IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

2600 HOLDINGS, LLC d/b/a
SOUTHERN ROOTS CULTIVATION **PLAINTIFF**

v. **CASE NO. 60CV-21-582**

ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION; ARKANSAS
ALCOHOLIC BEVERAGE CONTROL DIVISION;
and ARKANSAS MEDICAL MARIJUANA COMMISSION **DEFENDANTS**

MOTION FOR A NEW TRIAL

Comes now Bennett Scott "Storm" Nolan, II, and River Valley Production, LLC d/b/a River Valley Relief Cultivation, hereafter "River Valley," by and through their undersigned counsel, and for their Motion for a New Trial, states:

1. The Court filed its judgment, decree, and writ on the 3rd day of November, 2022. This Motion is filed within ten days, as allowed by Ark. R. Civ. Pro., Rule 59. The grounds for this Motion is that the Court made fundamental errors of fact and law in its Order, and deprived movant of due process in proceeding to adjudicate matters in his absence, and directing that his license to cultivate medical marijuana be taken from him. See, Ark. R. Civ. Pro., Rule 59(a)(1)(6).

2. On January 22, 2021, Plaintiff, 2600 Holdings, LLC ("2600 Holdings") filed this action. Before any responsive pleading was filed, it filed an Amended Complaint on February 9, 2021. The Amended Complaint neither referred-to nor incorporated the initial pleading. Therefore, the initial pleading is superseded, and is deemed void and of no effect.

3. The Amended Complaint joined no other plaintiff. Notably, no natural person joined as plaintiff to declare any interest in the proceeding that sought, in ¶ 3 of the Amended Complaint, to strip the cultivation license that Defendant Arkansas Medical Marijuana Commission ("MMC") had issued to natural person Bennett Scott "Storm" Nolan, II ("Nolan").

4. Ark. Const. Amendment 98, Section 8(q)(2) declares that a cultivation license "shall only be issued to a natural person."

5. Plaintiff, an artificial person, to whom no natural person has joined as plaintiff, lacks standing to prosecute a claim that a license was issued *to Bennett Nolan*, or (as it persists errantly in claiming to "River Valley"). As such, Plaintiff herein can only urge "the public interest" (which must be identified, and is not). In doing so, it must proceed *in the name of the State*, as the mandamus statutes specify, Ark. Code Ann. § 16-115-101, upon relation by a citizen. *Wells v. Purcell*, 267 Ark. 456, 461, 592 S.W.2d 100 (1979), and with the Attorney General joined as Plaintiff. Plaintiff did not so appear or declare, and must only therefore represent a private interest in having the license stripped from Bennett Nolan. Not itself being a natural person, with standing to hold such a license, it cannot do so.

6. Pleading further, and affirmatively, the Rules of the Medical Marijuana Commission define a school as a building or facility operated by a public school district. MMC Rules, Section III(13). The unnamed, unknown natural person that 2600 Holdings sought to operate under, himself/herself submitted an Application in 2017 that was located within seven hundred (700) feet of the school bus transportation facility owned and operated by the Jacksonville Public School District, and would therefore be disqualified. As such, 2600 Holdings may only represent the public interest as that interest pertains to Nolan's facility and its corporate operator. That interest is that the highest scorer (Nolan scored higher) operate more than 3,000 feet from a

building operated by a public school district, under corporate control. Plaintiff does not suggest that any deficiency presently attends Movant's operations.

7. Plaintiff's Amended Complaint, while demanding that the license be stripped from "River Valley" (a permitee under Nolan's license), did not join Bennett Nolan as a party defendant. Both River Valley and Nolan are citizens of Arkansas, and amenable to process from this Court. Their presence would not deprive this Court of jurisdiction, but as we shall see, their absence did. The State Defendants moved to dismiss this action under Rule 19 (Motion to Dismiss, March 15, 2021, ¶ 7). The Court overruled the Motion without comment (Order, July 26, 2021). The State's Motion correctly identified Nolan as the holder of the license, and showed that Plaintiff was not qualified because it was not a natural person.

8. The non-qualified Plaintiff led the Court into error by arguing *as established* simply on its say-so, the proposition to be proved in an action when Nolan and River Valley *are present*: that Nolan has no right to the license. The Constitution of Arkansas obliged Nolan to pay $100,000.00 to obtain his license in 2020, and $100,000.00 to renew it both in 2021 and 2022, months (and over a year) before Plaintiff moved for summary judgment. The absent party held a license (and a permit), *prima facie*. To deprive the absentees of a license without Due Process is a constitutional violation, condemned by the Fifth Amendment, and by Article 2, Section 8 of the Arkansas Constitution.

9. In making its argument, Plaintiff ignored the fact that the *prima facie* license/permit holders were present and amenable to process, and argued that it had no one it *could* sue because "River Valley Production, LLC" (not the natural person licensee) had *dissolved* in March 2019. It is sometimes necessary to sue dissolved corporations, and the majesty of law is not impeded when dissolution occurs: under Ark. R. Civ. Pro., Rule 4(g)(4), one may procure a means of service from

the Court, and such means may include publication. Nothing, however, prevents the actual license holder to be served. Plaintiff did not join him.

10. No defendant with an actual, personal interest was joined by the Plaintiff, or by order of the Court, as Rule 19(a) requires. Summary judgment was entered in Nolan's absence. A judgment entered in the absence of necessary parties who are amenable to process is void. The happenstance that the person is aware of the action is no excuse for not serving him with process. *Williams v. Hall,* 98 Ark. 50, 250 S.W.3d 581 (2007).

11. This fundamental error in essential procedures obliges the Court to rescind its November 3, 2022, Order, and to permit Nolan (licensee) and River Valley (permitted) to appear and defend their interest(s).

12. Besides the fundamental violation of Due Process and the Rules of Procedure, the Court's Summary Judgment Order made numerous misstatements of fact. For example, the Court perceived to be significant the "fact" that before the MMC issued a license to Nolan, it settled with him and fined him (Order, p. 6). In fact, the license to Nolan was issued on July 17, 2022, and across fine in question was imposed by the Arkansas Alcoholic Beverage Control Division ("ABC") in December 2020 – January 2021, six months after the license issued.

13. The Court suggested that at the Application period, a corporation is needed to "back" the natural person applicant (Order, p. 12). In his 2017 Application, Nolan revealed himself as the 100% owner of membership units in "River Valley Production, LLC," which had statutory minimal assets. It was Nolan who would "back" the operating company, not the other way around. One doubts that any corporate applicant in 2017 would hold more than minimal assets, and keep them in treasury, unused, for years after 2018, in the off-chance that a license may issue. None of these corporations were doing business until licensed. In general, an "operating company's"

("opco") profits are minimal, because sizeable rents are distributed to "prop co's" (property companies that own and rent the facility and its fixtures, furnishings, and equipment to the opco). Even more sizeable payments will be made to "opco's" administrative services provider (handlers of funds received and spent by the operator, arrangers of insurance, negotiators of contracts, etc.). There is no "backing" of Nolan by the operating company he owns 100% of: capital comes from Nolan's funds, and moneys borrowed on the strength of his credit.

14. Besides errors of fact that the Court deemed consequential, in its discussion of the "Constitution" and the "Rules," the Court believed that a MMC "Rule" forbade a cultivation facility to be situated within 3,000 feet of a juvenile detention facility. Amendment 98, Section 8(b)(2) refers to "Rules" as regulations that are adopted under Arkansas's Administrative Procedures Act, Ark. Code Ann. § 25-15-201, *et seq*. Under that Act, a "Rule" must undergo notice, comment, and review before the agency promulgates it, and then must be published in the Arkansas Register. Ark. Code Ann. § 25-15-2014. The "Advisory" that the staff issued on August 11, 2017, was never promulgated by the Agency, nor published in the Register, and is not a Rule.

15. The Constitution, Amendment 98, offered no definition for the word "school": it simply said that a cultivation facility may not be within 3,000 feet of a "school."

16. The Rules did define "school" to be a facility operated by a public school district. Nolan procured from the Fort Smith Public School District on July 7, 2017, a list of all its schools. The juvenile detention facility was no on that list. When, after closing on the property he had purchased as a site for a facility, he read the "Advisory" of August 11, 2017, he procured substantiation from the Sebastian County Judge, the Fort Smith Special School District, and the Arkansas Department of Education that Sebastian County's juvenile detention building is not a "school." Nolan submitted these in support of his application. (If Nolan had been a party to this

action he could have shown that the "Application" tendered by Plaintiff in 2017 was actually 700 feet away from a facility operated by a school district.)

17. A review of the same "Advisory" discusses what is a "church," because Amendment 98 forbids licensing cultivation within 3,000 feet of a "church." Any single-family residence can at some point be a "church," and churches sometimes originate as meetings in a home. The Advisory said a "church" is a "standalone" place of worship, and that a chapel inside a hospital does not make the hospital a "church." Under this analysis, the fact that classes may be offered inside a juvenile jail does not make the jail a *school*. It is a "standalone" detention facility, that offers classroom space that it owns and operates to others.

18. The MMC had undoubted discretion to interpret its own *Rules* to permit Nolan's site to be qualified, and his application to be scored.

19. The Court did not consider these points because Nolan was not a party able to raise them.

20. When Nolan's Application was scored, and ranked, he did have a corporation then in existence capable of operating a cultivation facility if he was issued a license. The score he obtained from the numerous reviews sought information on places and capabilities independent of the corporate existence. The MMC found his operational plans and capabilities to be superior to those submitted by the individuals seeking the license under which Plaintiff hopes to operate. The MMC's judgment in 2018 was that if 8 licenses be issued, Nolan should get the sixth one, and be a cultivating licensee in the public's interest. "2600" (or its natural person sponsor), the Constitution decided, should *not* be issued a license in the public's interest. Its procedures, protocols, security steps - - of vital interest to the public - - were insufficient, when compared to Nolan's.

21. The Constitution, Amendment 98, Section 10, deals with the *Inspection* of facilities, and their requirements when inspected. Section 10 deals with *post-licensure* activity: no facility will be inspected until there are plans submitted for approval, and then built-out. None of that will happen until after a license is issued.

22. The Constitution declares that ABC inspect to assure that "A… cultivation facility shall be [sic] an entity incorporated in the State of Arkansas." After July 17, 2020, when the license was issued to Nolan, an Arkansas corporation owned 100% by him existed to operate the facility and execute policies and procedures, precautions and protocols, he had developed. As in 2017 (the year of the Application), the 2020 operating corporation was 100% owned by Nolan. The public interest was in no-way affected by the dissolution of one LLC that "never started business." Plaintiff cannot identify any harm to the public interest, only a collateral impact on itself. Even that impact if one subject to disqualification, because its proposed facility is within 700 feet of a building operated by the Jacksonville, Arkansas School District.

23. Disturbingly, the Court issued its November 3, 2022, opinion with slighting comments about the absent Nolan, who could not defend himself. The Court said it "remains curious" why "so many accommodations were made for Mr. Nolan." (Order, p. 13). "It is difficult," the Court said elsewhere, "to come to any other conclusion than MMC was committed to placing Mr. Nolan in charge of a cultivation facility." (Order, p. 12). That curiosity could have been addressed if the Court had followed its mandatory Rule 19 duty to *add Nolan*,and hear from him before judging him. The Court also expressed its "curiosity" that the MMC should issue a cultivation license *after* denying him a dispensary license. (Order, p. 14). For the record, the cultivation license issued on July 17, 2020; the dispensary license was awarded to another in December 2020. The MMC did not in December 2020 permit Nolan to speak to the Motion before

the MMC. His paid-up license was not *revoked*, as it stands now to be: no license ever issued, and not being an "adjudication," could not be appealed, as he had no remedy in the courts.

24. The Court's reference to the Constitution and Rules (which do not include mere informational "Advisories" on which Plaintiff's Mandamus relies) impels the Court to consider whether an existing corporation *must* be shown to exist at the *Application stage*, as opposed to when a license is issued. As noted, the license is issued to a natural person, not to a corporation. The Rules require that the natural person submit proof of his identity in the form of a certified birth certificate, a passport, a naturalization statement, a consular report, etc., MMC Rules, Section IV, ¶ 5(b)(i)(1-10), but nowhere is the applicant required to show a copy of Articles of Incorporation from the State!

25. Indeed, the applicant need only list a "legal name" of the entity. Const. Amendment 98, Section 8(g)(2)(B). A "legal name" is a *natural person*'s name, not a corporation. *Black's Law Dictionary*, 4th Ed., 1951, p. 1041; *Black's Law Dictionary*, 7th Ed., 1999, p. 1043-1044. Furthermore, one may reserve a name of an LLC, without incorporating. An application simply asking for a "legal name" does not require a corporation to be in existence, at that early, preliminary stage.

26. The duties owed by an applicant during the pre-license period are duties owed to the sovereign, not to "the public" and not to "competitors." The public's interest arises at the point when the license issues, after the fee and bond are tendered. From that point on, the developed site must be more than 3,000 feet from a school (or any "school-owned facility), and its operator must be a corporation.

27. The mandamus statutes declare that a private individual may seek mandamus, or the State may do so in the public's interest. Ark. Code Ann. § 16-115-101. If a private individual seeks to assert the public interest, he must do so in the name of the State. *Wells v. Purcell, supra.*

28. A mandamus private plaintiff may not prosecute duties that a third-party owed to a department of the State, especially without joining him.

29. The MMC had the discretion under its definition of "school" in its own Rules to decided that a juvenile jail is not a school, and its interpretation of its own Rules should not be overborne by mandamus unless clearly erroneous and unreasonable.

30. The MMC had the discretion under its rules to determine that if a corporation holding a permit to cultivate marijuana under a qualified natural person licensee, is identical in substance with a former corporation, and even a continuance of it, and may so operate.

31. Finally, Plaintiff waited until February 9, 2021, to seek mandamus, after Nolan paid the $100,000.00 fee, after he posted the $500,000.00 bond, and halfway into his construction of an $8,000,000.00 facility, employing 75 people whom Plaintiff desires to be unemployed as quickly before Thanksgiving and Christmas as is humanly possible! With respect, this Plaintiff's action is barred by *laches*. Laches is a defense to mandamus. The public, having taken benefits (fees, fines, and taxes) from Plaintiff, is estopped to derivatively insist upon a right it might have applied to enforce before outlays issued to it from Nolan/River Valley.

WHEREFORE, PREMISES CONSIDERED, Bennett Scott "Storm" Nolan, II, and River Valley Production, LLC, d/b/a River Valley Relief Cultivation, asks for a new trial under Rule 59.

Respectfully Submitted,

BENNETT SCOTT "STORM" NOLAN, II, and RIVER VALLEY PRODUCTION, LLC d/b/a RIVER VALLEY RELIEF CULTIVATION

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CERTIFICATE OF SERVICE

I, Matthew T. Horan, do hereby certify that on this 17th day of November, 2022, I filed the foregoing via the E-Flex electronic filing system, which shall send notification of the filing to any participants.

s/ Matthew T. Horan
Matthew T. Horan