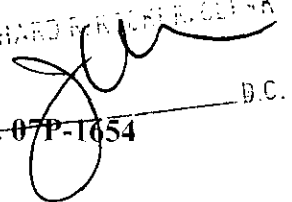


IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

FILED

2012 JAN -4 AM 10:19

RICHARD P. WICKER, CLERK



DOCKET NO. 07P-1654

D.C.

IN RE: CONSERVATORSHIP OF JOHN )  
DANIEL TATE, )  
WARD, )  
DAVID E. TATE, )  
TEMPORARY CONSERVATOR. )

RESPONSE TO MOTION FOR RELIEF FROM JUDGMENT

AND

TEMPORARY CONSERVATOR, DAVID E. TATE'S MOTION TO STRIKE AND  
MOTION TO DISMISS

COMES NOW the TEMPORARY CONSERVATOR, DAVID E. TATE, pursuant to Rule 11.38, 42, 43 (a) and (b), T.R.A.P., and hereby responds to **RESPONDENT JOHN DANIEL TATE'S** Motion for Relief from Judgment; and 1) pursuant to Rule 12.06, Tennessee Rules of Civil Procedure, the **TEMPORARY CONSERVATOR, DAVID E. TATE**, respectfully moves the Court to Strike **RESPONDENT JOHN DANIEL TATE, PRO SE'S** "Verified Motion for Relief From Judgment"; and 2) pursuant to Rule 60.02 (2), T.R.C.P., respectfully moves the Court to dismiss **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment upon this Court reacquiring jurisdiction in this cause as follows:

**A. RESPONDENT JOHN DANIEL TATE, PRO SE'S MOTION FOR RELIEF FROM JUDGMENT MUST BE DENIED FOR LACK OF JURISDICTION.**

This court lacks jurisdiction to hear and decide the **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment. (See Exhibit "A" - Copy of **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment). In

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appeals as of right from a final judgment, the trial court loses jurisdiction of the case upon filing of the notice of appeal. Born Again Church v. Myler Church Building Systems, 266 S.W.3d 421,425 (Tenn. Ct. App. 2007); *see also*, Parks v. McGuire, 270 S.W.2d 347, 348 (Tenn. 1954). Any traditional matter that needs to be addressed in the trial court must be addressed once the trial court reacquires jurisdiction. Born Again Church v. Myler Church Building Systems, 266 S.W.3d at 425. Here, the Notice of Appeal was filed on September 7, 2010. This court has long since lost jurisdiction over this matter which is now vested with the appellate court. Were this court to ignore its jurisdictional limitations and consider the Motion anyway, such a ruling would be “void and nullity”. See Roberts v. Lowe, 1997 WL 189345 (Tenn. Ct. App. Apr. 16, 1997) (holding that when a notice of appeal has been filed, the trial court is deprived of jurisdiction and any order it enters thereafter is of no effect).

In the present case, this cause is still on Appeal before the Court of Appeals for the Middle Section of Tennessee, notwithstanding the entry of judgment entered by the Court of Appeals on December 29, 2011, (see T.R.A.P. 11), as the time to file any Application for Permission to Appeal has not expired.

Effective December 29, 2011, the Court of Appeals for the Middle Section of Tennessee entered it’s Judgment in this cause finding that the trial court’s judgment should be affirmed; and that the cause shall be remanded to the trial court for further proceedings consistent with the Court of Appeal’s opinion. (See Exhibit “B” - Copy of Court of Appeal’s Judgment entered on December 29, 2011). Under T.R.A.P. Rule 38, a copy of the judgment was sent to the parties and to the trial court, but no mandate has been entered with the trial court to reacquire jurisdiction thereof to hear the **RESPONDENT’S** Motion for Relief from Judgment.

T.R.A.P., Rule 42, requires the Clerk of the Court of Appeals to transmit to the Clerk of

the trial court the mandate of the Court of Appeals with Notice to the parties, sixty four (64) days after entry of judgment, unless the Court orders otherwise. No mandate has been issued by the Court of Appeals; therefore, this Court lacks jurisdiction to hear **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment.

T.R.A.P. Rule 43 (a) provides that the Clerk of the trial court shall file the mandate promptly upon receiving it from the Court of Appeals. In this case, no mandate has been filed with the Clerk of the trial court since the sixty four (64) day period has not expired under Rule 42(a), T.R.A.P; therefore, this Court lacks subject matter jurisdiction.

In addition, T.R.A.P. Rule 43(b) provides that when the Appellate Court dismisses the appeal or confirms the judgment of the trial court and the mandate is filed with the trial court, execution may issue and other proceedings may be conducted as if no appeal had been taken.

In summary, while the judgment of the Court of Appeals has been entered, the mandate has not been received or entered by the Clerk of the trial court. Therefore, this Court lacks jurisdiction to hear **RESPONDENT, JOHN DANIEL TATE, PRO SE'S** Motion For Relief from Judgment; and thus, said Motion should be denied for lack of jurisdiction.

**B) MOTION TO STRIKE UNDER RULE 12.06, T.R.C.P.**

The **TEMPORARY CONSERVATOR, DAVID E. TATE**, has filed herein a Motion to Strike the **RESPONDENT JOHN DANIEL TATE'S** Motion or Relief from Judgment, to be heard upon this Court reacquiring jurisdiction. When the trial court reacquires jurisdiction over the case upon the mandate of the Clerk of the Appeals Court being transmitted to the Clerk of the trial court under Rule 42, T.R.A.P.; and upon the clerk of the trial court entering the mandate promptly pursuant to Rule 43(a), T.R.A.P., the **TEMPORARY CONSERVATOR, DAVID E. TATE** respectfully moves the Court to strike the **RESPONDENT JOHN DANIEL TATE**,

**PRO SE'S** Motion for Relief From Judgment or Orders under Rule 12.06, Tennessee Rules of Civil Procedure, on the basis that said motion contains immaterial, impertinent and scandalous matters made against the Court; and contains contemptuous language of the **RESPONDENT JOHN DANIEL TATE** towards this Court as reflected in the language, i.e..... "thus this Court can respectfully kiss the ass of John Daniel Tate, aka Danny Tate and say "Good- bye" in the last paragraph of the Motion addressed to the Court. Since the Court of Appeals has affirmed the trial court's judgment in this cause; the only remaining issues to be addressed by the trial court pertain to **DAVID E. TATE'S** Motion for Award of Attorney Fees pending before the Court; **DAVID E. TATE'S** Motion for Award of Attorney Fees on Appeal to be filed; and the enforcement of the Judgment.

**C. MOTION TO DISMISS UNDER RULE 60.02 (2), T.R.C.P.**

The **TEMPORARY CONSERVATOR, DAVID E. TATE**, has also filed a Motion to Dismiss under Rule 60.02(2), T.R.C.P., the **RESPONDENT JOHN DANIEL TATE'S** Motion for Relief from Judgment, to be heard upon this Court reacquiring jurisdiction.

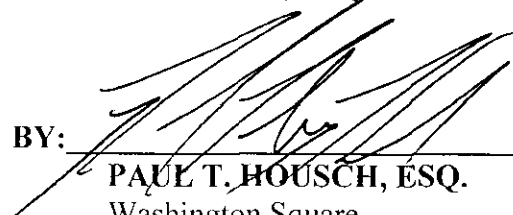
For grounds, the **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment should be dismissed under Rule 60.02(2), Tennessee Rules of Civil Procedure, as being "untimely"; and further, on the ground that no valid or sufficient facts have been alleged for relief thereto, within one year of the entry of final judgment. The trial court's judgment was entered on June 7, 2010; and pursuant to Rule 60.02(2), Tennessee Rules of Civil Procedure, this rule requires that any Motion for Relief from Judgment based on 60.02(2), i.e. (2) fraud (whether heretofore denominated, intrinsic or extrinsic) shall be filed not more than one year after the judgment, order of proceeding was entered or taken. In this case, the **RESPONDENT JOHN DANIEL TATE, PRO SE**, filed his Motion for Relief for Judgment on December 27, 2011, in

reliance upon Extrinsic Fraud under Rule 60.02(2), well beyond the statutory one year period under Rule 60.02(2), Tennessee Rules of Civil Procedure, to file said Motion.

**WHEREFORE**, the **TEMPORARY CONSERVATOR, DAVID E. TATE**, respectfully requests the Court to deny **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment for lack of jurisdiction; and alternatively, upon the Court reacquiring jurisdiction of this matter, the Court grant the **TEMPORARY CONSERVATOR, DAVID E. TATE'S** Motion to Strike under Rule 12.06, T.R.C.P., and Order the entire Motion stricken from the record under Rule 12.06; and further; the Court grant **TEMPORARY CONSERVATOR, DAVID E. TATE'S** Motion to Dismiss the **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment under Rule 60.02(2) as being "untimely" and without merit, and to award the **TEMPORARY CONSERVATOR, DAVID E. TATE**, his reasonable attorney fees and costs, for having to respond to **RESPONDENT JOHN DANIEL TATE, PRO SE'S** Motion for Relief from Judgment.

**RESPECTFULLY SUBMITTED,**

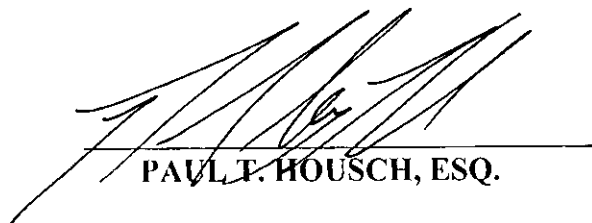
**PAUL T. HOUSCH, ESQ.**

BY:   
\_\_\_\_\_  
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(615) 259-3313

**ATTORNEY FOR DAVID E. TATE  
TEMPORARY CONSERVATOR**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing has been forwarded, postage prepaid, U.S. Mail, to. **Mr. John Daniel Tate, P.O. Box 261, Franklin, Kentucky 42135; Mr. John Daniel Tate, aka Danny Tate, P.O. Box 50949, Nashville, TN 37205; and Mr. John Daniel Tate, aka Danny Tate, 5909 Old Harding Pike, Nashville, TN 37205; and Mr. David Tate, 4827 Fleet Grove Avenue, Memphis, TN 38117** on this the 4th day of January, 2012.



PAUL T. HOUSCH, ESQ.