

IN THE CHANCERY COURT FOR MAURY COUNTY, TENNESSEE
AT COLUMBIA

MARY CATHERINE ELIZABETH)
THOMAS (d.o.b. 05/17/01), a minor child,)
by and through her next friend,)
)
ANTHONY EDWARD THOMAS,)
)
Petitioner.)

Docket No. 17-200

FILED
LARRY M. ROE CLERK & REGISTER
MAURY COUNTY, TN
2017 APR -6 PM 1:55

PETITION FOR PERPETUATION OF TESTIMONY
IN ACCORDANCE WITH T.R.C.P. 27.01

COMES NOW the Petitioner, by and through his undersigned counsel of record, and does hereby present this verified petition in accordance with T.R.C.P., the same for the perpetuation of testimony in an anticipated action before this Honorable Court, and would show unto this Honorable Court as follows:

1. The Petitioner, ANTHONY E. THOMAS, is the father and sole custodian of five (5) minor children, including a 15-year-old child, MARY CATHERINE ELIZABETH THOMAS (d.o.b. 05/17/2001) ("Elizabeth" or "child"), the same by order of the Maury County Juvenile Court, State of Tennessee Department of Children's Services v Kimberly Thomas and Anthony Thomas, Docket No. 15-JV-403. He brings this action by and through himself as next friend to that minor child.

2. Petitioner will show that on or about **January 23, 2017**, a seventh grade student who attended the same school with the child claimed to have witnessed the child being kissed by one of her teachers, potential adverse party, TAD ERIC CUMMINS, age 50 ("Cummins") ("the incident").

3. On **January 24, 2017**, the above-referenced seventh grade student reported the incident to school administration and, upon information and belief, an investigation of the incident by the school began at that time or shortly thereafter.

4. On or about **January 27, 2017**, Cummins was a, if not the only, chaperone at a field trip facilitated by the school and attended by the subject child. At some point, upon information and belief after this field trip, a directive was given to the student and teacher by the school that they should have no contact. Despite that directive, the teacher and child had contact at school on at least one occasion subsequent to the issuance of the directive. It is unknown to Petitioner if there were other such contacts at the school during this time.

5. On **January 31, 2017**, the Petitioner was first informed about the above incident when an investigator from the Maury County Sheriff's Department called Petitioner with questions regarding the incident. From the date and time of that call and leading into the following day, **February 1, 2017**, Petitioner learned about the aforementioned contact between the child and Cummins, as well as the fact that Cummins remained in his teaching position at the same school as the child despite the allegations of the incident.

6. On **February 1, 2017**, Petitioner contacted the child's school seeking information on the incident and further to express his extreme concern that his daughter was still forced to attend school with Cummins still in place as a teacher. After the revelation of the incident, the Petitioner also eventually learned that the child was facing ridicule by persons at the school because of the incident, being referred to by names such as "whore" and the like, and that the child was extremely emotionally distraught. During this interim period, he also learned that the child had an inflated view of Cummins, the same based upon statements made and reinforced by

Cummins to her, such as the assertion that Cummins was a millionaire, a former Special Forces soldier, and the like.

7. On the afternoon of **Friday, February 3, 2017**, due to Petitioner's concerns that Cummins still remained at the child school and, therefore, had *de facto* access to the child (notwithstanding the school's directive to the contrary), and due to his concerns that he was not receiving adequate information from the school about the incident, Petitioner hired the undersigned counsel. Early **Monday, February 6, 2017**, the undersigned counsel sent the attached letter to the school's "Central Office", the administration main office for the school and all public schools in this county (EXHIBIT 1). On that same date, Cummins was suspended from employment with the school and made to leave the same, upon information and belief ostensibly because he had violated the aforementioned no-contact directive issued by the child's school. It is not clear what role, if any, the letter played in the suspension process of Cummins.

8. On **February 8, 2017**, the child's school's Central Office responded to counsel's February 6 letter with the packet attached as EXHIBIT 2.

9. It is unknown who contacted law enforcement and when and how law enforcement was contacted regarding the above-referenced incident. Upon information and belief, law enforcement was investigating the incident up until the disappearance of the child as described below.

10. On **Monday, March 13, 2017**, the minor child failed to return home after ostensibly going to visit a friend for the day. Upon information and belief, the child was last seen locally when she was dropped off by a friend at Shoney's Restaurant in Columbia, Tennessee, carrying with her two bags. The child has not been home since. On the same day, Cummins went missing as well. According to surveillance video at a convenience store located next to the

Shoney's Restaurant, Cummins was seen turning his vehicle in the direction of Shoney's shortly after the child was left there.

11. On the evening of **March 13, 2017**, law enforcement was contacted due to the child not returning home. A sibling to the child told law enforcement that the same morning the child had awakened her to tell the sibling that if Elizabeth did not return by 6:00 p.m. that evening, call for help, or words to that effect.

12. Sometime in the evening of **Tuesday, March 14, 2017**, the Tennessee Bureau of Investigation issued an "Amber Alert", a consolidated public notice system designed to alert citizens to be on the lookout for a missing child. On the same day, Cummins was charged with inappropriate contact with a minor, said charge now pending in the Maury County General Sessions Court.

13. Since March 13, 2017, law enforcement, including the Maury County Sheriff's Department, the Tennessee Bureau of Investigation, and the Federal Bureau of Investigation have continued to investigate the child's disappearance, assuming all along that the child was with Cummins. On March 31, 2017, the child and Cummins were confirmed by the T.B.I. to have been seen in a Walmart in Oklahoma City, said sighting actually occurring on **March 15, 2017**. Petitioner saw the security video and still photographs from the same and also confirmed that the person in the video was his child, the same following closely in tow with Cummins. In the video, the child can be seen wearing an oversized flannel-style shirt, one appearing to be the exact shirt worn by Cummins in a video obtained from a local Walmart showing Cummins very shortly before his disappearance purchasing hair dye. In the Oklahoma video described above, in addition to wearing Cummins's shirt, it also appears as if the hair of both Cummins and the child had been dyed. The child also appears to be otherwise wearing the same leggings that she was

wearing on the day she disappeared and further looks as if her hair was unwashed. Petitioner suspects that Cummins had placed the child in a position of either staying in Cummins's car or otherwise in a place where bathing was not an option in the 2.5 days that had elapsed between the date and time of the disappearance and the date and time of the Oklahoma City video. That video is the only confirmed sighting of Cummins and/or the child since the child's abduction on March 13, 2017.

14. Upon information and belief, during the time since the March 13, 2017 disappearance of the child, the Petitioner has learned the following information from various sources, including friends and siblings of the child, the same showing a continuous pattern of grooming by Cummins of the child for months leading to the child's abduction by him. These alleged facts include, but are not limited to, the following:

(a) That on the morning of March 13, 2017, the child told the driver who dropped her off at Shoney's restaurant that she wanted to be taken back home. Allegedly, the child also told the driver that she was seeing a friend, a teenager known as "Thomas", and that she was ostensibly having second thoughts about spending the day with him. Petitioner now knows that the second thoughts by the child were in regard to Cummins (not "Thomas") and regarding her fear of going with him;

(b) That Cummins, unbeknownst to Petitioner, had on more than one occasion picked up the child from the Petitioner's residence for a meal, threatening her that if she did not go with him she would face repercussions at school;

(c) That the child had told various siblings and/or friends that she was scared of Cummins and that she felt "in over her head" and words to that effect as pertaining to her relationship with Cummins;

(d) That Cummins, after his suspension from school, was frequenting the place of work of the child, a fast food restaurant, where she would sometimes serve him. Petitioner was informed that the child had at times hidden in the restaurant from Cummins and asked employees to lie about her presence at work, not desiring to see or speak with him, and showing fear of him. In short, Petitioner asserts that Cummins was stalking the child;

(e) That Cummins told the child that because of the kissing incident described earlier, her future collegiate and work career was ruined, thus causing her to believe that her best option was to leave with him. Petitioner also has received information that, due to the entire situation, the child began feeling guilty for Cummins's suspension from school. Upon information and belief, Cummins played upon this guilt, causing the child to feel compelled to help him by, *inter alia*, going with him. Moreover, evidence has surfaced that the child became fearful of Cummins's reaction to his suspension and her belief that he would punish her in some way for it;

(f) That Cummins was often alone with the child at school, this practice going on for months prior to the child's disappearance, Cummins serving in some sort of unofficial mentoring capacity to the child, all unknown to the Petitioner. In one example from another child whose parent will not permit the child to speak officially on the subject, the subject child was found by the other student one morning before classes asleep on a hospital bed in the classroom of Cummins – alone. It is also unknown what the child was permitted to do in terms of these extra-curricular meetings with Cummins, although it is believed that the child was routinely meeting with Cummins at the school for non-academic reasons. Petitioner was also told that the child had a special seat next to Cummins and that he would give her money and gifts. Upon information and belief, other students saw physical contact by Cummins to the child, including the rubbing of her back and shoulders while at school.

Cummins also admitted to other persons at the school that he saw himself as a “father figure” and further readily told other persons that the child came from an “abusive home”. Petitioner will show that he has always had a strong and loving relationship with his child and has never abused her or any of his children. However, it is admitted that in 2015, the custodial and contact rights of the child’s mother were cut off by court order (and have remained so) due to abuse by that parent. Petitioner believes that Cummins used that unfortunate fact and pounced upon the vulnerability of the child, establishing himself without need as a substitute “father figure” and using that and his teaching position as a position of authority from which he could control the child.

Petitioner has further received information to demonstrate that a reputation and/or concern existed for months at the child’s school that the relationship between Cummins and child was unusually close, thus establishing red flags of Cummins’s intentions towards her, information that can be used to further establish the extent of Cummins’s control over the child.

In summary, Petitioner believes that the facts support and will, once confirmed, fully support that his daughter, the child, was as much a victim as a child abducted at night by an intruder, the difference being that instead of being forcefully taken without warning, the authority figure Cummins preyed upon the child for months on end, nudging and molding her until her will to resist was conflicted and ultimately broken.

15. Petitioner is still investigating the frequency and extent and other details of these alleged meetings and contact and events, as described by (a) through (f), above, and will use this petition and ensuing depositions as a basis for gaining information regarding the same. All of this information has been learned through statements of other persons, many of whom are not family or necessarily amenable to fully cooperating or otherwise giving statements under oath about their

knowledge on these matters. Without the Court granting relief as requested herein, it is becoming increasingly difficult to compel persons to cooperate and share what information they know about Cummins and his actions and words towards the child, thus preventing Petitioner from confirming each and every one of the above circumstances that were told to him.

16. In accordance with T.R.C.P. 27.01, Petitioner presents the following information, adopting and incorporating by reference all previously-made allegations:

(a) Petitioner expects to be Plaintiff in an action cognizable in this or another court of Tennessee, but is presently unable to bring the same due to the following: (i) The whereabouts of the child and Cummins is not known at this time; (ii) Although strongly suspected through circumstantial and other evidence (such as statements informally shared with him by others as detailed above), due to their absence, the exact nature of the relationship between the child and Cummins is officially unconfirmed at this time. Failure to properly vet this relationship before filing suit against Cummins could result in the failure of the suit altogether as the order of protection statute, for example, limits relief to specific classes of individuals, *e.g.*, those in a current or past physical relationship being one example; and (iii), as for common law torts like false imprisonment, the willingness of the child to both go with Cummins and stay with him is a material issue as to whether that tort is applicable. While the statements informally given to and otherwise gathered by Petitioner fully support the assertion that the will of this 15-year-old child was overcome, that she was groomed, and that she is for all purposes a victim of a masterfully manipulating predator, it is still the job of the undersigned counsel to solidify these facts by placing the declarants under oath and upon the record. For all of these reasons, the Petitioner is unable to bring any action at this time -- at least until more facts are fully confirmed.

All of the information, once confirmed under oath, will provide a basis for Petitioner filing an action for order of protection, as well suing Cummins for applicable common law torts, such as false imprisonment and other applicable civil remedies. Petitioner does not know the whereabouts of his daughter, the subject child, nor the whereabouts of her abductor, despite a national manhunt for the same. As such, he is unable to vet the above statements via his daughter or Cummins himself. As such, he needs the assistance of the Court to fully vet and confirm these facts under oath from third-party witnesses.

(b) The subject matter of the expected action is an order of protection and damages under common law torts, such as false imprisonment.

(c) Petitioner desires to confirm and fully establish the following facts from the proposed deponents:

- * The exact nature of the relationship between Cummins and the child, including any and all facts related to his grooming and intimidation and coercing of the same;

- * Any and all statements made by the child as to plans or reasons for her disappearance, especially including statements made by Cummins as related by the child; and

- * Other statements made by the child as to threats, coercion, intimidation, and fraud exacted upon the child by Cummins.

Petitioner desires to preserve the testimony of these witnesses for the reasons stated above and further due to the fact that with each passing week that Cummins and child are gone, the memories of these witnesses potentially becomes less clear and more subject to ultimate scrutiny when the above causes of action are heard at trial. Finally and in addition, at least two of the witnesses described and identified in EXHIBIT 3 have information, upon information and belief, that could lead to the finding of this child. Of those, one of the witnesses has stopped speaking to

the undersigned counsel altogether and the other one is believed to have more information than what has been shared to this point.

(d) The person expected to be an adverse party in the upcoming proceedings is Cummins. His present address is unknown. His last known address is 110 Haven Drive Columbia, Tennessee 38401.

(e) The names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each is hereby attached under seal as EXHIBIT 3 to this petition.

17. Petitioner will show that service cannot with due diligence be made upon the expected adverse party due to his current status as a fugitive and that even service by publication simply presents a delay that favors the Cummins, a prospect that is substantially outweighed by the need to preserve and explore this testimony. Petitioner hereby avers that while service by publication may be the only option for serving the potential adverse party, Cummins, the nature of the information needed, especially as it could serve the ancillary purpose of providing information on the whereabouts or potential whereabouts of the child, demands that depositions go forward before service is perfected. As such, the preservation and exploration of this testimony may prevent a failure of justice as contemplated by T.R.C.P. 27.01.

WHEREFORE, the Petitioner does hereby pray as follows:

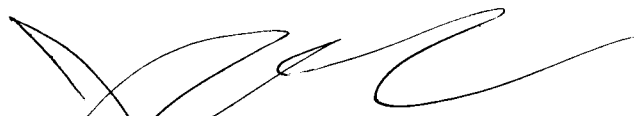
- (1) That the Court enter an order authorizing the petitioner to take the depositions of the persons to be examined as named in EXHIBIT 3 to this petition;
- (2) That the Court permit service of the expected adverse party by publication;

(3) That, due to the extenuating nature of this proceeding, the Court further immediately appoint a counsel for the expected adverse party and further allow for the immediate taking of depositions, without the need to wait for the time thresholds of service by publication; and

(4) That the Court grant such further relief as warranted by notions of law and/or equity.

Respectfully submitted,

WHATLEY & ASSOCIATES



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NOTICE OF HEARING

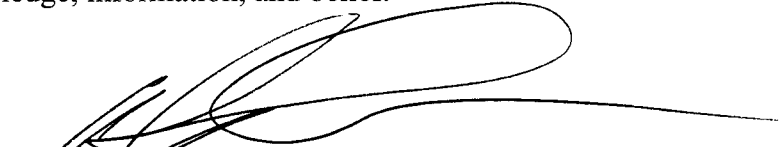
TAKE NOTICE THAT THE ABOVE MOTION IS SCHEDULED TO BE HEARD AT THE MAURY COUNTY COURTHOUSE ON THE 10th DAY OF April, 2017 AT 9:00 A.M. OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD.



**S. JASON WHATLEY (019646)
FRANZISKA E. ABBOTT (035004)**


STATE OF TENNESSEE)
)
COUNTY OF MAURY)

I, ANTHONY E. THOMAS, do hereby swear or affirm that the facts contained in this petition are true and correct to the best of my knowledge, information, and belief.

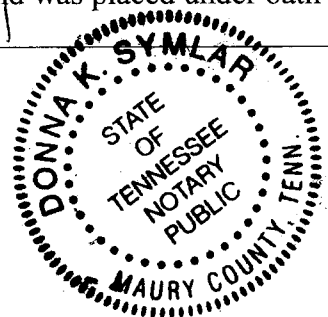


ANTHONY E. THOMAS

The above individual did appear before me and was placed under oath and further affixed his signature, above, on the 5th day of April, 2017.



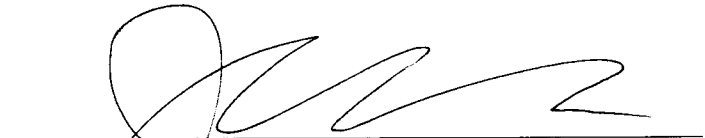
NOTARY PUBLIC



My commission expires: 10/23/17

SURETY

I am a surety for costs in this cause.



S. JASON WHATLEY (BPR 019646)