

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE AT
MURFREESBORO

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LAURIE L. BROWN
CIRCUIT COURT CLERK

RUTHERFORD WRESTLING CLUB, INC.)

Plaintiff,)

v.)

CASE NO. 61792

ROBERT ARNOLD;
RUTHERFORD COUNTY, TENNESSEE;
and RUTHERFORD COUNTY BOARD OF
EDUCATION,)

Defendants,)

ORDER

STATEMENT OF THE CASE

On November 29, 2010, Rutherford Wrestling Club, Inc., (hereinafter referred to as Plaintiff) filed its Complaint against Robert Arnold and Rutherford County, Tennessee, seeking damages under the Tennessee Governmental Tort Liability Act, injunctive relief, mandamus and declarations of a resulting trust. On December 14, 2010, Plaintiff filed a Complaint Amendment naming the Rutherford County Board of Education as an additional Defendant.

Pursuant to Order filed January 7, 2011, Plaintiff's request for injunctive relief was denied.

On January 13, 2011, Robert Arnold, Rutherford County, Tennessee, and the Rutherford County Board of Education filed their Answer to the Complaint.

Prior to trial, the parties withdrew and waived their jury demands.

Trial was held on July 9, July 10, and July 11, 2013. On July 9, 2013, before the presentation of evidence, Defendant's Motion for Judgment on the Pleadings, pursuant to Tenn.

R. Civ. P. 12.03, was heard and denied with the exception that Plaintiff's claims identified as Malicious Harassment and Wrongful Acts of Sheriff's Deputies were dismissed upon stipulation of counsel. On July 12, 2013, Plaintiff's presentation of evidence having been completed, Defendant's Motion for Involuntary Dismissal, pursuant to Tenn. R. Civ. P. 41.02(2), was heard and denied with the exception that Plaintiff's claims identified as Application of the GTLA / Conversion were narrowed from a claim of an intentional conversion, which was dismissed upon stipulation of counsel, solely to a claim of negligent conversion. Trial continued to be held on July 12 and August 1, 2013, after which this Court took this matter under advisement.

IDENTIFICATION OF ISSUES¹

Plaintiff submits the underlying premise to all of its claims against the County (Defendants) is "What will the evidence demonstrate regarding which party (RWC² or the County) possesses legal and/or equitable ownership of the wrestling building on the campus of Blackman Middle School, and its contents."³ Plaintiff identified the "various viable legal theories upon which Plaintiff may successfully recover from the Defendant," and acknowledged that "the claim set forth under the Governmental Tort Liability Act,⁴ and the entirely separate equitable trust theories are the primary claims."⁵

This Court has identified and will address each of Plaintiff's claims in turn as follows:

- I. Real Property Issues**
 - A. Resulting Trust
 - B. Fundraising and County Bidding Requirements
 - C. Application of the GTLA / Unlawful Taking
 - D. Unlawful Ejectment

¹ See Exhibit A for an outline of claims and correlating defenses filed by Plaintiff and Defendants.

² Plaintiff is Rutherford Wrestling Club, Inc. Plaintiff uses the terms Rutherford Wrestling Club or RWC interchangeably with Rutherford Wrestling Club, Inc. This Court will refer to the Plaintiff, Rutherford Wrestling Club, Inc., and to Rutherford Wrestling Club or RWC as separate entities.

³ Plaintiff's Pre-Trial Memorandum, Pg. 1 (June 27, 2013).

⁴ T.C.A. § 29-20-101.

⁵ Plaintiff's Pre-Trial Memorandum, Pg. 6 (June 27, 2013).

- E. Mistaken Improvement
- II. **Personal Property Issues**
 - A. Application of the GTLA / Conversion
 - B. Bad Faith Seizure
 - C. Civil Recovery of Personal Property
- III. **Miscellaneous Issues**
 - A. Mandamus
- IV. **Dismissed Issues**
 - A. Malicious Harassment
 - B. Wrongful Acts of Sheriff's Deputies

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Resolution of the issues in this litigation requires identification of the relationship between William C. Kennedy, Jr. (also referred to herein as Bill Kennedy or Major Kennedy), the Rutherford County Sheriff's Department, the Sheriff's Sharpshooters wrestling program, Rutherford Wrestling Club, and Rutherford Wrestling Club, Inc.

As of 2010, William C. Kennedy, Jr., had been employed with the Rutherford County Sheriff's Department for approximately nineteen (19) years. William C. Kennedy, Jr., had been promoted through the Sheriff's Department and ultimately, as of 2010, held the rank of Major, a third tier leadership position behind the Chief Deputies and the Sheriff. Major Kennedy was responsible for management of the School Resource Officer Divisions, All Youth Intervention Programs, Department Wellness Coordination Functions, Rutherford County School System Liaison, and School Safety Coordinator.⁶ One of the Youth Intervention Programs for which Major Bill Kennedy was responsible for managing was the "Keeping Kids S.A.F.E." program (also known or referred to as the Sheriff's Athletic Fellowship & Enrichment or S.A.F.E. program).⁷ Under the S.A.F.E. umbrella, a number of the programs were commenced, led, and directed by School Resource Officers (SROs) for whom Major Kennedy was responsible. In a document dated May 4, 2004, Major Kennedy's duties with the Rutherford County Sheriff's

⁶ Exhibit 92.

⁷ Exhibit 102.

Department were identified to include coordinating, facilitating, and/or participating in various youth-oriented activities “(e.g. Sheriff’s Sharp Shooter Wrestling, Fencing out Drugs, TEAM, Operation Integrity, etc.).”⁸

The wrestling program began as one of the aforementioned Sheriff’s Athletic Fellowship & Enrichment (S.A.F.E.) programs in 1998. William C. Kennedy, acting under his official duties with the Rutherford County Sheriff’s Department, was the driving force behind the implementation of the wrestling program. The wrestling program was initially identified as the Rockvale Rockets and then as the Blackman Blaze, which names originated from the Rutherford County Schools whose facilities they used (i.e. Rockvale Elementary, Blackman Elementary, and Blackman Middle schools).

On June 7, 2001, and June 14, 2001, the minutes of the Budget, Finance & Investment Committee of the Rutherford County Board of Commissioners confirm acceptance of a Juvenile Accountability Incentive Block Grant (federal matching grant) in the amount of \$25,077.00.⁹ The grant proceeds were expended on behalf of the wrestling club program.¹⁰

On June 19, 2001, William C. Kennedy, Jr., opened a bank checking account under the name, “Rutherford Wrestling Club” which was the first known use, verbal or written, of the name.¹¹ On June 28, 2001, notice of the assigned Employer Identification Number was forwarded from the Department of the Treasury / Internal Revenue Service to “Rutherford Wrestling Club.”¹² Both the checking account and the notice of the Employer Identification Number identified the address for “Rutherford Wrestling Club” as 940 New Salem Rd/Hwy, Murfreesboro, TN 37129, which is the address of the Rutherford County Sheriff’s Department.

⁸ Exhibit 92.

⁹ Exhibit 96.

¹⁰ Exhibit 97A.

¹¹ Exhibit 13.

¹² Exhibit 5.

After the federal matching grant was obtained the wrestling club was referred to as the Sheriff's Sharpshooters, or similar names. The wrestling club was never referred to as "Rutherford Wrestling Club."¹³ The wrestling club continued to grow and continued to use the facilities at Blackman Middle School until 2005, but prior to March 21, when William C. Kennedy, Jr., requested permission from Principal Butch Vaughn to construct a building upon the campus of Blackman Middle School. In turn, Mr. Vaughn conveyed the request to the Rutherford County Board of Education. Construction of the building began in 2005 and was completed in 2006.

The first issue which this Court will address is who owns the building in question constructed in 2005/2006 and located upon the campus of Blackman Middle School and the underlying real estate or access thereto.

I. Real Property Issues

BUILDING

The March 21, 2005 minutes of the Special Called Capital Projects Meeting of the Rutherford County Board of Education were introduced into evidence and state:

6. Rutherford County Sheriff's Department Wrestling Club Building

Motion by Mr. Patton, seconded by Mr. Hodge, to approve the request from the Rutherford County Sheriff's Department Wrestling Club to construct a 60-foot by 100-foot metal building adjacent to the gym at Blackman Middle School. The Wrestling Club will be using the building for storage, practice and meetings. There will be no cost to the Board.¹⁴

There is no other express or written agreement regarding the building other than the foregoing minutes.

¹³ William C. Kennedy, Jr., testified "Rutherford Wrestling Club, Inc." was a 501(c)(3) charitable corporation, incorporated in 2002. However, the admitted documentary evidence indicates otherwise. (See Exhibit 2, Article XV, Section 6, "These by-laws will be effective upon acceptance by the Board. William C. Kennedy 2005."; See also Exhibit 3, Application for Tax Exempt Status dated April 22, 2005 signed by William C. Kennedy, Jr.).

¹⁴ Exhibit 1.

No other representative of either Rutherford Wrestling Club or Plaintiff, Rutherford Wrestling Club, Inc., including William C. Kennedy, Jr., attended the Rutherford County Board of Education meeting.

No evidence was introduced which showed that Plaintiff ever conducted any fundraising activities, solicited grants, or advertised programs or activities, in its own name. Instead, the evidence showed that fundraising activities, solicitations for grants, and advertisements were conducted using the names and/or logos "Sheriff's Wrestling," "Sheriff's Sharpshooters," "Sheriff's Sharpshooter Wrestling," "Sheriff's Sharp Shooters," "Sheriff's Office," "Sheriff's Athletic Fellowship & Enrichment program (S.A.F.E.)", "Sheriff's Athletic Fellowship & Enrichment (S.A.F.E.) Wrestling Program" and Rutherford County Sheriff's Department.

A grant application letter and a fundraising request letter were introduced into evidence. Both letters were on Sheriff's Athletic Fellowship & Enrichment letterhead, bearing the logo of the Sheriff's Sharpshooter 2005 Wrestling, Rutherford County Sheriff's Office.

The grant application letter was forwarded over the signature of Major Bill Kennedy, Commander Youth Intervention, President of the Rutherford County SRO Association. In the grant application, Major Kennedy stated:

...The funds from this grant will go directly to the youth of Murfreesboro and Rutherford County through our Sheriff's Athletic Fellowship & Enrichment (S.A.F.E.) Program.

. . .

The "Keeping Kids S.A.F.E." program started in 1995 with after school and summer mentoring to our youth through the YMCA's Y-SAFE officers. We have since expanded to include a S.A.F.E. Building that allows us to participate with our kids 365 days a year in recreational activities such as wrestling, fencing, martial arts, archery, power-lifting, and TWRA trap shooting... We are having great success reaching a couple hundred kids a year and anticipate doubling our out-reach with the addition of our new building.

We need funds to finish our S.A.F.E. building and buy equipment for our existing and future programs.

. . . .

Our current and previous major supporters include:

- Rutherford County Conservation Board
- Middle Tennessee Electric Customers Care Inc.
- Music City Medical Co.
- Affordable Drive Way by Glenn Inc.
- **Rutherford Wrestling Club**¹⁵

The fundraising request letter was acknowledged to have been forwarded by Major Bill Kennedy, Commander Youth Intervention, President of the Rutherford County SRO Association.

In the fundraising request letter, Major Kennedy stated:

. . . .

We are now in the process of raising much needed funds to build a SAFE building...

. . . .

Currently, we can only use borrowed facilities at the convenience of the principal or other coaches who have first priority a couple of days a week...

. . . .

The SAFE building will be located at Blackman Middle School, behind the gym. It will be available for all Deputies to run their athletic programs out of year round...¹⁶

Plaintiff introduced into evidence, as a collective exhibit, the records of the City of Murfreesboro Building and Codes Department pertaining to construction of the building. None of the permits issued by the Codes Department, several of which were signed by William C.

¹⁵ Exhibit 77 (emphasis added): The Court takes notice that the name is identified as Rutherford Wrestling Club and not Rutherford Wrestling Club, Inc.

¹⁶ Exhibit 79.

Kennedy, identified Plaintiff as the owner of the property, but rather stated under owner's name "Data Unavailable".¹⁷

Included in the exhibit are:

- Building Stakeout confirmation letter and facsimile cover sheet dated April 24, 2006, of Thomas G. Rosenthal, RLS with Site Engineering Consultants (SEC, Inc.) wherein he identified the property as, "Lot 2, Rutherford County Blackman School's Property Safehouse."¹⁸
- E-mail dated October 10, 2006, from Warren Engineering, Inc., which states "A guy named Bill Kennedy with the Rutherford County Sheriff's Office called asking us to do a final inspection on the Blackman High School Wrestling Building."¹⁹
- October 12, 2006 Agreement Not to Occupy / Application for Temporary Electric Service signed by William C. Kennedy who designated billing for the electric service to Blackman Middle [School].²⁰
- October 18, 2006 Conditional Certificate of Occupancy / Application signed by William C. Kennedy as, "William C. Kennedy w/ Sheriff's Dept."²¹

Plaintiff introduced into evidence a series of checks that were signed by Bill Kennedy and drawn on the bank account of Rutherford Wrestling Club.²² According to testimony given at trial these checks were identified as being issued for payment of costs/expenses incurred for

¹⁷ Exhibit 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Exhibit 12 (see also Exhibit 83).

²¹ Exhibit 12.

²² The Court takes notice that the checking account is and has always been held in the name of Rutherford Wrestling Club and not Rutherford Wrestling Club, Inc.

construction of the building in question. The payment purpose identified on the memo line of each check is stated as follows:

No: 1223
Date: 09/30/05
Memo: Safe Building²³

No: 1244
Date: 12/29/05
Memo: Engineering for Safe Building²⁴

No: 1282
Date: 03/14/06
Memo: Safe Building Blackman Middle²⁵

No: 1284
Date: 03/30/06
Memo: Safe Building Youth of Rutherford Co.²⁶

No: 1291
Date: 04/17/06
Memo: Safe Building²⁷

Plaintiff introduced into evidence its 2006 and 2007 tax returns filed with the Internal Revenue Service. Included with and as a part of each tax return were two (2) schedules identified as Schedule 1 990-EZ and Schedule 2 990-EZ, respectively.

On the 2006 Schedule 2 990-EZ, Plaintiff submitted the following statement:

Our wrestling club raised money to build a building to use for our wrestling club, the land for the building was donated by Rutherford [C]ounty. The building sits on school property at Blackman Middle School on Blaze Drive in Murfreesboro, Tennessee. **Rutherford County owns the building we just raised the funds to have the building built.** The expenses incurred in 2006 totaled \$78,691.15 the cost of the building, the excavating, foundation, lights, electricity permits, inspections, etc.²⁸

²³ Exhibit 51.

²⁴ Exhibit 50.

²⁵ Exhibit 48.

²⁶ Exhibit 46.

²⁷ Exhibit 45.

²⁸ Exhibit 10(1) (emphasis added).

On the 2007 Schedule 2 990-EZ, Plaintiff submitted the following statement:

Our wrestling club raised money to have electrical work done on the building that we use for our wrestling practices[.] We raised money in 2006 to build the building[.] The building sits on the school property of Blackman Middle School located on Blaze Drive in Murfreesboro, Tennessee. **The Rutherford County Government owns the building and the land on which it sits.** The expenses that we incurred in 2007 totaled \$23[,]²⁹177.24 this included the cost of a portion of the building debt, heating, air conditioning, ventilation, duct work, inspections and permits[.]²⁹

RESTROOM ADDITION

In 2008, restroom facilities were constructed in the building. The July 11, 2008 letter of Will Shelton, who was then principal of Blackman Middle School, to Mr. Gill (Director of Schools for the Rutherford County Board of Education), was introduced into evidence and states, “I understand that Major Bill Kennedy desires to install restroom facilities in his building...”³⁰

The August 12, 2008 minutes of the Rutherford County Board of Education were introduced into evidence and, under agenda item 12, A., state:

12. FACILITIES

A. Blackman Middle School Wrestling Building Restroom Facility

Blackman Middle School Principal, Will Shelton, has requested permission to install a restroom in the wrestling building at his school. The project will be headed by Major Bill Kennedy and constructed through donations of both materials and labor. Major Kennedy will secure all permits and build the restrooms in compliance with Rutherford County School’s specifications and applicable codes. This will cut down on entrance of participants in the wrestling program into the school after hours.

Motion made by Mr. Dorris Jernigan, seconded by Mr. Wise, to approve construction of a restroom in the wrestling building at Blackman Middle School with the project headed by Major Bill Kennedy and at no cost to the Board.³¹

²⁹ Exhibit 10(2) (emphasis added).

³⁰ Exhibit 12.

³¹ Exhibit 88.

There is no other express or written agreement regarding the restroom addition to the building other than the foregoing letter and minutes.

No representative of Rutherford Wrestling Club, Inc., including its then president, William C. Kennedy, Jr., attended the school board meeting.

Plaintiff introduced into evidence, as a collective exhibit, the records of the City of Murfreesboro Building and Codes Department pertaining to construction of the restroom addition.

The Commercial Building Permit, issued October 2, 2008, and the Plumbing Permit, issued December 16, 2008, were both signed by William C. Kennedy who identified the owner of the property as the Rutherford County Board of Education.³² Additionally, the Mechanical Permit and the Electrical Permit, both issued February 27, 2009, signed by Lucas Thompson with Thompson Services, Inc., also identified the owner of the property as the Rutherford County Board of Education.³³

This Court took all of the evidence presented at trial into consideration and decided to put forth the evidence that this Court found most compelling. The aforementioned evidence, much of which was entered into evidence by Plaintiff, shows that the Plaintiff and its representatives never held Rutherford Wrestling Club, Inc., out to be the owner of the building in question until after the administrative change within the Rutherford County Sheriff's Department in September 2010. Plaintiff, through its president, William C. Kennedy, Jr., and other representatives, admitted that the owner of the property was Rutherford County, Tennessee, and/or Rutherford County Board of Education. The two (2) tax returns which Plaintiff introduced into evidence admit ownership of the building and the land upon which it is located is held by Defendants,

³² Exhibit 12 (see also Exhibit 84, 85).

³³ Exhibit 12 (see also Exhibit 86, 87).

Rutherford County, Tennessee, and/or Rutherford County Board of Education. The building and utility permits, bearing the signature of Plaintiff's president, admit that ownership is held by Defendants, Rutherford County, Tennessee, and/or Rutherford County Board of Education.

Furthermore, Plaintiff never paid any real estate taxes associated with the real property nor any of the charges/expenses for utility services, either electric or water, provided to the building from its construction through the date of trial. All of the utility service charges/expenses were paid by Defendants, Rutherford County, Tennessee, and/or Rutherford County Board of Education.

This evidence, and more³⁴, leads this Court to find that Plaintiff is not the owner of the building in question, but that the building is owned by Defendants, Rutherford County, Tennessee, and/or Rutherford County Board of Education.

The Court addresses the legal issues presented by the parties as follows:

A. Resulting Trust

Plaintiff's primary real estate claim is that of a resulting trust. Plaintiff requests that this Court declare an equitable trust against Rutherford County, Tennessee, or grant Plaintiff either an easement or a license to use, and have reasonable access to, the building in question. Based upon the foregoing and for the following reasons this Court denies Plaintiff's request.

Tennessee law states that a trust may be created by (1) the transfer of property to another person as trustee, either during the transferee's lifetime or by will; (2) the declaration of the owner of the property that the owner holds identifiable property as trustee; (3) the exercise of a

³⁴ Preble Ann Acton, a 26 ½ year employee of the Rutherford County Sheriff's Department, called to testify on behalf of Plaintiff, upon questioning stated that she thought the building in question, "was an SRO building," and, "...it was my understanding it was our building, Sheriff's Office property."

power of appointment in favor of a trustee; or (4) a court pursuant to its statutory or equitable powers.³⁵

Plaintiff concedes that no express trust exists between the parties, but rather argues that this Court should use its equitable powers under subsection (4) of Tenn. Code Ann. § 35-15-401 to grant Plaintiff a resulting trust. “A resulting trust is a reversionary, equitable interest implied by law in property that is held by a transferee, in whole or in part, as trustee for the transferor or the transferor's successors in interest.”³⁶ The resulting and constructive trusts are two forms of equitable relief used by the court to avoid unjust enrichment.³⁷ The Tennessee Supreme Court has stated:

Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved.

...[Resulting trusts] may be imposed in other circumstances, such that a court of equity, shaping its judgment in the most efficient form, will decree a resulting trust—on an inquiry into the consideration of a transaction—in order to prevent a failure of justice. However, the particular circumstances under which a resulting trust may arise varies from jurisdiction to jurisdiction.³⁸

These trusts often arise when the law presumes that the parties intended to create a resulting trust.³⁹ A resulting trust may be, and typically is, proven by parol evidence.⁴⁰ When a party attempts to use parol evidence to create a resulting trust, such a trust must be shown by more

³⁵ T.C.A. § 35-15-401.

³⁶ Restatement (Third) of Trusts § 7 (2003).

³⁷ *Story v. Lanier*, 166 S.W.3d 167, 184 (Tenn. Ct. App. 2004).

³⁸ *In re Estate of Nichols*, 856 S.W.2d 397, 401 (Tenn. 1993).

³⁹ *Story*, 166 S.W.3d at 184.

⁴⁰ *Saddler v. Saddler*, 59 S.W.3d 96, 99 (Tenn. Ct. App. 2000).

than mere preponderance of the evidence.⁴¹ The party attempting to prove the existence of a resulting trust must prove its existence by clear and convincing evidence.⁴² Generally speaking, the testimony of a single interested witness is insufficient to establish a resulting trust by clear, convincing evidence.⁴³

In the instant case, Plaintiff has failed to prove by clear and convincing evidence that a resulting trust exists. The only possible meeting of the minds in this case would be the Rutherford County Board of Education meeting on March 21, 2005. Neither the Plaintiff, Rutherford Wrestling Club, Inc., nor Rutherford Wrestling Club, by and through its representatives, attended the Rutherford County Board of Education meeting, and did not present the request to construct a building on the campus of Blackman Middle School. The minutes for that meeting do not make any mention of either Plaintiff, Rutherford Wrestling Club, Inc., or Rutherford Wrestling Club, but rather reference “the Rutherford County Sheriff’s Department Wrestling Club.”⁴⁴

Plaintiff has failed to show by clear and convincing evidence that Rutherford County, Tennessee, or the Rutherford County Board of Education, by and through its employees intended, or even knew, that they were agreeing to allow a private entity the use and enjoyment of government property. On the contrary, this Court finds that the evidence shows that the Rutherford County Board of Education intended to, and did, give permission to another county entity to construct, at no cost to the Board, a building for a program within the Rutherford County Sheriff’s Department.

⁴¹ *Wardell v. Dailey*, 674 S.W.2d 293, 295 (Tenn. Ct. App. 1984).

⁴² *Saddler*, 59 S.W.3d at 99.

⁴³ *Id.*

⁴⁴ Exhibit 10(1).

Furthermore, the evidence presented to this Court at trial shows that the representatives of Plaintiff expressed their own beliefs that the building in question and the real estate upon which it sits is the property of Rutherford County, Tennessee, and/or Rutherford County Board of Education. Plaintiff's tax returns, filed with the United States government, plainly state that the building, and the land upon which it sits, is owned by Rutherford County, Tennessee, and/or Rutherford County Board of Education. Plaintiff's acknowledgement that ownership of the building lies with Defendants, Rutherford County, Tennessee, and/or Rutherford County Board of Education, is evidence so compelling this Court can neither ignore nor turn a blind eye.

Therefore, this Court finds that there is not clear and convincing evidence provided by Plaintiff to establish a resulting trust, and the request for relief is denied.

Additionally, Plaintiff asks this Court to grant it access to the building in question through either an easement or a license. A license is a privilege to use land in possession of another which arises from the consent of the one whose interest in the land used is affected, and is not incident to an estate in the land.⁴⁵ A license creates no estate in land and is generally not considered an interest in land.⁴⁶ A license merely creates an authority to do a particular act or series of acts on the land of another.⁴⁷ An easement creates a non-possessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the rights of the easement holder.⁴⁸

This Court has not found proof of either a license or an easement in this case. Plaintiff has failed to show sufficient evidence that Rutherford County, Tennessee, and/or Rutherford County Board of Education intended to create either a license or easement agreement with

⁴⁵ Restatement (First) of Property, § 512 (1944).

⁴⁶ *United States v. Anderson County*, 575 F.Supp. 574, 578 (E.D. Tenn. 1983).

⁴⁷ *Barksdale v. Marcum*, 7 Tenn App. 697, 708 (1928).

⁴⁸ Restatement (Third) of Property § 1.2 (2000).

Plaintiff, Rutherford Wrestling Club, Inc or Rutherford Wrestling Club. The Rutherford County Board of Education speaks through its minutes, and its minutes show no evidence of an agreement between Rutherford County, Tennessee and/or Rutherford County Board of Education and either Plaintiff, Rutherford Wrestling Club, Inc., or Rutherford Wrestling Club. The minutes only show that the Rutherford County Board of Education agreed to allow the Rutherford County Sheriff's Department's Wrestling Club to construct and use a building upon Rutherford County property. Therefore, this Court denies Plaintiff's claim for either an easement or a license.

For the foregoing reasons this Court finds that there is no resulting trust and/or license and denies Plaintiff's request for relief under this claim.

B. Fundraising and County Bidding Requirements

Plaintiff next asserts that Rutherford County violated multiple statutes by allowing a charitable organization to construct the building in question and that Defendant, Rutherford County, could not legally construct the building, though any means, without first complying with the requirements set forth in Tenn. Code Ann. § 54-9-201.

Plaintiff seems to argue that the alleged illegality of these actions shows that the Defendant, Rutherford County Board of Education, when agreeing to allow the building to be constructed, intended for the building to be owned by Plaintiff. While this intent might be valid on another claim (even though it was not argued as evidence of intent on another claim), it is not helpful to this particular claim. Plaintiff, in stating this claim, fails to list any relief that might be granted to Plaintiff for the Defendant, Rutherford County Board of Education's, alleged violation of these statutes.

Furthermore, Tenn. Code Ann. § 54-9-201 is under Title 54, which refers to Tennessee Highways, Bridges, and Ferries. The instant case revolves around the legal ownership of a

building and its contents. The case does not involve a dispute over highways, bridges or ferries. Therefore, Tenn. Code Ann. § 54-9-201 is not applicable in this case.

For the aforementioned reasons this Court cannot grant relief to Plaintiff based upon this claim.

C. Application of the GTLA / Unlawful Taking

Plaintiff argues in its Pre-Trial Memorandum that the building in question was illegally taken away from it by means of eminent domain. Tennessee law gives any person or corporation authorized by law to make internal improvements the right to take the real estate of individuals.⁴⁹ The individuals whose property is taken must be justly compensated for their loss.⁵⁰ To recover for an unlawful taking the owners of the property shall commence proceedings within twelve months after the land has been actually taken possession of.⁵¹ Plaintiff further cites statutes that touch upon the procedural process of a lawful taking.⁵² However, the main issue at hand is whether Plaintiff has ownership of the building in question in order to bring a claim for unlawful taking.

In order to hold Rutherford County, Tennessee, liable for damages for unlawful taking this Court would have to find that Rutherford Wrestling Club, Inc., was the true owner of the property in question. Plaintiff has not provided this Court sufficient evidence to prove that Plaintiff is the true owner of the property in question. As this Court has already stated, Plaintiff's evidence provided at trial shows that Plaintiff, through its own representatives, did not express the belief that Plaintiff was the true owner of the building and the real estate upon which it sits.

⁴⁹ T.C.A. § 29-16-101.

⁵⁰ *Id.*

⁵¹ T.C.A. § 29-16-124.

⁵² Plaintiff's Pre-Trial Memorandum, Pg. 8 (June 27, 2013).

The Tennessee Rules of Civil Procedure state that a pleading shall set forth a short and plain statement of the claim showing the pleader is entitled to relief and a demand for the relief the pleader is seeking.⁵³ Each averment of a pleading shall be simple, concise, and direct and if that claim relies upon a violation of a statute, the statute must either be specifically referred to, or the facts must be sufficiently laid out so that the other party can be duly apprised of the statutory violation charged.⁵⁴ The court does not have a duty to create a claim that the pleader does not spell out in its complaint.⁵⁵ In its Complaint, Plaintiff merely mentions the term unlawful taking in the heading identified as claim C. The paragraph accompanying that heading makes no mention of an unlawful taking, eminent domain, or of condemnation, but instead only refers to a wrongful conversion and the removal of immunity under the Governmental Tort Liability Act. This Court concludes Plaintiff has not sufficiently pled this claim and therefore this Court cannot grant Plaintiff relief and the claim is dismissed.

For the aforementioned reasons, this Court's finding that the Plaintiff is not the owner of the property and that Plaintiff did not make a proper plea, this Court cannot grant relief to Plaintiff based upon an unlawful taking claim.

D. Unlawful Ejectment

Plaintiff brings an action for unlawful ejectment against the defendant. Plaintiff, Rutherford Wrestling Club, Inc., argues that, at minimum, the relationship between Plaintiff and the Defendant, Rutherford County, Tennessee, and/or Rutherford County Board of Education, should be considered a landlord-tenant relationship. Plaintiff argues that they enjoyed the status of tenants-at-will under Tennessee law. Being tenants, Plaintiff submits that the Defendants, Rutherford County, Tennessee, and/or Rutherford County Board of Education, could not oust

⁵³ Tenn. R. Civ. P. 8.01.

⁵⁴ Tenn. R. Civ. P. 8.05.

⁵⁵ *Utter v. Sherrod*, 132 S.W.3d 344, 351 (Tenn. Ct. App. 2003).

Plaintiff from the premises of the building without court process or other legal authority. The only relief requested by Plaintiff for alleged unlawful ejectment, which this Court previously denied, is for the Court to grant a temporary injunction pursuant to Rule 65 of the Tennessee Rules of Civil Procedure, granting immediate and unqualified restoration of the building in question to Rutherford Wrestling Club, Inc.

Plaintiff presents Tenn. Code Ann. § 29-15-101 in support of its argument for unlawful ejectment, which states that ejectment, forcible or unlawful entry or detainer *may* be brought in an action to recover real property.⁵⁶ The Tennessee Code Annotated goes on to state that “any person having a valid subsisting legal interest in real property, and a right to the immediate possession thereof, *may* recover the same by an action of ejectment.”⁵⁷ According to case law, these statutes are written permissively and do not make it mandatory that a landlord use these means to eject a tenant from the property.⁵⁸

This Court was unable to find any reported cases in the state of Tennessee, or in the Sixth Circuit of the United States Court of Appeals, that use the term “unlawful ejectment” in a real property context. The only cases on the subject of unlawful ejectment found by this Court were those dating back to the late 19th and early 20th centuries, which involved the removal of a passenger from a train, which falls under a completely different rule of law. Therefore, this Court must reject Plaintiff’s argument and claim of unlawful ejectment.

Considering that the Court was unable to find legal authority in support of an unlawful ejectment argument, the Court next looked to other alternative forms of relief that might be similar to the relief asked for by Plaintiff. In its Complaint Plaintiff used the phrase “unlawful

⁵⁶ T.C.A. § 29-15-101 (emphasis added).

⁵⁷ T.C.A. § 29-15-102 (emphasis added).

⁵⁸ *Dunegan v. Griffith*, 253 S.W.3d 164 (Tenn. Ct. App. 2007).

ouster.” The use of this phrase compelled this Court to consider a claim for unlawful ouster under Tenn. Code Ann. § 66-28-504. This statute states,

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits.⁵⁹

While this statute seems applicable to the current situation, this statute is found under Chapter 28 of the Tennessee Code Annotated, which is commonly referred to as the Uniform Residential Landlord and Tenant Act. The Uniform Residential Landlord and Tenant Act is designed to, among other things, simplify and revise the law governing the rental of dwelling units.⁶⁰ In the instant case, the parties are not in dispute about the ouster from a dwelling, but from a building used for commercial or recreational purposes. From the plain language of the statute, and its title, it appears that the statute would not apply to the commercial relationship in the instant case. Therefore, Tenn. Code Ann. 66-28-504 would not be applicable to the current case.

For the foregoing reasons, this Court denies Plaintiff's request to recover under claims for unlawful ejectment and unlawful ouster.

E. Mistaken Improvements

Lastly, although this particular claim was not specifically pled in the Complaint, Plaintiff seems to have made an argument during trial for a claim based upon mistaken improvements. At common law no compensation was allowed for improvements made to the land of another without his consent.⁶¹ Tennessee has since abrogated the common law rule by codifying the rule

⁵⁹ T.C.A. § 66-28-504.

⁶⁰ T.C.A. § 66-28-103.

⁶¹ *Uhlhorn v. Keltner*, 723 S.W.2d 131 (Tenn. Ct. App 1987)(citing *Rainer v. Huddleston*, 51 Tenn, 223, 225-26 (1871); *Townsend v. Shipp's Heirs*, 3 Tenn. 294, 298 (1813)).

that persons holding possession in good faith, under color of title, are entitled to have the value of improvements set off against rents and profits which the owner of the property may recover.⁶² The court in *Uhlhorn* extended this concept by stating that the elements set forth in Tenn. Code Ann. § 29-15-123 must be present even when a person is merely seeking compensation in a court of equity.⁶³

As set forth above, this Court found Plaintiff, by its own admission, is not and was never the owner of either the building or the land upon which it sits. Therefore, Plaintiff did not, and could not, have color of title under good faith, which are necessary elements for recovery under Tenn. Code Ann. § 29-15-123.

For the foregoing reasons, this Court finds that Plaintiff did not mistakenly improve the property of Rutherford County, Tennessee, and/or Rutherford County Board of Education under good faith color of title and therefore Plaintiff's claim, if any, for relief under Tenn. Code Ann. § 29-15-123 is denied.

Wherefore, all claims of Plaintiff for recovery under I. Real Property Issues are denied and dismissed.

II. Personal Property Issues

Upon trial, Plaintiff, through William C. Kennedy, Jr., submitted as its basis for computation of the amount claimed for personal property value or damages a series of invoices identified as Exhibits 15-30; 32; 37(a); 38; 59; 59(a)-(g); and 60. The invoices identified the date of purchase, item(s) purchased, the purchase price paid, and the payee. The invoices taken in the aggregate totaled \$35,868.98.⁶⁴ William C. Kennedy, Jr., testified the aforesaid sum, based upon invoices paid, represented the present value of the personal property which he

⁶² T.C.A. § 29-15-123.

⁶³ *Uhlhorn*, 723 S.W.2d 131.

⁶⁴ Exhibit 67.

identified was in the building. Additionally, William C. Kennedy, Jr., testified there were other items of personal property inside the building, some of which he could not specify, but would say was, “\$50,000.00 worth of equipment.” Accordingly Plaintiff sought recovery of \$85,868.98 as damages for loss of personal property.

This Court finds the personal property or contents of the building located on the campus of Blackman Middle School, taken collectively from the testimony of Plaintiff’s witnesses, subject to additional items which could not be specified, was identified as follows:

Wrestling Mats ⁶⁵	[The first purchased 2002; the second purchased 2007/2008]
Workout Equipment ⁶⁶	
Pegboards	
Stereo Equipment	
Projector Screen	
Desk	
Trophies	
Lockers	
Security system with DVR	
Two (2) Gorilla Shelves	
Copy Machine	
Records & Documents	[Estimated would fill between 1-10 banker boxes]
Air Units	
Video Equipment	
Uniforms ⁶⁷	
Weigh-in Equipment / Scales	
Refrigerator	
Video tapes	
Matted Flooring	[Puzzle design floor mats]
Chairs	
Office Supplies	

Sheriff Robert Arnold testified to the contents of the building in question and what was removed from the building on October 29, 2010. Sheriff Robert Arnold testified that the only items that were removed from the building were the wrestling mats, a copier tagged or marked as

⁶⁵ A mat is made up of multiple components or parts.

⁶⁶ This includes: weight sets, power clean station, plyometric boxes, hand weights, & a leg press machine.

⁶⁷ This includes: Singlets, shoes, t-shirts, jackets, headgear & sweats.

county property, a DVR, and one (1) box of documents. Sheriff Robert Arnold testified the wrestling mats were returned to the building within a matter of days, the copier was taken to and remains on the second (2nd) floor of the Rutherford County Jail, and the DVR was taken to and remains in School Resource Officer (SRO) John Heath's office at Blackman Middle School. The one (1) box of documents was delivered to William C. Kennedy, Jr., who refused to accept the box which was then placed and left at his feet. The box is now unaccounted for. Plaintiff has asked this Court for a judgment awarding return of the property to Plaintiff with compensation for damages thereto, or for the value of the property in question.

The second issue which this Court will address is who owns the personal property in question, i.e. the contents of the building located on the campus of Blackman Middle School.

This Court finds that the wrestling program, which started as a Sheriff's Athletic Fellowship & Enrichment (S.A.F.E.) program in 1998, never changed ownership, either to the Rutherford Wrestling Club or Plaintiff, Rutherford Wrestling Club, Inc. The wrestling club was always a program of the Rutherford County Sheriff Department, now known as the Rutherford County Sheriff Department's Sheriff's Sharpshooters wrestling club or other similar names. Plaintiff held a close relationship to the Sheriff's Sharpshooters but never held itself out to the public as the owner of the aforesaid wrestling club.

The same evidence identified and addressed by this Court as applicable to the real property issues is likewise applicable here. No evidence was introduced which showed that Plaintiff ever conducted any fundraising activities, solicited grants, or advertised programs or activities, in its own name.

Furthermore, evidence presented at trial shows that people closely associated with the wrestling program were unaware of the difference, now claimed or asserted by Plaintiff, between

Rutherford Wrestling Club, Inc., and the Rutherford County Sheriff Department's Wrestling Club, also known as the Sheriff's Sharpshooters or other similar names. A 15-year employee and the current finance director for Rutherford County, Tennessee, Lisa Nolan testified that until the October 29, 2010 event occurred, "I didn't know the Rutherford Wrestling Club existed." This Court finds that even the members of the Rutherford Wrestling Club, Inc., associated their club with the Rutherford County Sheriff Department's Wrestling Club, also known as the Sheriff's Sharpshooters or other similar names. This is demonstrated by the banner, hung in the building involved herein, which honored Bill Kennedy. The banner reads "The Bill Kennedy Center for Keeping Kids S.A.F.E." The Keeping Kids S.A.F.E. program was a Rutherford County Sheriff Department program. The banner also bore the name "Sheriff's Sharpshooters" and a Rutherford County Sheriff Department badge logo.

Upon consideration of all of the evidence presented, this Court finds that the Plaintiff's relationship with the Rutherford County Sheriff Department's Wrestling Club, also known as the Sheriff's Sharpshooters or other similar names, was the equivalent of a booster club type organization. The funds which Plaintiff raised and processed through its bank account were spent on behalf of the Rutherford County Sheriff Department's Wrestling Club, also known as the Sheriff's Sharpshooters or other similar names. These funds were used for the purchase of personal property which then became the property of the Rutherford County Sheriff Department's Wrestling Club, also known as the Sheriff's Sharpshooters or other similar names.

Therefore, this Court finds that Plaintiff retained no right of ownership or interest in any of the personal property in question, i.e. the contents of the building located on the campus of Blackman Middle School.

The Court addresses the legal issues presented by the parties as follows:

A. Application of the GTLA / Conversion

Plaintiff asserts that Defendants, Rutherford County, Tennessee, through Sheriff Robert Arnold and/or employees/agents of the Rutherford County Sheriff's Department, unlawfully converted property owned by Plaintiff. The Restatement of Torts, Second, defines conversion as "an *intentional* exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."⁶⁸ The Governmental Tort Liability Act (GTLA) codified the common law rule that "all governmental entities [are] immune from suit for any injury which may result from the activities of said governmental entities..."⁶⁹ The GTLA then sets out exceptions to the general rule in which immunity is removed, "for injury proximately caused by a negligent act or omission of any employee within the scope of his employment"⁷⁰ A list of exceptions to this removal of immunity is attached to this section, including any injury that, "[a]rises out of false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights..." Case law has interpreted this to mean that non-enumerated intentional torts must be accompanied by a showing of negligence in order to be removed from immunity under the GTLA.⁷¹ For instance, in *Limbaugh v. Coffee Medical Center* the court held that under the GTLA a governmental entity can be held liable for the negligent failure of one of its employees to supervise another employee who committed an intentional battery.⁷²

⁶⁸ Restatement (Second) of Torts § 222A (1965)(emphasis added).

⁶⁹ T.C.A. § 29-20-201.

⁷⁰ T.C.A. § 29-20-205.

⁷¹ *Phelps v. Newman*, 2013 WL 28393 (Tenn. Ct. App. 2013).

⁷² *Limbaugh*, 59 S.W.3d 73 (Tenn. 2001).

In the instant case, Plaintiff's sole claim to remove immunity under the GTLA is a conversion claim. Plaintiff stipulated at trial that there is no intentional conversion in this case. Plaintiff contends that the conversion alleged is negligent conversion. This Court could not find any authority stating the existence of a cause of action for negligent conversion in the State of Tennessee. Identifying the alleged conversion as negligent is not enough to remove immunity under the GTLA. The injury must arise from a negligent cause of action.

Plaintiff also has not supplied this Court any evidence that Rutherford County, Tennessee, was negligent in its duty to supervise Sheriff Robert Arnold and/or the employees/agents of the Rutherford County Sheriff's Department, when they entered the building in question. Therefore, this Court cannot find that the Defendants, Rutherford County, Tennessee, through Sheriff Robert Arnold and/or employees/agents of the Rutherford County Sheriff's Department, are removed from immunity under the GTLA. Plaintiff's claim for conversion is barred by the Governmental Tort Liability Act codified at Tenn. Code Ann. § 29-20-201.

In its Pre-Trial Memorandum, Plaintiff cited *Cruse v. City of Columbia*⁷³, and stated that it stood, "for the proposition that any and all property seized by a law enforcement agency of any political subdivision of this state must be based upon a court issued seizure warrant (T.C.A. § 40-33-204)."⁷⁴ In *Cruse*, the Tennessee Supreme Court allowed a conversion claim against the City of Columbia, and applied the statute of limitations from that claim as opposed to the statute of limitations of the GTLA.⁷⁵

The court in that case ruled that the GTLA did not apply in the case because the claim was not being brought pursuant to the GTLA, but instead was pursuant to § 40-17-118, which,

⁷³ *Cruse v. City of Columbia*, 922 S.W.2d 492 (Tenn. 1996).

⁷⁴ Plaintiff's Pre-Trial Memo., Pg. 12 (June 27, 2013).

⁷⁵ *Cruse*, 922 S.W.2d 492.

“removes immunity of governmental entities for liability for damage to property taken under the circumstances set forth therein.”⁷⁶ The circumstances in Tenn. Code Ann. § 40-17-118 are when, “[p]ersonal property [is] confiscated as stolen property by a lawful officer of the state, a county or a municipality of the state to be held as evidence of a crime...”⁷⁷ This would mean that the immunity set forth in the GTLA could be avoided if there were a statute independent of the GTLA, such as Tenn. Code Ann. § 40-17-118, that removed immunity. However, T.C.A. § 40-17-118 does not apply in the instant case because the personal property in question was not “confiscated as stolen property,” and Plaintiff has failed to allege any other statute for which immunity might be removed.

For these reasons, the Defendant(s) are immune from liability and Plaintiff’s claim for conversion fails.

Plaintiff alternatively argues that the wrongful removal and damage of property without Court-issued process was a violation of Section 7, Article I of the *Constitution of the State of Tennessee*. Section 7 in effect mirrors the 4th Amendment of the *United States Constitution* by stating that the people will be free from unreasonable seizures and searches.⁷⁸ This Court has already found that Plaintiff is not the owner of the building in question, and therefore, there can be no unconstitutional search. Sheriff Robert Arnold, and employees/agents, with the Rutherford County Sheriff’s Department entered a building owned by Rutherford County, Tennessee, and/or Rutherford County Board of Education, gaining access through Rutherford County Sheriff Department employee and Blackman Middle School SRO officer John Heath. Rutherford County, Tennessee, cannot be held liable under this section of the Constitution for entering its own building.

⁷⁶ *Cruse*, 922 S.W.2d at 494.

⁷⁷ T.C.A. § 40-17-118.

⁷⁸ Tenn. Const. Art. I § 7; U.S. Const. amend. IV.

In regards to the personal property inside of the building, Plaintiff has failed to provide this Court with enough authority to determine whether Section 7 would apply to the instant case. Section 7 is most commonly used by a person who is wronged during a criminal investigation and the relief most commonly given is that the evidence obtained during the seizure is subject to suppression. Plaintiff has provided this Court no authority in support of their assertion that a violation of Section 7 can lead to individual liability of a county official. Since Section 7 is not applicable in this case and further since Plaintiff has failed to meet its burden of proof, this claim is denied.

For the foregoing reasons, Plaintiff's request for relief under a claim of unlawful conversion is denied.

B. Bad Faith Seizure

Plaintiff next asserts that Sheriff Robert Arnold acted in bad faith when he seized property owned by Plaintiff. To support this assertion, Plaintiff cites Chapter 33, Part 2, of the Tennessee Code Annotated. This Chapter and Part sets forth the procedures for seizing property that is subject to forfeiture, and states that, "(a)ll personal property, including conveyances, subject to forfeiture under § 39-14-307, § 47-25-1105, § 53-11-451, § 55-10-414, § 55-50-504(h), § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020 or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part."⁷⁹ The plain reading of this statute is that the procedures set forth would only apply if the property was forfeited pursuant to one of the aforementioned statutes. Plaintiff in this case has not pled which of the statutes listed in Tenn. Code Ann. § 40-33-201 would be applicable. Notwithstanding, this Court looked to each of the statutes in turn and found that none of them were applicable to the case at hand.

⁷⁹ T.C.A. § 40-33-201.

The statutes listed under Tenn. Code Ann. § 40-33-201 are all criminal statutes under which an appropriate agency might seize property. In this case, Defendant, Sheriff Robert Arnold, testified that he entered the property for the stated purpose to inventory personal property owned by the Rutherford County Sheriff's Department, not for the purpose of investigation under the belief criminal activity was occurring therein. Plaintiff has not alleged that the Defendant, Sheriff Robert Arnold, seized any property pursuant to any criminal statute. Chapter 33 Part 2 of Tenn. Code Ann., would not apply without a seizure pursuant to one of the criminal statutes listed under Tenn. Code Ann. § 40-33-201.

For the aforementioned reasons this Court denies Plaintiff the relief requested under a claim for bad faith seizure.

C. Civil Action for Recovery of Personal Property

While not directly listed in the Complaint as a claim in a specific heading, Plaintiff briefly mentioned Tenn. Code Ann. § 29-30-101 in the body of its claim for unlawful conversion and ejectment. This statute states that a person entitled to possession of tangible personal property in possession of another may recover that personal property by filing an action to recover for personal property.⁸⁰ A later part of Chapter 30 of the Tennessee Code Annotated sets forth the procedure in which to recover personal property by stating that a party shall file, in circuit or chancery court, a sworn complaint or sworn affidavit swearing to Plaintiff's entitlement to possession, a description that reasonably identifies the property sought, and the value of the property.⁸¹ Plaintiff did not file a sworn complaint or attach a sworn affidavit to either its Complaint filed November 29, 2010, or its Complaint Amendment filed December 14, 2010.

Therefore, Plaintiff's request for relief under Tenn. Code Ann. § 29-30-101 is denied.

⁸⁰ T.C.A. § 29-30-101.

⁸¹ T.C.A. § 29-30-103.

Furthermore, even if Tenn. Code Ann. § 29-30-101 had been complied with, this Court has already found Plaintiff retained no right of ownership or interest in any of the personal property in question, i.e. the contents of the building located on the campus of Blackman Middle School.

Wherefore, all claims of Plaintiff for recovery under II. Personal Property Issues are denied and dismissed.

III. Miscellaneous Issues

A. Mandamus

Tenn. Code Ann. § 29-25-101 sets forth the requirements for the remedy of mandamus, and gives circuit court judges the authority to issue these writs. Mandamus is a special remedy used to coerce performance of official duties and it only attaches when there is no other specific remedy to enforce the right.⁸² The writ of mandamus is not issued to control or coerce discretionary power, but instead to enforce an official duty, and to compel the exercise of power.⁸³ For an act to be enforced by a writ of mandamus, the act must be ministerial in nature.⁸⁴ To determine whether an act is ministerial the court will look to whether the law, “defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of judgment.”⁸⁵ The party seeking mandamus has the burden of proving that its right to issuance is clear and indisputable.⁸⁶ In the instant case, Plaintiff is the party seeking mandamus, and they have failed to show any authority that sets forth the duties of Sheriff Robert Arnold to act in compliance with their requested relief. Plaintiff has not met its burden of proof in showing

⁸² *Hayes v. Civil Service Com'n of Metropolitan Government of Nashville and Davidson County*, 907 S.W.2d 826, 828 (Tenn. Ct. App. 1995).

⁸³ *Tusant v. City of Memphis*, 56 S.W.3d 10, 18 (Tenn. Ct. App. 2001).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Federal Deposit Ins. Corp. v. Ernst & Whinney*, 921 F.2d 83, 86 (6th Cir. 1990).

that Sheriff Robert Arnold has failed to perform a precise and certain duty, because Plaintiff has failed to show the Court any authority that would place a duty upon the sheriff.

For the foregoing reasons, Plaintiff's request for relief under a claim for the remedy of mandamus is denied.

Wherefore, all claims of Plaintiff for recovery under III. Miscellaneous Issues are denied and dismissed.

IV. Dismissed Issues

A. Malicious Harassment

The parties stipulated that this claim was dismissed.

B. Wrongful Acts of Sheriff's Deputies

The parties stipulated that this claim was dismissed.

Wherefore, all claims of Plaintiff for recovery under IV. Dismissed Issues are denied and dismissed.

It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint, and Complaint Amendment, are dismissed, with all court costs assessed against the Plaintiff, for which execution may issue, if necessary.

J. MARK ROGERS

State of Tennessee, Rutherford County
The undersigned, Circuit Court Clerk of
the said County and State, hereby certifies
that the foregoing is a correct copy of
the instrument filed in the foregoing case
in the Circuit Court of Murfreesboro, Tennessee.
This 10 day of Sept 2013

Laura Bohling Clerk

Deputy Clerk