



**IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS
CIVIL DIVISION**

**RHEA MIDDLETON AND LARRY MIDDLETON,
as CO-REPRESENTATIVES OF THE ESTATE
OF MARK MIDDLETON, DECEASED,**

PLAINTIFFS

VS.

CASE NO. 53 CV-22-45

**SCOTT MONTGOMERY, SHERIFF OF PERRY
COUNTY, in his official capacity; BILL GREENE,
CORONER OF PERRY COUNTY,
in his official capacity; JANE AND
JOHN DOES 1 through 10 in their capacity
as employees of PERRY COUNTY, ARKANSAS;**

DEFENDANTS

**BRIEF IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs Rhea Middleton and Larry Middleton (collectively the “Middletons”) bring this action to protect sensitive photographs and related media from needless and unlawful public disclosure.

As set forth in their Petition for Declaratory Judgment, Mark Middleton (“Mr. Middleton”) died by suicide on May 7, 2022, in Perry County, Arkansas at the age of 59 years. Rhea Middleton, his wife, and Larry Middleton, his brother, were appointed as co-Personal Representatives of the estate of Mr. Middleton in the case pending before the Pulaski County Circuit Court. *See* Order Probating Will, *In re Estate of Mark Middleton, Deceased*, No. 60PR-22-1032 (May 16, 2022). The Middletons understand that the Perry County Sheriff’s Department, working with the Perry County Coroner, conducted an investigation of the scene of Mr. Middleton’s death and maintained all relevant information regarding the investigation in an investigatory file designated as Case No.

22-244 (the “File”). The Middletons further understand that the File contains photographs and potentially other videos, sketches, or other illustrative content (collectively the “Media Content”) that depict Mr. Middleton’s body and the scene of Mr. Middleton’s death.

Since Mr. Middleton’s death, the family has received intimidating, threatening, hurtful, and offensive messages from individuals regarding Mr. Middleton, his death, and his family based on an unsupported, offensive, and unsubstantiated conspiracies. *See* Affidavit of Larry Middleton attached as Exhibit A. As part of these unsubstantiated theories, these same individuals have obtained and subsequently published online leaked information regarding the details of Mr. Middleton’s death, which has caused immense the family immense pain. *Id.* The Middletons understand that once the Sheriff’s investigation is concluded, these same individuals (and likely others) will seek to obtain and publish photographs of Mr. Middleton’s body, the scene of his death, and other information that may be in the File.

The Middleton’s should not have to suffer any further harassment, and they certainly should not be forced to confront suicide photos published by internet conspiracy theorists. They bring this action in order to prevent disclosure of certain Media Content in the File that would be used to injure, embarrass, intimidate and torment them. As shown below, this request is in accord with precedents set by the United States and Arkansas Supreme Courts.

I. THE MIDDLETONS ARE ENTITLED TO IMMEDIATE INJUNCTIVE RELIEF

Rule 65 of the Arkansas Rules of Civil Procedure authorizes this Court to issue an injunction if the Middletons demonstrate that: (1) they have some likelihood of success on the merits of their claims, and (2) irreparable harm will result in the absence of an injunction. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175, 72 S.W.3d 95, 101 (2002). As illustrated below, the Middletons are likely to succeed on the merits of their claims and prove that the absence

of an injunction will result in irreparable harm, thus rendering a temporary restraining order and preliminary injunction both necessary and appropriate.

A. The Middletons are Likely to Succeed on the Merits of Their Claims.

The Middletons require immediate injunctive relief to protect their privacy interest in the Media Content that depict Mr. Middleton's body or the scene of his death contained within the File. In order to justify injunctive relief, the Middletons must show that they have a reasonable probability of succeeding on the merits. *See Three Sisters*, 348 Ark. at 175, 72 S.W.3d at 101; *see also Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 542, 42 S.W.3d 453, 457–58 (2001). The Middletons meet this standard.

This case presents the legal question: when may an Arkansas citizen prevent disclosure of personally sensitive information that is subject to public release through the Arkansas Freedom of Information Act ("FOIA")? The test to answer that question is well established. First, the party objecting to disclosure must establish that they have a valid privacy interest. *McCambridge v. City of Little Rock*, 298 Ark. 219, 228, 766 S.W.2d 909, 913 (1989). Then, the Court must weigh that interest against the public's interest in the contested materials. *Id.*; *see also Nat'l Archives and Recs. Admin. v. Favish*, 541 U.S. 157, 170 (2004). Pursuant to this test, the contested materials in this case, the Media Content, should not be disclosed. Furthermore, because the Middletons are likely to succeed on these claims, an injunction should be entered.

1. The Middletons have a Protected Privacy Interest.

Both the Arkansas Supreme Court and the Supreme Court of the United States have held that surviving family members may possess a protected privacy interest in photographs contained within a police investigatory file that depict the body of a deceased relative or the death scene. *See*

McCambridge, 298 Ark. at 228, 766 S.W.2d at 913; *see also Favish*, 541 U.S. at 170. To this point, the Arkansas Supreme Court has held that surviving family members have “a right to avoid disclosure by the government of some personal matters.” which specifically could include depictions of a deceased’s body. *McCambridge*, 298 Ark. at 230, 766 S.W.2d at 914.

In *McCambridge*, the Arkansas Supreme Court considered a question similar to the one before the Court. A Little Rock businessman killed his wife, two children, and himself. *McCambridge*, 298 Ark. at 224, 766 S.W.2d at 911. The police investigated and photographed the crime scene. *Id.* The businessman’s mother subsequently filed suit to prevent disclosure of the crime scene photographs. *Id.*

The *McCambridge* Court determined that the decedent’s mother had a protectable privacy right in photographs depicting the scene of death. To reach this conclusion, it conducted an analysis under a three-part test. *McCambridge*, 298 Ark. at 230, 766 S.W.2d at 914. Under that test, a party has a protectable privacy interest if the material subject to disclosure is such that: “(1) that the individual wants to and has kept private or confidential, (2) that, except for the challenged government action, can be kept private or confidential, and (3) that to a reasonable person would be harmful or embarrassing if disclosed.” *Id.* Because the *McCambridge* photographs were determined to satisfy all three parts of this test, the Court held that the surviving family members possessed a protected privacy interest that could prevent the disclosure of such photographs in response to a FOIA request. *McCambridge*, 298 Ark. at 231, 766 S.W.2d at 915.

As was the case in *McCambridge*, the three-part test is satisfied here. First, the surviving family members undisputedly want to keep the Media Content private and confidential as it is the very basis of this action. Second, except for the disclosure of the Media Content by the Defendants, such Media Content would be private and not known to the public. Finally, a reasonable person

would find the Media Content depicting Mr. Middleton's body and the scene of his death harmful and embarrassing. Therefore, like in *McCambridge*, the Middletons possess a protected privacy interest in the Media Content contained within the File that could prevent the disclosure of such content in response to a FOIA request.

2. The Middletons' Protected Privacy Interest Prevents Disclosure of the Media Content Contained in the File.

Because the Middletons possess a privacy interest in the Media Content contained within the File, the Court must weigh that privacy interest against the public's right for the Media Content to be disclosed. *McCambridge*, 298 Ark. at 231, 766 S.W.2d at 915. The *McCambridge* Court did not set forth factors for this Court to consider in weighing those interests, but in that case, it noted that the decedent was the son of a world famous actress. *Id.* at 225, 766 S.W.2d at 911. He was accused of misappropriating money for his mother's benefit by crediting market gains to her account and lodging market losses on his employer's account. *Id.* at 224, 766 S.W.2d at 911. Ultimately, the Court found that *McCambridge*'s privacy interest did not outweigh the public's interest in disclosure based on her being a public figure and because of the "strong interest in depicting how the multiple *murders* occurred, why the police considered the case closed as a *triple-murder* suicide matter, and why no further action should be taken." *Id.* at 231, 766 S.W.2d at 915 (emphasis added).

Fifteen years later, the Supreme Court of the United States considered a similar fact pattern¹. In *Favish*, a close advisor of the President committed suicide. *Favish*, 541 U.S. at 161. Conspiracy theorists aligned against the President spread malicious and baseless rumors about the suicide, including that the death was in fact a murder. *Id.* Once a lawsuit was filed to force

¹ Though the Court in *Favish* considered the federal FOIA, the distinction is not material as the analysis involved the same framework set out by the Arkansas Supreme Court in *McCambridge*; that is, the disclosure of photographs could be prevented based upon an invasion into the deceased's family's privacy interest.

disclosure of the photographs, the President's advisor's family joined the fight to stop the harassment by preventing photographs of the body and suicide scene from being released publicly. *Id.* at 171. The *Favish* Court, citing *McCambridge*, first held that surviving family members have a protected privacy interest in photographs depicting the scene of their deceased relative's death. *Id.* at 170.

The *Favish* Court then held, as did *McCambridge*, that such a privacy interest could prevent the disclosure of photographs if the unwarranted invasion into the family's privacy interest caused by disclosure outweighed the public's interest in disclosure. *Id.* at 171. Unlike *McCambridge*, however, the *Favish* Court articulated a test to weigh these competing interests, which requires that an individual seeking disclosure to show: (1) that the public interest sought to be advanced is a significant one, an interest more specific than having the information for one's own sake, and (2) that the information is likely to advance that significant interest. *Id.* at 171.

The *Favish* Court noted that in that case the public's interest was a mere (that is, not substantiated) interest in uncovering deficiencies in the government's investigation, which did not outweigh the "extensive" invasion into the family's privacy interest that would occur upon disclosure of the photographs. *Id.* at 173–74. Importantly, the Court's opinion expressly pointed to the affidavit of the deceased's sister, which illustrated the harassment the family suffered and the immense pain caused by such harassment before the photographs had even been disclosed. *Id.* at 167. To emphasize the gravity of the invasion into the family's privacy interest that could occur upon disclosure, the Court stated that once disclosed the "information belongs to the public." *Id.* at 174. That is, once disclosed, the photographs could be seen and used by anyone and everyone. Based on the above, the Court held that the family's protected interest in the photographs prevented

disclosure unless and until a party seeking disclosure could meet the Court's two-part test articulated above. *Id.*

Favish, therefore, provides the Court guidance on how it should balance the Middleton's privacy interest against any public interest in seeking the Media. While the legal question presented is similar to that of *McCambridge*, the facts in this case are much more similar to *Favish*. The *McCambridge* court allowed disclosure because the case involved an individual accused of financial impropriety and a triple murder. Here, there is no allegation that Mr. Middleton committed any crime, much less a triple murder. Additionally, while *McCambridge* involved the relative of a world famous actress. Our case involves no such public figure. *Favish* is closer to the facts here. There was no crime alleged in *Favish* (as here), and while the decedent in *Favish* was certainly a well-known public figure (unlike here), the fact that online conspiracy theorists were seeking suicide photos for no legitimate interest (as here) was sufficient to prevent public disclosure.

There is no "significant" public interest that would be served by disclosing the Media Content to the public. *Id.* at 171. No crime was committed, there is no allegation of financial wrongdoing, neither Mr. Middleton nor his family is a public figure and neither is his family (as in *McCambridge*), and there is no question about the propriety of the Sheriff's investigation. For these reason, the Middleton's privacy interest in the Media Content outweighs any possible interest their harassers have in it.

B. The Middletons Will Suffer Irreparable Harm Without Injunctive Relief.

The Arkansas Supreme Court has held that "the prospect of irreparable harm or lack of an otherwise adequate remedy is the foundation of the power to issue injunctive relief." *Three Sisters*, 348 Ark. at 175, 72 S.W.3d at 100 (citing *Wilson v. Pulaski Ass'n of Classroom Teachers*, 330

Ark. 298, 302, 954 S.W.2d 221, 224 (1997)). Harm is considered irreparable “when it cannot be adequately compensated or redressed in a court of law.” *Id.* at 176, 72 S.W.3d at 101.

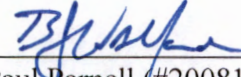
The Supreme Court of the United States outlined the irreparable harm that would occur upon the dissemination of such photographs when it stated that “once there is disclosure, the information belongs to the public.” *Favish*, 541 U.S. at 174, 124 S.Ct. at 1581. This was true in 2004 and even more so now as the channels for dissemination have exponentially multiplied beyond that of what the Court in 2004 likely could have even imagined. Today, the disclosure of such photographs could instantaneously be posted and spread across all parts of the world in mere seconds. The Arkansas Supreme Court noted the impact disclosure would and could have when it stated that such “horrible and sickening” photographs would be sensitive for grieving family members. Again, though, such statements must be viewed in the context for which they were made. The dissemination channels for which could be used to further torture the Middleton family simply did not exist in 1989.

Moreover, the Court in *Favish* noted that there is no mechanism under FOIA to provide a protective order prior to dissemination. *Id.* Though dealing with federal FOIA law, this point rings true under Arkansas FOIA law as well where no such mechanism exist either. Meaning, the only possible remedy for which the family has to prevent this irreparable harm is by issue of injunctive relief by this Court. Thus, there is no dispute that the Middletons will suffer irreparable harm if injunctive relief is not granted. Since the Middletons have shown a likelihood of success on the merits and the threat of irreparable harm, injunctive relief should be granted to prevent disclosure of the Media Content that depict Mr. Middleton’s body or the scene of his death contained within the File.

II. CONCLUSION

For the foregoing reasons, Plaintiffs, Rhea Middleton and Larry Middleton, respectfully request that this Court enter a temporary restraining order and preliminary injunction and grant any additional relief the Court deems appropriate.

Respectfully submitted,



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AFFIDAVIT OF LARRY MIDDLETON

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

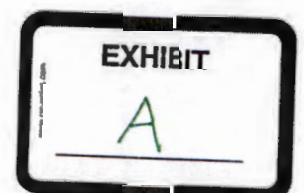
The affiant being first duly sworn, does depose and state:

1. My name is Larry Middleton. I am a resident of Pulaski County, Arkansas and I am the brother of Mark Middleton and one of the co-Personal Representatives in his estate in Case No. 60PR-22-1032.

2. I am over eighteen (18) years of age, of sound mind and body and otherwise duly qualified to make this affidavit.

3. My brother died by suicide in Perry County, Arkansas on May 7, 2022, at the age of 59 years of age.

4. Since his death, I, and other members of the family, have received intimidating, threatening, hurtful, and offensive inquiries from individuals regarding Mark and his death based on an unsupported, offensive, and unsubstantiated conspiracies.



5. Moreover, these individuals have obtained details regarding Mark's death and published such details online as part of the unsupported, offensive, and unsubstantiated conspiracies, which has caused unimaginable pain to myself and our family.

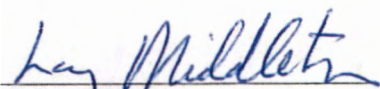
6. I, as do others in my family, have extreme fear and anxiety regarding the potential disclosure of the photographs and other media content depicting my brother's body and the scene of his death as I am certain that such content will be placed across the internet.

7. Once disclosed, my family will face inconceivable amounts of harassment, threats, and pain from the inquiry and use of such content. This harm will be irreparable if the material is made public.

8. This disclosure would constitute an unwarranted and unjust invasion into my privacy, the privacy of Mark's wife and daughters, and the privacy of the rest of his family.

9. Neither I, nor any other member of the family, consent to the disclosure of the photographs or other media content.

10. I am bringing this action in my capacity as co-Personal Representative of my brother's estate, and in my personal capacity as someone effected.

By: 
Larry Middleton

Subscribed and sworn to before me this 23rd day of May, 2022.


Notary Public

In and for the county of Pulaski, State of Arkansas

My Commission Expires:

