debtor with which to satisfy plaintiff's judgment. Since that is not the law, the complaint fails to state a claim on which relief can be granted.

The judgment of the court below is affirmed and the cause is remanded to the Circuit Court of Sumner County for any further necessary proceedings. Tax the costs on appeal to the appellant.

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BEN H. CANTRELL, JUDGE

CONCUR:

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<sup>1</sup>Rule 10(b) of the Rules of the Court of Appeals reads as follows:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

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HENRY F. TODD, PRESIDING JUDGE  
MIDDLE SECTION

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WILLIAM C. KOCH, JR., JUDGE

