Declaratory Judgments

by

Russell T. Perkins, Chancellor
Davidson County Chancery Court, Part IV

presented at the Chancery Forum CLE
April 13, 2012[1]

The Chancery Court "may entertain a complaint for a declaratory judgment in any case of equitable cognizance for the purpose of declaring rights, status or other legal relations whether further relief is or could be claimed." Henry R. Gibson, Gibson's Suits in Chancery § 44.11 (8th ed. 2004). A declaratory judgment "may be either affirmative or negative in form and effect[.]" *Id.*; Tenn. Code Ann. § 29-14-102. Ideally, a declaratory judgment suit does not involve disputed issues of fact although the Tennessee Declaratory Judgment Act specifically provides that factual disputes in declaratory judgment suits should be tried and determined in the same manner as in other civil actions. *See Goodwin v. Metropolitan Bd. of Health,* 656 S.W.2d 383 (Tenn. Ct. App. 1983); Tenn. Code Ann. § 29-14-108.

The Tennessee Declaratory Judgment Act ("the Act") provides that:

> [a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of

[1] The views expressed by Chancellor Perkins in this handout and in the Chancery Forum on April 13, 2012 are strictly his own and do not represent the views of any other Davidson County Chancellor.

> construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. § 29-14-103. Under the Act, courts may construe a contract "before or after there has been a breach thereof." Tenn. Code Ann. § 29-14-104. Fiduciaries may seek declaratory judgments under Tenn. Code Ann. § 29-14-105 for issues including the "construction of wills and other writings." Tenn. Code Ann. § 29-14-105(3).

If a requested declaratory judgment or decree would not "terminate the uncertainty or controversy[,]" then the court may refuse to enter it. Tenn. Code Ann. § 29-14-109. A party may apply for and be awarded further relief after a declaratory judgment has been entered. *See* Tenn. Code Ann. § 29-14-110. The Act is remedial and is designed "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations[.]" Tenn. Code Ann. § 29-14-113. Consequently, the Act is to be liberally construed. *See id.*

Tenn. R. Civ. P. 57 provides, in its entirety, as follows:

> The procedure for obtaining a declaratory judgment pursuant to Tennessee Code Annotated [§ 29-14-101] "et seq.", shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not necessarily preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an

> action for a declaratory judgment and may advance it on the calendar.

Id. This rule does not change any substantive principle under the Act. It merely clarifies the procedural context for declaratory judgment actions, including the potential role of juries in deciding disputed questions of fact.

The courts, however, have viewed the broad language of the Act through the prism of overarching legal principles such as justiciability and sovereign immunity. *See LaRouche v. Crowell,* 709 S.W.2d. 585 (Tenn. Ct. App. 1985), *cert. denied*, 106 S. Ct. 1265 (1986); *Parks v. Alexander,* 608 S.W.2d 881 (Tenn. Ct. App. 1980), *cert. denied*, 101 S. Ct. 2019 (1981). Additionally, although courts have discretion in declaratory judgment cases, the courts have long been admonished to exercise caution in entertaining declaratory judgment suits. *See Tennessee Farmers Mut. Ins. Co. v Hammond,* 290 S.W.2d 860 (Tenn. 1956).

In the leading case of *Colonial Pipeline Co. v. Morgan,* 263 S.W.3d 827 (Tenn. 2008),[2] the Court allowed declaratory judgment suits against state officials if those state officials were enforcing unconstitutional statutes and the plaintiff was not seeking monetary damages. In these instances, these suits are directed to the allegedly *ultra vires* conduct of state officials and no waiver of sovereign

[2] The *Colonial Pipeline* decision, at pp. 836-39, gives an excellent discussion of the history of declaratory judgments in the context of justiciability questions. These pages are attached as an Appendix to this handout.

immunity is implicated or necessary. These declaratory judgment suits are viewed as not being suits against the sovereign; they are treated as suits outside the reach of sovereign immunity. *See Hill v. Beeler,* 286 S.W.2d 868, 871 (Tenn. 1956). Implicit in the *Colonial Pipeline* decision is the inherent ability of a party to challenge adverse action predicated on a state official's enforcement of an unconstitutional statute, particularly given the Court's decision that the Act did not contain a specific waiver of the State's sovereign immunity. This ability to seek redress from potential official adverse action on the basis of an unconstitutional statute raises the spectra of *ultra vires* conduct that may be addressed outside the sovereign immunity shield.

Appendix

ing. *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 reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool,* 974 S.W.2d 677, 679 (Tenn.1998). We presume the General Assembly was aware of its prior enactments at the time it passed the legislation. *Owens v. State,* 908 S.W.2d 923, 926 (Tenn.1995).

I. Exhaustion of Administrative Remedies

A. The Declaratory Judgment Act

A declaratory judgment action is a relative novelty in the law. *Snow v. Pearman,* 222 Tenn. 458, 436 S.W.2d 861, 863 (1968) (observing that "the declaratory judgment procedure does not come to the jurisprudence of Tennessee from antiquity"). The common law did not allow a suit in either law or equity absent an actual and present injury. *Clein v. Kaplan,* 201 Ga. 396, 40 S.E.2d 133, 137 (1946). In recent centuries, however, declaratory judgment actions have gained popularity as a proactive means of preventing injury to the legal interests and rights of a litigant. One commentator has observed that the declaratory judgment action recognizes that "[c]ourts should operate as preventive clinics as well as hospitals for the injured." Henry R. Gibson, *Gibson's Suits in Chancery,* ****837*** § 545 (6th ed.1982). This evolution in the law has been achieved largely by statutory enactment. In the 1850's, the English Declaratory Judgment Act was passed. 15 & 16 Vict. Chap. 86. In 1922, the Conference of Commissioners on Uniform State laws drafted the first Uniform Declaratory Judgment Act.[FN3] One year later, the Tennessee General Assembly adopted this legislation. Act of Feb. 9, 1923, ch. 29, 1923 Tenn. Pub. Acts 105 (now codified at Tenn.Code Ann. §§ 29–14–101 to –113 (2000 & Supp.2007)). The stated purpose was to "settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." *Id.* at § 12.

FN3. At first, American courts approached declaratory judgments with skepticism. *See Liberty Warehouse Co. v. Grannis,* 273 U.S. 70, 76, 47 S.Ct. 282, 71 L.Ed. 541 (1927) (holding that a federal district court had no jurisdiction to entertain a declaratory judgment action under Kentucky law); *Anway v. Grand Rapids Ry. Co.,* 211 Mich. 592, 179 N.W. 350, 361 (1920) (finding that an early declaratory judgment act was void because it was non-judicial in character). However, this Court upheld the constitutionality of Tennessee's Declaratory Judgment Act shortly after it was passed. *Miller v. Miller,* 149 Tenn. 463, 261 S.W. 965 (1924); *see also Justiciability of Suits for Declaratory Judgments—Federal Rule,* 11 Tenn. L.Rev. 294 (1933). In a case involving facts similar to the case at bar, the United States Supreme Court also affirmed the constitutionality of our Act. *Nashville, C. & S.L. Ry. v. Wallace,* 288 U.S. 249, 53 S.Ct. 345, 77 L.Ed. 730 (1933). The Court noted that the "Constitution does not require that the case or controversy should be presented by traditional forms of procedure, invoking only traditional remedies." *Id.* at 264, 53 S.Ct. 345.

[8][9] "Declaratory judgments" are so named because they proclaim the rights of the litigants without ordering execution or performance. [FN4] 26 C.J.S. *Declaratory Judgments* § 1 (2001). Their purpose is to settle important questions of law before the controversy has reached a more critical stage. 26 C.J.S. *Declaratory Judgments* § 3 (2001). The chief function is one of construction. *Hinchman v. City Water Co.,* 179 Tenn. 545, 167 S.W.2d 986, 992 (1943) (quoting *Newsum v. Interstate Realty Co.,* 152 Tenn. 302, 278 S.W. 56, 56–57 (1925)). While findings of fact are permitted in a declarat-

ory judgment action, "the settlement of disputed facts at issue between the parties will ordinarily be relegated to the proper jurisdictional forums otherwise provided." *Id.*

> FN4. Tennessee allows for additional relief based upon a declaratory judgment. Tenn.Code Ann. § 29–14–111 (2007).

In its present form, the Tennessee Declaratory Judgment Act grants courts of record the power to declare rights, status, and other legal relations. Tenn.Code Ann. § 29–14–102 (2000). The Act also conveys the power to construe or determine the validity of any written instrument, statute, ordinance, contract, or franchise, provided that the case is within the court's jurisdiction. Tenn.Code Ann. § 29–14–103 (2000). Of particular relevance to this case, the Act provides that "[a]ny person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder." *Id.* Declaratory judgment statutes are remedial in nature and should be construed broadly in order to accomplish their purpose. Tenn.Code Ann. § 29–14–113 (2000); *Shelby County Bd. of Comm'rs v. Shelby County Quarterly Court,* 216 Tenn. 470, 392 S.W.2d 935, 941 (1965).

[10][11][12][13][14][15] Although a plaintiff in a declaratory judgment action need not show a present injury, an actual "case" or "controversy" is still required. ***838***Cardinal Chem. Co. v. Morton Int'l,* 508 U.S. 83, 95, 113 S.Ct. 1967, 124 L.Ed.2d 1 (1993) (stating that "a party seeking a declaratory judgment has the burden of establishing the existence of an actual case or controversy"). A bona fide disagreement must exist; that is, some real interest must be in dispute. *Goetz v. Smith,* 152 Tenn. 451, 278 S.W. 417, 418 (1925). Courts still may not render advisory opinions based on hypothetical facts. *Third Nat'l Bank v. Carver,* 31 Tenn.App. 520, 218 S.W.2d 66, 69 (1948). The justiciability doctrines of standing, ripeness, mootness, and political question continue as viable defenses. *See, e.g., Texas v. United States,* 523 U.S. 296, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998) (finding a declaratory judgment action was not ripe); *Cardinal Chem.,* 508 U.S. at 83, 113 S.Ct. 1967 (finding a declaratory judgment action was moot). Moreover, in disputes involving a state agency, one must generally exhaust the available administrative remedies before filing a suit for declaratory relief.[FN5] *See Abington Ctr. Assocs. Ltd. P'ship v. Baltimore County,* 115 Md.App. 580, 694 A.2d 165, 170 (1997); *see also* Tenn.Code Ann. § 4–5–225 (2005 & Supp.2007). Subject to some exceptions, a declaratory judgment action should not be considered where special statutory proceedings provide an adequate remedy. *Katzenbach v. McClung,* 379 U.S. 294, 296, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964). This includes administrative remedies prescribed under the Uniform Administrative Procedures Act ("UAPA") and other relevant sections of the Tennessee Code.

> FN5. " 'Ripeness and exhaustion are complementary doctrines which are designed to prevent unnecessary or untimely judicial interference in the administrative process.' " *Ticor Title Ins. Co. v. FTC,* 814 F.2d 731, 735 (D.C.Cir.1987) (quoting E. Gellhorn & Boyer, Administrative Law and Process 316–19 (1981) (hereinafter "Gellhorn & Boyer")). While these doctrines are similar, they involve different requirements and are designed to achieve different purposes. In an attempt to distinguish these doctrines, the Court of Appeals for the District of Columbia noted:
>
> > The exhaustion doctrine emphasizes the position of the party seeking review; in essence, it asks whether he may be attempting to short circuit the administrative process or whether he has been reasonably diligent in protecting his own interests. Ripeness, by contrast, is concerned primarily with the institutional relationships between courts and agen-

> cies, and the competence of the courts to resolve disputes without further administrative refinement of the issues.
>
> *Ticor Title,* 814 F.2d at 735 (quoting Gellhorn & Boyer). In short, exhaustion focuses on the actions of the party seeking relief, and ripeness focuses on separation of powers.

B. Exhaustion of Administrative Remedies Doctrine

[16] The exhaustion doctrine has been recognized at common law as an exercise of judicial prudence. Justice Brandeis referred to it as "the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50–51, 58 S.Ct. 459, 82 L.Ed. 638 (1938). When a claim is first cognizable by an administrative agency, therefore, the courts will not interfere "until the administrative process has run its course." *United States v. W. Pac. R.R. Co.,* 352 U.S. 59, 63, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956). Both courts and legislatures have recognized that the exhaustion doctrine promotes judicial efficiency and protects administrative authority in at least three ways. First, sometimes "[j]udicial intervention may not be necessary because the agency can correct any initial errors at subsequent stages of the process [, and] the agency's position on important issues of fact and law may not be fully crystallized ***839** or adopted in final form." *Ticor Title,* 814 F.2d at 735 (quoting Gellhorn & Boyer). Secondly, exhaustion allows the agency to develop a more complete administrative record upon which the court can make its review. *Efco Tool Co. v. Comm'r,* 81 T.C. 976, 981, 1983 WL 14906 (1983). Finally, cases that concern subject matter within the purview of administrative agencies often involve "specialized fact-finding, interpretation of disputed technical subject matter, and resolving disputes concerning the meaning of the agency's regulations." *West v. Bergland,* 611 F.2d 710, 715 (8th Cir.1979) (citations omitted). Requiring that administrative remedies be exhausted often leaves courts better equipped to resolve difficult legal issues by allowing an agency to " 'perform functions within its special competence.' " *Id.* (quoting *Parisi v. Davidson,* 405 U.S. 34, 37, 92 S.Ct. 815, 31 L.Ed.2d 17 (1972)).

[17][18][19][20] While the doctrine arose as a discretionary rule in courts of equity, today many exhaustion requirements are mandated by legislation. *See Smith v. United States,* 199 F.2d 377, 381 (1st Cir.1952). When a statute provides specific administrative procedures, "one claiming to have been injured must first comply with the provisions of the administrative statute." *State v. Yoakum,* 201 Tenn. 180, 297 S.W.2d 635, 641 (1956) (citing *State ex rel. Jones v. City of Nashville,* 198 Tenn. 280, 279 S.W.2d 267 (1955)). The mere fact that an agency probably will deny relief is not a sufficient excuse for failure to exhaust available remedies. *Id.* Exhaustion of administrative remedies is not an absolute prerequisite for relief, however, unless a statute " 'by its plain words' " requires exhaustion. *Thomas v. State Bd. of Equalization,* 940 S.W.2d 563, 566 (Tenn.1997) (quoting *Reeves v. Olsen,* 691 S.W.2d 527, 530 (Tenn.1985)). Thus, a statute does not require exhaustion when the language providing for an appeal to an administrative agency is worded permissively. *Id.* Absent any statutory mandate, whether to dismiss a case for failure to exhaust administrative remedies would be a matter of " 'sound judicial discretion.' " *Reeves,* 691 S.W.2d at 530 (quoting *Cerro Metal Prod. v. Marshall,* 620 F.2d 964, 970 (3d Cir.1980)).

C. Title 67

The Defendants assert that under the facts of this case, the portion of the Tennessee Code that pertains to the tax classification of utilities and carriers requires exhaustion through the Board. Tenn.Code Ann. §§ 67–5–1301 to –1334 (2006 & Supp.2007). Upon its review of the statute, the Court of Appeals found no such requirement. In making this determination, the Court of Appeals