

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION, AT NASHVILLE**

JOHN RIAN EASON,	§	
	§	
<i>Plaintiff-Appellee,</i>	§	
	§	
<i>v.</i>	§	Case No. _____
	§	
KAITLYN HANKS, <i>et al.</i> ,	§	Wilson County Circuit Court
	§	Case No.: 2021-CV-567
<i>Defendant-Appellant.</i>	§	

**DEFENDANT-APPELLANT KAITLYN HANKS' TENN. R. APP. P.
10(a) APPLICATION FOR EXTRAORDINARY APPEAL OF
ORDER IMPOSING PRIOR RESTRAINT FORBIDDING
SPEECH ABOUT A PUBLIC FIGURE**

DANIEL A. HORWITZ, BPR #032176
LINDSAY E. SMITH, BPR #035937
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
daniel@horwitz.law
lindsay@horwitz.law
(615) 739-2888

*Limited Appearance Pro Bono
Counsel for Kaitlyn Hanks¹*

¹ In accordance with their professional obligation to provide for the “delivery of legal services at no fee . . . to individuals . . . seeking to secure or protect civil rights, civil liberties, or public rights,” *see* RPC 8, Rule 6.1(b)(1), Horwitz Law, PLLC and the above-named attorneys enter a limited appearance in this action for the purpose of litigating Ms. Hanks’ extraordinary appeal before this Court only.

I. INTRODUCTION

This extraordinary appeal concerns a categorically unconstitutional prior restraint against speech that was issued and then orally extended by the Wilson County Circuit Court. The *Ex Parte Temporary Restraining Order* at issue imposes a prior restraint forbidding pure speech about a public figure. A copy of the challenged order is attached to this Application as **Exhibit #1**.

In relevant part, the unconstitutional prior restraint at issue in this extraordinary appeal provides that:

It is, **THEREFORE, ORDERED** that Defendants and any person or entity acting in concert with Defendants shall immediately be restrained and enjoined from:

1. Publishing any defamatory statements regarding Plaintiff or any statements concerning Plaintiff's private affairs and concerns on the internet, orally, or through any other medium of communication; and
2. Publishing any libelous or slanderous statements regarding Plaintiff to any other individual(s) or entities.

Id. at 2.

For the reasons detailed below, the Wilson County Circuit Court's prior restraint is categorically unconstitutional, overbroad, and should be vacated and dissolved.

II. TENN. R. APP. P. 10(c)(1) STATEMENT OF QUESTION PRESENTED FOR REVIEW

This extraordinary appeal presents a single, straightforward question of law for this Court's review: Is the Wilson County Circuit Court's pre-trial, speech-based prior restraint forbidding speech about a public figure constitutional? This Court's review of this narrow question

presents an atypical standard of review. *See P&G v. Bankers Tr. Co.*, 78 F.3d 219, 227 (6th Cir. 1996) (“the standard of review is different. The decision to grant or deny an injunction is reviewed for abuse of discretion. [] We review First Amendment questions de novo.”) (citing *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485 (1984)).

III. TENN. R. APP. P. 10(c)(2) STATEMENT OF THE FACTS NECESSARY TO AN UNDERSTANDING OF WHY AN EXTRAORDINARY APPEAL LIES

On November 19, 2021, Plaintiff John Rian Eason filed a *Verified Complaint for Damages and Injunctive Relief* against Defendants Kaitlyn Hanks and William Shotack. *See Exhibit #2*. The Plaintiff’s Complaint avers that he is “an accomplished and talented singer-songwriter in the entertainment industry” and that he “derives a significant portion of his income from performing at local venues throughout Tennessee, Georgia, North Carolina, South Carolina Louisiana, Mississippi, Florida, Kentucky, Alabama, Virginia, and elsewhere in the United States.” *Id.* at ¶ 1. Thus, the Plaintiff is a public figure, and he has sued the Defendants based on specific allegations that he is a public figure. *Id.*

The Plaintiff’s Complaint seeks a money judgment for libel, intentional infliction of emotional distress, and civil conspiracy. *See id.* at 12–15. The Plaintiff additionally sought a wide-ranging temporary restraining order “followed by a temporary injunction[.]” *Id.* at ¶ 81.²

² In support of that relief, the Plaintiff’s Complaint was verified not based on personal knowledge, but based on “the best of [Plaintiff’s] knowledge, information, and belief.” *See Exhibit #2* at 20. *But see Bridgewater v. Adamczyk*, No. M2009-01582-COA-R3-CV, 2010 WL 1293801, at *4 (Tenn. Ct. App. Apr. 1, 2010) (“Personal knowledge’ is defined as

On November 19, 2021—the same day the Plaintiff’s Complaint was filed—the Wilson County Circuit Court entered an *Ex Parte Temporary Restraining Order* against both Defendants. See **Exhibit #1**. With respect to Defendant-Appellant Hanks, the order provided that:

It is, **THEREFORE, ORDERED** that Defendants and any person or entity acting in concert with Defendants shall immediately be restrained and enjoined from:

1. Publishing any defamatory statements regarding Plaintiff or any statements concerning Plaintiff’s private affairs and concerns on the internet, orally, or through any other medium of communication; and
2. Publishing any libelous or slanderous statements regarding Plaintiff to any other individual(s) or entities.

Id. at 2.

The Circuit Court additionally entered an order setting a hearing on November 30, 2021, at 1:00 p.m. “to show cause why this temporary restraining order should not be extended and/or should not become a temporary injunction.” *Id.* at 3.

The undersigned did not represent Defendant-Appellant Hanks at the time of the hearing, and thus, the undersigned did not participate in the November 30, 2021 hearing. However, the undersigned understands that—following the Parties’ November 30, 2021 hearing—the Court indicated orally to the Parties that its temporary restraining order would

‘knowledge gained through firsthand observation or experience, as distinguished from belief based on what someone else has said.’ Black’s Law Dictionary 703 (7th ed. 2000). Our courts have rejected affidavits filed in support of motions for summary judgment that were submitted ‘upon information and belief.’”) (collecting cases), *no app. filed*.

be extended to a temporary injunction as the Plaintiff requested. The undersigned also understands from the Clerk of the Wilson County Circuit Court that an order extending the challenged temporary restraining order has not yet issued; that it will not issue for several days at least; and that there is neither a transcript nor an audio recording of the hearing to supply this Court for review. Nonetheless, by rule—and regardless of the order’s unconstitutionality—the temporary restraining order remains effective against Defendant Hanks unless and until it is reversed. *See Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 355 (Tenn. 2008) (“Erroneous orders must be followed until they are reversed.”).

IV. TENN. R. APP. P. 10(c)(3) STATEMENT OF THE REASONS SUPPORTING AN EXTRAORDINARY APPEAL

“[P]rior restraints on speech . . . are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). “Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). “Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.” *Alexander v. United States*, 509 U.S. 544, 550 (1993).

To impose a prior restraint against pure speech, a “publication must threaten an interest more fundamental than the First Amendment itself. Indeed, the Supreme Court has never upheld a prior restraint, even faced with the competing interest of national security or the Sixth Amendment right to a fair trial.” *P&G*, 78 F.3d at 226–27. Alleged defamation of a

public figure falls at least modestly below the publication of the Pentagon Papers in terms of evaluating these interests. *See N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971).

Indeed, defamation can *never* be enjoined on a preliminary basis. *Hill v. Petrotech Res. Corp.*, 325 S.W.3d 302, 311 (Ky. 2010) (holding that preliminary injunctions may never issue in defamation cases, and noting that “while the rule may temporarily delay relief for those ultimately found to be innocent victims of slander and libel, it prevents the unwarranted suppression of speech of those who are ultimately shown to have committed no defamation, and thereby protects important constitutional values.”); *List Indus. Inc. v. List*, No. 2:17-CV-2159 JCM (CWH), 2017 WL 3749593, at *3 (D. Nev. Aug. 30, 2017) (“[A] preliminary injunction poses a danger that permanent injunctive relief does not: that potentially protected speech will be enjoined prior to an adjudication on the merits of the speaker’s or publisher’s First Amendment claims.”) (cleaned up); *Balboa Island Vill. Inn, Inc. v. Lemen*, 156 P.3d 339, 347 (Cal. 2007), *as modified* (Apr. 26, 2007) (same) (citing *DVD Copy Control Assn., Inc. v. Bunner*, 75 P.3d 1 (Cal. 2003) (conc. opn. of Moreno, J.). Further, where—as here—public figures are concerned, even a post-adjudication injunction may be constitutionally impermissible. *See Sindi v. El-Moslimany*, 896 F.3d 1, 33 (1st Cir. 2018) (noting that an “[a]n injunction that prevents in perpetuity the utterance of particular words and phrases after a defamation trial” may still be unconstitutional even after the words and phrases have been found defamatory, because “[b]y its very nature, defamation is an inherently contextual tort,” and “[w]ords that were false and spoken with actual malice on one occasion

might be true on a different occasion or might be spoken without actual malice.”).

Further still, the scope of the prior restraint imposed by the Wilson County Circuit Court goes far beyond just proscribing defamation. Instead, it also forbids the publication of “any” unmistakably non-defamatory, constitutionally-protected “statements concerning Plaintiff’s private affairs and concerns on the internet, orally, or through any other medium of communication,” see **Exhibit #1**, at 2—rendering it overly broad and constitutionally infirm for that reason, too. *Cf. Kauffman v. Forsythe*, No. E2019-02196-COA-R3-CV, 2021 WL 2102910, at *6 (Tenn. Ct. App. May 25, 2021) (“And the court’s order was not limited to defamatory comments. It enjoined the parties from making any public comments about each other. The order was overly broad and infringed on constitutionally protected speech. So we vacate the restraining order.”).

Prior restraints against speech do not just harm speakers, either. Instead, they abridge *the public’s* right to hear what a speaker has to say as well. *See, e.g., Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976) (“Where a willing speaker exists, “the protection afforded [by the First Amendment] is to the communication, to its source and to its recipients both.”); *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 812 (2000) (“To prohibit this much speech is a significant restriction of communication between speakers and willing adult listeners, communication which enjoys First Amendment protection.”). For this reason and others, “[a] court’s equitable power to grant injunctions should be used sparingly, especially when the activity enjoined is not illegal, . . . and when it is broader than necessary to

achieve its purposes.” *Kersey v. Wilson*, No. M2005-02106-COA-R3-CV, 2006 WL 3952899, at *8 (Tenn. Ct. App. Dec. 29, 2006) (citing *Earls v. Earls*, 42 S.W.3d 877 (Tenn. Ct. App. 2000); *Terry v. Terry*, M1999-01630-COA-R3-CV, 2000 WL 863135 (Tenn. Ct. App. June 29, 2000) (*perm. app. denied* Jan. 8, 2001)).

For all of these reasons, pre-trial defamation injunctions like the one challenged here are categorically unconstitutional. As such, by issuing such an injunction—on an ex parte basis—and then extending it through trial, “the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review[.]” Tenn. R. App. P. 10(a). For similar reasons, this appeal presents weighty issues of public concern bearing on bedrock constitutional rights. Accordingly, extraordinary review is warranted.

V. TENN. R. APP. P. 10(c)(4) STATEMENT OF THE RELIEF SOUGHT

The Circuit Court’s *Ex Parte Temporary Restraining Order* restricting Defendant-Appellant Hanks’ speech—and any subsequent preliminary (pre-judgment) order extending it that is entered during the pendency of this appeal—should be vacated and dissolved.

Further, the relief sought by this Application should be granted on an expedited basis, without oral argument, based on the Parties’ briefing in order to prevent an extended adjudication that would itself constitute irreparable injury. *See, e.g., Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (“it is well-settled that ‘loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’”) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976));

Newsom v. Norris, 888 F.2d 371, 378 (6th Cir. 1989) (“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.”). *See also Young v. Giles Cnty. Bd. of Educ.*, 181 F. Supp. 3d 459, 465 (M.D. Tenn. 2015) (“Under case law applicable to free speech claims, the loss of First Amendment freedoms, for even minimal periods of time, is presumed to constitute irreparable harm.” (quotation omitted)).

VI. TENN. R. APP. P. 10(c) APPENDIX OF EXHIBITS

For the Appellant’s “appendix containing copies of any order or opinion relevant to the questions presented in the application and any other parts of the record necessary for determination of the application,” *see* Tenn. R. App. P. 10(c), the Appellant has appended the following two exhibits:

1. The Wilson County Circuit Court’s Nov. 19, 2021 *Ex Parte Temporary Restraining Order* (**Exhibit #1**); and
2. The Plaintiff’s Nov. 19, 2021 *Verified Complaint for Damages and Injunctive Relief* (**Exhibit #2**).

VII. CONCLUSION

For the foregoing reasons, Defendant-Appellant Hanks’ Rule 10 Application should be granted.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176
LINDSAY E. SMITH, BPR #035937
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
daniel@horwitz.law
lindsay@horwitz.law
(615) 739-2888

*Limited Appearance Pro Bono Counsel
for Kaitlyn Hanks*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2021, a copy of the foregoing was sent via the Court's electronic filing system, via UPS mail, and/or via email to the following parties or their counsel:

ANDY GOLDSTEIN, ESQ.
SCARLETT SLOANE, ESQ.
COLE LAW GROUP
1648 Westgate Circle, Suite 301
Brentwood, TN 37027
Telephone: (615) 326-5430
Fax: (615) 942-5914
agoldstein@colelawgrouppe.com
ssloane@colelawgrouppe.com

Counsel for Plaintiff

WILLIAM SHOTACK
1890 N. Bass Dr.
Mount Juliet, TN 37122

Pro Se Defendant

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, BPR #032176