

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

|                               |   |               |
|-------------------------------|---|---------------|
| THE MAJOR NATHANIEL CHEAIRS   | ) |               |
| CAMP 2138 SONS OF CONFEDERATE | ) |               |
| VETERANS,                     | ) |               |
|                               | ) |               |
| Petitioner,                   | ) |               |
|                               | ) |               |
| v.                            | ) | No. 22-1611-I |
|                               | ) |               |
| THE TENNESSEE HISTORICAL      | ) |               |
| COMMISSION, and               | ) |               |
| WILLIAMSON COUNTY, TENNESSEE, | ) |               |
|                               | ) |               |
| Respondents.                  | ) |               |

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**MEMORANDUM AND FINAL ORDER  
ON PETITION FOR JUDICIAL REVIEW**

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This matter is before the Court on Petitioner The Major Nathaniel Cheairs Camp 2138 Sons of Confederate Veterans’ (“SCV”) *Petition for Judicial Review* of an agency decision under the Uniform Administrative Procedures Act ( “UAPA”), pursuant to Tenn. Code Ann. § 4-5-322.<sup>1</sup> SCV seeks reversal of Respondent The Tennessee Historical Commission’s (the “Commission”) decision that Williamson County’s official seal is not a “memorial” as defined by the Tennessee Heritage Protection Act of 2016 (the “Act”), Tenn. Code Ann. § 4-1-412, and that judicial estoppel was not a bar to Williamson County’s petition for a declaratory order to that effect after it initially petitioned for a waiver of the Act’s prohibitions against altering “memorials.”

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<sup>1</sup> SCV originally filed its Petition for Judicial Review in the Chancery Court for Maury County, Tennessee. Respondent moved to dismiss for improper venue. The Maury County Chancery Court transferred the case to Davidson County Chancery Court. *See* Nov. 18, 2022 Transfer Order.

## I. BACKGROUND AND ADMINISTRATIVE PROCEEDINGS

### A. The Williamson County Seal

In July 1968, Judge Fulton Greer, on behalf of Williamson County, accepted “a colorful painting showing the four most important elements in the County’s development which [had been] commissioned to be adopted as the official seal of the County.” Administrative Record (“A.R.”), Vol. I, p. 14. The seal’s upper left quadrant “depicts a Confederate Battle Flag and cannon”; the other quadrants depict a schoolhouse, a book in front of a window with light streaming in, and farm animals. *Id.*, pp. 15, 130. The upper left quadrant represents the November 30, 1864 Battle of Franklin, which occurred during the “historic conflict” known as the Civil War, or “The War Between the States,” under the Act, Tenn. Code Ann. § 4-1-412(b)(2). *Id.*, pp. 130-131.

In July 2020, the Williamson County Board of Commissioners passed a resolution to establish a task force to evaluate revision of Williamson County’s official seal. *Id.*, p. 46. The resolution recited that:

[O]ne of the four quadrants of the official seal of Williamson County adopted in 1968 bears a cannon and a Confederate flag commemorating the local history related to the War Between the States; and

\* \* \*

[T]he design on the Williamson County Seal meets the definition of a memorial commemorating a historic conflict under Tenn. Code Ann. § 4-1-412; and

[D]ue to such status, any change in the Seal would require approval of the Tennessee Historical Commission by 2/3 vote, after request by the relevant public entity, which in this case is Williamson County.

*Id.* The Task Force convened and later presented a report to the Board of Commissioners. *Id.*, pp. 20-48. The Board of Commissioners passed a resolution to “accept and adopt” the Task Force’s report. *Id.*, pp. 18-19. That resolution includes the same recitals found in the earlier resolution, and “authorizes the County Mayor to submit a request to modify the County Seal of Williamson County to the Tennessee Historical Commission. . . .” *Id.*

**B. Williamson County’s Petition for Waiver and SCV’s Petition to Intervene**

On October 12, 2020, Williamson County Mayor Rogers Anderson submitted a letter to the Commission, requesting a waiver under § 4-1-412(c) of the Act to allow “Williamson County Government to remove a memorial regarding a historic conflict from its official county seal.” *Id.*, p. 15. The Mayor’s letter states,

One quadrant of the Williamson County Seal (“the Seal”) contains a depiction of a cannon with the Confederate flag draped across it. This quadrant is reasonably construed to represent the Battle of Franklin that occurred during the War Between the States. As such this quadrant of the Seal would appear to represent an “historic event” that was part of an “historic conflict” within the meaning of Tenn. Code Ann. § 4-1-412. Pursuant to that statute, a waiver must be obtained before a memorial regarding an historic conflict may be removed or altered. Because the definition of “memorial” includes artworks, flags, and historic displays commemorating historic conflicts including the War Between the States, it is Williamson County’s understanding that a waiver must be approved before removing the image of the Confederate flag from the Seal.

*Id.* On November 5, 2020, Williamson County formally filed a “Petition for Wavier” with the Commission to allow it to alter the Seal under the Act. *Id.*, pp. 8-53.

In February 2021, SCV petitioned to intervene as of right in Williamson County’s waiver proceeding, contesting the requested waiver. *Id.*, p. 59-66. SCV claimed that the Seal’s four quadrants represent Williamson County’s “diversity,” and the upper left quadrant represents the County’s “rich history” and “the community’s Civil War losses and the history of the conflict within Williamson County.” *Id.*, pp. 61-62.

On August 20, 2021, the Commission issued a Notice of Hearing and filed it with the Administrative Procedures Division of the Office of the Secretary of State (“APD”), setting a “final hearing” on Williamson County’s Petition for Waiver on October 8, 2021. *Id.*, pp. 1-6. On the same day, SCV filed with the APD a notice of filing of its Petition to Intervene. *Id.*, pp. 56-66. On September 8, 2021, Administrative Judge Steve Darnell issued an order granting SCV’s

intervention, without objection by Williamson County, and also granted SCV’s “oral motion” to continue the hearing on the Petition for Waiver to February 18, 2022, over Williamson County’s objection. *Id.*, pp. 68-69.

**C. Williamson County’s Petition for Declaratory Order**

On November 8, 2021, Williamson County filed a *Petition for Declaratory Order*, pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.07,<sup>2</sup> using the same administrative case number as its Petition for Waiver. *Id.*, pp. 79-89. Williamson County sought a declaration that § 4-1-412 of the Act does not apply to the County’s official seal. It explained that the County originally had “availed itself” of the waiver process under § 4-1-412 “to obtain the needed certainty as to the authority of the [C]ounty to revise, replace or abandon the county seal . . . .” But, following the SCV’s intervention converting the waiver proceeding to a contested case under the UAPA, Williamson County requested a threshold determination by the Commission as to “whether this matter is appropriately before it – or whether Williamson County is free to alter its seal without necessity of a waiver.”

In its Petition for Declaratory Order, Williamson County asserted that its official seal is not a “memorial,” as defined by the Act, because even if it is a “statue, monument, memorial, bust,

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<sup>2</sup> Tenn. Comp. R. & Reg. 1360-04-01-.07 provides,

- (1) Any affected person may petition an agency for a declaratory order as to the validity or the applicability of a statute, rule, or order within the primary jurisdiction of the agency.
- (2) The petition seeking a declaratory order shall be filed in writing with the agency. Any challenge to the applicability of a statute or rule must comply with the procedural requirements for a declaratory order, and a challenge to the applicability of a statute or rule will not be entertained without compliance with these requirements.
- (3) In the event the agency convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, in which an administrative judge from the [APD] (whether sitting alone or with the agency) will be utilized, then the [APD] shall be notified immediately and shall be promptly provided with electronic copies of all pleadings, motions, objections, etc.

nameplate, historical marker, plaque, artwork, flag, historical display, school, street, bridge, or building,” it was not “erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization.” Williamson County instead asserted that the seal is a “statutory mechanism for the county government to display its authority and bind itself to legal documents,” under Tenn. Code Ann. § 5-8-202.<sup>3</sup> The County further asserted that “the county seal is representative of Williamson County, not the individual elements that comprise the seal.” *Id.*

#### **D. Administrative Proceedings Before the Commission**

On February 4, 2021, the parties jointly moved to continue the “final hearing,” citing their “extensive good faith negotiations” and need for additional time to finalize a settlement. *Id.*, pp. 90-91. Administrative Judge Darnell entered the parties’ agreed order, continuing the matter to April 15, 2022. *Id.*, pp. 95-96.

On March 15, 2022, following a pre-hearing conference, Administrative Judge Claudia Padfield, to whom the case was reassigned,<sup>4</sup> entered an order resetting the final hearing on April 22, 2022. *Id.*, pp. 98-103. The order recited the parties’ prior communications with Administrative Judge Darnell in November and December 2021 about the petition for declaratory order, and his determination “that the parties should file pre-hearing briefs to address the declaratory issue and to present the briefs to the Commission prior to the hearing such that the Commission could address the petition [for declaratory order] at the beginning of the hearing.” *Id.*, p. 99. The order directed

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<sup>3</sup> Tenn. Code Ann. § 5-8-202 provides that,

The finance committee, to carry out the will of the county legislative body, shall be vested with full power to formulate, make and sign a contract upon the terms and conditions specified, which contract shall be approved by the county mayor, and attested by the county clerk, with the county seal attached, on the part of the county, and shall be binding on the county.

<sup>4</sup> The parties state that scheduling issues necessitated reassignment to Administrative Judge Padfield.

the parties to be “prepared to present testimony, introduce evidence, and make arguments to the Commission at the outset of the hearing regarding the petition for declaratory order.” *Id.*, p. 100.

SCV argued in its written response to Williamson County’s Petition for Declaratory Order that the County is judicially estopped from seeking a declaratory order that the Act does not apply to its seal, because it took a “diametrically opposite legal position” in its Petition for Waiver that the seal is a “memorial” under the Act. *Id.*, pp. 104-116. SCV also argued that the “ceremonial” seal at issue is not the type of seal contemplated under Tenn. Code Ann. § 5-8-202, and the County affixes different seals to its official documents. *Id.*

Williamson County replied that judicial estoppel does not apply under these circumstances, because none of its prior statements that the seal is a “memorial” were made under oath, and the County is permitted to present alternative legal theories. *Id.*, pp. 117-122.

On April 8, 2022, the parties filed a joint motion to continue the hearing on the Petition for Waiver and a “joint statement” of their agreement that the Commission should convene a contested case only on the County’s Petition for Declaratory Order. *Id.*, pp. 123-125. The parties agreed that the Petition for Declaratory Order presented “an important jurisdictional question that is dispositive to the outcome of the Petition for Waiver.” *Id.* Administrative Judge Padfield issued an order continuing the hearing of the Petition for Waiver to June 17, 2022. *Id.*, pp. 127-129.

Before the hearing on the Petition for Declaratory Order, the parties filed “Jointly Stipulated Findings of Fact,” as follows:

1. The official Williamson County Seal (the “Seal”) was adopted in July 1968.
2. The Seal, designed by county historian Virginia Bowman and journalist James H. Armistead<sup>[s]</sup> was accepted by Judge Fulton Greer at the July 15, 1968 Quarterly Court Term.
3. The Seal consists of four quadrants. The upper left section depicts a Confederate Battle flag and cannon. The upper right quadrant shows a

schoolhouse. The lower left portrays a book open in front of a window with light streaming in. The lower right segment shows farm animals.

4. The upper left quadrant represents the largest battle that occurred in Williamson County at Franklin on November 30, 1864.
5. The Battle of Franklin was part of the events of the historic conflict known as the Civil War, also referred to as the “War Between the States” under T.C.A. § 4-1-412[(a)](2).
6. The upper left quadrant currently only contains the flag representing the Confederate forces, and a cannon.
7. Resolving the question of whether the Seal is a “memorial” as defined in the Tennessee Heritage Protection Act is an important question of law.
8. The Tennessee Historical Commission is the proper body to answer this question pursuant to T.C.A. § 4-5-223 which states “Any affected person may petition for a declaratory order as to the validity or applicability of a statute, rule, or order within the primary jurisdiction of the agency.”

*Id.*, pp. 130-131. Each party separately submitted proposed conclusions of law. *Id.*, pp. 133-134; 135-142.

On April 22, 2022, the Commission conducted a contested case hearing on the Petition for Declaratory Order, with Administrative Judge Padfield sitting with the Commission. A.R., Vol. II, Transcript. The parties presented opening statements and closing arguments, but called no witnesses and introduced no evidence, relying only on their stipulated facts. *Id.*, p. 10. Williamson County argued that even if the official seal is “artwork” or a “plaque,” it was not “dedicated in honor of” any particular historical event or conflict and so is not a “memorial” under the Act and the Act does not apply. In opposition to SCV’s judicial estoppel argument, Williamson County argued that none of its statements about the official seal in its Petition for Waiver—or for Declaratory Order—were made under oath. In any event, Williamson County argued its statements are legal conclusions to which the doctrine of judicial estoppel does not apply. Williamson County further argued that subject matter jurisdiction is not waivable, so it cannot be

estopped from raising issues that address the Commission’s jurisdiction. Williamson County reiterated that the official seal represents and is a symbol of the County as a whole, and does not honor any particular historical event or conflict and, therefore, is not a “memorial” under the Act. Williamson County submitted that if the Commission granted the Petition for Declaratory Order and declared the official seal is not a “memorial” under the Act, there would be no need to proceed with the Petition for Waiver.

SCV argued that the upper left quadrant represents the Battle of Franklin and the seal is “erected” on public property, making it a “memorial” under the Act. It further contended that the County Clerk certified as “true and accurate” the County Commission’s resolutions containing statements that the seal is a “memorial,” so judicial estoppel applies and bars the County from arguing to the contrary. SCV acknowledged that if the Commission denied Williamson County’s Petition for Declaratory Order and declared the official seal is a “memorial” under the Act, then the Petition for Waiver would move forward.

The Commission member asked counsel for the parties’ questions, after which Administrative Judge Padfield instructed the Commission regarding its role, the issue to be decided, and deliberations. One Commission member requested an instruction on judicial estoppel, and Administrative Judge Padfield stated:

[J]udicial estoppel would be based on how the parties have acted, that they’re prevented from arguing their case now. So in this case, because the petition for waiver was filed first, the argument by the intervenor [SCV] is that they [Williamson County] are prevented or should be prevented from arguing that this statute does not apply for the petition—request for the petition for declaratory order because they went with the waiver petition first.

*Id.*, pp. 74-75. In answer to another question, Administrative Judge Padfield stated that judicial estoppel “requires a statement under oath” as to a factual matter, but stated that it could also apply to “changing an argument of the law as well.” *Id.*, p. 75.



The Commission adopted the parties' stipulated facts, unanimously concluded that Williamson County's official seal is not a "memorial" under Tennessee's Heritage Protection Act, the Act does not apply to the County's official seal, and judicial estoppel does not bar Williamson County's Petition for Declaratory Order. *Id.*, pp. 76-80. At the end of the hearing, Administrative Judge Padfield informed the Commission and the parties that SCV had a right to appeal the Commission's decision and stated she would "wait until the appeal period has run before [she] [would] dismiss the underlying waiver petition"; and if SCV appealed, she would "stay the waiver petition." *Id.*, p. 81.

The Commission entered its Order granting Williamson County's Petition for Declaratory Order on May 9, 2022, and a "corrected" Order on May 23, 2022 to include notice of appeal procedures. A.R., Vol. I, pp. 143-158. The parties entered into an agreed order to stay the effectiveness of the Commission's decision. *Id.*, pp. 168-169.

#### **E. SCV's Petition for Judicial Review**

SCV filed its *Petition for Judicial Review* of the Commission's decision under the UAPA, alleging the Commission committed reversible error because its decision was in violation of statutory provisions, arbitrary and capricious, and based on an arbitrary and capricious or unwarranted exercise of discretion in light of the Administrative Judge's instructions on the doctrine of judicial estoppel. In its brief, SCV focuses its challenge on the argument that the Commission ignored the Administrative Judge's instruction on judicial estoppel. SCV argues the Commission failed to apply that instruction to bar Williamson County from changing its legal argument and taking a contradictory position on its Petition for Declaratory Order from the position taken in its Petition for Waiver that its official seal is a "memorial" under the Act. SCV requests that the Commission's decision be reversed and the case remanded to the Commission for rehearing. Williamson County opposes the relief requested.

## II. LEGAL PRINCIPLES

### A. The Tennessee Heritage Protection Act

Relevant portions of the Act provide:

(a) For purposes of this section:

\* \* \*

(2) “Historic conflict” means any war, battle, or military conflict in which citizens of the United States have participated in, including, but not limited to . . . The War Between the States;

\* \* \*

(4) “Historic event” means any event recognized as having state, national, military, or historical significance;

\* \* \*

(7) “Memorial” means:

\* \* \*

(B) Any statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; and

(8) “Public property” means all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

(b)(1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

\* \* \*

(c)(1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) . . . . A public entity shall petition the commission for a waiver prior to undertaking any action . . . , that could foreseeably violate the restrictions imposed by this section.

(c)(2) The petition for waiver shall be in writing and shall state the basis upon which the waiver is sought....

\* \* \*

(c)(4) An initial hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than sixty (60) days after a petition is filed. . . .

(c)(5) A final hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than one hundred eighty (180) calendar days after a petition is filed; provided, that if an amendment to the petition is filed, then no final hearing shall be scheduled until at least one hundred eighty (180) calendar days have elapsed from the date of the filing of the amendment.

(c)(6) An interested entity, group, or individual . . . may intervene in any petition for waiver by filing written notice with the commission not less than forty-five (45) calendar days prior to the final hearing. Upon filing notice, the interested entity, group, or individual shall be a party in all proceedings on the petition for waiver, shall receive copies of all filings, and may present relevant testimony and evidence at any hearing on the petition . . . .

\* \* \*

(e)(1) This section shall apply to any memorial in existence prior to January 1, 1970, and those lawfully created, erected, named, or dedicated on or after January 1, 1970.

\* \* \*

(i) The [UAPA] . . . shall apply to this section except to the extent that the provisions of this section conflict, in which case this section shall control.

Tenn. Code Ann. § 4-1-412.

**B. Declaratory Orders Before the Agency Under the UAPA**

Under the UAPA, “[a]ny affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency.” Tenn. Code Ann. § 4-5-223(a). Upon receiving a petition for a declaratory order, the agency must either:

(a)(1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(a)(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

- (b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

\* \* \*

**C. Judicial Review under the UAPA**

Judicial review of a state administrative agency’s final decision in a contested case is governed by the UAPA, and is limited to the administrative record. Tenn. Code Ann. § 4-5-322(a) and (g). The scope of judicial review under the UAPA is defined as follows:

- (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
  - (1) In violation of constitutional or statutory provisions;
  - (2) In excess of the statutory authority of the agency;
  - (3) Made upon unlawful procedure;
  - (4) Arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;or
  - (5)(A) Unsupported by evidence that is both substantial and material in light of the entire record.
  - (5)(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h). This standard of judicial review is “narrow” and “deferential” to the agency’s administrative decision. *Taylor v. Board of Administration, City of Memphis Retirement System*, 681 S.W.3d 751, 754 (Tenn. 2023). The UAPA further provides that the reviewing court may not reverse, remand, or modify an agency’s decision absent errors affecting the merits of the decision. Tenn. Code Ann. § 4-5-322(i).

### III. ANALYSIS

#### A. Subject Matter Jurisdiction

As an initial matter, the Court addresses the issue of subject matter jurisdiction. “Subject matter jurisdiction involves a court’s power to adjudicate a particular type of controversy.” *Dishmon v. Shelby State Community College*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999) (citation omitted). It “involves the nature of the cause of action and the relief sought,” and is derived from the State Constitution or by statute. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000) (citations omitted). Judgments entered by courts lacking subject matter jurisdiction are void; thus, whether a court has subject matter jurisdiction is a “threshold inquiry” to be decided at the earliest instance. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012).

Under the UAPA, Chancery Court’s subject matter jurisdiction to conduct judicial review is limited to final decisions in contested cases. Tenn. Code Ann. § 4-5-322(a)(1); *Phillips v. Chattanooga Fire and Police Pension Fund*, No. E2022-00296-COA-R3-CV, 2022 WL 16579684 at \*9 (Tenn. Ct. App. Nov. 2, 2022). An agency’s order is final when it “resolves all of the parties’ claims” and there is nothing left to adjudicate. *Oliver v. Tenn. Dep’t of Safety & Homeland Security*, No. M2021-00121-COA-R3-CV, 2022 WL 16707819 at \*4 (Tenn. Ct. App. Nov. 4, 2022) (quoting *Ball v. McDowell*, 288 S.W.3d 833, 836-37 (Tenn. 2009)). Although none of the parties in this case questioned the Court’s subject matter jurisdiction, given the procedural history before the Commission, this Court addresses the issue of subject matter jurisdiction on its own. *Dishmon*, 15 S.W.3d at 480 (citation omitted).

As discussed above, Williamson County initially filed a Petition for Waiver under the Act, SCV intervened, without objection, and the administrative proceeding became a contested case before the Commission under the UAPA. Williamson County then filed a Petition for Declaratory Order, using the same administrative docket number. Williamson County’s alleged that the

County Seal was not a “memorial” and the Act did *not* apply, allowing Williamson County to alter the Seal without a waiver by the Commission. Williamson County requested that the Commission determine, as a threshold matter, whether the Act applied to the County’s official seal or whether the County is free to alter the seal without the necessity of obtaining a waiver from the Commission.

Both petitions originally were set for hearing on April 22, 2022, with the Petition for Declaratory Order to be decided “at the outset” as a threshold matter. The parties later filed a “joint motion” to continue the Petition for Waiver and “joint statement,” agreeing that the Petition for Declaratory Order “represents an important jurisdictional question [whether the Act applies to the Seal] that is dispositive to the outcome of the Petition for Waiver.” A.R. p. 123. Based on this joint statement, the Administrative Judge continued the Petition for Waiver and the Commission heard only the Petition for Declaratory Order.

At the conclusion of the hearing, the Commission determined that the Seal was not a “memorial” under the Act, and the Act did *not* apply to the Seal. This decision left nothing for the Commission to adjudicate, rendering moot Williamson County’s earlier Petition for Waiver. Nevertheless, the Administrative Judge, sitting with the Commission, stated that Petition for Waiver would remain pending if SCV appealed the Commission’s decision. A.R., Vol. II, p. 81 (emphasis added).

Mootness is one of several justiciability doctrines, or rules, that courts follow to determine whether to hear a particular case. *See Norma Faye Pyles Lynch Family Purpose, LLC v. Putnam Cnty.*, 301 S.W.3d 196, 202 (Tenn. 2009). A case must be justiciable from its beginning to its end. *See Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203–04 (Tenn. 2009) (citations omitted). In other words, mootness cannot be waived, and it can be raised at any time by any party or by the court. *See Rainwaters v. Tenn. Wildlife Resources Agency*, No.

W2022-00514-COA-R3-CV, 2024 WL 2078231, at \*4 (Tenn. Ct. App. May 9, 2024) (quoting *Dominy v. Davidson Cnty. Election Comm'n*, No. M2022-00427-COA-R3-CV, 2023 WL 3729863, at \*4 (Tenn. Ct. App. May 31, 2023)) (citing *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167 (Tenn. 2022)).

“[A] moot case is one that has lost its justiciability either by court decision, acts of the parties, or some other reason occurring after commencement of the case.” *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 204 (citations omitted). “If a case no longer serves as a means to provide some sort of judicial relief to the prevailing party it will be considered moot.” *Stacey Fair v. Clarksville Montgomery Cnty. School Sys.*, No. M2017-00206-COA-R3-CV, 2017 WL 4773424, at \*3 (Tenn. Ct. App. Oct. 23, 2017) (citing *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 203–04).

The Court finds that the Commission’s decision granting Williamson County’s Petition for Declaratory Order disposed of and rendered the Petition for Waiver moot, as there is nothing left for the Commission to decide. The Court respectfully finds that the Administrative Judge’s statement that the Petition for Waiver would remain pending if SCV appealed the Commission’s decision was in error as a matter of law. The Court concludes that upon granting the Petition for Declaratory Order, the Petition for Waiver should have been dismissed as moot, and the Commission’s decision on the Petition for Declaratory Order was a final decision. Thus, the Court concludes it has subject matter jurisdiction of the Commission’s final decision on the Petition for Declaratory Order.

#### **B. Doctrine of Judicial Estoppel**

In its Petition for Judicial Review, SCV alleges that the Commission committed reversible error “in failing to apply judicial estoppel to Williamson County’s Request for a declaratory order.” SCV maintains that judicial estoppel applies when a party changes its legal argument by taking a

contradictory position within the same proceeding. In its brief in support of its Petition, SCV argues that the Commission decision was based on unlawful procedure, which was an abuse of discretion when it ignored the Administrative Law Judge's instruction on judicial estoppel regarding a party's change in its legal position. The Court rejects SCV's argument, finding that the Administrative Judge's instruction on judicial estoppel regarding a party's changed legal position was erroneous, as a matter of law; however that faulty instruction did not affect the merits of the decision, as the Commission correctly found that judicial estoppel did not apply.

Under Tennessee law, judicial estoppel applies "when a party has attempted to contradict by oath" a prior "sworn statement." *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 315 (Tenn. 2009) (citations omitted). The doctrine applies only to "directly contradictory *statements of fact*," *Kershaw v. Levy*, 583 S.W.3d 544, 545, 549 (Tenn. 2019), made in judicial proceedings. *Cracker Barrel*, 284 S.W.3d at 314; *Boyce v. LPP Mortgage, Ltd.*, 435 S.W.3d 758, 770 (Tenn. Ct. App. 2013), *perm. app. denied* (Tenn. 2014). The doctrine does not apply where factual statements are not sworn or made under oath, *Cracker Barrel*, 284 S.W.3d at 315, or to "context-related legal conclusions," *Kershaw*, 583 S.W.3d at 551 (citation omitted), or to a party's legal arguments or positions. *Boyce*, 435 S.W.3d at 770-71.

Williamson County initially sought a waiver under the Act to alter its official seal, but later changed course and its legal theory. In its Petition for Declaratory Order, Williamson County sought a declaration that its official seal is not a "memorial" under the Act, making the Act inapplicable and a waiver unnecessary, allowing Williamson County to alter the seal without Commission approval. The Commission agreed and granted the declaratory judgment petition. While SCV attacks the merits of Williamson County's argument that the Act does not apply, SCV's contention on judicial review is that the County should have been judicially estopped to assert its argument on the Petition for Declaratory Judgment that is "expressly contrary to and



patently inconsistent with” its earlier Petition for Waiver. Among its arguments, SCV contends that the County Clerk certified as “true and correct” the County Commission’s resolutions containing statements that the official seal is a “memorial.” And, as SCV frames it, the Commission’s decision should be reversed because it did not follow the Administrative Judge’s instruction that judicial estoppel applies to bar a party’s changed legal position.

The Court rejects SCV’s contentions. First, SCV misapprehends the County Clerk’s certification, which is limited to certifying that the County Commission’s resolutions and true and accurate copies of the resolutions as approved by the County Commission, but not that any of the statements or findings within the resolutions are true and accurate. Further, as the Court has found, judicial estoppel instruction to the Commission was erroneous. Tennessee law plainly holds that judicial estoppel applies only to sworn *statements of fact*, and *not* to a party’s legal conclusions, positions, or arguments. *Kershaw*, 583 S.W.3d at 549, 551; *Boyce*, 435 S.W.3d at 770-71. The Commission rejected SCV’s judicial estoppel argument, notwithstanding the erroneous instruction, and any error regarding that instruction did not affect the Commission’s decision.

SCV continues with its argument on judicial review that the doctrine of judicial estoppel should be applied. The Court disagrees. There are no “sworn” statements of fact at issue where the County’s resolutions, the Mayor’s letter, and the County’s Petition for Waiver *are not* sworn to or made under oath. SCV insists that Williamson County’s shifting or contradictory “statements” of its position are subject to the doctrine of judicial estoppel, but the Court finds they are not. Williamson County’s legal position as stated its Petition for Declaratory Order—that the Act does not apply to its official seal—is asserted in the alternative to its legal position as stated in the Petition for Waiver. Indeed, the parties agreed in their pre-hearing joint statement that the petitions were mutually exclusive; that is, if the Commission granted Williamson County’s Petition for Declaratory Order, then there was no need to proceed on the Petition for Waiver. Thus, the

Commission’s decision rejecting the doctrine of judicial estoppel under the circumstances of this case, notwithstanding the erroneous instruction, does not constitute unlawful procedure, is not arbitrary and capricious or an abuse of its discretion, and provides no basis for reversal of the Commission’s decision.<sup>5</sup>

### **C. Interpretation of the Tennessee Heritage Protection Act**

SCV briefly argues on its *Petition for Judicial Review* that the Commission abused its discretion when it misinterpreted the Act to find that Williamson County’s official seal is not a “memorial.” SCV contends the seal was “officially adopted or accepted” by the County, “depicts a historical event or conflict” and the “traditional and historic anchors of the community,” and it is found on the County Courthouse floor, and on County buildings, podiums and vehicles. SCV does not explain, however, how those facts meet the definition that the official seal is a “memorial” under the Act. The interpretation of Act’s definition of “memorial” presents a question of law for the Court.

The Act defines a “memorial” as “[a]ny statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization” that was (as relevant here) “in existence prior to January 1, 1970.” The parties relied exclusively on a few stipulated facts before

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<sup>5</sup> In its reply brief, SCV alternatively argues that if *judicial* estoppel does not bar Williamson County’s Petition for Declaratory Order, then *equitable* estoppel does. But, SCV did not argue equitable estoppel before the Commission, and only raises it as an issue before this Court for the first time in its reply. This Court’s review is limited to the administrative record and only to issues the Commission considered in the administrative proceedings. Tenn. Code Ann. § 4-5-322(g); *see also In re Billing and Collection Tariffs of South Cent. Bell*, 779 S.W.2d 375, 380 (Tenn. Ct. App.), *perm. app. denied* (Tenn. 1989) (issues not raised in administrative proceeding are waived on judicial review). Further, a party cannot raise a new issue or argument for the first time in a reply brief. *See Hughes v. Tenn. Bd. of Probation and Parole*, 514 S.W.3d 707, 724 (Tenn. 2017); *Gentry v. Former Speaker of House Glen Casada*, No. M2019-02230-COA-R3-CV, 2020 WL 5587720, at \*6 (Tenn. Ct. App. Sept. 17, 2020), *perm. app. denied* (Tenn. Jan. 13, 2021).

the Commission and offered no testimony or evidence. They stipulated that the official seal was “adopted” in July 1968; was “accepted” by the County Quarterly Court in July 1968; one of the seal’s quadrants depicts a Confederate flag-draped cannon representing the Battle of Franklin; and the Battle of Franklin was a part of the “War Between the States.” None of the stipulated facts establish that the official seal was “erected for, named, or dedicated on public property in honor of any historic conflict or event.” In the absence of any evidence demonstrating the Williamson County seal meets this statutory requirement, the Court concludes that the Commission’s decision that the County seal is not a “memorial” and the Act does not apply is not an abuse of its discretion. Thus, the Court concludes the Commission’s decision should be affirmed.

#### **IV. CONCLUSION**

The Commission’s decision granting Williamson County’s Petition for Declaratory Order, finding that Williamson County’s Seal is not a “memorial” as defined by the Tennessee Heritage Protection Act, and that the Act does not apply, should be affirmed and renders moot Williamson County’s Petition for Waiver. The Commission’s May 9, 2022 Order, as corrected, was not made on unlawful procedure, was not arbitrary and capricious, and was not an abuse or unwarranted exercise of the Commission’s discretion. The Court further finds the Administrative Judge’s instruction on judicial estoppel was erroneous, but did not affect the merits of the Commission’s decision. Finally, it was error for the Administrative Judge to advise the Commission that the Petition for Waiver should remain pending in the event of an appeal on the Petition for Declaratory Order, as nothing remained to be adjudicated. Accordingly, the Commission’s decision on Williamson County’s Petition for Declaratory Order should be affirmed.

It is, accordingly, ORDERED, ADJUDGED, and DECREED that the Tennessee Historical Commission’s May 9, 2022 Order, as corrected, granting Williamson County, Tennessee’s *Petition for Declaratory Order* is hereby AFFIRMED.

It is further ORDERED, ADJUDGED, and DECREED that Williamson County's Petition for Waiver was rendered moot by the Commission's decision on Williamson County's Petition for Declaratory Order, and this matter is hereby REMANDED to the Commission for the limited purpose of entering an order dismissing the Williamson County's Petition for Waiver.

The Court directs the Clerk & Master to enter this Memorandum and Order as a final judgment under Tennessee Rule of Civil Procedure 58, with costs TAXED to Petitioner The Major Nathaniel Cheairs Camp 2138 Sons of Confederate Veterans.

*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.

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*s/ Julie Spencer*  
Deputy Clerk & Master

8/6/24

Date