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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 19, 2026 Session

STATE OF TENNESSEE EX REL. STEPHEN EIMERS v. LINDSAY CORPORATION ET AL.

Appeal from the Circuit Court for Davidson County
No. 23C2792 Thomas W. Brothers, Judge

No. M2025-01457-COA-R9-CV

The plaintiff filed a qui tam action on behalf of the State of Tennessee against several defendants who designed and manufactured guardrails that were installed on Tennessee roads. The defendants moved to dismiss the case based on the expiration of the Tennessee False Claims Act's three-year statute of limitations. The plaintiff responded, inter alia, that the statute of limitations had been tolled while an earlier federal action involving this claim had been pending. The defendants disagreed, arguing that the plaintiff was not entitled to tolling under 28 U.S.C. § 1367(d) because he had voluntarily dismissed all of his claims in the federal action. But the plaintiff asserted that he was not entitled to voluntarily dismiss his claims in the federal action due to specific requirements of the federal False Claims Act. The trial court denied the motion to dismiss but granted an interlocutory appeal to this Court. We hold that the plaintiff voluntarily dismissed all of his claims in the federal action and that he therefore was not entitled to tolling under 28 U.S.C. § 1367(d). So we reverse.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which VALERIE L. SMITH and STEVEN W. MARONEY, JJ., joined.

Brigid M. Carpenter, Nashville, Tennessee; and James H. Heller, Stephen A. Miller, and Jillian T. Flax, Philadelphia, Pennsylvania, for the appellants, Lindsay Corporation, Safe Technologies, Inc., Lindsay Transportation Solutions, LLC, and Barrier Systems, Inc.

Wayne A. Ritchie, James R. Stovall, and Samantha I. Ellis, Knoxville, Tennessee and Kyle McGee and Laina M. Herbert, Wilmington, Delaware, for the appellee, Stephen Eimers.

OPINION

I. BACKGROUND

Although the case from which this appeal stems was not filed until November 2023, this matter originated in federal court years earlier. On March 1, 2019, Relator/Appellee Stephen Eimers ("Relator") filed a qui tam[1] complaint ("the federal action") in the United States District Court for the Northern District of New York ("the district court" or "the federal district court") against related entities Defendants/Appellants Lindsay Corporation, Lindsay Transportation Solutions, Safe Technologies, Inc., and Barrier Systems, Inc. (collectively "Defendants"),[2] as well as Valmont Corporation, Valmont Transportation, and Armorflex Corporation.[3] The federal action raised claims under the federal False Claims Act ("FCA"), the Tennessee False Claims Act ("TFCA"), and the false claims acts of eleven other states. The federal action stated that Relator filed his complaint on his own behalf and on behalf of the United States and California, Florida, Georgia, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Tennessee, and Virginia, to recover funds paid in false claims and damages involving a guardrail manufactured and sold by Defendants.

After years of investigation, in September 2023, the United States Attorney General's office appeared in the matter for the first time, filing a letter requesting a conference to address its proposed motion to dismiss. The letter further stated that the states involved "have no objection to the Court declining to exercise supplemental jurisdiction over the remaining state claims and to dismissing those claims without prejudice to the states." The federal district court invited the United States Attorney General to file its motion to dismiss. Relator thereafter responded stating that he would "voluntarily dismiss the federal claims in the Complaint[,]" as Relator did "not object to the Court declining to exercise supplemental jurisdiction over the state claims and to dismissing those claims without prejudice to the states." Relator requested, however, that the district court continue to exercise supplemental jurisdiction over the "New York state[] claims" due to the existence of complete diversity.

Nevertheless, on October 10, 2023, Relator filed a notice of voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure, which the federal district court signed on the same day; this notice did not specify that it applied only to certain claims.

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[1] A qui tam complaint is "[a]n action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive." *Qui Tam Action*, *Black's Law Dictionary* (9th ed. 2009).

[2] In their brief, Defendants state that the correct names for the latter two defendants are Safe Technologies, LLC (f/k/a Safe Technologies, Inc.) and Lindsay Transportation Solutions, LLC (f/k/a Barrier Systems, Inc.), respectively.

[3] Contemporaneous to the filing of his brief to this Court, Relator filed a motion for this Court to take judicial notice of certain pleadings and orders filed in the federal action. Defendants filed no response in opposition to the motion, and resolution was reserved pending oral argument. Relator's motion to take judicial notice is hereby granted.

However, because the FCA claim could not be dismissed without the consent of the court and the United States Attorney General, *see* 31 U.S.C. § 3730(b)(1),[4] there is no dispute that the case was not dismissed upon the execution of this notice. Rather, on October 12, 2023, the United States Attorney General gave notice that it did not object to the dismissal of the FCA claims. Specifically, the letter stated that

> [T]he Attorney General consents to the dismissal of the federal False Claims Act claims in this action . . . without prejudice to the rights of the United States, based on its determination that such a dismissal is commensurate with the public interest and that the matter does not warrant the continued expenditure of government resources to pursue or monitor the action based on currently available information.

The letter further provided that the United States Attorney General had been authorized to inform the federal district court that "all twelve States do not object to dismissal of the state claims, so long as the dismissal is without prejudice as to the States."

On October 26, 2023, the federal district court entered an order of dismissal ("the October 2023 order") that provided as follows:

> Relator [] having filed a Notice of Voluntary Dismissal of this action; the United States having filed its Notice of Consent to Dismissal, pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(1); and the United States having represented to the Court that the twelve State plaintiffs do not object to dismissal of the state claims, the Court rules as follows:
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> > IT IS ORDERED that,
> > 1. This action is dismissed without prejudice as to Relator [], the United States, California, Florida, Georgia, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Rhode Island, Tennessee, and Virginia;
> > 2. The seal shall be lifted upon [certain specified documents]. All other contents of the Court's file in this action shall remain under seal and not be made public.

On November 27, 2023, Relator refiled his TFCA claim in the Davidson County Circuit Court ("the trial court") against Defendants and others.[5] Like in the federal action, the Tennessee complaint asserted that it was brought to recover money that the State of

[4] Discussed in detail, *infra*.

[5] Three other originally named defendants, Valmont Corporation, Valmont Transportation, and Armorflex Corporation were voluntarily dismissed without prejudice in the case *sub judice* and are not at issue in this appeal.

Tennessee spent paying false claims and damages involving a guardrail manufactured and sold by Defendants. According to Relator, the guardrail was approved for use on Tennessee roads after Defendants represented that the rail had been successfully crash tested in 2010 and received an eligibility letter from the Federal Highway Administration. Relator alleged, however, that after the 2010 crash testing, Defendants "secretly and substantially redesigned" the guardrail, rendering the product unsafe. Relator therefore brought his claim on behalf of the State of Tennessee and asserted that Defendants knowingly made, used, or presented false claims to the Tennessee Department of Transportation. Specifically, Relator alleged that as a result of Defendants' misrepresentations, "[e]ach time a contractor or subcontractor sought reimbursement for the installation of [the altered guardrail] while certifying that it was an approved original [guardrail] constitute[d] a false claim under TENNESSEE FCA." Relator therefore asked that the State be awarded compensatory damages "in an amount sufficient to cover, inter alia, the cost of purchasing and installing the unapproved [guardrail] and/or the cost of removing and replacing every noncompliant [guardrail] currently installed on the public roadways of Tennessee[,]" as well as civil penalties and treble damages under the TFCA. The State of Tennessee provided notice on March 26, 2024, that it declined to intervene in the action; the State of Tennessee reserved the right to intervene or participate at a later date.[6]

Defendants promptly filed a motion to dismiss, arguing that, inter alia, Relator's claim was barred by the TFCA's three-year statute of limitations. Relator responded that the claim was timely, citing, among other things, (1) the Tennessee Savings Statute, Tennessee Code Annotated section 28-1-105; and (2) that the claim had been tolled under 28 U.S.C. § 1367(d) due to a previously filed and dismissed federal action. As such, Relator asserted that his complaint was timely filed in the trial court.

Defendants argued that 28 U.S.C. § 1367(d) was inapplicable because all of the claims in the federal action had been voluntarily dismissed by Relator, citing the plain language of the October 2023 order. Moreover, Defendants asserted that federal courts had held that tolling under § 1367(d) was not applicable where all claims had been voluntarily dismissed. As such, Defendants asserted that Relator was not entitled to tolling under § 1367(d) and that his claim under the TFCA was untimely.

The trial court denied the motion to dismiss by order of April 3, 2025. In reaching this decision, the trial court ruled that giving 28 U.S.C. § 1367(d) "its most open-ended reading[] provides a 30-day tolling period for Relator's claim[.]" In its memorandum accompanying its order, the trial court explained the procedural history in the federal action as follows:

> On March 1, 2019, the Relator filed a Complaint against [Defendants] and other defendants in the Northern District of New York. On September

[6] The State of Tennessee elected not to file a brief in this appeal.

> 28, 2023, a United States attorney wrote to the District Court informing the court that it intended to have the Complaint dismissed. . . . In the letter it states that, "The United States has been advised by counsel for the 12 states that the states have no objection to the court declining to exercise supplemental jurisdiction over the remaining state claims and to dismissing those claims without prejudice to the states."
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> On October 10, 2023, the Relator filed a Notice of Dismissal under Federal Rule of Civil Procedure 41(A)(1)(a)(i).[7] On October 12, 2023, the United States filed its Notice of Dismissal along with a Proposed Order, and on October 26, 2023, the District Court in New York entered an Order dismissing the case without prejudice after receiving approval from the United States Attorney General and representations from the United States Attorney General that the state Attorneys General[] from the 12 states involved did not oppose voluntary dismissal. The Proposed Order and the Order entered on October 26, 2023, contained the same language without any reference to supplemental jurisdiction.

(Record citations omitted).[8]

The trial court then concluded that based upon the complaint and record, the statute of limitations for Relator's claim under the TFCA "began to run on March 1, 2019, when Relator filed his Complaint in New York[,]" as this "was the date by which the State of Tennessee knew or reasonably should have known or had notice of these complaints." The trial court rejected Relator's argument that his claim was saved under Tennessee's Savings Statute, holding that the statute "only applies when the action in federal court is dismissed for lack of jurisdiction." The trial court instead noted that "neither the Order of Voluntary Dismissal nor the United States Notice of Consent to Dismissal make any statement about the Court dismissing for lack of jurisdiction." In other words, "the Order [dismissing the federal action] simply does not state dismissal is on the grounds of lack of supplemental jurisdiction."

As to tolling under § 1367(d), however, the trial court came to the opposite conclusion. First, the trial court discussed the circumstances in which a district court must dismiss supplemental claims, as well as the circumstances in which a district court may decline to exercise supplemental jurisdiction. The trial court then held that § 1367(d) "can be broadly read to apply to any claim technically asserted under subsection (a) as long as it was later dismissed regardless of the reason for the dismissal." The trial court went on to explain that

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[7] As discussed *infra*, there is no dispute that the proper reference is to Rule 41(a)(1)(A)(i).

[8] The trial court noted that it would take judicial notice of various orders and public records submitted in connection with the federal action without converting the matter to a question of summary judgment. Neither party objects to this procedure on appeal.

> all claims, including the federal FCA, were simultaneously dismissed voluntarily, after the United States and the 12 states agreed to voluntary dismissal. As previously noted, the letter from the United States Attorney General states that the United States has been advised by counsel for the 12 states that the states have no objection to the Court declining to exercise supplemental jurisdiction over the remaining state claims and to dismissing those claims without prejudice to the states.
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> As this is a matter of first impression for a court in Tennessee, the [c]ourt finds that a more open-ended reading of § 1367(d) should be permitted for these unique circumstances, because the Relator could not voluntarily dismiss this case without the consent of the United States Attorney General and the [federal] District Court. Additionally, the actual intent of the Order based on the letter from the United States Attorney General appears to be dismissal based upon the [federal] District Court declining to exercise supplemental jurisdiction, although the Order itself does not specifically state that. Had the Order entered by the [federal] District Court contained a reference to § 1367(c) and its subparts, the issue whether § 1367(d) applies may not have been disputed in this matter.

Relator then filed an amended complaint, again containing a single count under the TFCA. Defendants again filed a motion to dismiss on the basis of the expiration of the statute of limitations, and the trial court again denied the motion. In its order, the trial court declined to reconsider either its ruling against the application of the Tennessee Savings Statute, or in favor of the application of § 1367(d) tolling. In ruling on the latter argument, the trial court explained as follows:

> The [c]ourt reaffirms its holding that the [federal district] court's order is essentially ambiguous. While the [c]ourt has noted that all claims, including the federal FCA claim, were simultaneously and voluntarily dismissed in the order, the incorporation of the [United States Attorney General] letter and [Relator's] response letter, give rise to a reasonable interpretation that the [federal district] court's dismissal of Tennessee state claims was for a lack of supplemental jurisdiction. What's more, the Relator here had no unilateral power to voluntarily dismiss any of the claims pursuant to 31 USC § 3730(b)(1). It required the consent of the Attorney General who, in this case, specifically gave consent to a dismissal for lack of supplemental jurisdiction. Thus, as stated in its previous Order, the [c]ourt holds that the tolling provision of 28 USC § 1367(d) should be read broadly to include the peculiar circumstances of this case.

Defendants then filed a motion in the trial court for permission to file an interlocutory

appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure.[9] The trial court granted the motion on September 9, 2025; this Court likewise granted Defendants' application for permission to appeal by order of October 20, 2025. In granting the motion, the following issues were taken from the trial court's order granting the interlocutory appeal and designated for our review:

1. Whether the Court can find that the order entered October 26, 2023, in the action filed by Relator in the United States District Court for the Northern District of New York dismissed supplemental state law claims for lack of supplemental jurisdiction, given the procedural technicalities that a party shall follow under the federal False Claims Act.
2. Whether the tolling provisions of 28 U.S.C. § 1367(d) provide a 30-day tolling period for Relator's claims brought under the Tennessee False Claims Act.

II. ANALYSIS

This case presents a rare situation in which Tennessee courts are called upon to resolve an issue that sits at the intersection of two federal statutes, the FCA and 28 U.S.C. § 1367. As the appellants in this appeal, Defendants assert that the October 2023 order should be interpreted as nothing more than an order of voluntary dismissal with the consent of the United States Attorney General, as required by the FCA. Defendants further assert that § 1367(d)'s tolling has been uniformly held by federal courts not to apply in the situation where all claims were voluntarily dismissed. So then, Defendants contend that the trial court erred in holding that Relator was entitled to tolling under § 1367(d).

In contrast, Relator asserts that the federal district court's order should be interpreted as a dismissal of state law claims for lack of supplemental jurisdiction under § 1367 due to the unique requirements of the FCA and the circumstances leading up to the dismissal of the federal action. Thus, Relator asserts that the October 2023 order of the federal district court should not be interpreted as a true order of voluntary dismissal. And in any event, Relator asserts that § 1367(d)'s tolling can apply even if the October 2023 order is interpreted as an order of voluntary dismissal.

Thus, this appeal involves two questions. First, how should the federal district court's October 2023 order of dismissal be interpreted? And if interpreted as an order of voluntary dismissal of all claims, can tolling under § 1367(d) apply? A brief review of the federal statutes and rules at issue is therefore useful in resolving the first question.

In this case, Relator filed his notice of voluntary dismissal pursuant to Rule

[9] In denying the previous motion to dismiss, the trial court indicated that it gave permission for an interlocutory appeal to be filed. The trial court later amended that ruling to state that it was inviting Defendants to file a motion requesting permission to seek an interlocutory appeal.

41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. Rule 41(a)(1)(A) provides that a plaintiff may generally voluntarily dismiss his or her federal action "without court order" by filing either a notice of dismissal if no answer or motion for summary judgment has been filed by the opposing party, or via a stipulation of dismissal signed by all parties who have appeared. Fed. R. Civ. P. 41(a)(1)(A). Rule 41 notes, however, that the procedure outlined above is "[s]ubject to . . . any applicable federal statute." ***Id.*** So then the right to voluntarily dismiss a federal action under Rule 41 may be modified by a federal statute. This appeal involves one such statute.

Specifically, Relator filed his federal action on the basis of the FCA. "The primary purpose of the FCA 'is to indemnify the government—through its restitutionary penalty provisions—against losses caused by a defendant's fraud.'" ***U.S. ex rel. Wilkins v. United Health Grp., Inc.***, 659 F.3d 295, 304 (3d Cir. 2011) (quoting ***Mikes v. Straus***, 274 F.3d 687, 696 (2d Cir. 2001), *abrogated on other grounds by* ***Universal Health Servs., Inc. v. United States***, 579 U.S. 176, 136 S. Ct. 1989, 195 L. Ed. 2d 348 (2016)). "[A] private individual, otherwise known as a relator, may bring a civil action in the name of the United States to enforce this provision of the FCA and may share a percentage of any recovery resulting from the suit." ***Id.*** (citing 31 U.S.C. § 3730(b) & (d)); *see also* ***Mikes***, 274 F.3d at 692 ("The Act contains a *qui tam* provision designed to encourage private individuals to file suit by offering them a percentage of any money recovered. Those persons bringing a *qui tam* suit are known colloquially as whistle-blowers."). When a private person brings a qui tam action under the FCA, however, such an "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." 31 U.S.C. § 3730(b). Thus, the right to voluntarily dismiss a qui tam action under the FCA is "[s]ubject to" the consent requirement of § 3730(b).

Against this backdrop, we are tasked with determining whether the October 2023 order of the district court should be interpreted as an order of voluntary dismissal or an order dismissing supplemental jurisdictional claims. In addressing this question, both parties primarily cite Tennessee law concerning how this Court should interpret orders.[10] Specifically, Tennessee law provides as follows:

> The general rule is that a judgment should be so construed as to give effect to every part of it and where there are two possible interpretations that one will be adopted which is in harmony with the entire record, and is such as

[10] Defendants also cite federal law on this issue, which they assert is similar to our own. *See generally* ***Travelers Indem. Co. v. Bailey***, 557 U.S. 137, 150, 129 S. Ct. 2195, 2204, 174 L. Ed. 2d 99 (2009) ("[W]here the plain terms of a court order unambiguously apply, as they do here, they are entitled to their effect."); ***United States v. Spallone***, 399 F.3d 415, 424 (2d Cir. 2005) ("Although court orders must ordinarily be interpreted by examination of only the four corners of the document, where, as in this case, an ambiguity in terminology results in a lack of clarity as to the scope of the ruling, a reviewing court may properly examine the entire record for the purpose of determining what was decided." (internal citations, quotation marks, and brackets omitted)).

> ought to have been rendered and is such as is within the jurisdictional power of the court. Moreover, the judgment will be read in the light of the pleadings and the other parts of the record.

Lamar Advert. Co. v. By-Pass Partners, 313 S.W.3d 779, 786 (Tenn. Ct. App. 2009) (quoting ***John Barb, Inc. v. Underwriters at Lloyds of London***, 653 S.W.2d 422, 423 (Tenn. Ct. App. 1983)). More recently, the Tennessee Supreme Court has held that "[l]ike other written instruments, orders and judgments should be interpreted and enforced according to their plain meaning." ***Morgan Keegan & Co. v. Smythe***, 401 S.W.3d 595, 608 (Tenn. 2013) (quoting ***Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.***, 249 S.W.3d 346, 359 (Tenn. 2008)). When, however, an order is open to more than one interpretation, "it should be construed with reference to the issues it was meant to decide, and should be interpreted in light of the context in which it was entered, as well as the other parts of the record, including the pleadings, motions, issues before the court, and arguments of counsel." ***Id.*** (citing ***In re Langenfeld***, 160 N.H. 85, 993 A.2d 232, 236 (2010)). And when we construe orders and judgments "effect must be given to that which is clearly implied, as well as to that which is expressly stated." ***Id.*** If, however, "the language in an order is clear, then the literal meaning of the language in the order controls." ***Konvalinka***, 249 S.W.3d at 359 (citing ***Allstate Ins. Co. v. Watson***, 195 S.W.3d 609, 611 (Tenn.2006); ***Teter v. Republic Parking Sys., Inc.***, 181 S.W.3d 330, 342 (Tenn. 2005)). Indeed, "[l]itigants are entitled to rely on the reasonable interpretation of orders, and the use of the 'plain and ordinary meaning' standard to interpret orders assures that litigants will be treated fairly." ***Id.*** The interpretation of a court order is a question of law, which this Court reviews de novo with no presumption of correctness as to the trial court's ruling. ***Lamar***, 313 S.W.3d at 785.

Relator in this case asserts that because of the consent requirement under the FCA, the October 2023 order is required to be considered in light of the entire record, including the United States Attorney General's intention to file a motion to dismiss, as well as the specific consent authorized by the states in the United States Attorney General's notice of consent to the dismissal. He further asserts that this record supports his argument that the clear import of the October 2023 order indicates the intention of the parties and the federal district court to dismiss the state law claims for lack of supplemental jurisdiction.

In support of his argument that the October 2023 order should be interpreted in this way, Relator notes that this issue was resolved in his favor in a parallel action by the California Superior Court for the County of Sacramento ("California Superior Court"). *See* ***State of California, ex rel. Stephen Eimers v. Lindsay Corp.***, No. 23CV012368 (Cal. Super. Ct. Nov. 1, 2025). In its ruling, the California Superior Court explained that the states involved in the federal action "only consented to the district court declining to exercise supplemental jurisdiction over the state claims" and that Relator's "request for dismissal was only intended to cover the federal claims." Rather, Relator only "stated his non-objection" to the state law claims "being dismissed based on the district court declining

to exercise supplemental jurisdiction." The California Superior Court explained that the federal district court's dismissal of the claims "did not convert Relator's narrow request – or California's narrow consent – into a voluntary dismissal of the California claim." Thus, the California Superior Court held that "Relator did not voluntarily dismiss the California claim, it was dismissed based on the district court's declination of supplemental jurisdiction." So the California Superior Court held that Relator's claim was entitled to tolling under § 1367(d). And while the California Superior Court was only considering a claim under the California False Claims Act, Relator urges us to adopt similar reasoning to toll his claim under the TFCA.

Respectfully, the California Superior Court's interpretation of the October 2023 order is not reflective of what actually transpired in the federal action. While Relator may desire that the federal action was concluded as found by the California Superior Court, we simply cannot agree that it was. To begin, we first look to what is plainly stated in the October 2023 order of dismissal. *See* ***Konvalinka***, 249 S.W.3d at 359. As the trial court conceded in its initial order denying Defendants' motion to dismiss, this order neither states nor implies in any way the dismissal is based on a lack of supplemental jurisdiction or that the district court was declining to exercise supplemental jurisdiction over the state law claims as a result of the dismissal of the federal law claims. Indeed, supplemental jurisdiction is simply not mentioned in the October 2023 order.

Rather, the October 2023 order mentions that Relator filed a notice of voluntary dismissal and that the United States Attorney General had consented to the dismissal pursuant to § 3730(b)(1). Of course, the federal district court need not have obtained the consent of the United States Attorney General had it dismissed the FCA claims on non-voluntary grounds, as § 3730(b)(1) "appl[ies] only to voluntary dismissals." ***United States ex rel. Turner v. Dynamic Med. Sys., LLC***, No. 117CV01757NONESAB, 2022 WL 20804350, at *15 (E.D. Cal. Jan. 24, 2022); *see also* ***Minotti v. Lensink***, 895 F.2d 100, 103 (2d Cir. 1990) ("[W]e find that [§ 3730(b)(1)] applies only in cases where a plaintiff seeks voluntary dismissal of a claim or action brought under the False Claims Act, and not where the court orders dismissal."); ***U.S. ex rel. Shaver v. Lucas W. Corp.***, 237 F.3d 932, 934 (8th Cir. 2001) ("[T]he Attorney General's consent is required only where the relator seeks a voluntary dismissal, not where, as here, the district court grants a motion by the defendant to dismiss for failure to state a claim.").

Relator contends, however, that because the consent of the United States Attorney General and the district court was required to voluntarily dismiss under the FCA, he simply "could not" dismiss his claim. Respectfully, we disagree. Although Relator could not dismiss his claim without the consent of the United States Attorney General and the district court, he was permitted under the FCA to voluntarily dismiss his claim so long as he obtained their consent. Relator has cited no law to even suggest that simply because the United States Attorney General or district court were required to give their consent, there is no ability to voluntarily dismiss any FCA claim. Indeed, federal law appears to accept

that even where consent is required under the FCA, a voluntary dismissal thereunder still constitutes a voluntary dismissal. *See* ***Minotti***, 895 F.2d at 103. Rather, the situation is akin to one in which a voluntary dismissal is requested but must be acted upon by the court. *See* Fed. R. Civ. P. 41(a)(2) ("Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."); *see also* ***Pontenberg v. Bos. Sci. Corp.***, 252 F.3d 1253, 1255 (11th Cir. 2001) (noting that "[t]he district court enjoys broad discretion in determining whether to allow a voluntary dismissal under Rule 41(a)(2)"). Under these circumstances, the matter is still voluntarily dismissed even though the trial court's consent is required. *Cf.* ***D.C. Elecs., Inc. v. Narton Corp.***, 511 F.2d 294, 296 (6th Cir. 1975) (describing Rule 41(a)(2) as one of "three distinct and separate methods whereby an action may be voluntarily dismissed"). Thus, the FCA's consent requirements do not, *ipso facto*, transform a clear and unambiguous order of voluntary dismissal into a judicial dismissal, particularly one in which the court has declined to exercise supplemental jurisdiction.[11]

But even if we were to consider the entire record in the federal action, we still do not reach the conclusion reached by the California Superior Court. For instance, the California Superior Court's statement that Relator only stated a "non-objection" to the dismissal of his state law claims for lack of supplemental jurisdiction does not paint the full picture of what actually occurred. It is true that Relator initially notified the federal district court that he would "voluntarily dismiss the federal claims" and allow the federal district court to "declin[e] to exercise supplemental jurisdiction over the state claims" resulting in their dismissal. But that is not what Relator subsequently did. Rather, Relator filed a notice of voluntary dismissal that did not state that it applied only to the federal claims raised in his complaint. Relator's action changed the entire course of the federal action from one in which only the federal claims were to be voluntarily dismissed in light of the United States Attorney General's proposed motion to dismiss, to one in which all of the claims were voluntarily dismissed. Thus, whatever Relator may have meant to do, what he did was seek to voluntarily dismiss his entire lawsuit.

What is more, while the California Superior Court may have been concerned with the scope of the consent provided by California to dismiss the California False Claims Act claim raised in the federal action, we do not agree that Tennessee's consent was relevant in this case. For one, while the United States Attorney General's letter giving notice of its intent to file a motion to dismiss indicated that the states did not object to the dismissal of the state law claims for lack of supplemental jurisdiction, the FCA required only the consent of the United States Attorney General to voluntarily dismiss the action. *See* 31

[11] And while § 3730(b)(1) requires that the federal court also consent to the dismissal, Relator cites no law to suggest that the federal district court's decision was ineffective without additional written findings indicating its reasons for consenting to the dismissal under § 3730(b)(1), or that an order that otherwise clearly indicates an intent to permit a relator to voluntarily dismiss an FCA claim is transformed into a dismissal on other grounds by the court's failure to more thoroughly detail its reasons for permitting the voluntary dismissal.

U.S.C. § 3730(b)(1). And the TFCA does not require the consent of the Tennessee Attorney General, but only that of the court. *See* Tenn. Code Ann. § 4-18-104(c)(1) (stating that "the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter"). So then, when Relator filed his unqualified notice of voluntary dismissal of all the claims at issue in the federal action, there was no law that required the district court give consideration to the Tennessee Attorney General's consent to the dismissal before it could be accomplished.

Based on the foregoing, we conclude that regardless of the consent requirement of 31 U.S.C. § 3730(b)(1), the federal district court's order cannot be interpreted as anything other than a voluntary dismissal by Relator of both the FCA claims, as well as the state False Claims Act cases, including Relator's claim under the TFCA. We therefore conclude that the claim in the federal action under the TFCA was not dismissed for lack of supplemental jurisdiction.

Having determined that the October 2023 order should be interpreted as an order that voluntarily dismissed both the federal claim and the state law claims in the federal action, we must now determine whether Relator's claim under the TFCA is entitled to tolling under 28 U.S.C. § 1367(d). In relevant part, § 1367 provides as follows:

> **(a)** Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
> **(b)** In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.
> **(c)** The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--
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> **(1)** the claim raises a novel or complex issue of State law,
> **(2)** the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> **(3)** the district court has dismissed all claims over which it has original

> jurisdiction, or
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> **(4)** in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
>
> **(d)** The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Thus, § 1367(a) provides "a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have original jurisdiction." ***Exxon Mobil Corp. v. Allapattah Servs., Inc.***, 545 U.S. 546, 558, 125 S. Ct. 2611, 2620, 162 L. Ed. 2d 502 (2005). Section 1367(b), however, limits the broad grant of supplemental jurisdiction under the statute in some diversity jurisdiction cases involving the joinder or intervention of additional parties. ***Id.*** at 560. And § 1367(c) "confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise[.]" ***City of Chicago v. Int'l Coll. of Surgeons***, 522 U.S. 156, 173, 118 S. Ct. 523, 533, 139 L. Ed. 2d 525 (1997). Finally, § 1367(d) protects plaintiffs from the expiration of the statute of limitations on their supplemental state-law claims in the event those claims are refiled:

> [S]ome claims asserted under § 1367(a) will be dismissed because the district court declines to exercise jurisdiction over them and, if they are to be pursued, must be refiled in state court. To prevent the limitations period on such supplemental claims from expiring while the plaintiff was fruitlessly pursuing them in federal court, § 1367(d) provides a tolling rule that must be applied by state courts[.]

Jinks v. Richland Cnty., S.C., 538 U.S. 456, 459, 123 S. Ct. 1667, 1669, 155 L. Ed. 2d 631 (2003). The dispute in this case, however, is whether a plaintiff who voluntarily dismisses both his federal claims and his supplemental state-law claims is entitled to tolling under § 1367(d) for the refiled claim in state court.

A claim under the TFCA

> may not be filed more than three (3) years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than ten (10) years after the date on which the violation of § 4-18-103 was committed.

Tenn. Code Ann. § 4-18-106(a). In this case, the trial court found that the TFCA's three-year statute of limitations began to run on March 1, 2019. As such, the three-year statute of limitations, absent tolling, would have expired on March 1, 2022. Under § 1367(d), "the

state limitations period is suspended during the pendency of the federal suit" and for a period of thirty days thereafter. ***Artis v. District of Columbia***, 583 U.S. 71, 74, 138 S. Ct. 594, 598, 199 L. Ed. 2d 473 (2018). If the "stop-the-clock" tolling of § 1367(d) applies, however, the three-year limitations period was tolled on March 1, 2019, when Relator filed the federal action, and Relator's November 27, 2023 complaint was timely.[12]

Defendants assert, however, that Relator's TFCA claim is not entitled to tolling under § 1367(d) because the tolling provision does not apply when all of the claims in the federal action were voluntarily dismissed. In support of this argument, Defendants cite various cases decided by the federal courts on this issue. For example, in ***Holt v. County of Orange***, 91 F.4th 1013 (9th Cir. 2024), the plaintiffs initially sued the defendants in federal court but voluntarily dismissed that action because their claims were added to a different action. ***Id.*** at 1016. After their claims were dismissed from the second action for improper joinder, one of the original plaintiffs once again filed claims in federal court. Without tolling, however, her claims were filed after the expiration of the applicable statute of limitations. The district court held that the claims were indeed time-barred and dismissed the claims. ***Id.***

The United States Court of Appeals for the Ninth Circuit affirmed, holding that "the supplemental jurisdiction statute, 28 U.S.C. § 1367, tolls the applicable statute of limitations for a federal-law claim that is contained in the same federal court complaint as a supplemental state-law claim and that is 'voluntarily dismissed at the same time as or after the dismissal of the [supplemental] claim.'" ***Id.*** (alteration in original) (quoting 28 U.S.C. § 1367(d)). The Court further held, however, that "tolling is not available when the *supplemental* claim is voluntarily dismissed[.]" ***Id.***

In reaching this result, the Ninth Circuit first recognized that the question of whether tolling applies when both federal claims and supplemental state-law claims were "dismissed at the same time" is "complex[.]" ***Id.*** at 1018–19. The court noted that the plaintiff's federal claims constituted "'other claim[s]' within the meaning of § 1367(d)" and that these claims were voluntarily dismissed. Thus, the question remained whether the plaintiff's "dismissal of her supplemental state-law claims . . . was a 'dismissal of the claim[s] under subsection (a)' within the meaning of § 1367(d)." If so, the plaintiff was entitled to tolling under § 1367(d).

To resolve this dispute, the Ninth Circuit first considered the United States Supreme Court's decision in ***Raygor v. Regents of the University of Minnesota***, 534 U.S. 533, 122 S. Ct. 999, 152 L. Ed. 2d 27 (2002), which considered the proper interpretation of the word

[12] In his brief, Relator also asserts that his claim was timely under what he characterizes as the TFCA's ten-year statute of limitations. It is unclear if Relator asserts that this is an independent, alternative basis for affirming the trial court. However, this was not among the issues designated for review by this Court. So it is not properly addressed in this appeal.

"dismissal" as it is used in § 1367(d). ***Id.*** at 545. In that case, the plaintiffs filed state-law claims against the defendant, an arm of the State of Minnesota, in federal district court. The federal district court dismissed the case, and the plaintiffs refiled in state court. The Minnesota Supreme Court held that the plaintiffs were not entitled to tolling under § 1367(d) because it was inconsistent with the defendants' Eleventh Amendment Immunity. ***Id.*** at 539. The United States Supreme Court agreed with the outcome of the state court, holding that § 1367(d) "occurs in the context of a statute that specifically contemplates only a few grounds for dismissal [in § 1367(a), (b), and (c)]," and that "it is unclear if the tolling provision was meant to apply to dismissals for reasons unmentioned by the statute." ***Id.*** at 545. The Court held that, in the context of a case implicating the Eleventh Amendment, it required clear congressional intent to apply § 1367(d)'s tolling to a dismissal not expressly included in that section. ***Id.*** Without that clear intent, the Court declined to apply tolling to the plaintiffs' claims.

The Ninth Circuit in ***Holt*** read ***Raygor*** as requiring an inquiry into the "background legal principles against which Congress enacted § 1367." ***Holt***, 91 F.4th at 1020. Importantly, the court noted that "a voluntary dismissal generally does not toll the statute of limitations for the dismissed claims for the period during which those claims were pending." ***Id.*** Thus, "[a]bsent a statute to the contrary, a voluntary dismissal 'leaves the situation the same as if the suit had never been brought in the first place.'" ***Id.*** (quoting ***Humphreys v. United States***, 272 F.2d 411, 412 (9th Cir. 1959)). In other words, federal law is well settled that a plaintiff "'cannot deduct from the period of the statute of limitations applicable to his case' the time that the voluntarily dismissed claims were pending." ***Id.*** (quoting ***Humphreys***, 272 F.2d at 412 n.1); *see also* ***id.*** (noting that this precedent was "of sufficiently ancient vintage that the Supreme Court considered it established law by the early nineteenth century" (citing ***Alexander v. Pendleton***, 12 U.S. (8 Cranch) 462, 470, 3 L. Ed. 624 (1814)).

The Ninth Circuit further held that it would "significantly pare back the operation" of the above long-standing precedent to hold that § 1367 applies when both the federal claims and the supplemental state-law claims are voluntarily dismissed. As the court explained

> We are unwilling to conclude that § 1367(d) abrogated such an entrenched legal rule absent a clear indication that Congress meant to do so. *See* ***Astoria Fed. Sav. & Loan Ass'n v. Solimino***, 501 U.S. 104, 108, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991) ("[W]here a common-law principle is well established . . . courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.'" (quoting ***Isbrandtsen Co. v. Johnson***, 343 U.S. 779, 783, 72 S. Ct. 1011, 96 L. Ed. 1294 (1952))).
>
> There is no clear indication in § 1367 that Congress intended to do so.

> Instead, each of the grounds for dismissal listed in § 1367 requires some action by the district court. Subsections (a) and (b) describe circumstances in which a district court must dismiss supplemental claims—when the claims do not "form part of the same case or controversy" as the plaintiff's federal claims, or when exercising jurisdiction over the supplemental claims "would be inconsistent with the jurisdictional requirements of" the statute codifying federal courts' diversity jurisdiction. 28 U.S.C. § 1367(a), (b). Clearer still, the introductory words of § 1367(c) provide that "district courts *may decline to exercise supplemental jurisdiction* over a claim under subsection (a)." ***Id.*** § 1367(c) (emphasis added). The words "may decline" indicate that the district court must make an affirmative decision. The statute's consistent requirement in subsections (a), (b), and (c) that dismissal of supplemental claims involve affirmative decisions by the district court strongly suggests that "dismissal," as used in § 1367(d), does not encompass the voluntary dismissal of claims brought under § 1367(a).

Holt, 91 F.4th at 1020.

Moreover, in considering whether tolling applied to the plaintiff's supplemental state-law claims, the court held that such a claim is only tolled under the statute "while the claim is pending and for a period of 30 days after it is *dismissed*." ***Id.*** at 1021 (emphasis added) (quoting 28 U.S.C. § 1367(d)). As the court explained, "[n]othing in the statute suggests that 'dismissed' in the third clause of § 1367(d) means something different than 'dismissal' in the second clause." ***Id.*** (citing ***Util. Air Regul. Grp. v. E.P.A.***, 573 U.S. 302, 319–20 (2014) (unless context indicates otherwise, "[o]ne ordinarily assumes that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks and citation omitted))). So then, the same type of dismissal referenced in the second clause—via affirmative decision of the trial court—must have occurred in order to permit tolling under § 1367(d). Because the plaintiff's supplemental state-law claims were voluntarily dismissed in the original federal action—rather than affirmatively dismissed by the federal court—the Ninth Circuit held that the plaintiff was not entitled to tolling under § 1367(d) while that original federal case was pending. ***Id.***

According to Defendants, federal courts considering this issue have nearly unanimously reached the same result. *See, e.g.*, ***Speedwell, LLC v. Town of Morristown***, No. 21CV18796 (EP) (JRA), 2023 WL 2207588, at *6 (D.N.J. Feb. 24, 2023) ("Given the Supreme Court's refusal to apply Section 1367(d) to a claim dismissed for reasons not contained in subsections (a), (b), or (c), this Court concludes Section 1367(d) does not apply to Plaintiffs' voluntary dismissal of ***Speedwell I*** pursuant to Rule 41(a)(1)—a reason not contained in subsections (a), (b), or (c) of Section 1367."); ***Parrish v. HBO & Co.***, 85 F. Supp. 2d 792, 795–97 (S.D. Ohio 1999) (concluding that § 1367(d) did not toll the plaintiff's state-law claims where he voluntarily dismissed all of his claims under Federal

Rule of Civil Procedure 41(a));[13] ***Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.***, 878 F. Supp. 2d 1009, 1019 (C.D. Cal. 2011) (holding that § 1367(d) did not toll the plaintiffs' state-law claims that were refiled in federal court because, inter alia, the original action was voluntarily dismissed and concluding that "§ 1367(d) applies only where, pursuant to § 1367(c), a federal court declines to exercise supplemental jurisdiction over state law claims after dismissing the federal claims"); ***Zychek v. Kimball Int'l Mktg. Inc.***, No. CV06-64-N-EJL, 2006 WL 1075452, at *3 (D. Idaho Apr. 21, 2006) (holding that the plaintiff could not rely on § 1367(d) to toll the statute of limitations where the prior action was voluntarily dismissed under Federal Rule of Civil Procedure 41(a)); ***Peters v. Bd. of Trs. of Vista Unified Sch. Dist.***, No. 08cv1657-L(NLS), 2009 WL 2485753, at *3 (S.D. Cal. Aug. 11, 2009) ("Section 1367(d) tolling applies when supplemental state law claims are dismissed in federal court pursuant to section 1367(b) or (c) and then re-asserted in state court.");[14] *cf.* ***Long v. Forty Niners Football Co., LLC***, 33 Cal. App. 5th 550, 558, 244 Cal. Rptr. 3d 887, 894 (2019), *as modified* (Apr. 8, 2019) ("When a federal court declines to exercise this supplemental jurisdiction and dismisses claims that fall outside of its original jurisdiction under section 1367(c) . . . , the period of limitations for any dismissed claim 'shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.'" (citing 28 U.S.C. § 1367(d))).[15] *But see* ***Brengettcy v. Horton***, No. 1:01CV00197, 2006 WL 1793570, at *9 (N.D. Ill. May 5, 2006) ("As written, Section 1367(d) tolls pending claims (so long as they are asserted under Section 1367(a)) until dismissal for any reason[.]" (citing Annette B. Greitzer, *IV. Supplemental Jurisdiction*, 37 Loy. L.A. L. Rev. 1501, 1547 (2004) (noting that "case law is scarce as to whether or not [the tolling provision of 1367(d)] includes claims that the plaintiff voluntarily dismisses, or whether this includes claims that are dismissed for reasons other than lack of subject matter jurisdiction"))).[16]

But Relator notes that state courts that have considered this issue have often come to the opposite conclusion. Most recently, in ***Bray v. Idaho Department of Juvenile Corrections***, 175 Idaho 221, 564 P.3d 377 (2025), the Idaho Supreme Court held that the plaintiffs were entitled to tolling under § 1367(d) even though the plaintiffs voluntarily dismissed their supplemental state-law claims in the prior federal action. In reaching this result, the ***Bray*** court also relied on the United States Supreme Court precedent that

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[13] The ***Parrish*** court expressly disagreed with an early decision by the Southern District of Ohio in ***Naragon v. Dayton Power & Light Co.,*** 934 F. Supp. 899 (S.D. Ohio 1996).

[14] Like ***Centaur***, ***Peters*** also involved a supplemental state-law claim that was refiled in federal court. ***Id.*** at *2–3.

[15] In ***Long***, the plaintiff invoked the federal court's diversity jurisdiction, rather than supplemental jurisdiction over state-law claims. ***Id.*** The discussion of dismissal of a supplemental state-law claim "under section 1367(c)" therefore appears to be unnecessary to the resolution of the question presented in ***Long***.

[16] ***Brengettcy*** was not actually resolved on this basis, as the court held that the claims at issue could not be tolled under any circumstances because they simply were not asserted in the earlier action. *See* ***id.*** ("Yet the added breadth of Section 1367 does not help Plaintiff here. Section 1367(d), by its plain terms, tolls only 'claims asserted.' By leaving them out of the 2002 Complaint, Plaintiff did not assert any claims against the New Defendants. Those claims thus fall outside of Section 1367's tolling provision.").

§ 1367(d) does not apply to dismissals "for reasons unmentioned by the statute[.]" ***Id.*** at 41388 (citing ***Raygor***, 534 U.S. at 545). But the Idaho Supreme Court held that voluntary dismissal "was not a reason 'unmentioned by the statute' because 'voluntary dismissal' is expressly listed among the 'claim saving options' set forth in 28 U.S.C. section 1367(d)." ***Id.*** Thus, the Idaho Supreme Court interpreted § 1367(d) by omitting certain clauses, to wit: "claim[s] in the same action that [are] voluntarily dismissed . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed . . . ." ***Id.*** at 389 (quoting 28 U.S.C. § 1367(d)). In other words, the Idaho Supreme Court held that § 1367(d) "explicitly applies to voluntary dismissals—regardless of the motive" and "[t]o disallow application of the exception would require us to ignore the plain language of section 1367." ***Id.*** *But cf.* ***Noak v. Idaho Dep't of Corr.***, 152 Idaho 305, 311–12, 271 P.3d 703 (2012) (holding that § 1367(d) did not apply when the supplemental state-law claims were dismissed in the prior federal action pursuant to a stipulation of dismissal).

Other courts have reached the same conclusion based on different reasoning. For example, in ***Blinn v. Florida Department of Transportation***, 781 So. 2d 1103 (Fla. Dist. Ct. App. 2000), the Florida Court of Appeals held that § 1367(d) applies to a voluntarily dismissed supplemental state-law claim largely based on policy considerations:

> In our view, the tolling provision of section 1367 ought not be interpreted as applicable only to dismissals predicated on a federal court's decision to decline supplemental jurisdiction, pursuant to the criteria set forth in section 1367(c)(1)–(4). A policy of this nature would force a plaintiff to litigate the supplemental jurisdiction question in order to gain the savings protection of section 1367(d). In cases such as this, where the basis for the exercise of supplemental jurisdiction clearly exists, it appears a voluntary dismissal should receive the same treatment as a refusal of the federal district court to exercise supplemental jurisdiction, i.e., the plaintiff should have the benefit of the section 1367(d) thirty-day tolling provision to refile the case in state court. In this case, appellant's voluntary dismissal of her federal action served to preserve judicial labor and resources. We do not wish to encourage a policy which would interpret section 1367(d) as inapplicable to a voluntary dismissal of claims where the federal court has original jurisdiction, and could exercise supplemental jurisdiction.

Blinn, 781 So. 2d at 1108; *see also* ***Krause v. Textron Fin. Corp.***, 59 So. 3d 1085, 1090–91 (Fla. 2011) (expressly agreeing with the reasoning of ***Blinn*** and holding that § 1367(d) was not limited to instances in which the federal court declined to exercise supplemental jurisdiction under § 1367(c)).[17]

[17] The claim for which § 1367(d) tolling was at issue in ***Krause*** was not voluntarily dismissed; rather, the federal district court determined that the bankruptcy court lacked subject matter jurisdiction over that claim. ***Id.*** at 1089.

Although not involving a voluntary dismissal, the Michigan Court of Appeals held that § 1367(d) tolling applied to a state law defamation claim that was dismissed from a federal court for lack of subject matter jurisdiction, rather than on § 1367(c) grounds. *See* ***Puetz v. Spectrum Health Hosps.***, 919 N.W.2d 439 (Mich. Ct. App. 2018). In reaching this result, the Michigan Court of Appeals held that "[s]ubsection (d) appears to toll the limitations period for *any* claim asserted under [s]ubsection (a) regardless of whether the plaintiff was successful in asserting that claim." ***Id.*** at 444. The Michigan Court of Appeals recognized the precedent set by the United States Supreme Court in ***Raygor***, but noted that case involved issues of immunity that were not present in the case before the court:

> Overall, ***Raygor*** contains language suggesting that § 1367(d) may apply only to dismissals contemplated by §§ 1367(a), (b), and (c), but it also contains language making clear that the interpretation of § 1367(d) was driven by constitutional concerns that are not relevant to the issue in the case sub judice.

Id. at 446. But the Court noted that the United States Supreme Court later declined to extend the holding in ***Raygor*** outside of the context of Eleventh Amendment concerns. *See* ***Jinks***, 538 U.S. at 459 (declining to hold that § 1367(d) could not apply to any claims against political subdivisions because no Eleventh Amendment concerns were implicated in that context).

So the court returned to other statutory interpretation principles. First, the court noted that the tolling provision "applies to 'any claim asserted under subsection (a).'" ***Puetz***, 919 N.W.2d at 447. And that the term "any" means "every; all." ***Id.*** (citing ***Nat'l Pride At Work, Inc. v. Governor***, 481 Mich. 56, 77, 748 N.W.2d 524 (Mich. 2008)). And the plaintiff asserted a supplemental claim under subsection (a), regardless of how it was ultimately dismissed. The court further held that considering the statute "as written" to apply to the plaintiff's claim matched congressional intent, as the purpose of § 1367(d) was to prevent the expiration of the statute of limitations while a plaintiff was "fruitlessly pursuing them in federal court[,]" and to enable federal courts to "deal economically" by allowing supplemental claims to be heard simultaneously with related federal claims. ***Id.*** (first quoting ***Jinks***, 538 U.S. at 459; and then quoting ***Artis***, 583 U.S. at 75). And finally, the court concluded that applying § 1367 tolling to the plaintiff's claims furthered the purposes of statutes of limitations generally to prevent litigation of stale claims. ***Id.*** The Michigan Court of Appeals therefore held that the plaintiff was entitled to tolling under § 1367(d) notwithstanding the fact that her supplemental state law claim had been dismissed for lack of subject matter jurisdiction by the federal court. *See also* ***Haskins v. Akiona-Gutierrez***, 128 Haw. 312, 288 P.3d 130 (Haw. Ct. App. 2012) ("We reject the appellees' contention that the statute only applies when a federal court expressly 'declines to exercise supplemental jurisdiction' over a state law claim because that interpretation would undermine the clear, remedial purpose of the statute.").

"Though they are persuasive authority . . . , this Court is not bound by decisions of the federal district and circuit courts. We are bound only by decisions of the United States Supreme Court." ***State v. Carruthers***, 35 S.W.3d 516, 561 n.45 (Tenn. 2000). Nor are we bound by the decisions of other state courts. *See* ***Summers Hardware & Supply Co. v. Steele***, 794 S.W.2d 358, 362 (Tenn. Ct. App. 1990) ("Cases from other jurisdictions . . . are always instructive, sometimes persuasive, but never controlling in our decisions."). With no United States Supreme Court precedent directly addressing this issue, we must utilize the principles of statutory construction to reach our own conclusion as to the applicability of § 1367(d) in this case.

According to the Tennessee Supreme Court, we look to federal law to determine the "applicable principles of statutory construction of a federal statute[.]" ***Culbreath v. First Tenn. Bank Nat'l Ass'n***, 44 S.W.3d 518, 524 (Tenn. 2001). Specifically, the Tennessee Supreme Court countenances the following inquiry:

> A "familiar canon of statutory construction is that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Moreover, "words will be interpreted as taking their ordinary, contemporary, common meaning," so that "[i]n construing a federal statute it is appropriate to assume that the ordinary meaning of the language that Congress employed accurately expresses the legislative purpose." Therefore, if the words of the statute are unambiguous, the judicial inquiry is at an end, and the plain meaning of the text must be enforced because "'courts must presume that a legislature says in a statute what it means and means in a statute what it says there.'"

Id. (quoting ***Hudson v. Reno***, 130 F.3d 1193, 1199 (6th Cir. 1997), *cert. denied*, 525 U.S. 822, 119 S. Ct. 64, 142 L. Ed. 2d 50 (1998)). We therefore "must interpret the statute 'as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" ***Id.*** (quoting ***Cafarelli v. Yancy***, 226 F.3d 492, 499 (6th Cir. 2000)). Thus, we return as we must to the words of § 1367(d), which we reproduce here:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

As an initial matter, the Michigan Court of Appeals was correct to begin with the first clause of § 1367(d), which indicates that the provision applies to all claims asserted under subsection (a). *See* ***Puetz***, 919 N.W.2d at 447. This clause therefore appears to

support Relator's interpretation of § 1367(d). However, the United States Supreme Court expressly cautioned against "broadly read[ing] [§ 1367(d)] to apply to any claim technically 'asserted' under subsection (a) as long as it was later dismissed, regardless of the reason for dismissal." ***Raygor***, 534 U.S. at 545. Rather, the Court indicated that the provision should be read "in the context of a statute that *specifically contemplates only a few grounds for dismissal*." ***Id.*** at 442–45 (emphasis added). Still, the ***Raygor*** court ultimately resolved the case on the Eleventh Amendment grounds, rather than strict statutory construction grounds. ***Id.*** (noting that such a broad reading in this context "raises serious doubts about the constitutionality of the provision given principles of state sovereign immunity"). Obviously, those considerations are not present in this case.

Other portions of the statute do not support Relator's interpretation, particularly the use of both "voluntary dismissal" and dismissal/dismissed. The United States Supreme Court has recognized that "[w]hen 'Congress includes particular language in one section of a statute but omits it in another section of the same Act,' . . . 'it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" ***Clay v. United States***, 537 U.S. 522, 528–29, 123 S. Ct. 1072, 1077, 155 L. Ed. 2d 88 (2003) (quoting ***Russello v. United States***, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)).[18] In other words, "[w]hen Congress includes particular language in one section of a statute but omits it in another[,] . . . this Court presumes that Congress intended a difference in meaning." ***Digital Realty Tr., Inc. v. Somers***, 583 U.S. 149, 161, 138 S. Ct. 767, 777, 200 L. Ed. 2d 15 (2018) (quoting ***Loughrin v. United States***, 573 U.S. 351, 358 (2014) (internal quotation marks and alteration omitted)). Federal courts therefore may decline to import language into a provision in which Congress did not place it. *See* ***Badgerow v. Walters***, 596 U.S. 1, 11, 142 S. Ct. 1310, 1318, 212 L. Ed. 2d 355 (2022) (declining to add another provision's "consequential language into provisions containing nothing like it"). And federal courts have held that this principle applies even more strongly in situations wherein the different articulations are not in neighboring sections of an act, but in the same statutory section, subsection, or paragraph. *See* ***AMP Inc. v. United States***, 820 F.2d 612, 616 (3d Cir. 1987) ("The general presumption becomes particularly weighty in this instance, where Congress used the word 'unfunded' in one clause but not in the very next one."); ***Rainey v. Merit Sys. Prot. Bd.***, 824 F.3d 1359, 1362 (Fed. Cir. 2016) ("That principle applies *a fortiori* in a case such as this one, where the two different formulations appear not only in the same statute, but in the same section, subsection, and paragraph of the statute."), *overturned due to legislative action* (June 14, 2017).

As the Ninth Circuit recognized, this principle is apt here due to the use of both

[18] Tennessee law is no different. *See* ***Bryant v. Genco Stamping & Mfg. Co.***, 33 S.W.3d 761, 765 (Tenn. 2000) ("A basic rule of statutory construction is that the legislature is presumed to use each word in a statute deliberately, and that the use of each word conveys some intent and has a specific meaning and purpose. Consequently, where the legislature includes particular language in one section of the statute but omits it in another section of the same act, it is presumed that the legislature acted purposefully in including or excluding that particular subject." (internal citation omitted)).

"voluntarily dismissed" and simply "dismissed" or "dismissal" in § 1367(d). *See* ***Holt***, 91 F.4th at 1021. The definition of "voluntary dismissal" is self-evident: a dismissal at the plaintiff's request, rather than an adverse involuntary judgment. *See* ***Mortg. Guar. Ins. Corp. v. Richard Carlyon Co.***, 904 F.2d 298, 300 (5th Cir. 1990) ("Generally, an order of voluntary dismissal without prejudice entered at the plaintiff's request is not an involuntary adverse judgment."); *see also* ***Arthur v. E.I. du Pont***, 798 F. Supp. 367, 368 (S.D.W. Va. 1992) ("If the dismissal occurred at the instance of the plaintiff, it is 'voluntary;' if at the instance of the defendant or the court, it is 'involuntary.'"); *Voluntary Dismissal*, *Black's Law Dictionary* (9th ed. 2009) ("A plaintiff's dismissal of a lawsuit at the plaintiff's own request or by stipulation of all parties.").

While the general terms "dismissal" or "dismissed" may sometimes encompass voluntary dismissals, given the different phrasing utilized in the statute, we conclude that Congress intended each term to convey a different meaning. *See* ***Digital Realty***, 583 U.S. at 161. Specifically, Congress expressly referred to claims that are "voluntarily dismissed" when describing the "other claim[s]" eligible for tolling under § 1367(d) but omitted that qualification when referring to the "dismissal of the claim under subsection (a)." 28 U.S.C. § 1367(d). This distinction is significant and supports the inference that Congress intended the unqualified terms "dismissed" and "dismissal" to carry a different meaning from the express reference to claims that are "voluntarily dismissed." So although Congress provided for tolling of "other" claims that are voluntarily dismissed, it provided only for tolling of claims "under subsection (a)," i.e., supplemental state-law claims, when the claim is "dismissed." To interpret both provisions as encompassing voluntary dismissals would diminish the significance of Congress's decision to expressly identify voluntary dismissals in one clause but not the other. Thus, while voluntary dismissal is "[]mentioned" in § 1367(d), the statute expressly refers to voluntary dismissal only with respect to an "other claim" in the same action. ***Bray***, 564 P.3d at 389. The Idaho Supreme Court's decision to omit the bulk of the subsection, particularly the clause that refers to "other" claims, alters the material language of the statute. *See* ***id.*** We therefore find the decisions of ***Holt*** and the other federal courts more persuasive on this issue.

Moreover, we find persuasive ***Holt***'s interpretation of "dismissal" and "dismissed" in § 1367(d) as referring to an affirmative action by a judge, rather than at the plaintiff's request. ***Holt***, 91 F.4th at 1021. The United States Supreme Court presumes that "Congress expects its statutes to be read in conformity with this Court's precedents[.]" ***Clay***, 537 U.S. at 527 (quoting ***United States v. Wells***, 519 U.S. 482, 495, 117 S. Ct. 921, 137 L. Ed. 2d 107 (1997)). As the Ninth Circuit recognized, federal law has long held that voluntary dismissals do not generally toll the statute of limitations for the period of time that the claims were pending prior to the voluntary dismissal. *See* ***Holt***, 91 F.4th at 1020; *see also* ***Willard v. Wood***, 164 U.S. 502, 523, 17 S. Ct. 176, 181, 41 L. Ed. 531 (1896) ("The general rule in respect of limitations must also be borne in mind, that if a plaintiff mistakes his remedy, in the absence of any statutory provision saving his rights, or where, from any cause, a plaintiff becomes nonsuit, or the action abates or is dismissed, and, during the

pendency of the action, the limitation runs, the remedy is barred."); *see also* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2367 (4th ed.) ("[M]ost importantly, it seems well settled in the case law that the statute of limitations is not tolled by bringing an action that later is dismissed voluntarily under Rule 41(a)." (citing cases)). Thus, "[a]n action dismissed without prejudice leaves the situation the same as if the suit had never been brought. In the absence of a statute to the contrary a party cannot deduct from the period of the statute of limitations the time during which the action so dismissed was pending." ***Bomer v. Ribicoff***, 304 F.2d 427, 428–29 (6th Cir. 1962) (internal citation omitted).

Against this longstanding legal backdrop, we presume that Congress legislated with knowledge of the established rule that voluntary dismissals ordinarily do not toll statutes of limitations. Accordingly, absent a sufficiently clear indication that Congress intended a different result, we decline to construe § 1367(d) as departing from that rule. *See* ***Holt***, 91 F.4th at 1020 (citing ***Astoria***, 501 U.S. at 108). Indeed, the United States Supreme Court has recognized that "Congress does not write upon a clean slate" and that "[i]n order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law." ***United States v. Texas***, 507 U.S. 529, 534, 113 S. Ct. 1631, 1634, 123 L. Ed. 2d 245 (1993) (citing ***Astoria***, 501 U.S. at 108). But no such clear indication is present in this case. Rather, Congress has chosen to make a distinction between general dismissal and "voluntary dismissal" in its treatment of the two types of claims referred to in § 1367(d). Given this distinction and the long-held principle against tolling of claims that are ultimately voluntarily dismissed, we conclude, like the Ninth Circuit in ***Holt***, that Congress intended "dismissal" and "dismissed," as applied to supplemental claims under § 1367(d), to refer to dismissals imposed by the court rather than dismissals initiated by the plaintiff.[19]

In sum, both the principles of statutory interpretation and long-standing federal law concerning the effect of a voluntary dismissal support interpreting § 1367(d) as inapplicable where a plaintiff voluntarily dismisses his or her supplemental state-law claims. Indeed, although § 1367(d) was intended to protect a plaintiff from "fruitlessly" pursuing a claim in federal court, ***Jinks***, 538 U.S. at 459, when a plaintiff voluntarily dismisses his supplemental state-law claims, it is his own action that frustrates his ability to obtain relief in the federal court rather than any decision by the court declining to exercise jurisdiction over the claim or otherwise. As such, we conclude that the trial court erred in holding that Relator's TFCA claim was tolled by 28 U.S.C. § 1367(d) while the federal action was pending. The judgment of the trial court is therefore reversed, and this matter is remanded to the trial court for further proceedings consistent with this Opinion.

[19] Some courts go further to hold that the only types of dismissal in which tolling is permitted must be under § 1367(c). *See, e.g.*, ***Centaur***, 878 F. Supp. 2d at 1019. Because Relator voluntarily dismissed his claims, we need not decide whether § 1367(d) applies to judicial dismissals outside the circumstances enumerated in § 1367(c).

III. CONCLUSION

The judgment of the Davidson County Circuit Court is reversed, and this matter is remanded for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Appellee Stephen Eimers, for which execution may issue if necessary.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE