

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
November 22, 2013 Session

**JACQUELINE WALL FARTHING, DICKSON COUNTY REGISTER OF  
DEEDS V. DICKSON COUNTY, TENNESSEE, BY AND THROUGH BOB  
RIAL, MAYOR FOR DICKSON COUNTY, TENNESSEE**

**Appeal from the Chancery Court for Dickson County  
No. 2012CV307 George C. Sexton, Chancellor**

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**No. M2013-00941-COA-R3-CV- Filed February 26, 2014**

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Register of Deeds filed petition pursuant to Tenn. Code Ann. § 8-20-101 *et seq.* seeking an increase in compensation for her three deputy clerks and seeking an award of her costs, including attorney's fees. The trial court denied Register the relief she sought, and she appealed. Based on the evidence presented and the language of the statute, we hold the trial court was required to determine the appropriate salary for Register's assistants. Register is entitled under the applicable statute to have her costs, including her attorney's fees, paid out of the fees collected by her office.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Alan Poindexter, Lebanon, Tennessee, for the appellant, Jacqueline Wall Farthing, Dickson County Register of Deeds.

Timothy Valton Potter, Dickson, Tennessee, for the appellee, Dickson County, Tennessee, by and through Bob Rial, Mayor for Dickson County, Tennessee.

**OPINION**

**I. BACKGROUND**

Jacqueline Wall Farthing is the Register of Deeds for Dickson County. Her office employs three deputy clerks: a Senior Chief Deputy, a Deputy Clerk III, and a Deputy Clerk II. When the Dickson County finance director was determining the county's budget for

2012-13, Ms. Farthing proposed a budget for her office that included an increase in her deputy clerks' salaries by 5% as well as an increase in her own salary by 1.6%. The amount Ms. Farthing was seeking to increase her deputies' salaries totaled \$3,367.65.<sup>1</sup> The finance director did not include the salary increases Ms. Farthing requested when he submitted the county budget to the budget committee for its review and approval. As a result, the 2012-13 budget that was ultimately approved for Dickson County did not include the increases Ms. Farthing sought.

Shortly after the county budget was approved, Ms. Farthing filed a petition in chancery court pursuant to Tennessee Code Annotated § 8-20-101 in which she asked the court to require Dickson County, by and through its mayor, Bob Rial, to approve salary increases for her deputy clerks.<sup>2</sup> Mayor Rial filed an answer asking the court to deny Ms. Farthing the relief she sought. The trial court held a hearing in February 2013.

During the hearing, Ms. Farthing testified that she is unable to run the Register of Deeds office by herself. She explained that she has three deputy clerks she relies on to perform the responsibilities of her office and that she was not asking the court for any additional assistants. Instead, she was only seeking an increase in the salaries Dickson County pays her three employees. Ms. Farthing testified that she has spoken with her employees about their salaries and that she is fearful her employees will leave for a higher paying position if they do not receive an increase in their salaries.

Ms. Farthing testified about how the salaries her employees receive compare with the salaries of comparable employees in other counties. Ms. Farthing explained that she has contacted individuals in the Register of Deeds offices in about ten different counties in Middle Tennessee, many of them neighboring counties of Dickson County. Ms. Farthing stated that the salaries her employees receive are lower than that paid to similarly positioned employees in every other county she researched other than Hickman County. Ms. Farthing testified that the salaries of the deputy clerks in Cheatham County served as a good comparison because Cheatham County and Dickson County are similar in size and have similar per capita incomes. According to Ms. Farthing's testimony and documentary evidence, the deputy clerks in Cheatham County were each paid between \$3,892 and \$10,952

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<sup>1</sup>Ms. Farthing was not seeking to increase each deputy's salary by this amount. The proposed \$3,367.65 represented the sum total of the proposed raises.

<sup>2</sup>In her petition, Ms. Farthing did not ask the court to increase her own salary; she was seeking only a raise for her employees.

more yearly than her three similarly positioned employees.<sup>3</sup>

The court then wrote the following in its Order:

[T]his Court concludes that it is not the role of this Court to determine if Petitioner and/or her employees “*deserve*” a pay increase as requested; such is not the issue. The Court finds that the Dickson County Commission did not act arbitrary or capricious in denying raises to Petitioner and/or her employees because the County Commission granted no raises in fiscal year 2012-2013, and the pay actually received by the Petitioner and her employees is within the range of pay for those positions in other comparable counties.

The court thus denied Ms. Farthing the relief she requested and dismissed her petition. The court also ruled that Ms. Farthing was responsible for the payment of her attorney’s fees, as well as the cost of the case, and Dickson County was responsible for the payment of its attorney’s fees.

On appeal, Ms. Farthing raises two issues. First, she contends the trial court erred in failing to make a determination of the salaries her deputy clerks should be paid. Second, she contends the trial court erred in failing to allow her attorney’s fees and other litigation expenses to be paid out of the fees collected by her office.

## II. STANDARD OF REVIEW

The issues in this case involve statutory construction as well as questions of fact. Our review of the trial court’s findings of fact is *de novo* with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Blair v. Brownson*, 197 S.W.3d 681, 684 (Tenn. 2006); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001); *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984). Statutory construction is a question of law that is reviewed *de novo* without any presumption of correctness. *Estate of French v. Stratford House*, 333 S.W.3d 546, 554 (Tenn. 2011); *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 506 (Tenn. 2004); *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn. 2000).

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<sup>3</sup>The Senior Chief Deputy of Cheatham County was paid \$34,312 per year, whereas the comparable deputy clerk in Dickson County was paid \$30,420 per year (difference of \$3,892). The Chief Deputy of Cheatham County was paid \$31,111, whereas the comparable deputy clerk in Dickson County received \$21,976.50 (difference of \$9,134.50). The Deputy II of Cheatham County was paid \$29,477, compared with the Deputy II of Dickson County, who was paid \$18,525 (difference of \$10,952).

The Tennessee Supreme Court has explained the principles for statutory interpretation thusly:

When dealing with statutory interpretation, well-defined precepts apply. *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008). Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). When a statute is ambiguous, however, we may refer to the broader statutory scheme, the history of the legislation, or other sources to discern its meaning. *Colonial Pipeline*, 263 S.W.3d at 836. Courts must presume that a legislative body was aware of its prior enactments and knew the state of the law at the time it passed the legislation. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

*Estate of French v. Stratford House*, 333 S.W.3d at 554.

### III. EMPLOYEES' COMPENSATION

The trial court held that the Dickson County Commission had not acted in an arbitrary or capricious manner in denying raises to the employees of the Register's office. However, that is not the relevant question to be answered in this type of proceeding. The arbitrary and capricious standard applies to challenges to decisions by local boards and commissions *via* common law writ of certiorari. The lawsuit before us did not challenge the Commission's budgetary decision.<sup>4</sup> Instead, it was brought pursuant to a specific statutorily-created procedure.

As our Supreme Court has stated, county and state budgetary matters are usually left to political branches and subdivisions, and the judiciary is brought into the "budgetary fray" only in limited circumstances. *Boarman v. Jaynes*, 109 S.W.3d 286, 291 (Tenn. 2003). However, as the Court explained, "with the enactment of Tennessee Code Annotated section

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<sup>4</sup>That procedure would not apply to budgetary decisions by the county legislative body, and we are unaware of any such challenges other than the type herein.

8-20-101, *et seq.*, our legislature conferred authority upon the courts to determine the number and compensation” of those identified in the statute. *Id.*

The Register of Deeds filed a petition pursuant to Tenn. Code Ann. § 8-20-101, which provides an avenue for some public employees, including registers of deeds, to apply to a judge or chancellor to set salaries for their employees. The statute provides:

(a) Where any one (1) of the clerks and masters of the chancery courts, the county clerks and the clerks of the probate, criminal, circuit and special courts, county trustees, registers of deeds, and sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person’s office by devoting such person’s entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person’s office in the following manner and under the following conditions, namely:

.....

(3) The clerks and masters of the chancery courts, county trustees, county clerks and clerks of the probate courts, and registers of deeds may make application to the chancellor, or to one (1) of the chancellors, if there be more than one (1), holding court in their county by sworn petition as above set forth, **showing the necessity for a deputy or deputies or assistants, the number required and the salary each should be paid.**

Tenn. Code § 8-20-101 (emphasis added).

Once a petition is filed, the court is directed to hold a hearing promptly, based upon which,

The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify.

Tenn. Code Ann. § 8-20-102.

In *Boarman v. Jaynes*, 109 S.W.3d 286, the petitioner was a clerk and master who, like Ms. Farthing, sought an increase in the wages of three employees who worked in her office. *Id.* at 287-88. Interpreting Tenn. Code Ann. § 8-20-101, the Supreme Court wrote:

The statutory scheme enacted by the general assembly for staffing and compensating the court clerk's office is clear. The office holder must demonstrate: (1) an inability to discharge the duties of a particular office by devoting his or her entire working time thereto; and, (2) the office holder must petition the court and show the necessity for assistants, the number of assistants required, and the salary each should be paid.

*Boarman*, 109 S.W.3d at 291.

The Supreme Court had granted review of the Court of Appeals decision in *Boarman* specifically to address the proper construction of Tenn. Code § 8-20-101, *et seq.* *Id.* at 289. The Court of Appeals had held that the petitioner was required to demonstrate an inability to maintain her office by “utilizing the efforts of her staff as constituted and compensated at the time of the filing of her complaint.” *Id.* at 293. The Supreme Court held that the statute did not require such a showing. *Id.* The Court held that the Court of Appeals had imposed an extra standard that did not exist in the statute and, therefore, could not be required. *Id.* at 290.

The *Boarman* court clarified that “[o]nce the necessity of employing assistants is established, the appropriate trial court is empowered to determine the number of assistants needed and their salaries.” *Id.* at 291. Once the number of assistants needed is determined, the court may set the salaries. Tenn. Code Ann. § 8-20-102. *See Chesteen v. Cates*, 1993 WL 327792, at \*1 (Tenn. Ct. App. Aug. 24, 1993) (trial court has jurisdiction under §8-20-101 *et seq.* to determine salary increases for deputy clerks).

Dickson County disagrees with the Supreme Court's interpretation of the statute in *Boarman*. It argues that the statute was clearly meant to apply only where one of the named public officials wants to hire additional employees, *i.e.*, increase the number of deputies. “It is the position of this Appellee that the statute was not intended to create a means of judicial review merely because the department head believes additional funding for her staff is deserved.” However, Dickson County does concede that *Boarman* is controlling law.

Not only is this court required to follow the holding of *Boarman*, we also disagree with the County's position. The statute clearly gives the trial court authority to set salaries. That authority is not limited to new positions. Additionally, the County misconstrues the effect of the statute. An action brought under Tenn. Code Ann. § 8-20-101 does not seek

judicial review of decisions by the county budgeting authority. Instead, it creates a method for certain public officials to obtain the staffing and funding they need in order to perform the duties assigned to them by statute.

Article VII of the Tennessee Constitution creates various State and County Officers, including the Register of Deeds. The Constitution provides that there shall be elected in each county a Register of Deeds, a Sheriff, a Trustee, a County Clerk, and an Assessor of Property, whose duties shall be established by the General Assembly. Tenn. Const., Art. VII, sec. 1. Statutes describe the office of Register of Deeds, including establishing bond requirements, duties of the office, fees to be charged, and recordkeeping. Tenn. Code Ann. § 8-13-101 *et seq.* A Register may be indicted for failing to “perform any official duties.” Tenn. Code Ann. § 8-13-110. Tennessee Code Annotated § 8-20-101, *et. seq.* exists so that constitutionally- created offices have a method for obtaining needed personnel and funding for such personnel when they are able to prove the need, independent of control by local county officials.

In *Boarman*, the petitioner offered evidence in support of her petition, including her testimony that two of her three employees were thinking of leaving their jobs because their salaries were below the prevailing wage for the nature and type of services they performed. 109 S.W.3d at 292. The *Boarman* petitioner also presented evidence of comparable salaries for county employees from ten different counties in Tennessee. *Id.* The chancellor in *Boarman* found the petitioner’s deputy clerks and assistants were being compensated at a rate below the prevailing salary for the work they were performing, and that it was “less than that reasonably necessary to retain competent personnel against the enticements of the private sector.” *Id.*

The Supreme Court in *Boarman* concluded that the evidence did not preponderate against the chancellor’s findings of fact and that those facts supported the trial court’s judgment providing for the *Boarman* petitioner’s deputy clerk positions and the compensation to be paid to each of them. *Id.*

In the case before us, the Register established, and there was no dispute, that the Register could not discharge the duties of her office by herself. Consequently, the trial court was then empowered to determine the number of assistants needed and their salaries. Again, the Register established, and there was no dispute, that three employees were required. It was then the trial court’s duty to determine the salary of those employees.

The trial court found that the Dickson County Commission did not act arbitrarily or capriciously when it denied granting raises to the Register’s employees, because the commission did not give anyone raises for the 2012-13 fiscal year and the salaries of Ms.

Farthing and her employees are within the range of pay in comparable counties.

The standard applied by the trial court was an incorrect one. The budget decision by the local government was not under review. Instead, based upon the showings by Ms. Farthing discussed above, the trial court's role was to determine the appropriate salary for each assistant to be paid, based on the evidence presented.<sup>5</sup>

Where the trial court does not make a finding of fact on a particular issue, we "must conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Dorning v. Bailey*, 223 S.W.3d 269, 272 (Tenn. Ct. App. 2007) (quoting *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999)). The trial court here did not make a finding of fact regarding the appropriate salaries Ms. Farthing's deputy clerks should be paid. Therefore, we must review the evidence introduced at trial to determine whether Ms. Farthing satisfied her burden of proof.

The only issue in dispute is the appropriate salary for the employees of the Register's Office. There was testimony that the employees had received no salary increase for four years. Ms. Farthing also testified that she is afraid her employees will leave for better paying positions if they do not receive a pay increase. She introduced testimony and documentary evidence that of ten different nearby and/or comparable counties in middle Tennessee, her employees receive the second lowest wages of those performing comparable jobs. Ms. Farthing also testified that Cheatham County was the most similar to Dickson County and that similar employees in Cheatham County receive higher salaries.

The increase Ms. Farthing initially sought from the budget commission was only 5% more than her employees currently receive, and totals just \$3,367.65 among the three of them. A raise in this amount would still leave them at a lower rate of pay than their counterparts in Cheatham County. In her petition, Ms. Farthing asked the court to increase her employees' wages to match the wages Cheatham County pays its deputy clerks.

Our review of the evidence leads us to conclude that Ms. Farthing carried her burden of proving her deputy clerks should receive an increased salary. The evidence was that Ms. Farthing initially sought an increase of \$3,367.65, and that she believed this modest increase

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<sup>5</sup>Dickson County contends the trial court made a finding of fact that the wages paid to Ms. Farthing's employees are within the range of pay for those positions in other comparable counties and that this finding justifies the trial court's denial of the relief Ms. Farthing sought. We disagree. We believe the court's statement that the wages were within the range of pay in comparable counties was made to justify its conclusion that the commission did not act in an arbitrary and capricious fashion.



would prevent her employees from seeking employment elsewhere. Although she sought a larger increase in her petition, the evidence does not support the higher wages. We reverse the trial court's judgment and award the Register of Deeds a 5% increase in her employees' salaries, retroactive to the beginning of Dickson County's 2012-13 fiscal year.

#### IV. COSTS

The second issue Ms. Farthing raises on appeal is that the trial court erred in denying her request for attorney's fees and other litigation costs. In her petition, Ms. Farthing sought an award of "her costs including reasonable attorney's fees." In its Order the trial court wrote, "Petitioner Jacqueline Wall Farthing shall be responsible for the payment of her own attorneys' fees incurred in this cause . . . ." The court also ordered the costs of the case to be taxed to Ms. Farthing. Ms. Farthing objects to the taxing of costs or fees to her personally.

In cases brought pursuant to Tennessee Code Annotated § 8-20-101 *et seq.*,

The cost of all cases shall be paid out of the fees of the office collected by such officers, and they and each of them shall be allowed a credit for the same in settlement with the county trustee.

Tenn. Code Ann. § 8-20-107.

As used in this statute, "costs" have been interpreted to include reasonable attorney's fees. *Jenkins v. Armstrong*, 211 S.W.2d 908, 910 (Tenn. Ct. App. 1947). The *Jenkins* court explained that an attorney's fee is "certainly a necessary expense or 'cost'; for none could contend that the petitioner could properly file and prosecute toward the relief sought, without the employment of legal assistance." *Id.* The *Jenkins* court further explained:

While the filing of such petition and the prosecution thereof toward the relief sought is certainly for the benefit of petitioner and her relief, it is also, when filed in a proper case, as contemplated by the statutes, for the benefit of the office and its proper administration. In this, as well as in the funds affected, the defendant County Judge, and his constituents, the people of the County, have a real and continuing interest.

*Id.*

In a more recent case, the Court of Appeals has affirmed the holding in *Jenkins*, noting that § 8-20-107 has been interpreted by other courts to include attorney's fees as part of the petitioning local official's "costs," as that term is used in the statute. *Patterson v. Wharton*, 2006 WL 1237266, at \*2 (Tenn. Ct. App. May 10, 2006). The *Patterson* court explained that when attorneys' fees are awarded, the fees are not charged to the county directly; instead, they become an expense payable from the funds that are available to the county official. *Id.* In *Grisham v. Hackett*, the Court of Appeals relied on § 8-20-107 to award attorney's fees incurred on appeal. 1987 WL 30164, at \*3 (Tenn. Ct. App. Dec. 30, 1987).

Ms. Farthing asks this Court to award her the costs, including her attorney's fees, that were incurred at the trial level as well as on appeal. We believe Ms. Farthing is entitled to have these costs and fees paid out of the fees collected by the Dickson County Register of Deeds, as set forth in the statute, and that she be allowed a credit for this amount in settlement with the Dickson County Trustee.

To the extent the trial court's judgment is inconsistent with our conclusion, we reverse the trial court's judgment denying Ms. Farthing fees and costs for the trial court proceedings, and remand this case to the trial court for a determination of the fees she incurred at trial and on appeal.

## V. CONCLUSION

The trial court's judgment is reversed. Ms. Farthing's three deputy clerks shall receive a 5% increase in their compensation, retroactive to the beginning of the fiscal year 2012-13. The case is remanded to the trial court to determine the amount of attorney's fees she incurred at trial and on appeal. The trial costs Ms. Farthing has incurred, and her attorney's fees at the trial and on appeal, shall be paid out of the fees collected by her office as set forth in Tenn. Code Ann. § 8-2-107. Costs of this appeal are taxed to Dickson County.

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PATRICIA J. COTTRELL, JUDGE