

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 17, 2023 Session

**FILED**  
06/07/2023  
Clerk of the  
Appellate Courts

**VONDELL RICHMOND v. CITY OF CLARKSVILLE, TENNESSEE**

**Appeal from the Circuit Court for Montgomery County  
No. CC-22-CV-485 Kathryn Wall Olita, Judge**

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**No. M2022-00974-COA-R3-CV**

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This case involves a declaratory judgment action to determine whether the plaintiff, then a member of the Clarksville City Council, was entitled to a declaration of rights concerning alleged communications between the Clarksville City Attorney and the local District Attorney General potentially pertaining to plaintiff. The trial court dismissed the action, concluding that the plaintiff was seeking an impermissible advisory opinion because there was no justiciable controversy. Having reviewed the record, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

Mark R. Olson, Clarksville, Tennessee, for the appellant, Vondell Robert Richmond.

Mark Nolan and Jeff T. Goodson, Clarksville, Tennessee, for the appellee, City of Clarksville, Tennessee.

**MEMORANDUM OPINION<sup>1</sup>**

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This 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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

## BACKGROUND AND PROCEDURAL HISTORY

Vondell Richmond was formerly a duly-elected member of the Clarksville City Council (“the City Council”).<sup>2</sup> According to the City of Clarksville’s (“the City”) official charter, a council member must reside in the specific ward he or she was elected to serve. While Mr. Richmond was serving as a council member, private citizens submitted written complaints to the City alleging that Mr. Richmond was in violation of this charter requirement. According to Mr. Richmond, when issues arose concerning the residency requirement, he consulted with the City Attorney, Lance Baker. Later, as a result of the aforementioned complaints, a proceeding was initiated against Mr. Richmond before the City’s Ethics Committee. According to Mr. Richmond, he was “informed that the factual allegations made against him related to the City issues [had] . . . been forwarded for investigation by law enforcement.”<sup>3</sup> Mr. Richmond then became concerned that the City Attorney had provided information to the local District Attorney General that Mr. Richmond had discussed with him concerning his residency-related issues, and Mr. Richmond believed that these discussions were covered by the attorney-client privilege. Mr. Richmond subsequently retained a private attorney who requested that the district attorney provide him with any information he may have received from the City Attorney regarding conversations pertaining to Mr. Richmond’s residency-related issues.

When he failed to receive a response to his request, Mr. Richmond filed a complaint for declaratory judgment. According to his complaint, Mr. Richmond sought a declaration of rights concerning “[i]nformation and [c]ommunication by and between [Mr. Richmond]” and the City Attorney and any communication between any employee of the City Attorney’s office and the district attorney’s office. Specifically, Mr. Richmond alleged that he was seeking a declaratory judgment “to determine if specific records and communication, **to the extent they exist**, are protected by attorney client privilege[.]” (emphasis added). On April 18, 2022, the City filed a motion to dismiss Mr. Richmond’s complaint, arguing that there was no justiciable controversy between the parties, among other things, and that Mr. Richmond’s complaint sought an impermissible advisory opinion from the trial court.

On June 23, 2022, the trial court entered an order granting the City’s motion to dismiss, holding in pertinent part as follows:

Taking all of the allegations of [Mr. Richmond’s] Complaint as true, the Court finds that [Mr. Richmond] is seeking an impermissible advisory

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<sup>2</sup> According to his brief, Mr. Richmond, as of the time of this appeal, is no longer a member of the City Council.

<sup>3</sup> Indeed, the record indicates that the Montgomery County Election Commission was the entity which forwarded a complaint concerning Mr. Richmond’s residence to the District Attorney’s Office for the 19th Judicial District.

opinion from this Court concerning the application of the attorney-client privilege to potential communications between the City of Clarksville Office of the City Attorney and the Office of the District Attorney for the 19th Judicial District. Because the communications described in [Mr. Richmond's] Complaint are unknown (indeed, [Mr. Richmond] appears to ask that this Court compel disclosure of the information potentially shared by and between the City of Clarksville and the Office of the District Attorney), this Court would be answering a theoretical question only. No justiciable controversy exists based upon the facts alleged in the Complaint.

This appeal followed.

### ISSUE PRESENTED

Mr. Richmond raises two issues for our review on appeal, which we have condensed and restated as follows:

Whether the trial court properly dismissed Mr. Richmond's declaratory judgment action.

### STANDARD OF REVIEW

The Supreme Court has previously asserted that:

The primary purpose of the Declaratory Judgment[s] Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations...." Tenn. Code Ann. § 29-14-113. Although the Act is "to be liberally construed and administered," *id.*[,] we have acknowledged that "certain limitations must be placed upon the operation of the statute." *Johnson City v. Caplan*, [] 253 S.W.2d 725, 726 (1952). For example, *a declaratory judgment action cannot be used by a court to decide a theoretical question*, *Miller v. Miller*, [] 261 S.W. 965, 972 (1924), render an advisory opinion which may help a party in another transaction, *Hodges v. Hamblen County*, [] 277 S.W. 901, 902 (1925), or "*allay fears as to what may occur in the future[.]*" *Super Flea Mkt. [v. Olsen]*, 677 S.W.2d [449,] 451 [(Tenn. 1984)]. Thus, in order to maintain an action for a declaratory judgment a justiciable controversy must exist. *Jared v. Fitzgerald*, [] 195 S.W.2d 1, 4 (1946). For a controversy to be justiciable, *a real question rather than a theoretical one must be presented* and a legally protectable interest must be at stake. *Cummings v. Beeler*, [] 223 S.W.2d 913, 915 (1949). *If the controversy depends upon a future or contingent event, or involves a theoretical or hypothetical state of facts, the controversy is not justiciable.* *Story v. Walker*, [] 404 S.W.2d 803, 804 (1966). If the rule were otherwise,

the “courts might well be projected into the limitless field of advisory opinions.” *Id.*

*West v. Schofield*, 460 S.W.3d 113, 129–30 (Tenn. 2015) (quoting *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000)).

## DISCUSSION

At the outset of our analysis, we note that, “in order to sustain an action for a declaratory judgment, a justiciable controversy must exist.” *UT Med. Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007) (citing *Jared v. Fitzgerald*, 195 S.W.2d 1, 4 (Tenn. 1946)). For a matter to be considered “justiciable” as it pertains to a declaratory judgment action, “a case must involve presently existing rights, live issues that are within a court’s jurisdiction, and parties who have a legally cognizable interest in the issues.” *Id.* (citing *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 193).

In the appeal before us, Mr. Richmond maintains that the trial court erred in dismissing his declaratory judgment action against the City. At the core of Mr. Richmond’s argument is that, contrary to the trial court’s order dismissing the case, there is in fact a justiciable controversy present in his action. Specifically, he argues that there are multiple issues here which may be adjudicated by a declaratory judgment.<sup>4</sup> We find Mr. Richmond’s argument unavailing and without merit. As noted earlier, a justiciable controversy is one where a real question rather than a theoretical one is presented and a legally protectable interest is at stake. Here, the rights with which Mr. Richmond is concerned are his rights to attorney-client privilege and his right to alleged information. Mr. Richmond argues that a declaratory judgment action is the appropriate vehicle to determine the aforementioned rights. We disagree. The declaration sought by Mr. Richmond in his declaratory judgment action is purely hypothetical. Indeed, as outlined earlier, Mr. Richmond states in his complaint that he is seeking a declaratory judgment “to determine if specific records and communication, **to the extent they exist**, are protected by attorney client privilege[.]” (emphasis added). As such, it does not appear that there is even an allegation in the complaint as to the *actual* existence of any communications at issue. Courts are not permitted to render an advisory opinion based on hypothetical facts.

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<sup>4</sup> In part, Mr. Richmond argues that, as a Clarksville Councilman, he had an attorney-client relationship with the City Attorney and that he is entitled to communications between the City Attorney and the district attorney’s office insofar as they pertain to him. Mr. Richmond argues that a declaratory judgment action is the appropriate remedy in determining the City Attorney’s duty to provide information subject to the Tennessee Rules of Professional Conduct. However, to the extent that Mr. Richmond relies on the Tennessee Rules of Professional Conduct and any purported violation thereof for the basis of his complaint, we note that these rules cannot provide the basis for a civil action. This Court has previously held that “[t]he Rules [of Professional Responsibility] are not designed to create a private cause of action for infractions of disciplinary rules; they are designed to establish a remedy solely disciplinary in nature.” *Akins v. Edmondson*, 207 S.W.3d 300, 307–08 (Tenn. Ct. App. 2006) (internal citations omitted).

*Colonial Pipeline Co.*, 263 S.W.3d 827, 838 (Tenn. 2008) (citing *Third Nat'l Bank v. Carver*, 218 S.W.2d 66, 69 (Tenn. 1948)). Here, the existence of any purported communications between the City Attorney and the district attorney is purely hypothetical and speculative, and therefore, cannot be the basis for a declaratory judgment.

In light of the foregoing, we find no error on the part of the trial court in dismissing Mr. Richmond's declaratory judgment action.

#### CONCLUSION

The trial court's order of dismissal is affirmed.

s/ Arnold B. Goldin  
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ARNOLD B. GOLDIN, JUDGE