

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 4, 2026

MICHELLE CORLEY v. TONY LEE CORLEY**Appeal from the Circuit Court for Davidson County**
No. 21D-475 Stephanie J. Williams, Judge

No. M2025-01898-COA-R9-CV

A mother brought a post-divorce contempt petition alleging multiple instances where father had violated the parties' marital dissolution agreement. At the hearing on the contempt petition, the trial court found that mother was in possession of notes from her attorney during her redirect examination. Father moved for a mistrial, and the court granted the motion. Father subsequently objected to a new hearing on the ground that retrial would violate the double jeopardy protections of the state and federal constitutions. We have determined that retrial of the father, who requested the mistrial, would not violate double jeopardy protections.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and STEVEN W. MARONEY, J., joined.

David Hudson, Jr., Nashville, Tennessee, for the appellant, Tony Lee Corley.

Sarah Richter Perky and Marykate E. Williams, Franklin, Tennessee, for the appellee, Michelle Corley.

OPINION**FACTUAL AND PROCEDURAL BACKGROUND**

Michelle Corley ("Mother") and Tony Lee Corley ("Father") were divorced pursuant to a final judgment entered in October 2021. The judgment incorporated the parties' marital dissolution agreement ("MDA") and a permanent parenting plan regarding their minor child.

Mother filed a petition for criminal contempt in June 2023 asserting 17 counts; in August 2023, Mother filed an amended petition for criminal contempt alleging 18 counts. Father filed a petition for criminal contempt in October 2023 asserting 26 counts. A hearing on these petitions occurred on January 23, 2024, before Judge Stanley Kweller. During redirect examination of Mother, the trial court noticed that Mother was holding notes from her attorney. Father moved for a mistrial, and the court granted the motion.

For reasons not apparent from the record, Judge Kweller did not enter an order regarding the January 2024 hearing on the criminal contempt petitions.¹ Judge Stephanie Williams replaced Judge Kweller in September 2024. On September 23, 2025, Judge Williams (hereinafter, “the trial court”) entered an order from the January 23, 2024 contempt hearing before Judge Kweller.² The order states that Father informed the court at the beginning of the hearing that he was nonsuited his petition for criminal contempt. The order further states:

During redirect examination of Mother by her counsel, the Court found that Mother was referring to notes that were prepared by her attorney and that listed questions that would be asked. The Court did not take issue with the notes having been prepared by counsel, but it did find that it was improper for Mother to be reviewing those notes during redirect examination. Accordingly, the Court declared a mistrial as to all 18 counts of criminal contempt in Mother’s Amended Petition. The Court made the notes trial exhibit 22.

The Court informed counsel for the parties that it would reach out to them within a couple of days to reschedule Mother’s Amended Petition for Final Hearing.

On September 29, 2025, the trial court held a final hearing on Mother’s amended petition. In an order entered on September 30, 2025, the trial court stated that, about one hour before the hearing, Father provided the trial court with a copy of a motion to continue the final hearing. Father asked the court “to continue the hearing so that he may file several motions, including a motion to alter or amend the Court’s January 23, 2024 ruling, which was memorialized in the Court’s September 23, 2025 Order.” Father was arguing “that

¹ Judge Kweller entered an order on February 16, 2024, based upon the January 23, 2024 hearing, modifying the previous scheduling order regarding Wife’s petition to modify the permanent parenting plan and for civil contempt. This order does not address the criminal contempt petitions.

² Judge Williams’s order includes a certificate of familiarity stating that, “Pursuant to Rule 63 of the Tennessee Rules of Civil Procedure, I certify familiarity with the record and have determined that this proceeding may be completed without prejudice to the parties.”

Mother's counsel engaged in prosecutorial misconduct at the January 23, 2024 hearing, and that that misconduct caused Father to request a mistrial." The order further states:

After hearing arguments from counsel and reviewing the transcript from the January 23, 2024 hearing, the Court determined that Judge Kwellner, who presided over the January 23, 2024 hearing, found that Mother's counsel did not engage in prosecutorial misconduct. The Court will not disturb that finding, absent a ruling to do so from a higher court.

In a footnote, the court made the following comment based upon the hearing transcript:

Judge Kwellner specifically found that "there's been no suggestion that [Mother's counsel] sent [Mother] up there with the notes"; "[Mother's counsel] didn't do anything wrong by preparing the document"; and "it doesn't bother me that it was prepared and your client reviewed it before court. That's not the problem. The problem is she sat up here and used this to help her testimony, or I have to assume that because she was referring to it during her testimony."

The court gave Father ten days to file a motion for an interlocutory appeal or notice that he would not be filing such a motion. The hearing was continued "until that matter has been resolved."

The trial court thereafter granted Father's motion for an interlocutory appeal on the following issues:

1. Whether Judge Kwellner erred by not granting Father a mistrial with prejudice.
2. Whether Judge Kwellner made a finding that Mother's counsel did not engage in misconduct regarding Mother's notes.
3. Whether [the trial court made] sufficient findings or [had] sufficient evidence to determine that the Double Jeopardy Clause—of the United States Constitution or the Tennessee Constitution—does not bar Father's retrial on the August 4, 2023 Amended Petition for Criminal Court.

This Court granted Father's application for permission to appeal on these certified questions.

STANDARD OF REVIEW

We review a trial court's findings of fact after a non-jury proceeding de novo upon the record with a presumption of correctness, unless the evidence preponderates otherwise. *See* TENN. R. APP. P. 13(d); *Regions Bank v. Thomas*, 532 S.W.3d 330, 336 (Tenn. 2017).

We review the trial court’s conclusions of law de novo with no presumption of correctness. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). Issues of constitutional interpretation present questions of law. *State v. Rimmer*, 623 S.W.3d 235, 253 (Tenn. 2021).

A trial court’s decision to grant or deny a motion for mistrial is reviewed under an abuse of discretion standard. *State v. Nash*, 294 S.W.3d 541, 546 (Tenn. 2009). An abuse of discretion occurs when a trial court “applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

ANALYSIS

I. Judge Kweller’s findings

We begin with the second certified question—whether Judge Kweller found that Mother’s counsel did not engage in misconduct regarding Mother’s notes.

Despite including this issue in the certified questions for this interlocutory appeal, Father omitted the issue from his statement of the issues in his appellate brief and failed to address it at all. Thus, this Court may deem the issue waived for failure to comply with the requirements of Tenn. R. App. P. 27(a)(4) and (7).³ *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012).

In its order regarding the January 23, 2024 hearing, the trial court specifically determined that Judge Kweller, who presided over that hearing, found that Mother’s counsel did not engage in prosecutorial misconduct. Similarly, in its amended order granting Father permission to appeal interlocutory orders, the trial court summarized the procedural history of the proceedings regarding Father’s amended petition for criminal contempt and found that “Judge Kweller had determined that Mother’s counsel did not engage in misconduct in relation to Mother’s notes.” The record on appeal contains no transcript or statement of the evidence regarding the January 23, 2024 contempt hearing. As the appellant, Father had a duty to prepare a transcript of “such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” TENN. R. APP. P. 24(b). When no transcript is available, the appellant shall prepare a statement of the evidence to convey an account of the relevant proceedings. TENN. R. APP. P. 24(c). In the absence of a

³ These provisions require the appellant’s brief to include a statement of the issues presented for review and an argument setting forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on.” TENN. R. APP. P. 27(a)(4), (7)(A).

transcript or statement of the evidence, this Court “is required to presume that the record, had it been properly preserved, would have supported the action of the trial court.” *Allen v. Allen*, No. W2010-00920-COA-R3-CV, 2011 WL 198516, at *3 (Tenn. Ct. App. Jan. 12, 2011). Given Father’s failure to preserve the necessary record, we must presume that the record would support the trial court’s findings regarding Judge Kweller’s decision. Father has not pointed to any evidence or raised any argument to the contrary.

II. Sufficiency of findings for double jeopardy determination by trial court

The third certified question is whether the trial court made sufficient findings or had sufficient evidence to determine that double jeopardy did not bar a retrial. As stated above, we have no transcript or statement of the evidence, which would be necessary to determine whether the trial court’s findings are supported by a preponderance of the evidence. In his appellate brief, Father frames the issue as whether double jeopardy bars his retrial for criminal contempt. Father argues that the trial court’s actions in the present case constitute “a flagrant violation of double jeopardy principles.” We respectfully disagree.

The United States and Tennessee Constitutions both ensure that “no person shall be put in jeopardy of life or limb for the same offense.” *State v. Huskey*, 66 S.W.3d 905, 914 (Tenn. Crim. App. 2001) (citing U.S. CONST. amend. V; TENN. CONST. art. I, § 10). The federal and state constitutional protections against double jeopardy have been construed to include the following protections: “(1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense.” *Rimmer*, 623 S.W.3d at 253. Criminal contempt proceedings are subject to double jeopardy protections. *Overnite Transp. Co. v. Teamsters Local Union No. 480*, 172 S.W.3d 507, 510 (Tenn. 2005).

In a non-jury proceeding, the general rule is that jeopardy attaches when the first witness is sworn to testify. *Bailey v. Crum*, 183 S.W.3d 383, 390 (Tenn. Ct. App. 2005) (citing *State v. Bryan*, No. W2019-00620-CCA-R3-CD, 2000 WL 33288749, at *9 (Tenn. Crim. App. June 27, 2000)). Moreover, “[o]nce jeopardy attaches, a defendant has a valued interest in having the particular jury selected for trial render a verdict.” *Huskey*, 66 S.W.3d at 914 (citing *United States v. Jorn*, 400 U.S. 470, 485-86 (1971)). The policy underlying the limitation to a single proceeding has been summarized as follows:

[T]he State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Id. (quoting *Green v. United States*, 355 U.S. 184, 187-88 (1957)).

Father emphasizes that in the present case Mother testified and, therefore, jeopardy attached. The analysis does not, however, end there. In *Oregon v. Kennedy*, the United States Supreme Court discussed the application of double jeopardy in cases where the defendant requests a mistrial. 456 U.S. 667, 671-79 (1982). In that instance, the defendant has elected to terminate the proceeding before the verdict, and double jeopardy does not generally bar the government from retrying the defendant. *Id.* at 672. There is a narrow exception to this principle: a defendant who requests a mistrial may invoke the double jeopardy bar if “the conduct giving rise to the successful motion for a mistrial was intended to provoke the defendant into moving for a mistrial.” *Id.* at 679. Tennessee has adopted the *Kennedy* standard with respect to the Tennessee Constitution’s double jeopardy analysis. *Rimmer*, 623 S.W.3d at 256; *Huskey*, 66 S.W.3d 905 at 917; *State v. Tucker*, 728 S.W.2d 27, 31 (Tenn. Crim. App. 1986). Thus, when the defendant moves for a mistrial, double jeopardy will bar retrial “only when it is shown that the prosecutor is ‘goading’ the defense into moving for a mistrial.” *Tucker*, 728 S.W.2d at 31.

To succeed in his double jeopardy argument based upon prosecutorial misconduct, Father must prove that there was prosecutorial misconduct and that, “through the misconduct, the prosecutor intended to force the defendant into moving for a mistrial and succeeded in doing so.” *Rimmer*, 623 S.W.3d at 256. Father does not argue that the alleged prosecutorial misconduct was intended to goad him into moving for a mistrial. And, the available evidence shows otherwise. In its order granting Father permission for an interlocutory appeal, the trial court made the following notation based upon the hearing transcript:

Notably, Mother’s counsel proposed that, to remedy the issue of Mother’s notes, the Court should strike all of Mother’s redirect testimony and go forward with only Mother’s direct testimony and cross-examination testimony. Judge Kweiler stated that he had considered that option but instead decided to declare a mistrial. Clearly, it was not Mother’s counsel’s or Mother’s intention to force Father to request a mistrial. To find otherwise, the Court would essentially have to find that Mother or her counsel intended for Mother to get caught looking at notes on the stand.

We affirm the trial court’s determination that double jeopardy did not bar a retrial of Father in this case.

III. Mistrial ruling

Father also asserts that Judge Kweiler erred by not granting Father a mistrial with prejudice. We review this decision under an abuse of discretion standard. *Nash*, 294 S.W.3d at 546.

Father's argument here is that Mother's possession of notes during redirect examination constituted "improper witness coaching and a flagrant abuse of the administration of justice" and that the trial court should have granted a "mistrial with prejudice." In support of this assertion, Father cites Tenn. R. Evid. 612, which governs the use of writing to refresh a witness's memory and requires that "an adverse party is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness." As Father points out, the advisory comments to Rule 612 require the examiner to lay a foundation to establish that there is a necessity to refresh the witness's memory, "show the witness the writing, take back the writing, and ask the witness to testify from refreshed memory." TENN. R. EVID. 612 cmt. There is no dispute that this procedure was not followed in this case.

In deciding to declare a mistrial, Judge Kweller opined that mistrials were not "declare[d] with or without prejudice." According to the trial court's September 2025 order concerning the contempt hearing, Judge Kweller found that it was improper for Mother to consult the notes during her redirect examination but did not find any misconduct in Mother's counsel preparing the notes. The trial court determined that the appropriate remedy for this evidentiary error was to declare a mistrial. Father has identified no authority stating that the imposition of that remedy under similar circumstances constitutes an abuse of discretion.⁴ We find no abuse of discretion in this trial court's decision to declare a mistrial and not to make the declaration "with prejudice."

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Tony Lee Corley, for which execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE

⁴ Father cites an unpublished New Jersey opinion, *Hernandez v. La Fortaleza, Inc.*, No. A-0367-22, 2024 WL 65217 (N.J. Sup. Ct. Jan. 5, 2024), in which a plaintiff's attorney coached a witness during a recess to testify as to a particular fact despite the witness having no memory of the fact. The trial court dismissed the case with prejudice based upon the attorney encouraging his client to commit fraud upon the court, and the appellate court affirmed. *Id.* at *3-4. The facts in the present case, as found by the trial court, do not evidence any intention to commit a fraud on the court. Contrary to Father's assertion, this case does not involve "egregious actions" that "deprived [Father] of his constitutional right to a fundamentally fair proceeding." The trial court acted within its discretion to remedy the evidentiary error by declaring a mistrial and allowing the matter to be retried.