

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**DAVID SCOTT BLACKWELL** )  
 )  
 **Petitioner,** )  
 )  
 vs. )  
 )  
 **BILL HASLAM, Governor of the State** )  
 **Of Tennessee in his official capacity only;** )  
 **ROBERT E. COOPER, JR., Attorney** )  
 **General and Reporter for the State of** )  
 **Tennessee; VICTOR S. TORRY JOHNSON,** )  
 **District Attorney General for the 20<sup>th</sup>** )  
 **Judicial District, in his official capacity only;** )  
 **KIM R. HELPER, District Attorney General** )  
 **for the 21<sup>st</sup> Judicial District, in her official** )  
 **capacity only; and the STATE OF** )  
 **TENNESSEE,** )  
 )  
 **Respondents.** )

NF  
No. 10-0739-III

DAVIDSON COUNTY CHANCERY COURT  
2012 JUL -2 AM 8:05  
FILED  
D.C.211

**MEMORANDUM AND ORDER**

This is a declaratory judgment action filed pursuant to Tennessee Code Annotated § 29-14-102 and 42 U.S.C. § 1983, and for recovery of costs and attorneys' fees pursuant to 42 U.S.C. § 1988. The case arises out of the Petitioner's conviction and subsequent pardon for three felony drug offenses in Georgia. The Petitioner was granted a full pardon by the State of Georgia that expressly restored his right to possess a firearm. The Petitioner now resides in Tennessee and desires to purchase and possess firearms. The issue which spurred the lawsuit is that Tennessee Code Annotated § 39-17-1307(b)(1)(B) makes it a Class E felony offense for a person, who has been "convicted of a felony

involving the use or attempted use of force, violence or a deadly weapon” or who has been “convicted of a felony drug offense,” to possess a firearm in Tennessee. The Petitioner filed this lawsuit seeking a declaration that, by virtue of his Georgia pardon, he would not be in violation of Tennessee Code Annotated §§ 39-17-1307(b)(1)(B) and 39-17-1316(r)(1) by purchasing or possessing a firearm in Tennessee.

The case is back before this Court upon remand from the Tennessee Court of Appeals. That Court has ruled (1) this Court has subject matter jurisdiction and (2) further proceedings before the trial court are required to afford each side the opportunity to add whatever facts they choose.

The latter opportunity to add facts has occurred. The State has filed an answer, and, after reviewing the State’s answer, the Petitioner has represented that it has no more facts to allege in any further amended complaint. Thus, there are no additional facts beyond those alleged in the complaint which are admitted as true by the State. Under these circumstances, each side has appropriately<sup>1</sup> filed competing motions for judgment on the pleadings.

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<sup>1</sup> As cited and quoted in the Petitioner’s papers, “Where the allegations of the complaint are admitted in the answer, the subject matter thereof is removed as an issue, no proof is necessary, and it becomes conclusive on the parties.” *Rast v. Terry*, 532 S.W.2d 552 (Tenn. 1976). “Admissions in pleadings are judicial (conclusive) admissions, conclusive against the pleader until withdrawn or amended....This is so because pleadings are for the purpose of notifying adversary and the court of the contentions of the pleader and thus defining the issues. If a fact alleged in a pleading is admitted in the pleading of the adversary, then that fact ceases to be an issue in the case and there is no need to prepare or hear evidence on the subject.” *John P. Saud & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 642 S.W.2d 151, 152 (Tenn. Ct. App. 1982).

After considering the parties' motions, the Court concludes that the Petitioner prevails. The Court's decision is based upon the following facts, authorities and reasoning.

### Facts

The undisputed facts on which this case is based are quoted as follows from the Court of Appeals opinion:

David Scott Blackwell, (hereinafter "Petitioner"), was convicted of three felony drug offenses in the State of Georgia in 1989 and sentenced to nine years of incarceration, serving five years in prison and four years on probation. In 2003, Petitioner received a full pardon from the Georgia Board of Pardons and Paroles, which is the entity entitled to grant pardons under the Georgia Constitution. The pardon expressly provided that Petitioner's firearm rights were restored.

When Petitioner moved to Tennessee, he learned that Tennessee Code Annotated § 39-17-1307(b)(1)(B) makes it a Class E felony for a person, who has been "convicted of a felony involving the use or attempted use of force, violence or a deadly weapon" or who has been "convicted of a felony drug offense," to possess a firearm as that term is defined in Tennessee Code Annotated § 39-11-106.<sup>1</sup> In order to determine if his Georgia pardon exempted him from the application of Tennessee Code Annotated § 39-17-1307(b)(1)(B), and to avoid the risk of being charged with a felony should he possess a firearm in Tennessee, Petitioner asked his state representative to request a written opinion of the Attorney General of Tennessee concerning the right of a Tennessee resident who had received a full pardon of felony drug offenses in another state to purchase and possess a firearm in Tennessee. On October 29, 2009, the Attorney General issued an opinion that Tennessee Code Annotated § 39-17-1307(b)(1)(B) (2007) prohibited a person convicted of a felony drug offense from possessing a handgun, including a pardoned out-of-state felon.<sup>2</sup>

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<sup>1</sup>Tennessee Code Annotated § 39-11-106(11) defines a firearm as "any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use."

<sup>2</sup>It should be noted that the Attorney General opinion requested by Petitioner's state representative and referenced by the parties and the trial court, which was dated October 20, 2009, analyzed the issue under Tennessee Code Annotated § 39-17-1307(b)(1) as it

On April 29, 2010, the Petitioner filed this lawsuit for a declaration of his rights to possess firearms in Tennessee.

### Analysis and Decision

The Court has concluded that the Petitioner prevails because Petitioner's counsel, on remand, has demonstrated and persuaded this Court that Mr. Blackwell's receipt of a pardon from the State of Georgia – which explicitly restores his firearm rights – is sufficient for this Court to find that the Tennessee firearm prohibition of section 39-17-1307(b)(1)(B) can not be applied to the Petitioner. In so concluding the Court quotes excerpts from and adopts the following argument of Petitioner's counsel on the Full Faith and Credit Clause of the U.S. Constitution. (*See Memorandum of Law In Support of Judgment on the Pleadings, April 23, 2012, pages 14-15, 23-24, 29, 33*).

Article IV, §1 of the United States Constitution generally requires states to recognize and give effect to the “public acts, records, and judicial proceedings” of other states. There is, however, a “public policy” exception to full faith and credit: a forum state is not required to apply another state's law in violation of its own legitimate public policy. *See Seiller & Handmaker, LLP v. Finnell*, 165 S.W.3d 273, 276-77 (Tenn. Ct. App. 2004). This exception, though, is tempered by two well-recognized doctrines. First, “a party who invokes the public policy exception must identify the public policy that is

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read prior to a 2008 amendment. *See* Tenn. Op. Atty. Gen. No. 09-168 (Oct. 20, 2009). The previous version of the statute prohibited the possession of “handguns.” Tennessee Code Annotated § 39-17-1307(b)(1) was amended effective July 1, 2008, and the amendment replaced the term “handgun” with “firearm.” *See* 2008 Tenn. Pub. Acts 1044-1045. Thus, the statute as amended in 2008 should have been the subject of the Attorney General's 2009 Opinion, not the prior version.

offended by the foreign judgment and has a 'stern and heavy' burden." *Id.* at 277 (quoting *Biogen Distrib., Inc. v. Tanner*, 842 S.W.2d 253, 256 (Tenn. Ct. App. 1992)). Second, a "judgment of the court of another state does not necessarily violate the public policy of this State merely because the law upon which it is based is different from our law." *Trustmark Nat. Bank v. Miller*, 209 S.W.3d 54, 58 (Tenn. Ct. App. 2006) (quoting *Four Season Gardening & Landscaping, Inc. v. Crouch*, 688 S.W.2d 439, 445 (Tenn. Ct. App. 1984)).

In this case, the State asserts that the public policy exception applies such that Tennessee does not have to accord full faith and credit to Petitioner's Georgia pardon. The Court rejects this argument. The Court adopts Petitioner's argument that Tennessee has a clear policy to restore civil disabilities upon receipt of a pardon as established in case law. "[A] full pardon restores one's civil rights and remits all punishment associated with the conviction...." *State v. Blanchard*, 100S.W.3d 226, 231 (Tenn. Crim. App. 2002). "The purpose of [the Restoration of Rights] law was to wipe out the transgressions of the offending person and to give him another chance in society." *Bryant v. Moore*, 279 S.W.2d 517, 518 (Tenn. 1995). The same is true with Georgia pardons, as demonstrated in this case, with the restoration of the Petitioner's civil rights. The semantics that Tennessee pardons forgive but do not forget, (*see State v. Blanchard*, 100 S.W.3d 226 (Tenn. Crim. App. 2002)), whereas Georgia pardons do both, is immaterial.<sup>2</sup> Thus, there

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<sup>2</sup> At least one other state employing the very same "forgive but not forget" approach extended full faith and credit to the pardon of another state to restore the right to obtain a concealed weapon permit. *See Schlenker v. Dep't of State, Div. of Licensing*, 743 So.2d 536, 537 (Fla. Dist. Ct. App. 1998) (Connecticut restoration of appellant's civil rights following his Connecticut felony conviction was entitled to full faith and credit in Florida: "At the time appellant moved to Florida in 1973, he did so in

is no inconsistency between Tennessee and Georgia's public policies regarding pardons. Accordingly, the public policy exception to application of the Full Faith and Credit Clause does not apply in this case. The result is that Tennessee must give full faith and credit to Petitioner's Georgia pardon, including restoration of rights of firearms possession.

But even if this Court is wrong in its foregoing analysis of the similarity of the policy informing pardons in Tennessee and Georgia, the Petitioner nevertheless prevails on his full faith and credit argument. The mere fact that states have different laws and procedures is insufficient by itself to apply the public policy exception and to refuse to recognize Mr. Blackwell's pardon. *Trustmark Nat. Bank v. Miller*, 209 S.W.3d 54, 58 (Tenn. Ct. App. 2006) (applying a foreign lien priority judgment that differs from Tennessee priority rules).

Tennessee Court have regularly extended full faith and credit to out-of-state judgments which conflict with Tennessee policy and statutes. For example, Tennessee courts have consistently enforced foreign judgments for gambling debts:

Holding to American attitudes and prohibitions that predate the Revolutionary War, Tennessee considers gambling contrary to public policy of this state. Tenn. Code Ann. § 39-17-501(1) (Supp. 2001). In fact both gambling and the promotion of gambling are misdemeanors, Tenn. Code Ann. §§ 39-17-502 and 503 (1997), and gambling debts incurred in Tennessee cannot be collected in Tennessee's courts. Tenn. Code Ann. § 29-19-102 (2000). However, notwithstanding Tennessee's official antipathy toward gambling, our courts have long held that judgments for out-of-state gambling debts are enforceable in Tennessee.

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full possession of all civil rights of Connecticut citizenship. He did not arrive here under a disability. To the contrary, he arrived as any other citizen, with full rights of citizenship."). The Florida court was not concerned that Schlenther's conviction might also be "forgotten" in the process of being forgiven.

*Boardwalk Regency Corp. v. Patterson*, No. M1999-02805-COA-R3-CV, 2001 WL 1613892, at \*3 (Tenn. Ct. App. Dec. 18, 2001). Similarly, a Tennessee court recently granted full faith and credit to a bigamous marriage upon finding it was recognized by estoppel in the couples' previous state, even though "the applicable statutes, our prior case law, and the public policy of this state prohibit the application of the marriage by estoppel doctrine to void, bigamous marriages." *Farnham v. Farnham*, 323 S.W.3d 129, 140 (Tenn. Ct. App. 2009), *perm. app. denied* (Tenn. May 12, 2010) (quoting *Guzman v. Alvares*, 205 S.W.3d 375, 380-81 (Tenn. 2006)).

### Conclusion

In the above analysis, the Court has concluded as a matter of law that the Georgia pardon the Petitioner received in this case – explicitly restoring his firearm rights – is not inconsistent with nor violative of Tennessee's public policy. The authorities and analysis of the Petitioner's brief demonstrate that Tennessee has a statutory policy to restore civil disabilities upon receipt of a pardon just as the Georgia pardon restores civil disabilities. That demonstration renders immaterial the semantics of Tennessee and Georgia law, respectively, "forgive but not forget" versus "forgive and forget." The Court's alternative conclusion is that, like with gambling debts or bigamous marriages, Tennessee shall extend full faith and credit in this case even if its laws and procedures are different. Accordingly, under either alternative the U.S. Constitution requires this Court to give full faith and credit to the Georgia pardon. When that is done, Tennessee Code Annotated

section 39-17-1307(b)(1)(B) does not apply to disqualify the Petitioner from possessing a firearm or purchasing one under section 39-17-1316(r)(1).

It is therefore ORDERED that the Petitioner's Motion For Judgment On The Pleadings is granted to the extent that the Court declares, upon application of the Full Faith and Credit Clause of Article IV, § 1 of the U.S. Constitution, that Tennessee Code Annotated sections 39-17-1307(b)(1)(B) and 39-17-1316(r)(1) do not apply to the Petitioner and that these sections can not prohibit and/or be enforced against the Petitioner to prevent him from possessing and purchasing a firearm in Tennessee. The foregoing Order renders it unnecessary for the Court to decide the Petitioner's other theories regarding the inapplicability of sections 39-17-1307(b)(1)(B) and 39-17-1316(r)(1), and/or that they are unconstitutional.

It is further ORDERED that the Defendant's Motion For Judgment On The Pleadings is denied.


With respect to whether the foregoing declaration by the Court that the Petitioner is entitled to possess a firearm in Tennessee under the Full Faith and Credit Clause of the U.S. Constitution has resulted in a violation of the Petitioner's constitutional rights and/or entitlement to recovery of attorneys' fees, it is ORDERED that Petitioner's counsel, on or before July 13, 2012, shall file a brief and supporting affidavits, as required by Local Rule § 5.05, if Petitioner, in light of the Court granting only the Full Faith and Credit Claim, continues to assert constitutional violations and entitlement to attorneys' fees.



It is also ORDERED that opposition to Petitioner's claims of constitutional violations and/or attorneys' fees shall be filed by July 27, 2012.

Subsequently, the Court shall decide any remaining issues on the papers.

This is not a final order. One shall be issued after the attorneys' fee issue is decided, and at that time court costs shall be taxed to the Defendants.

  
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ELLEN HOBBS LYLE  
CHANCELLOR

cc: David L. Raybin  
Frank Berger-Gilligan

 **MAILED**  
7/2/12