



**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. 53CV-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**

**PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Come now Petitioners Rhea Middleton and Larry Middleton, co-Personal Representatives of the estate of Mark Middleton, deceased (collectively the “Middletons”), by and through their attorneys, Rose Law Firm, a Professional Association, for its Petition for Declaratory Judgment and Injunctive Relief state as follows:

**I. NATURE OF THE ACTION**

1. This is an action seeking declaratory and injunctive relief pursuant to Arkansas Code Annotated §§ 16-111-101 *et seq.* The Middletons seek a declaration that: (1) the Middletons have a privacy interest in the photographs, videos, sketches, and other illustrative content (collectively the “Media Content”) depicting Mark Middleton’s (“Mr. Middleton”) body or scene of Mr. Middleton’s death contained within the Perry County Sheriff’s Department’s investigatory file designated as Case No. 22-244 (the “File”); (2) that the Defendants may not disclose the Media

Content depicting Mr. Middleton's body or the scene of Mr. Middleton's death contained within the Perry County Sheriff's Department's File; (3) and, in order for the Media Content to be disclosed, a party seeking disclosure must affirmatively meet the standard set by the Arkansas and United States Supreme Courts.

## **II. PARTIES**

2. Rhea Middleton is a resident of Pulaski County, Arkansas. She was appointed as co-Representative of the estate of Mr. Middleton by the Circuit Court of Pulaski County. *See Order Probating Will, In re Estate of Mark Middleton, Deceased*, No. 60PR-22-1032 (May 16, 2022). She brings this action in her personal capacity as the widow of Mark Middleton and as the co-Representative of his estate.

3. Larry Middleton is a resident of Pulaski County, Arkansas, who was appointed as co-Representative of the estate of Mr. Middleton by the Circuit Court of Pulaski County. *See Order Probating Will, In re Estate of Mark Middleton, Deceased*, No. 60PR-22-1032 (May 16, 2022). He brings this action in his personal capacity as the father of Mark Middleton and as the co-Representative of his estate.

4. Scott Montgomery is the Sheriff of Perry County and is responsible for the disclosure of records contained in files of the Perry County Sheriff's Department in response to an Arkansas Freedom of Information Act ("FOIA") request. Upon information and belief, Scott Montgomery is a resident of Perry County, Arkansas.

5. Bill Greene is the coroner for Perry County and is responsible for the disclosure of records held at the coroner's office in response to a FOIA request. Upon information and belief, Bill Greene is a resident of Perry County, Arkansas.

6. Jane and John Does 1 through 10 are employees of Perry County, Arkansas who have access to, and could assist in the disclosure of records, in response to a FOIA request.

### **III. VENUE AND JURISDICTION**

7. This Court has personal jurisdiction over the parties to this action.

8. This Court has subject matter jurisdiction over this claim for declaratory relief pursuant to Arkansas Code Annotated § 16-111-101 *et seq.*

9. Venue is proper in this Court pursuant to Arkansas Code Annotated § 16-60-101 in that the substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

### **IV. FACTUAL BACKGROUND**

10. Mr. Middleton, age 59 years, died by suicide in Perry County, Arkansas on May 7, 2022.

11. The Middletons understand that the Perry County Sheriff's Department conducted an investigation of the scene of Mr. Middleton's death and maintained all relevant information regarding the investigation in the File.

12. The Middletons understand that the File contains Media Content that depicts Mr Middleton's body and the scene of Mr. Middleton's death.

13. Since Mr. Middleton's death, Mr. Middleton's family, including the Middletons, has been harassed by outlandish, hurtful, unsupported, and offensive online articles regarding Mr. Middleton, his death, and his family. *See* Affidavit of Larry Middleton attached as Exhibit A. These articles are scurrilous, baseless, and malicious.

14. The same individuals who created the online articles will attempt to obtain details of the File, including the Media Content contained within the File, from Defendants. This

information will then almost certainly be published online. Plaintiffs, and other family members of Mr. Middleton, will suffer irreparable harm if such materials are disclosed.

15. The Middletons' understand that any request for information in the File would likely come to one of the Defendants, who have an obligation under the FOIA, Arkansas Code Annotated § 25-19-105(a) to disclose certain information. This lawsuit seeks a declaration that any Media Content depicting Mr. Middleton's body or scene of Mr. Middleton's death should not be disclosed under the FOIA.

**V. Declaratory Judgment**

16. The Middletons incorporate and re-allege the allegations set forth in paragraphs 1-15 as fully set forth herein.

17. The Middletons have a privacy interest in the Media Content contained within the File that depicts Mr. Middleton's body or his scene of death. This privacy interest is well recognized in the law. *McCambridge v. City of Little Rock*, 298 Ark. 219, 228, (1989); *Nat'l Archives and Recs. Admin. v. Favish*, 541 U.S. 157, 170 (2004)

18. Based on the privacy interest, the Middletons seek a judgment declaring that the Media Content contained within the File that depict Mr. Middleton's body or his scene of death not be disclosed in response to a FOIA request, as the family's privacy interest outweighs the public's interest, or lack thereof, in disclosure.

19. Such a judgment is consistent with guiding precedent. In *McCambridge*, the Arkansas Supreme Court held that a family's protected privacy interest in photographs depicting the deceased's body or the scene of death could prevent disclosure of such records upon a FOIA request. *Id.* at 231, 766 S.W.2d at 915. That interest must be then weighed against the public's interest in the same photos.

20. Disclosure was allowed in *McCambridge* because, there, a famous individual was involved, a triple murder occurred, and the public had a “strong interest in [seeing] 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.*

21. Here, the case does not involve a public figure<sup>1</sup>, there are no crimes, much less a triple murder, and there is no question about the propriety of the Sheriff’s investigation.

22. This case is much more comparable to *Favish*, where the Supreme Court of the United States faced the question of whether the family’s privacy interest in photographs depicting the scene of an individual’s suicide outweighed the public’s right to disclosure. *Favish*, 541 U.S. at 171.

23. In order for the public’s interest to outweigh the family’s privacy interest, the Court held that an individual seeking disclosure must show that: (1) that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake and (2) that the information is likely to advance that significant interest. *Id.* at 172, 124 S.Ct. at 1580.

24. In *Favish*, the Court held that the public’s interest in uncovering deficiencies in the government’s investigation was not substantiated and did not outweigh the “extensive” invasion into the family’s privacy interest that would occur upon disclosure of the photographs. *Id.* at 173–74.

25. The Court also noted that once disclosed, “the information belongs to the public,” *id.* at 174, which is even more true now due to the digital channels for which a leaked image may now be disseminated across all parts of the world in mere seconds.

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<sup>1</sup> *McCambridge* involved a world famous actress.

26. The Court in *McCambridge* did not enumerate a standard for courts to use to weigh the family privacy interest with the public's interest in disclosure, but because the analysis is similar under Arkansas and federal law, courts should use the standard set out in *Favish*.<sup>2</sup>

27. Therefore, in order for the Media Content contained within the File to be disclosed, a requestor would be required to show (1) that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake and (2) that the information is likely to advance that significant interest.

28. There is no public interest here that outweighs the Middleton family's sincere and personal right to privacy. There is no allegation of a crime or inadequate investigation.

29. For that reason, Defendants should be enjoined from disclosing any Media Content depicting Mr. Middleton's body or scene of Mr. Middleton's death that may be held in their files.

30. This action is appropriate because Arkansas Code Annotated § 16-111-102 provides a right to the requested declaration; specifically: "Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder." The Middletons request a declaration of their rights under the applicable statutes, specifically including the Arkansas Freedom of Information Act Arkansas Code Annotated § 25-19-105.

WHEREFORE, Plaintiffs pray as follows:

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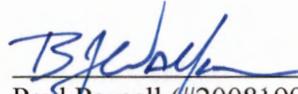
<sup>2</sup> Though the Court in *Favish* considered the federal FOIA, the distinction is not material as the analysis involved the same framework set out by the Arkansas Supreme Court in *McCambridge*; that is, the disclosure of photographs could be prevented based upon an invasion into the deceased's family's privacy interest.

First: for a declaration that the Middletons have a privacy interest in the Media Content depicting Mr. Middleton's body or scene of Mr. Middleton's death contained within the Perry County investigatory file(s);

Second, for a declaration that the Middletons' privacy interest outweighs any public interest in the same; and

Third, that the Defendants, their agents, representatives, and employees, be enjoined from disclosing Media Content depicting Mr. Middleton's body or scene of Mr. Middleton's death contained within the Perry County investigatory file.

Respectfully submitted,



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Paul Parnell (#2008199)  
Byron J. Walker (#2002114)  
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**DEFENDANTS**

**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  
Larry Middleton

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

[Signature]  
Notary Public

In and for the county of Pulaski, State of Arkansas

My Commission Expires:

PAUL PARNELL  
PULASKI COUNTY  
NOTARY PUBLIC - ARKANSAS  
My Commission Expires November 18, 2024  
Commission No. 12421276