

**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
20<sup>TH</sup> JUDICIAL DISTRICT  
AT NASHVILLE  
PART \_\_\_\_\_**

**STATE OF TENNESSEE,** )  
*ex rel. JULIE MIX MCPEAK,* )  
**solely in her official capacity as** )  
**Commissioner of** )  
**Commerce & Insurance,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )

**VICKIE L. RINGLEY, individually** )  
**and d/b/a Hawkins County** )  
**Memorial Gardens,** )  
 )  
**Defendant.** )

**No.**

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**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION  
FOR TEMPORARY RESTRAINING ORDER**

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The State of Tennessee (“State”), by and through counsel, and on behalf of and at the request of Julie Mix McPeak, Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”), files this Memorandum of Law in support of the State’s Application for Temporary Restraining Order pursuant to Tenn. Code Ann. § 46-1-301(c) and Tenn. R. Civ. Proc. 65.03. The State requests a temporary restraining order to preserve the status quo until a hearing and entry of an order on the Commissioner’s Verified Petition for Appointment of the Commissioner as receiver for Hawkins County Memorial Gardens and for Extraordinary Relief (“Verified Petition”) and to enjoin ongoing and future violations

of both the Cemetery Act of 2006, Tenn. Code Ann. Title 46, chapters 1 and 2 (“Cemetery Act”) and the Order of Summary Suspension<sup>1</sup> by Hawkins County Memorial Gardens<sup>2</sup> and its owner and operator, Vickie L. Ringley. Specifically, the State seeks to restrain Ms. Ringley and anyone else acting on behalf of Ms. Ringley or for the Cemetery from:

- engaging in the business of operating or interfering with the operation of Hawkins County Memorial Gardens in violation of the Cemetery Act and the Order of Summary Suspension;
- exercising or attempting to exercise control of any finances, property, or monies of Hawkins County Memorial Gardens;
- concealing or destroying any books, papers, records, computer data, and other documents related to the operation and management and business activities of Hawkins County Memorial Gardens;
- transferring, withdrawing, concealing, or disposing of any monies held on deposit in any financial institution in any account that is owned by or held for the benefit of the Cemetery or Ms. Ringley, including personal accounts; and
- making any disposition of the Cemetery’s assets, wherever located.

The Application and this Memorandum of Law rely on and incorporate the Verified Petition, the Order on Summary Suspension, written statements by Vickie

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<sup>1</sup> Attached as Exhibit A3 to Affidavit of Robert Gribble, filed contemporaneously with this Memorandum (“Gribble Aff.”).

<sup>2</sup> Also referred to herein as the “Cemetery.”

L. Ringley, and the affidavits of Robert Gribble, Adrian Chick, Gary Gillespie, and Randall Ramsey.

### ARGUMENT

Because of Ms. Ringley's personal financial impairment, her history of misappropriating Cemetery monies, and willingness to disobey the existing Order of Summary Suspension, there is substantial danger that Ms. Ringley will attempt to withdraw existing monies that belong to the Cemetery and its customers as well as collect additional monies through unlawful operation of the Cemetery once Ms. Ringley is served with the Verified Petition and therefore put on notice that the Cemetery could be taken from her in a receivership action. Additionally, there is significant risk that Ms. Ringley could destroy or conceal records. If such actions are not prevented by a restraining order, they would work an irreparable harm on the Cemetery, as the Cemetery is currently financially impaired and in need of the monies and complete records to rehabilitate or restore the Cemetery and satisfy obligations to customers as part of the receivership action.

The Application for a Temporary Restraining Order seeks an immediate Court order to stop violations of the Cemetery Act and the Order of Summary Suspension and to prevent future violations that could result in irreparable harm. The proposed Temporary Restraining Order would maintain the financial and operational status quo by barring Ms. Ringley and others from any activities or acts affecting the Cemetery's records, business, and assets until a full hearing on the Verified Petition can take place.

**I. The Commissioner is Authorized to Request Injunctive Relief.**

The Commissioner is responsible for administering and enforcing the provisions of the Cemetery Act. Tenn. Code Ann. § 46-1-301(a). Tenn. Code Ann. § 46-1-301(c) provides that “[t]he commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule and regulation promulgated for the administration or enforcement of the provisions of this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond is required for the prosecution of the suit or for the issuance of an injunction.”

**II. The Legal Requirements for a Temporary Restraining Order Are Satisfied In This Case.**

Rule 65.03 provides for a restraining order when the movant shows that immediate and irreparable injury or loss will result to the applicant before the adverse party can be heard in opposition. Tennessee courts consider the following factors when deciding to grant injunctive relief: (1) the threat of irreparable harm to plaintiff if the injunction is not granted, (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant, (3) the probability that plaintiff will succeed on the merits, and (4) the public interest. *Gentry v. McCain*, 329 S.W.3d 786, 792 (Tenn. Ct. App. 2010) (citing *S. Cent. Tenn. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 n. 6 (Tenn. Ct. App. 2000)). The State meets all four factors in this case.

A. The Commissioner Faces Irreparable Harm Without Relief.

Ms. Ringley has stated that the Cemetery “has no money to operate,” and for purposes of the receivership, this serves as evidence that the Cemetery is impaired, insolvent, and will not be able to satisfy contractual obligations owed to the Cemetery’s customers. See Ringley Correspondence in Contested Case<sup>3</sup>; Verified Petition, ¶¶ 30-43. However, while the Cemetery itself has no money for operations, there is a possibility that assets and monies that were misappropriated (and continue to be misappropriated) in violation of the Cemetery Act may exist elsewhere. Over a period of several years, Ms. Ringley has received thousands of dollars from customers that were required by statute to be deposited in a pre-need merchandise and services trust fund. Verified Petition ¶¶ 44-52. Since Ms. Ringley never established a pre-need merchandise trust fund, Ms. Ringley never deposited these monies into such a fund; the location of those misappropriated monies is unknown. In addition, Ms. Ringley received monies from customers and simply never performed under the contracts. Verified Petition ¶¶ 23-24; Gribble Aff., ¶¶ 9-10. If any misappropriated monies still exist, they most likely reside in Ms. Ringley’s personal account; Ms. Ringley has stated that she had no bank account for the Cemetery and only operated from her personal account. See Ringley Written Statement to Hawkins County Sheriff’s Office, page 4 of 4.<sup>4</sup> It will be the responsibility of the Commissioner, if feasible, to explore

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<sup>3</sup> Attached as Exhibit B2 to Affidavit of Adrian Chick, filed contemporaneously with this Memorandum (“Chick Aff.”).

<sup>4</sup> Attached as Exhibit B1 to Chick Aff.

recovery of all of these monies—which total in excess of \$35,000, according to customer complaints—in an effort to rehabilitate the Cemetery.

However, there is a substantial risk Ms. Ringley will remove and abscond with existing funds from accounts she controls—including her personal account—upon being served with the Verified Petition and learning that the Cemetery is likely to be taken from her in a receivership action. Ms. Ringley is financially impaired. She has stated that when customers pay her she does not “immediately order [the merchandise] because [she has] bills to pay,” including her personal mortgage, light bill, and other expenses. *Id.*, page 4 of 4. Ms. Ringley has complained that she is no longer able to run the Cemetery and that her personal finances are not good. *See Ringley Correspondence in Contested Case*, page 2 of 2. Additionally, a trustee has now initiated a foreclosure sale on personal property owned by Ms. Ringley, including a residential home. *See Public Notice of Foreclosure Sale*.<sup>5</sup> The foreclosure sale was supposed to take place on September 26, 2014. On September 25, 2014, Ms. Ringley filed bankruptcy along with her husband. *See Petition for Bankruptcy*.<sup>6</sup> In the *Petition for Bankruptcy*, Mr. and Ms. Ringley claimed that their liabilities outstrip their assets by hundreds of thousands of dollars. *Id.*

When this personal financial impairment is coupled with Ms. Ringley’s history of misappropriating monies, there is significant risk that Ms. Ringley will attempt to

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<sup>5</sup> Attached as Exhibit A4 to Gribble Aff.

<sup>6</sup> Attached as Exhibit A5 to Gribble Aff. Roughly a week later, Mr. and Ms. Ringley voluntarily dismissed their *Petition for Bankruptcy*, claiming they could not present a confirmable plan. *See Order Dismissing Chapter 13 Case Upon Request of Debtor(s)*, attached as part of Exhibit A5 to Gribble Aff. along with the *Petition for Bankruptcy*.

withdraw as much of the Cemetery's monies as she can prior to a hearing on the Verified Petition. Such an event would result in irreparable harm to the receivership action; once those monies are transferred or disposed of, they may be unrecoverable. This Court should therefore restrain Ms. Ringley from transferring, withdrawing, concealing or disposing of any monies from any account owned by or held for the benefit of the Cemetery or Ms. Ringley, including her personal accounts.

Moreover, in light of Ms. Ringley's personal financial impairment, there is concern that Ms. Ringley will continue to operate the Cemetery until the hearing on the Verified Petition, will improperly seek and collect additional monies from the Cemetery's customers in violation of the Cemetery Act and the Order of Summary Suspension, and withdraw whatever monies she collects. Indeed, the Commissioner knows of at least one instance where Ms. Ringley continued to collect payments from a customer after she was ordered not to operate the Cemetery and not to exercise any control over the Cemetery's finances pending formal proceedings. *See Gary Gillespie Affidavit*<sup>7</sup> (customer made four payments to Ms. Ringley after the date of service of the Order of Summary Suspension).<sup>8</sup> There may be other similar instances of which the Commissioner is not yet aware, and in light of the pending Verified Petition, the Commissioner has a genuine concern that Ms. Ringley may continue these efforts to collect as much as she can in the interim.

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<sup>7</sup> Attached as Exhibit B6 to Chick Aff.

<sup>8</sup> Since there is no independent account set up for the Cemetery to receive money, all funds paid into the Cemetery by customers—including those routinely paid in and those that Ms. Ringley actively tries to collect—will have to go directly to Ms. Ringley and are therefore at risk of being withdrawn or transferred.

Importantly, a restraining order is also needed from this Court because the administrative Order of Summary Suspension currently in place will not deter Ms. Ringley from acting until the time of the hearing on the Verified Petition. Indeed, the Order of Summary Suspension is proving no bar to Vickie Ringley's continued interference into the affairs of the Cemetery. As recently as October 23, 2014, despite the Order of Summary Suspension's clear command that she not operate any aspect of the Cemetery, Ms. Ringley interfered with the exhumation and relocation of two bodies from the Cemetery. *See* Randall Ramsey Affidavit.<sup>9</sup> In light of the increased motive to withdraw monies, and in light of Ms. Ringley's clear willingness to disobey the administrative order in place, the Commissioner requires the requested relief from this Court so that this Court can prevent irreparable harm and have immediate jurisdiction over any violations of prohibited conduct that might arise.

B. The Balance Between the Irreparable Harm and Any Injury to Ms. Ringley Weighs in Favor of the Restraining Order.

The purpose of the Commissioner's Application for a Restraining Order is to preserve the status quo of the Cemetery's finances, and the requested restraining order does not unduly burden or prejudice the Cemetery or Ms. Ringley. While the Commissioner recognizes a facial burden on Ms. Ringley with respect to one aspect of the order—the prohibition on transferring, withdrawing, concealing, or disposing monies out of her personal accounts—Ms. Ringley's personal accounts are the only known place where recoverable monies might exist. If the injunction does not reach to cover her personal accounts, there would be no way to prevent her from absconding

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<sup>9</sup> Attached as Exhibit A6 to Gribble Aff.

with funds that could be misappropriated property belonging to the Cemetery and its customers. Recognizing this precise kind of risk, courts have approved injunctive relief that extends to personal bank accounts. *See, e.g., Inventory Locator Service v. Dunn*, 776 S.W.2d 523, 524 (Tenn. Ct. App. 1989) (noting that the trial court enjoined defendant from withdrawing monies from his personal bank accounts after plaintiff discovered defendant misappropriated checks made payable to plaintiff and deposited them in defendant's personal account). This risk is particularly heightened in light of Ms. Ringley's financial impairment. *See, e.g., Petition for Bankruptcy.*

C. The Commissioner Will Likely Succeed on the Merits of the Verified Petition for Receivership.

Based on evidence provided by Ms. Ringley and other investigative results obtained by the Department, the Commissioner is likely to succeed on the merits of the Verified Petition. Ms. Ringley has caused the Cemetery to be impaired and insolvent, has caused the Cemetery to be unable to meet the Cemetery's contractual obligations when they come due, has never established a pre-need merchandise and sales trust account in violation of Tenn. Code Ann. § 46-1-207(b)(2) and therefore not maintained trust funds in the manner required by the Cemetery Act, has misappropriated and misapplied funds that should have been trusted for the protection of customers, and has operated the Cemetery without a valid certificate of registration in violation of Tenn. Code Ann. § 46-1-103. Any one of these grounds is a justification for receivership.

D. A Temporary Restraining Order is in the Public Interest.

The Commissioner is charged with acting in the public interest and enforcing the cemetery statutes. Accordingly, the Commissioner may seek injunctions to prevent violations of the Cemetery Act and the irreparable harms the Act was designed to avoid. The continued operation and control of the Cemetery by Ms. Ringley could impose further damages on the Cemetery and its customers. As the Commissioner explained in the Verified Petition, because of the improper use of monies by Ms. Ringley and the number of customer complaints, a situation that is currently bad is becoming worse. The risk of potential litigation over the unmet contractual obligations concerning the interment and commemoration of Cemetery customers and their loved ones continues to grow. Without the requested relief, there is substantial risk that Ms. Ringley will continue to operate the Cemetery in violation of the law, misappropriate monies that belong to the Cemetery and its customers, and dispose of assets that are needed to fulfill contractual obligations and otherwise rehabilitate the Cemetery for future use by the community, if possible. A temporary restraining order will insure that the public's interest is protected until the hearing on the Verified Petition.

**REQUEST FOR TEMPORARY RESTRAINING ORDER**

Now therefore, in view of the foregoing, the Commissioner submits that:

1. A hearing be set on the Commissioner's Application for a Temporary Restraining Order.

2. The Commissioner's Application for a Temporary Restraining Order should be granted.

3. The Court should enter an order substantially in the same form as the proposed Temporary Restraining Order attached to the Application for Temporary Restraining Order as Exhibit A and order that the Cemetery and Ms. Ringley and anyone acting on her behalf or for the Cemetery be restrained, enjoined, and prohibited from engaging in any or all or the following acts:

3.1. Engaging in the business of operating Hawkins County Memorial Gardens in violation of the Cemetery Act and the Order of Summary Suspension, including establishing, maintaining, managing, operating, improving, and conducting the affairs of Hawkins County Memorial Gardens; interfering with the operation of Hawkins County Memorial Gardens; opening or closing graves or mausoleums or lawn crypts; physically entering the property of the Cemetery except as necessary to enter, leave, and return to a personal residence located on a property adjacent to the Cemetery; and caring, preserving, or embellishing the property;

3.2 Exercising or attempting to exercise control of any finances, property, or monies of Hawkins County Memorial Gardens;

3.3. Concealing or destroying any books, papers, records, computer data, and other documents related to the operation and management and business activities of Hawkins County Memorial Gardens;

3.4. Transferring, withdrawing, concealing, or disposing of any monies held on deposit in any bank, credit union, or other financial institution in any

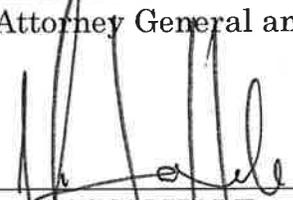
account that is owned by or held for the benefit of the Hawkins County Memorial Gardens or Ms. Ringley, including personal accounts; and

3.5 Selling, destroying, concealing, or making any other disposition of the Cemetery's assets, wherever located.

4. That the Temporary Restraining Order remain in effect until dissolved by further Order of this Court or operation of law.

Respectfully submitted,

HERBERT H. SLATERY III (9077)  
Attorney General and Reporter



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M. JASON HALE (26840)  
Assistant Attorney General  
Financial Division  
P.O. Box 20207  
Nashville, TN 37202  
(615) 532-8812; fax 532-8223

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE**

**CERTIFICATE OF SERVICE**

The undersigned certifies that this Pleading will be served on the below listed Defendant at the same time and in the same manner as the Summons and the Verified Petition for Appointment of Commissioner as Receiver for Hawkins County Memorial Gardens and for Extraordinary Relief that has been filed in this cause on the 24<sup>th</sup> day of November, 2014.

Vickie L. Ringley  
536 Carters Valley Loop  
Rogersville, TN 37857

Independence Trust Co.  
P.O. Box 682188  
Franklin, TN 37068

  
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M. Jason Hale