

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 16, 2013 Session

WILLIAM LANE LANIER v. CORIE J. DIZOL (F/K/A LANIER)

**Appeal from the Chancery Court for Marshall County
No. 14072 J. B. Cox, Chancellor**

No. M2013-00746-COA-R3-CV - Filed December 13, 2013

Court in post-divorce modification of custody action dismissed Mother's motion to alter or amend the order adopting parenting plan proposed by Father, holding that the motion was unsigned and not promptly corrected as allowed by Tenn. R. Civ. P. 11.01. Having determined that the motion was properly signed, we reverse the trial court's decision and remand the case for consideration of the motion.

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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, M. S., P. J., and FRANK G. CLEMENT, J., joined.

Michael T. Fort and William P. Holloway, Franklin, Tennessee, for the appellant, Corie J. Dizol.

M. Quinn Brandon Stewart, Lewisburg, Tennessee, for the appellee, William Lane Lanier.

OPINION

I. FACTS AND PROCEDURAL HISTORY

William Lanier ("Father") and Corie Dizol ("Mother") are the divorced parents of three minor children. On September 28, 2012, the trial court heard competing petitions to modify the permanent parenting plan adopted on February 21, 2007; the court entered an order on October 10 adopting the parenting plan proposed by Father. On November 2, Mother filed a Tenn. R. Civ. P. 59.04 motion to alter or amend asserting, in part, that there

were errors in calculating Mother's child support obligation and in setting the parenting schedule. A hearing on the motion was held on December 5.

At the hearing B. J. Strickland, Mother's counsel, represented that she was an officer in the United States Army and was mobilized to Fort Lewis, Washington, to attend to military duties following the September 28 hearing; while out of state, she prepared the Rule 59 motion signed it by hand, scanned the motion into her computer, and sent it by electronic mail to Mother who printed the motion and filed it in paper form with the clerk on November 2. These facts were not disputed at the hearing and on appeal.

On November 8 Father's counsel sent Ms. Strickland a letter advising her that he intended to seek sanctions under Tenn. R. Civ. P. 11 based, in part, on the fact that the Rule 59 motion did not bear Ms. Strickland's original, penned signature, but instead was a printed form of the scanned document. Father subsequently filed a motion to dismiss the Rule 59 motion, contending that the scanned document violated Tenn. R. Civ. P. 11.01 and that its filing violated Tenn. R. Civ. P. 5B because the rules of the 17th Judicial District do not allow electronic signing or verification. On November 28, Ms. Strickland mailed the clerk a Rule 59 motion bearing an original penned signature. On November 30 Father filed a motion to impose sanctions against Mother and Ms. Strickland, on the basis that the Rule 59 motion, along with two other pleadings filed on November 2, contained scanned signatures of Ms. Strickland.

The court entered an order on December 15, *inter alia*, dismissing the Rule 59 motion "because it was not timely filed with the original signature of counsel, nor was the matter corrected in a timely manner" and denying Father's Rule 11 motion "because opposing counsel, though late, eventually filed her original signature to the pleadings."

Mother appeals the denial of the Rule 59 motion, articulating the following issues:

1. Whether [Mother's] Motion to Alter or Amend was signed for the purposes of complying with Tennessee Rule of Civil Procedure 11.01.
2. Whether the signature page on [Mother's] Motion to Alter or Amend was promptly corrected as allowed by Tennessee Rule of Civil Procedure 11.01.
3. Whether [Mother] should be awarded attorney's fee on appeal.

Father likewise requests his attorney's fees on appeal.

II. ANALYSIS

In order to address the dispositive issue in this appeal, we must first determine whether Ms. Strickland's signature on the Rule 59 motion which was scanned into her computer, delivered by electronic mail to Mother, printed off, and filed with the clerk, was an electronic signature as contemplated by Tenn. R. Civ. P. 5B. Interpretation of the Tennessee Rules of Civil Procedure is a question of law, which we review *de novo* with no presumption of correctness. *Lacy v. Cox*, 152 S.W.3d 480, 483 (Tenn. 2004).

Tenn. R. Civ. P. 5B provides:

Any court governed by these rules may, by local rule, allow papers to be filed, signed, or verified by electronic means that comply with technological standards promulgated by the Supreme Court. Pleadings and other papers filed electronically under such local rules shall be considered the same as written papers.

Providing the context for the adoption of the Rule, the comment to Rule 5B states: "The courts in certain counties have expressed a desire to implement an electronic filing system. This rule permits trial courts, by local rule, to adopt such systems." Tenn. R. Civ. P. 5B, 2010 Advisory Commission Comment. It is not disputed that the 17th Judicial District did not have such a rule at the time of the events in this appeal.

Contrary to Father's argument, Tenn. R. Civ. P. 5B does not apply to the situation presented. The motion was not submitted to the clerk in electronic form as a part of an electronic filing system; rather the motion was filed in paper form and stamped filed by the Clerk. Thus, the absence of a local rule permitting electronic filings has no bearing on whether the Rule 59 motion was signed as required by Rule 11. Rather, the dispositive question is whether the lack of an original, penned signature renders the filing "unsigned" for the purposes of Tenn. R. Civ. P. 11.01.

Tenn. R. Civ. P. 11.01 provides:

Every pleading, written motion, and other paper shall be signed by at least one attorney of record . . . or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken *unless omission of the signature is corrected promptly after being called to the attention of the attorney or party*.

(emphasis added). The comment to Rule 11.01 states that the purpose of the Rule is to “make an absolute requirement that the attorney, if any, sign,” and to make “the signature, in effect, the attorney’s statement that the pleading is filed in good faith.” Tenn. R. Civ. P. Rule 11.01, Advisory Commission Comment, effective May 17, 2005.

Although Rule 11.01 requires that motions and other pleadings be signed, the rule does not mandate that the document as filed with the clerk bear an original, penned signature on its signature page, as argued by Father. Ms. Strickland prepared and signed the motion, thereby certifying that the motion was prepared in good faith; this satisfies the signature requirement of Rule 11.¹

In light of our disposition of this issue, it is unnecessary to reach the issue of whether Ms. Strickland’s mailing to the clerk of a new original motion on November 28 was prompt as allowed by Tenn. R. Civ. P. 11.01.

Father and Mother both request attorney’s fees incurred on appeal. Whether to award attorney’s fees on appeal rests within the sound discretion of this court. *Archer v. Archer*, 907 S.W.2d 412, 419 (Tenn. Ct. App.1995). Under the circumstances presented, we decline to award attorney’s fees on appeal to either party.

CONCLUSION

For the foregoing reasons, the judgment of the trial court dismissing the Rule 59 motion is reversed and the case remanded for the court to afford Mother a hearing on the motion.

RICHARD H. DINKINS, JUDGE

¹ Some judicial districts in Tennessee have adopted local rules which require an original signature on papers filed with the court. *See, e.g.*, Local Rules of Civil Practice, Chancery and Circuit Courts, Eleventh Judicial District, Rule 3.04; Rules of Local Practice in the Circuit and Chancery Courts, Second Judicial District, Rule 14.13; Rules of the Chancery Court, Third Judicial District, Rule 5.01; Rules of Chancery Court, Twenty-Eighth Judicial District, Rule 9. The Seventeenth Judicial District, in which this case was tried has no such rule.