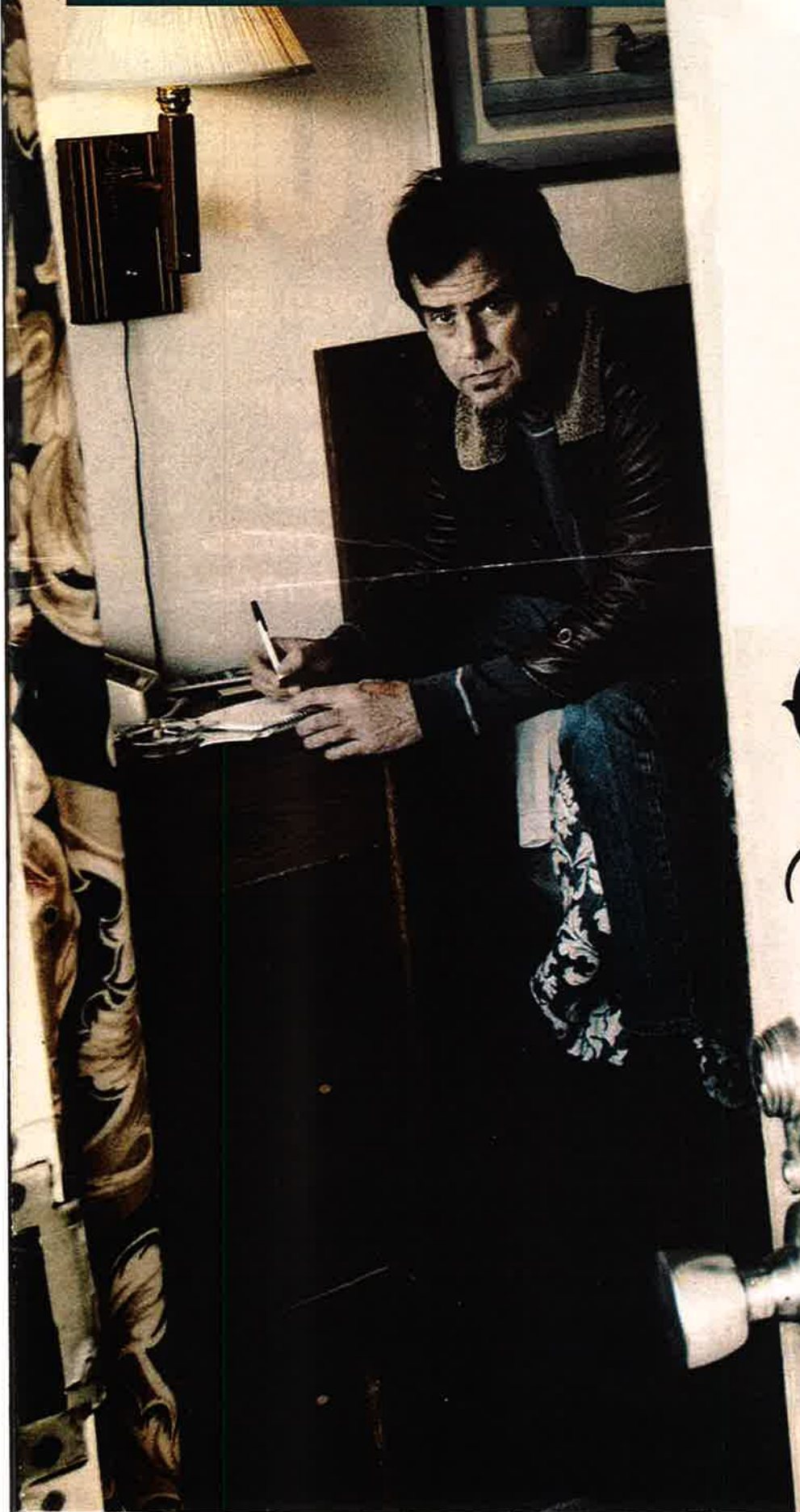


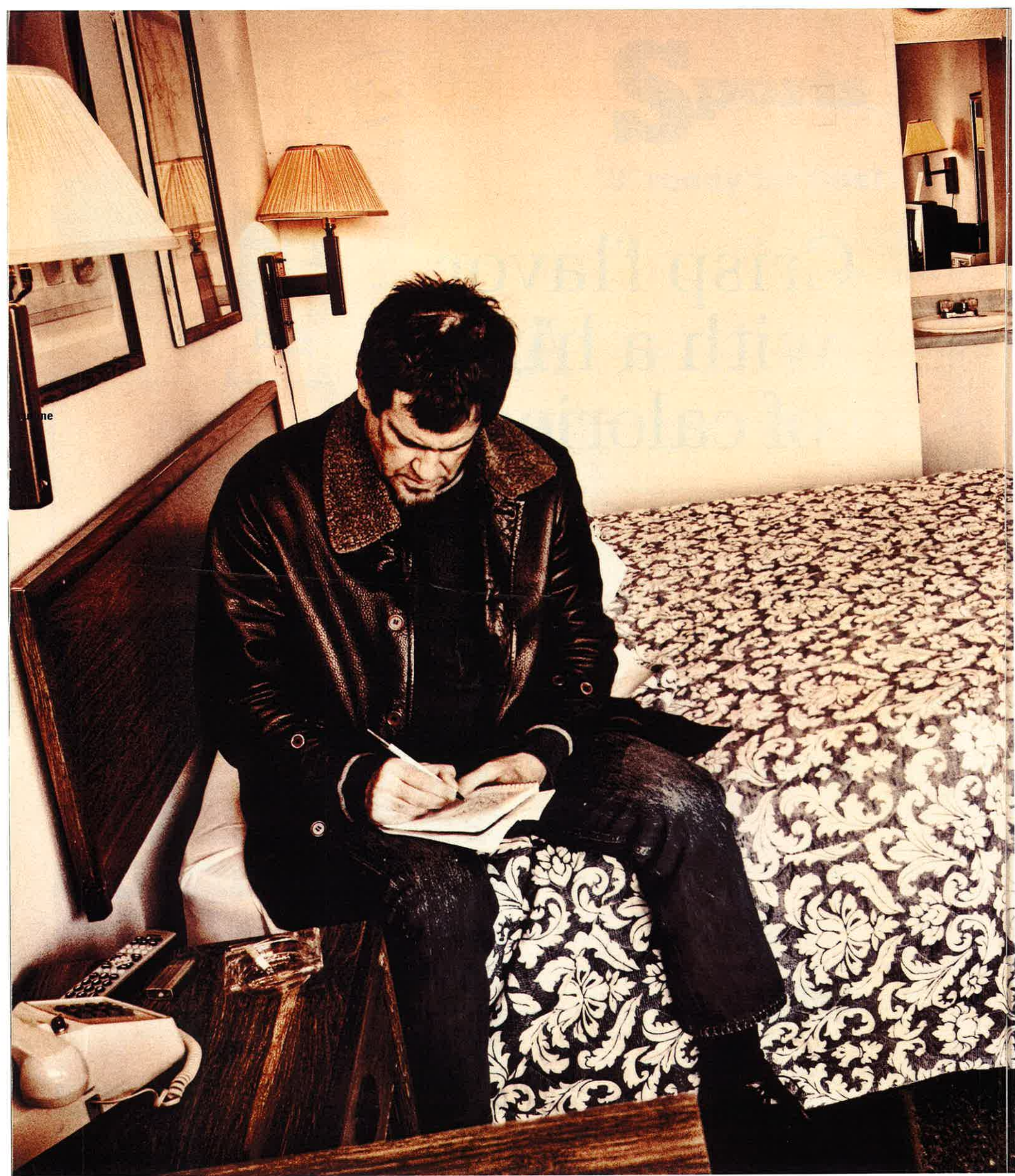
# NASHVILLE SCENE




## Court-Ordered Hell

How an errant judge and a controlling sibling stripped Nashville rocker Danny Tate of his money, his livelihood and his legal rights

**BY BRANTLEY HARGROVE**





# Court-Ordered

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BY BRANTLEY HARGROVE • PHOTOS BY ERIC ENGLAND

**D**anny Tate wasn't in court in early December to plead for the return of his constitutional rights. He couldn't be — not unless he wanted to be handcuffed and thrown into a lockdown psychiatric ward at Vanderbilt University Medical Center a third time, or shipped to some out-of-state in-patient rehab.

That's what he thought his estranged brother, David, seemed to have in mind. If that happened, Tate, a divorcee, could lose all custody of his two young daughters.

So instead of appearing in court as his fate was hashed out by opposing attorneys — both of whom, in a bizarre legal quirk, were clocking hours on his dime — Tate was at the Adventure Science Center with his little girl.

It had been a little more than two years since Tate's brother had petitioned the court for a conservatorship over him. This legal arrangement — in which the court declares someone incapacitated and a ward of the court after being presented with “clear and convincing evidence” — is akin to civil death. The ward loses control of his finances, his property, even his ability to enter into legally binding contracts.

The conservatorship allowed David to seize control of every aspect of his brother's life, from the royalty money he earns from album cuts, to the equipment at the studio where he composes talk show jingles, down to his cell phone, his car and his email account. Legally, Tate became a ghost.

If the name Danny Tate sounds familiar, chances are you spent a lot of time in Nashville clubs in the 1980s. A tall, rangy rocker with radio-ready pop chops, he cut a dashing figure locally in the dawn of the MTV era, when a video-friendly face was currency. His stock rose even higher when Rick Springfield took his song “Affair of the Heart” to the Top 10. When Tate called an early album *Sex Will Sell*, the title seemed to refer less to the cynical zeitgeist than the fortune foretold by his chiseled, brooding looks.

But that promise petered out in years lost to various addictions. He would notch up impressively long runs of sobriety, only to succumb once more. There was some precedent, then, when Tate's brother David stood before Nashville Judge Randy Kennedy in late October 2007 and told the Probate Court his brother was in the grip of a crack habit so consuming that it threatened his life.

How this hearing actually came about, though, is a mystery. There was no motion to set a hearing, according to court records. No process served to Tate. No police reports demanding urgent action. No one seemed to know anything about it except for Tate's brother and his attorney, Paul Housch.

And yet Judge Kennedy — with no evidence before him but David Tate's say-so, and with no notice or due process given to Tate himself so that he might contest the petition — allowed David to freeze Tate's assets in an *ex parte* “emergency” hearing, filings indicate. In the rap of a gavel, the ruling effectively removed every citizen's right Tate previously enjoyed.

Tate had no idea that the power of attorney he'd signed that summer to give David the ability to pay his bills while he was in rehab had already been used against him. Only days before the hearing, David used it to pay Housch a \$25,000 retainer, which the attorney would earn stripping Tate's rights.

A few weeks later, with only 12 days' notice of the follow-up hearing and no ability to write a check to hire his own attorney, Tate showed up to court with a neighbor who had no experience in this area of law simply to plead for a continuance *pro bono*. Neither Tate nor his neighbor was provided with any of the evidence upon which his disability was to be determined that day before they arrived in court. They weren't even given a report submitted a few days before the hearing by the chief witness — a child and adult psychiatrist without any certification in addiction medicine, who nevertheless labeled Tate disabled. Only after the hearing, once his fate was set in stone and the conservatorship was in place, was an attorney of Kennedy's choosing appointed to counsel Tate.

The Probate Court walked through a gaping hole in Tennessee conservatorship law that shreds constitutionally guaranteed due process rights. Under these circumstances, Tate's attorney Michael Hoskins figures that just about any local musician with assets and a drug problem could conceivably be stripped of his autonomy based on nothing more than hearsay.

Since then, Tate has engaged in what he calls “civil disobedience.” Or contempt of court, depending on whom you ask. He's blown off court-ordered drug screenings. What amounts to an arrest warrant has been issued by Kennedy, and Tate has evaded it, living out of cheap motels on the stipend provided by his brother. He fears at any moment he could be seized and remanded to a psychiatric center — making him a man on the lam without ever having been charged or convicted of any crime. He's declined to meet with court-appointed therapists >> p14

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and generally refused to countenance a conservatorship both he and his attorney say will only release him once his assets are utterly exhausted.

It's difficult to tell what's been conserved in this conservatorship. A nest egg of \$615,000, containing some stocks and his IRA, has dwindled to some \$175,000 in only two years. When the stock market tanked, the conservator left Tate's money where it was, Tate's attorney says. Nearly \$75,000 has been spent on fees for David Tate's attorney, Paul Housch. More than \$10,000 of Tate's money has been spent on the child psychiatrist, Dr. William Kenner, for the consultations and testimony used against him. No wonder the tenor at recent hearings lately has grown downright hostile.

"This is nothing but a liquidation proceeding," Tate's attorney Michael Hoskins bellowed to Kennedy in Probate Court, right before the judge denied every motion brought on behalf of Tate. "This is a miscarriage of justice."

"I've had enough of this," Kennedy barked. "Move on!"

In the words of one court, the consequences of a conservatorship amount to "a civil death without the dubious advantage of an inscription on a tombstone."

**W**eighing the sides in the war between the Tates is difficult. On the one side is an addict with a well-documented susceptibility to dangerous substances. On the other is a family member who may be acting from the best of intentions, yet who has stripped his sibling's rights and overseen the steady draining of his finances.

These judicial proceedings usually involve elderly folks suffering from dementia who can no longer make their own decisions. Sometimes the targets are drug-abusing celebrities who wreck their convertibles on Sunset Boulevard or are repeatedly jailed for felony possession of cocaine or drive with infants sitting on their laps or show up in emergency rooms with near-fatal amounts of cocaine in their bodies.

But there was none of this in Danny Tate's history. He has no criminal record, according to Metro Police. And he's never been to the ER for an overdose. On what proof, attorney Hoskins asks, was his disability determined?

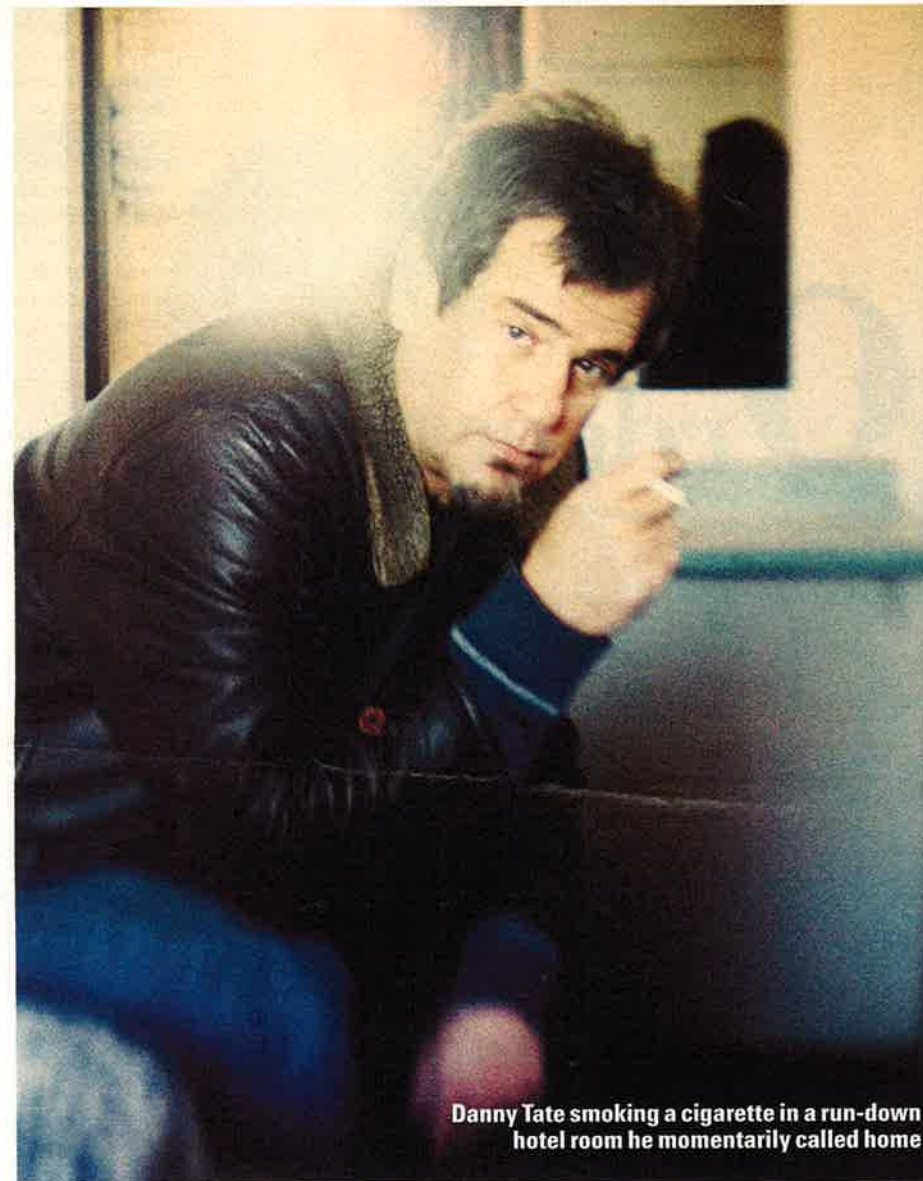
Since his initial defeat, Tate has waged legal war with a savage, wallet-rending twist. In spite of the fact that the conservatorship is contested, Tate is incurring the costs of both sides — his own attorney and his brother's — like a warlord fighting with himself, rendering the conservatorship aspect of the civil proceeding impossible. It's an odd Catch-22: Fight and deplete your savings. Don't fight, and your savings may be depleted anyway.

According to accounting provided to the court by Housch, the attorney for the conservatorship, Tate involuntarily paid him nearly \$700, for example, to attend a hearing to which Tate himself was barely given notice. Housch was once paid an additional \$400 to draft an opposition to Tate's motion to rid himself of the conservatorship. Ironically, on one occasion more than \$100 was paid to Housch to review accounting records for less than an hour to give an accounting of how much money Tate had before his conservator began spending it.

More than \$10,000 has been spent on accountants to give monthly reports on how much money is being spent by the conservator. Both Housch and David Tate declined *Scene* interview requests.

For roughly a year, Tate was without his email and the studio equipment he makes a

living with by composing jingles for the *Ellen DeGeneres Show*, the *Tyra Banks Show*, *The Bachelor* and *Entertainment Tonight*. TV producer requests for new material languished when David began intercepting Tate's email. He deactivated Tate's cell phone. He confiscated \$150,000 worth of recording equipment to ensure Tate didn't hock any of it at pawnshops for crack money, though there's no evidence he's ever done anything of the sort. Without these, his revenue stream shrank to a trickle, further diminishing his increasingly anemic pocketbook.



Danny Tate smoking a cigarette in a run-down hotel room he momentarily called home

It is tempting to see him as a helpless victim.

Here's the problem: Tate's no choirboy, no conveniently sympathetic underdog. A towering man with a lumberjack build and a booming, cigarette-roughened voice that rose above the din of Nashville watering holes in the cocaine-dusted '80s, Tate has struggled with alcohol and drug addiction for most of his adult life. His divorce and a dependence on prescription drugs after a shoulder surgery in 2004 knocked him off of Alcoholics Anonymous' 12 Steps after 18 dry years.

When Kennedy granted the conservatorship, Tate admits he was in bad shape, wrestling with a drug whose grip was like nothing he'd ever encountered. He's made it difficult for the attorneys pleading his case by flouting court order after court order, and Tate has gone through a handful of lawyers by now. The question is, are the rights provided for by the Constitution placed at hazard when a man is so easily stripped of them without proof and without the opportu-

nity to answer the charges before a court? Where do an addicted man's rights begin and end?

"Our understanding of liberty is inextricably intertwined with our belief in physical freedom and self-determination, and in our belief in the fundamental right to acquire, own and dispose of property," Tricia York writes in the *University of Memphis Law Review*. She points out three glaring openings in Tennessee conservatorship law through which any court can trample a Tennessean's rights.

First, there is no explicit statute requir-

ing someone in Tate's position to get notice that a petition is being submitted to have him declared disabled. Second, because this is a civil proceeding, the court isn't mandated to appoint him a legal advocate. If that person has the resources to hire his attorney, it is his right to do so. Tate no doubt had the means, but with his bank accounts frozen before he was able to address the court, he didn't have a way.

Third, York points out that Tennessee law places the responsibility to prove that the ward no longer needs the conservatorship on the ward, not the conservator. Because the proceedings are held in Probate Court, they aren't considered adversarial, even if the consequences are undoubtedly adverse for the ward. Therefore, many of the protections and guarantees a defendant receives in criminal court aren't afforded to someone like Tate in Probate Court.

Despite testimony from Cumberland Heights rehab center's chief physician, who says the venomous relationship between Tate and his brother renders the conservatorship an obstacle to his recovery, the conservatorship remains. When Hoskins, Tate's attorney, asked the court to enter a final order so that he could appeal the court's decision, Kennedy said that a final order had already been entered and that the 30 days he had to appeal had come and gone. But Hoskins argued that each order was interlocutory, meaning business was meant to be resolved further down the road with every order issued by Kennedy. The judge's ruling essentially trapped Tate in legal limbo with no foreseeable end.

Hoskins filed a kind of extraordinary relief application with the Middle Tennessee Court of Appeals that is so rarely granted that most lawyers don't bother with them. Remarkably, the high court — normally loathe to interfere with lower courts — reversed Kennedy's order, meaning the Probate Court had strayed so far from established legal procedure that an extraordinary judicial slap on the wrist was dealt to Kennedy. More remarkable still, Judge Frank Clement, the jurist who issued the Appeals Court decision, used to sit in Kennedy's seat in Probate Court.

Kennedy will now be forced to enter a final order, allowing Tate to take his case before the appellate court. Hoskins is convinced that a denial from the Appeals Court will mark the financial ruination of a successful Nashville musician.

"I'm convinced that when every dime is spent and he doesn't have another dollar to his name, they'll let him out of the conservatorship," Hoskins says.

**D**espite traces of the fidgety restlessness common to many musicians off the clock — not to mention a tendency to look over his shoulder — Danny Tate seems relaxed and articulate on this weekday afternoon at dusky Brown's Diner. Nor does he look much changed from his pretty-boy album covers. The square-jawed face may be lined, and his thick brown locks have been shorn, but he's no ravaged Chet Baker, a husk where beauty has been.

It is safe to say Danny Tate knows no other life than standing in front of a microphone. He grew up in Camden, Ark., the son of a Southern Baptist music minister, and was singing alongside his parents and six siblings at church services as soon as he could walk. Music seemed to be written into his DNA. By the first grade he was taking piano lessons. By the fifth, it was guitar.

According to Tate's sister, Becky Faust, life in the strictly religious home was no idyll. "I think we're some good people and I think we come from a great family," Faust says. "But there was a lot of strife and fighting in our home and it doesn't make for really learning how to communicate and solve problems right away."

Danny's brother David left home when Danny was 10, and Tate says he didn't have much contact with his older brother. Becky, however, thinks they were close.

As soon as Tate was a teenager, he heard the Lord's call and decided to enter into ministry like his father. At 18 years old, Tate, a sort of charismatic Southern Baptist revivalist wunderkind, had his own flock in Stephens, Ark., a tiny, dried-up oil town. But he says his faith was shaken by the pervasive racism he saw in the congregants. After graduating from Washita Baptist University at roughly the same time as former Arkansas Gov. Mike Huckabee, with a degree in music theory and composition, Tate decided to take the secular path, heretofore known to him as devil music.

He moved to Nashville in 1980 >>p16

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with moon-eyed dreams of Music City success. The small-town Arkansan, who didn't have his first drink until the age of 21, had his eyes pried open by the near-hedonism he found amid the fast crowds of Nashville. He started out waiting tables and playing piano at TGI Fridays on Elliston.

It was there that the strapping young singer, who had a lion's mane of long brown hair, was introduced to cocaine. Before long, the blow and booze that fueled the city's rock 'n' roll scene became a problem. Tate's long-suppressed addictive personality started making up for lost time in a big way.

Nevertheless, in 1983 he got his first big cut with "Affair of the Heart," at a time when few Nashville songwriters were denting the pop charts. Springfield was signed to the Welk Music Group, which gave Tate his first songwriting deal.

In 1986 Tate tried to break into the Los Angeles club scene with his own brand of gravelly singer-songwriter crooning. He didn't get a record deal, but he got a publishing deal with Island Music, who'd previously signed Bob Marley and U2. In Tate, they got a sharply commercial pop craftsman. They also got a highly functional alcoholic with a worsening cocaine problem.

To his credit, Tate recognized this. He walked into an Alcoholics Anonymous meeting, and the quasi-spiritual atmosphere he found in the recovery group appealed to his latent religious sensibilities. It started an 18-year stretch of sobriety.

Tate made his way to New York City in 1991, seeking the record deal that had proven elusive so far. He was picked up by Charisma Records, which soon folded into Virgin Records. He released a few albums and had some near-success, but never quite broke through as an artist. As a writer, however, he landed cuts with Tim McGraw, Travis Tritt, Diesel, Lynyrd Skynyrd, Jeff Healey, David Lee Murphy and Billy Ray Cyrus.

But in 1996, his father died. His terminally ill mother could no longer live without help. Tate's L.A. condo had been damaged in the earthquakes of 1994, so he resolved to move back to Arkansas to care for his mother. He gutted an Airstream trailer and filled it with his recording equipment. He needn't have bothered on Virgin's behalf. In the midst of this personal turmoil, the label chose that moment to cut him loose.

Even so, Tate found a much more lucrative and, for him, more creatively satisfying outlet that paid the bills and then some. He was contacted by *Entertainment Tonight* to write musical cues for the show.

"They wanted someone who could write Americana-type music," Tate says. "The jangly guitars, acoustic, B-3 organs ... that stuff was right up my alley."

After two years in Arkansas as his mother's caretaker, Tate was relieved by one of his sisters. It wasn't long before he began composing music for the *Ellen DeGeneres Show*, *Judge Mathis* and *The Bachelor*. In 2000 Tate married and had two children. By all outward appearances, things were going well. Royalty checks were rolling in and he was comfortable.

By 2004, though, things began falling apart. He and his wife drifted toward divorce. He underwent shoulder surgery and became reliant on prescription painkillers. He was taking a drug called Zyan to help him shake off his chain-smoking habit. The drug, which is identical to the antidepressant drug Wellbutrin, made him edgy, and after 18 years of sobriety, Tate sought out that first drink. Then he snorted his first lines. From then on he was on and off the wagon — using, then quitting, for a month at a

time, two months, sometimes nine months.

But blow, so abundant in the '80s, was much harder to come by in the Aughts. No worries. This was 2007, and there were cheaper and easier highs available. Tate found a consolation drug: crack cocaine.

"After a week I thought I might step away from this," Tate says. "But at that point, there wasn't no stepping away from it."

Up until then, Tate says, he hadn't had much contact with his family. They'd scattered to the four winds. Only two siblings lived in Tennessee: David, president of a successful product promotions company in Memphis, and his sister Becky, who lives in Nashville.

By the summer of 2007, much of his family was well aware of Tate's heavy dependence on crack. Tate checked into a four-week rehab in Antigua, but was kicked out for leaving the premises after two weeks. He signed a power of attorney with David to help him manage his finances in June.

Not surprisingly, a battle of wills ensued. With control over Tate's funds, David hired a sobriety coach for \$5,000. Tate says the dude burned sage and chanted in front of his house when he wasn't monitoring his construction business back in California. Tate fired him quickly. David spent an additional \$3,500 of Tate's money on an interventionist, though one addiction psychiatrist testifying at his trial said these confrontational methods are rarely successful.

David had Tate's mail, including his royalty checks, diverted to his home in Memphis. He began intercepting Tate's email and, by his own admission in court, started going through his brother's personal correspondence. Tate's suspicion grew, and his brother admitted in court that for months he hadn't provided Tate with an accounting of how much money was coming in. The acrimony between two already estranged brothers was only growing more acidic.

"It was so frustrating to watch what I'd worked my whole life for being plundered by this guy and feeling like my hands were tied to do anything about it," Tate says.

In early October 2007, David began consulting with attorney Paul Housch. Less than three weeks later, on a Friday, they filed the petition to name David conservator. By Tuesday, unbeknownst to Tate, they met *ex parte* with Judge Kennedy, who granted temporary letters of conservatorship.

Less than a week before the scheduled Nov. 14 conservatorship hearing, Dr. William Kenner made an unannounced visit to Tate's home at 11:30 a.m., without ever consulting Tate's treating psychiatrist for a full history. Kenner has admitted in open court that he has no experience treating patients with drug addiction. He is in fact certified as a child psychiatrist. Under later cross-examination, he even admitted that when patients come in with addiction problems, he refers them to therapists certified in addiction medicine.

That didn't stop Kenner from assessing Tate's condition in a brief report. It didn't contain the results of psychological testing, a physical exam or any questioning of Tate concerning his ability to manage his own affairs, but Kenner opined anyway that Tate's "appearance was that of a

long-term crack user." He went on to say that Tate smoked a lot and answered the door wrapped in a comforter, and that the single man's house was really dirty.

By comparison, the supplementary report Kenner filed a few days later read like a college creative writing essay. Hoskins says he suspects Kenner was prodded to expound on his visit by Housch. Kenner goes on at great length about Tate's hygiene and his agitated demeanor (albeit in response to a surprise visit from the psychiatrist hired by his brother on Tate's dime in a court proceeding that could alter his life irrevocably). This time Kenner wrote:

"We went outside to finish my interview, and I found that the white painted rocking chairs on Mr. Tate's front porch had a thick patina of accumulated dust and grit, but at least, the air was fresh and cool. Once outside, Mr. Tate began to chain smoke Camel Wides, and he flipped his butts over his shoulder into the leaves in his front yard. Since we had thunderstorms a few nights earlier, the fire danger was not great, but I doubt that Mr. Tate had calculated that."

Kenner may be best known for his expert testimony during the 1998 trial of a 17-year-old Putnam County girl who stabbed her mother to death with a file knife as she slept. Kenner essentially argued that the girl killed her mother during a nightmare — a defense whose only known precedent was a late 1800s trial in Scotland — and that

she could not be held accountable because she was, in fact, still asleep. The jury, and later the appellate court, rejected the idea.

Kennedy accepted Kenner's testimony as immutable proof of Tate's complete and utter disability. He issued a court order that whisked Tate away to a Vanderbilt psych ward. Tate's siblings and his ex-wife removed nearly every item of value from his home. Upon his discharge from Vanderbilt, Tate sought to have the conservatorship immediately dismantled.

In a physician report, Vanderbilt doctors seemed to question the conservatorship. One doctor urged Tate and his brother "to speak to their lawyers regarding whether this is a good arrangement or not." Tate's social worker wrote that he appeared "stable."

Kennedy, however, was not moved. The judge declined to release him. Tate checked himself into Cumberland Heights rehab and completed a 28-day inpatient program. After his release, he petitioned for a second time to have control over his life returned. Dr. Robert Murray, the medical director at Cumberland Heights, testified in court that when you have a "cognitively intact person who has a problem with addiction ... having a close family member as conservator is always a bad idea." He also noted that handcuffing Tate and forcing him into treatment programs is completely ineffective.

Despite this, Kennedy again declined to dissolve the conservatorship. Tate faced the turmoil in the way that came so agonizingly easy, smoking crack on and off over the ensuing months. Still, by the end of 2008, he'd



Two of Danny Tate's albums

notched up a half-year stretch of hard-won sobriety. It did little to console him as the annual accountings rolled in: More than \$300,000 gone in one year. These revelations sparked all-new marathons of crack use.

By June 2009, according to drug tests, Tate was off crack. To ensure Tate attended the court-ordered screenings, Kennedy dispatched his court bailiffs to Tate's home that month. They handcuffed and transported him to a drug testing facility across the street from the courthouse. Tate says he told the bailiffs he had a drug test from the day before proving he was clean for all but marijuana. The new test came back negative for cocaine. Nonetheless, Tate was involuntarily committed at Vanderbilt.

"It was not a real good time because Danny was clean," Tate's sister Becky Faust says.

**I**nject the courts into the turbulence created by drug abuse, recriminations and the disappointments and hurts of one man's life, not to mention common family dysfunction, and you're left with a toxic brew — an environment not at all conducive to sobriety, mental health professionals involved in the case say. And at least in some quarters, there is, if not doubt, then uncertainty about the legal measures used against Tate.

"I really don't know if the conservatorship still needs to be in place," Becky Faust says.

Tate's attorney Hoskins believes there is hope. He thinks the reversal the Appeals Court granted may not be a complete victory, but it's at least a nod. Once a final judgment is entered, however, the legal maneuvering will continue, and the court will wield its broadsword might where a scalpel might be more appropriate.

For the moment, there is not much for Danny Tate to do but seek solace in whatever innocuous legal vices he can find. Standing outside Brown's Diner, he partakes of the only addiction these days that won't get him in trouble: a cigarette.

"I used to drink here," Tate says.

A lifetime ago, it must seem. He probably never imagined he'd be back here without a beer in his hand, meeting furtively with a reporter, only to return later to the shabby hotel that's his residence of the moment.

What's been lost to Tate is the in-between — when years of struggling and near-success gave way to a comfortable life padded with royalty checks and clean living. Tate learned in Alcoholics Anonymous that to heal he must quit fighting everyone and everything. But when he sees the conservatorship accounting, he says, his gorge rises all over again.

"Bottom line, I wanted you to know that I am not proud of what I did to myself or my children or whatever I haven't had the chance to recognize," Tate wrote recently in an email. "I haven't always acted or reacted honorably. And I'm personally ashamed of where I let it take me."

"But it does not justify what's been done to me. When that gets resolved then I'll finally have the chance to address those things, move onward and heal."

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"After a week I thought I might step away from this," Tate says. "But at that point, there wasn't no stepping away from it."