

Supreme Court Appeals
Pending Cases
8-15-23

1. Style Roger Baskin v. Pierce & Allied Construction, Inc.
 2. Docket Number M2021-00144-SC-R11-CV
 3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf
 4. Lower Court Summary Plaintiff Roger Baskin sued Pierce & Allred Construction, Inc. (“Defendant”) for breach of contract and breach of warranty, alleging Defendant failed to construct a house in Muscle Shoals, Alabama, in accordance with the parties’ contract. Plaintiff alleged that although he “paid construction costs totaling more than \$1,700,000, [Defendant] failed to complete construction of the house and has left Plaintiff with a home riddled with construction defects that affect every major system of the home.” Defendant moved to dismiss the complaint under Tenn. R. Civ. P. 12.02(2) and (3), asserting that the trial court lacked personal jurisdiction over it, and that venue was improper in Davidson County. The trial court dismissed the complaint for lack of personal jurisdiction and improper venue. We hold that Defendant’s contacts with Tennessee, including its purposeful applications for a certificate of authority to transact business and for a contractor’s license in Tennessee, are such that Defendant should reasonably anticipate being hauled into court in this state. Consequently, Tennessee courts may exercise personal jurisdiction over Defendant. We further find that Davidson County is a proper venue for this action, and therefore reverse the judgment of the trial court.
 5. Status Heard 11/9/22 in Jackson.
 6. Issue(s) As stated in the Appellant's application for permission to appeal:
 1. Whether the Court of Appeals erred in comparing this case to Crouch by not focusing on the quality of the non-resident party’s contacts with the State of Tennessee.
 2. Whether the Court of Appeals erred in considering Pierce’s actions in the State of Tennessee after Mr. Baskin’s cause of action accrued action in determining whether Pierce is subject to specific personal jurisdiction in the State of Tennessee.
 3. Whether the Court of Appeals erred in construing Ford to apply in situations wherein the non-resident’s activities in the forum state, which do not cause any harm, are of the same general nature (construction), as opposed to applying Ford to situations involving the sales of identical vehicles or dialing of identical robocalls.
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1. Style Melissa Binns v. Trader Joe’s East, Inc.
2. Docket Number M2022-01033-SC-R11-CV

3. Lower Court Decision Links <https://ctrack.tncourts.gov/ctrack/docket/docketEntry.do?action=edit&deID=2098953&csNameID=85090&csIID=85090>
4. Lower Court Summary This matter is before the Court upon the Tennessee Rule of Appellate Procedure 9 application for permission to appeal filed by Trader Joe’s East, Inc. Having considered the application and supporting documents, the Court cannot conclude that an interlocutory appeal is necessary to prevent irreparable injury, to develop a uniform body of law, or to prevent needless, expensive and protracted litigation.
5. Status Application granted 1/11/23; Fully briefed.
6. Issue(s) As stated in the Appellants’ Rule 11 Application:
1. Whether a plaintiff can assert direct negligence claims against an employer if the employer admits that it will be vicariously liable for the negligent conduct attributed to its employees under the doctrine of *respondeat superior*
 2. Whether direct negligence claims can be asserted against a premises owner concurrently with a premises liability theory of recovery.

1. Style Terry Case v. Wilmington Trust, N.A., et al.
2. Docket Number E2021-00378-SC-R11-CV
3. Lower Court Decision Links https://www.tncourts.gov/sites/default/files/e2021-378_case_v._wilmington.pdf
4. Lower Court Summary The plaintiff appeals the trial court’s order granting the defendants’ motions for summary judgment and dismissing the plaintiff’s claims for breach of contract, wrongful foreclosure, injunctive relief, and declaratory relief. Having determined that the plaintiff has waived arguments related to his breach of contract claim, we review solely the trial court’s dismissal of the plaintiff’s claim for wrongful foreclosure. We conclude that the defendants did not strictly comply with the notice requirements of the deed of trust, vacate the portion of the trial court’s order granting summary judgment to the defendants with respect to the plaintiff’s wrongful foreclosure claim, and set aside the foreclosure sale. We affirm the trial court’s order with respect to the plaintiff’s breach of contract claim. We decline to award the defendants damages pursuant to Tennessee Code Annotated § 27-1- 122.
5. Status Application granted 1/5/23. Fully briefed. TBH 9/6/23 in Knoxville.
6. Issue(s) As stated by Applicant:
1. Does Tennessee recognize an independent cause of action for wrongful foreclosure to set aside a foreclosure sale based entirely on a procedural defect in the sale that causes no harm or prejudice?
 2. Tennessee Code Annotated § 35-5-101(f) allows foreclosure sale postponements of less than 30 days to be announced orally. Does the Fannie Mae/Freddie Mac Uniform Tennessee Deed of Trust, which secures over 500,000 residential mortgage loans in Tennessee, nevertheless require written notice of such postponements?

1.	Style	Bill Charles v. Donna McQueen
2.	Docket Number	M2021-00878-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/McQUEEN%20-Majority%20Opinion.pdf
4.	Lower Court Summary	This case involves a lawsuit alleging claims of defamation and false light arising from an online review. In response to the lawsuit, the defendant filed a petition under the Tennessee Public Participation Act to dismiss the lawsuit. The trial court ultimately granted the petition and dismissed the case. For the reasons stated herein, we affirm in part and reverse in part.
5.	Status	Application granted 3/9/23. Fully briefed.
6.	Issues(s)	<p>As stated in the Appellant’s Rule 11 Application:</p> <ol style="list-style-type: none"> 1. Pursuant to Tennessee Rule of Appellate Procedure 27(b), whether a Defendant/Appellee can “waive” (or forfeit) any claim to mandatory attorneys’ fees on appeal under Tennessee’s Anti-SLAPP Act by not specifically listing that request in her statement of issues—particularly when the trial court has not yet ruled on the fee request. 2. Pursuant to Tennessee Rule of Appellate Procedure 27(b), after a trial court dismisses a plaintiff’s entire complaint with prejudice, whether a Defendant/Appellee can “waive” (or forfeit) appellate review of alternate grounds for affirmance by not specifically listing that request in her statement of issues. 3. Whether there is admissible evidence in the record to find that Plaintiff—as the HOA President and registered agent who spoke with both the media and the city council regarding the 1,000+ home Durham Farms community—is a limited-purpose public figure for defamation purposes.

1.	Style	Thomas Edward Clardy v. State
2.	Docket Number	M2021-00566-SC-R11-ECN
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/clardy_t_-_filed_opn.pdf
4.	Lower Court Summary	For a 2005 shooting, a Davidson County jury convicted the Petitioner, Thomas Edward Clardy, of one count of first degree premeditated murder, two counts of attempted first degree premeditated murder, and three counts of reckless endangerment. The trial court imposed a life sentence. On December 8, 2020, the Petitioner filed a petition for a writ of error coram nobis, alleging newly discovered

evidence in the form of an affidavit showing that he did not participate in the crime. The Petitioner acknowledged that he did not file the petition within the applicable statute of limitations but said he was entitled to an equitable tolling. The State agreed, and it asked the trial court for an equitable tolling and to hear the case on its merits. The coram nobis court, noting that it was not bound by the State's concession, dismissed the petition as untimely. After review, we conclude that the coram nobis court erred and that the Petitioner is entitled to an equitable tolling of the statute of limitations. As such, we reverse and remand to the coram nobis court for a hearing on the Petitioner's error coram nobis claims.

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| 5. | Status | Heard on 6/1/23 in Nashville. On 8/4/23, the State filed a notice of developments in the Federal habeas case. |
| 6. | Issue(s) | As stated in the Appellant's Rule 11 Application:

A. Whether an error coram nobis petitioner must present evidence of actual innocence to obtain due-process tolling of the statute of limitations.

B. If so, whether the evidence presented in this case—which does not rule out or seriously undermine the petitioner's guilt—meets the standard of actual innocence. |

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| 1. | Style | Vanessa Colley v. John S. Colley |
| 2. | Docket Number | M2021-00731- SC-R11-CV |
| 3. | Lower Court Decision Links | https://www.tncourts.gov/sites/default/files/m2021-731 - opinion - colley.pdf |
| 4. | Lower Court Summary | Appellant/Husband voluntarily nonsuited his post-divorce lawsuit involving issues of alimony and the parties' alleged settlement of an IRS debt. Appellee/Wife moved for an award of her attorney's fees on alternative grounds, i.e., the abusive lawsuit statute, Tenn. Code Ann. § 29-41-106; the parties' MDA; and Tennessee Code Annotated section 36-5- 103(c). The trial court granted Wife's motion and entered judgment for her attorney's fees and costs. The trial court specifically held that Husband's lawsuit was not abusive, and Wife does not raise this as an issue on appeal. As such, we conclude that she is not entitled to her attorney's fees under the abusive lawsuit statute. As to her claim for attorney's fees and costs under the MDA and Tennessee Code Annotated section 36-5-103(c), both grounds require that Wife be a "prevailing party" in the underlying lawsuit. Because Husband took a voluntary nonsuit, neither party prevailed in the action, and Wife is not entitled to her attorney's fees and costs. Reversed and remanded. |
| 5. | Status | Application granted 3/9/23. Fully briefed. |
| 6. | Issue(s) | As stated in the Appellant's Rule 11 Application:

1. Is a defendant who defends against a lawsuit that seeks to modify a court-ordered Marital Dissolution Agreement and secures a judgment of dismissal, without prejudice, following the plaintiff's voluntary nonsuit a "prevailing party" within the meaning of Tenn. Code Ann. § 36-5-103(c)?

2. When "contract language is interpreted according to its plain terms and ordinary meaning," <i>see BSG, LLC v. Check Velocity, Inc.</i> , 395 S.W.3d 90, 93 (Tenn. 2012), is a defendant who secures a judgment of dismissal, without prejudice, following a |

plaintiff's voluntary nonsuit a "prevailing party" within the meaning of a contractual fee-shifting provision when the term "prevailing party" is not otherwise defined?

1.	Style	Commercial Painting Co., Inc. v. The Weitz Co. LLC et al.
2.	Docket Number	W2019-02089-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf
4.	Lower Court Summary	This is the third appeal arising from a commercial construction project. Most recently, the case went to trial before a jury, which awarded the plaintiff subcontractor \$1,729,122.46 in compensatory damages under four separate theories and \$3,900,000.00 in punitive damages. The trial court further awarded the plaintiff pre- and post-judgment interest and attorney's fees and costs. We conclude the economic loss rule is applicable to construction contracts negotiated between sophisticated commercial entities and that fraud is not an exception under the particular circumstances of this case. Because punitive damages and interest are not authorized under the parties' agreement, those damages are reversed. The compensatory damages of \$1,729,122.46 awarded for breach of contract are affirmed. The award of attorney's fees incurred at trial are vacated for a determination of the attorney's fees incurred in obtaining the compensatory damages award. No attorney's fees are awarded on appeal. We therefore reverse in part, affirm in part, and vacate in part.
5.	Status	Heard 11/9/22 in Jackson.
6.	Issue(s)	<p>According to the Supreme Court's Order granting the application for permission to appeal:</p> <p>1. Whether the Court of Appeals erred in applying this Court's holding in <i>Milan Supply Chain Solutions, Inc. v. Navistar, Inc.</i>, 627 S.W.3d 125 (Tenn. 2021), and expanding the application of the economic loss doctrine to the circumstances of this case.</p> <p>2. Whether the Court of Appeals erred in vacating the trial court's award of attorney's fees and in limiting the scope of recoverable fees on remand, and whether the Court of Appeals erred in denying Commercial Painting Company an award of costs and fees on appeal.</p>

1.	Style	Robert Crotty, et al. v. Mark Flora, M.D.
2.	Docket Number	M2021-01193-SC-R11-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 10/5/22 in Nashville.
6.	Issue(s)	As stated in Appellant's Rule 11 Application:

1. Should the Trial Court exclude testimony regarding the role of a Non-party Physician in causing the Plaintiff's injuries, when there is no allegation of wrongful conduct by the Non-party Physician?

2. Should the Trial Court limit evidence of medical expenses to only those actual economic losses that were actually paid or are payable?

1.	Style	Robert Allen Doll, III v. BPR
2.	Docket Number	M2022-01723-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 12/12/22; Appellant's brief filed 7/7/23; Appellee's brief filed 8/7/23.
6.	Issue(s)	N/A

1.	Style	State of Tennessee v. David Wayne Eady
2.	Docket Number	M2021-00388-SC-R11-CD
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/eady_d_-_filed_opn.pdf
4.	Lower Court Summary	https://www.tncourts.gov/sites/default/files/eady_d_-_filed_separate_opn.pdf Defendant, David Wayne Eady, was convicted by a jury of eleven counts of aggravated robbery and one count of attempted aggravated robbery. The trial court sentenced Defendant as a repeat violent offender and imposed eleven concurrent sentences of life without the possibility of parole. The trial court ran the life imprisonment sentences concurrently with a fifteen-year sentence for the attempted aggravated robbery conviction. On appeal, Defendant contends 1) the trial court abused its discretion in denying his motion to sever the offenses; 2) the trial court abused its discretion in denying his motion to suppress his statements; 3) the trial court abused its discretion in denying his motion to disqualify the District Attorney General's Office, 4) the evidence was insufficient to support his conviction for aggravated robbery as charged in count eight of the indictment; and 5) his convictions for aggravated robbery as charged in counts one and two of the indictment violate Double Jeopardy as a matter of plain error. Because the facts and circumstances support only one conviction for aggravated robbery as charged in counts one and two, we merge the two counts, and remand for entry of amended judgments in counts one and two reflecting the merger. In all other respects, we affirm the judgments of the trial court.
5.	Status	Heard at Boys State 5/24/23.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:

(1) Did the Court of Criminal Appeals, in affirming the trial court's denial of Mr. Eady's motion to sever offenses, diverge from preexisting severance case law and create a split in authority?

(2) Did the Court of Criminal Appeals apply an incorrect legal standard when it affirmed the trial court's denial of Mr. Eady's motion to disqualify the Davidson County District Attorney's Office and thereby create a split in authority on the issues of when a district attorney's office is vicariously disqualified and the appropriate remedy when a district attorney's office violates the ethical rules concerning conflicts of interest?

1.	Style	Family Trust Services LLC et al. v. Greenwise Homes LLC et al.
2.	Docket Number	M2021-01350-SC-R11-CV
3.	Lower Court Decision Links	https://tncourts.gov/sites/default/files/family_trust_-_majority_opinion.pdf
4.	Lower Court Summary	This appeal involves claims by four plaintiffs against an attorney, his business partner, and the attorney's and partner's limited liability company. The plaintiffs claim that the defendants fraudulently redeemed properties sold via tax sales, utilizing forged or fraudulent documents. Following a bifurcated jury trial, the plaintiffs' claims were dismissed except for the claim of one plaintiff against the attorney defendant, which resulted in a verdict for damages in the amount of \$53,450. The trial court subsequently denied a motion for new trial filed by the plaintiffs. The plaintiffs have appealed. Upon thorough review, we conclude that the trial court's denial of the plaintiffs' motion for new trial should be reversed. However, we affirm the trial court's pre-trial determination that judgment on the pleadings was appropriate concerning the plaintiffs' claims of unjust enrichment and "theft" of the right of redemption. We further affirm (1) the trial court's grant of summary judgment in favor of the defendants concerning the plaintiffs' claim based on Tennessee Code Annotated § 66-22-113 and (2) the court's denial of the defendant company's motion to dissolve the lien lis pendens on its property. The remaining issue raised by the defendants is pretermitted as moot. We remand this matter to the trial court for a new trial.
5.	Status	Application granted 5/11/23. Appellants' brief filed 7/3/23; Appellees' motion for extension granted and brief due 8/23/23.
6.	Issue(s)	The single issue in this case, as rephrased is: Whether the exclusive remedy available to the appellate courts under Tennessee law upon determining that the trial court failed to apply the correct standard in exercising its role as the thirteenth juror and so erred in denying a motion for new trial is to remand for a new trial; or, alternatively, whether the appellate court may remand to the trial court to apply the correct standard and fulfill its role as thirteenth juror.

1.	Style	Robert E. Lee Flade v. City of Shelbyville, TN, et al.
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2. Docket Number M2022-00553-SC-R11-CV
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-553-COA.pdf>
4. Lower Court Summary
 This appeal involves application of the Tennessee Public Participation Act (TPPA). Plaintiff filed multiple causes of action against the City of Shelbyville, the Bedford County Listening Project, and several individuals – one of whom is a member of the Shelbyville City Council. Defendants filed motions to dismiss for failure to state a claim under Tennessee Rules of Civil Procedure 12.06, and two of the non-governmental Defendants also filed petitions for dismissal and relief under the TPPA. The non-governmental Defendants also moved the trial court to stay its discovery order with respect to Plaintiff’s action against the City. The trial court denied the motion. The non-governmental Defendants filed applications for permission for extraordinary appeal to this Court and to the Tennessee Supreme Court; those applications were denied. Upon remand to the trial court, Plaintiff voluntarily non-suited his action pursuant to Tennessee Rule of Civil Procedure 41.01. The non-governmental Defendants filed motions to hear their TPPA petitions notwithstanding Plaintiff’s nonsuit. The trial court determined that Defendants’ TPPA petitions to dismiss were not justiciable following Plaintiff’s nonsuit under Rule 41.01. The Bedford County Listening Project and one individual Defendant, who is also a member of the Shelbyville City Council, appeal. We affirm the judgment of the trial court.
5. Status Application granted 8/9/23.
6. Issue(s) As stated in the Appellant’s Rule 11 Application:

 When a defendant has petitioned for relief under Tennessee Code Annotated § 20-17-104(a), do the defendant’s claims survive a plaintiff’s subsequent nonsuit?

1. Style Colleen Ann Hyder v. BPR
2. Docket Number M2022-01703-SC-R3-BP
3. Lower Court Decision Links N/A
4. Lower Court Summary N/A
5. Status Appeal filed 12/8/22; Appellate record filed 4/18/23; Appellant’s brief filed 6/1/23; Appellee’s brief filed 7/31/23; Appellant’s motion for extension to file reply brief granted and due 9/1/23.
6. Issue(s) N/A

1. Style Loring E. Justice v. BPR
2. Docket Number E2022-01105-SC-R3-BP

3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 6/1/23 on-briefs.
6.	Issue(s)	N/A

1.	Style	Thomas Fleming Mabry v. The Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	E2022-00945-SC-R3-BP consolidated 10/13/22 with E2022-01390-SC-R3-BP filed 9/30/22
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	TBH 9/6/23 on-briefs.
6.	Issue(s)	N/A

1.	Style	Brian Philip Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	M2022-00075-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 10/5/22 on-briefs.
6.	Issue(s)	N/A

1.	Style	Peggy Mathes et al. v. 99 Hermitage, LLC
2.	Docket Number	M2021-00883-SC-R11-CV

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| 3. | Lower Court Decision Links | https://www.tncourts.gov/sites/default/files/peggyathes.opn_.pdf |
| 4. | Lower Court Summary | <p>This appeal involves a real property dispute. Resolution of the competing interests ultimately turns on the propriety of certain adverse possession claims that have been asserted. Following a bench trial, the trial court determined that there was no adverse possession established due to its finding that Mr. Whiteaker, a former record owner of the property, had “acquiesced in, and permitted” the possession of Mr. Eads, an original plaintiff in this action who is now deceased. Judgment was accordingly entered in favor of the Appellee herein, an entity that purchased the property at a sheriff’s sale. The Appellants, who assert rights to the property by dint of Mr. Eads’ alleged adverse possession, submit that there is no evidence to support the trial court’s view that Mr. Eads’ possession was subservient to Mr. Whiteaker. For its part, the Appellee maintains that several considerations countenance against the assertion of adverse possession rights. Having considered the various issues and arguments raised by the parties, we hold that the judgment of the trial court should be reversed, as we conclude that Mr. Eads previously acquired title to the property by common law adverse possession.</p> |
| 5. | Status | Heard 6/1/23 in Nashville |
| 6. | Issue(s) | <p>As stated in the Appellant’s Rule 11 Application:</p> <ol style="list-style-type: none"> 1. Whether the true owner of real property by way of an unrecorded deed received from his grantor may establish title by adverse possession. 2. Whether an inchoate common law adverse possession claim supersedes a valid, recorded judgment, attachment, order, injunction or other writ affecting title, use or possession of real estate, which is filed pursuant to Tenn. Code Ann. § 66-24-119 and/or Tenn. Code Ann. § 25-5-101. |
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| 1. | Style | Pratik Pandharipande, M.D. v. FSD Corporation |
| 2. | Docket Number | M2020-01174-SC-R11-CV |
| 3. | Lower Court Decision Links | pratik.pandharipande.opn_.pdf (tncourts.gov) |
| 4. | Lower Court Summary | <p>This is a dispute between a property owner and his homeowners’ association concerning the scope and applicability of restrictive covenants. Two restrictive covenants are at issue. One is a covenant contained in the neighborhood’s 1984 Declaration of Covenants, Conditions, and Restrictions that limited usage of the homes to residential use as “a residence by a single family.” The other is a covenant contained in a 2018 Amendment that relaxed the 1984 residential use restriction by authorizing short-term rentals of no less than 30 consecutive days, subject to specific criteria. The plaintiff, who purchased a home in the development in 2015 and has been leasing it on a short-term vacation rental basis to third parties as a business venture, seeks a declaratory judgment that he may lease his home for rentals as short as two days. For its part, the homeowners’ association seeks to enforce the restrictive covenants in the 1984 Declaration as well as the 2018 Amendment. The trial court granted summary judgment in favor of the homeowners’ association on both issues. In doing so, the court held that restrictions in the 1984 Declaration prohibited nonresidential renting. The court also held that Plaintiff’s current use of his property is subject to the 2018 Amendment, which authorized short-term leasing subject to stipulations including that “[t]he length of</p> |

the lease must be for a minimum of 30 consecutive days.” The plaintiff appeals. We affirm.

5. Status Heard 2/22/23 in Nashville.
6. Issue(s) As stated in the Appellant’s Rule 11 Application:
1. Whether the Court of Appeals erred in upholding the Trial Court’s ruling that FSD can retroactively ban STRs for owner-occupied chalets in a lake resort like Four Seasons?
 2. Whether the Court of Appeals erred in upholding the Trial Court’s ruling that FSD’s generic residential use restriction somehow prohibits owner-occupied STRs?
 3. Whether Teffeteller remains applicable law with regard to owner-occupied STRs like Dr. Pandharipande’s lake chalet in Four Seasons?
 4. Whether the Court of Appeals erred in refusing to review the Trial Court’s ruling on Dr. Pandharipande’s equitable estoppel arguments? and,
 5. Whether the 2018 Amendment grandfathers Dr. Pandharipande’s use of his lake chalet at Four Seasons for STRs?

1. Style Pharma Conference Education, Inc. v. State of Tennessee
2. Docket Number W2021-00999-SC-R11-CV
3. Lower Court Decision Links [PharmaConferenceEducationOPN.pdf \(tncourts.gov\)](#)
4. Lower Court Summary This appeal arises from a breach of contract case that concerned whether the contract at issue lacked consideration due to an illusory promise. Specifically, the terms of the contract provided that the plaintiff would produce as many programs “as is feasible.” The parties filed competing motions for summary judgment. The claims commission granted the State of Tennessee’s motion for summary judgment finding that the contract between the parties was devoid of consideration due to an illusory promise and was therefore unenforceable. Additionally, the claims commission denied the plaintiff’s motion for summary judgment as to liability and denied the plaintiff’s motion for summary judgment as to damages finding that the issue was moot. The plaintiff appeals. We affirm.
5. Status Application granted 8/9/23.
6. Issue(s) As stated in the Appellant’s Rule 11 Application:
- Did the Court of Appeals of Tennessee err by affirming the Tennessee Claims Commission’s finding that the contract at issue lacks consideration due to an illusory promise and is unenforceable when such a finding undermines the uniformity and consistency of Tennessee law governing contract interpretation?
- Pharma included the following sub-issues, which are largely in the nature of arguments:

A. Did the Opinion of the Court of Appeals create inconsistencies and threaten the uniformity and settlement of important questions of law by finding the contract at issue to be illusory despite Tennessee’s presumption in favor consideration?

See Tenn. Code Ann. § 47-50-103 (“All contracts in writing signed by the party to be bound, or the party’s authorized agent and attorney, are prima facie evidence of consideration”).

B. Did the Opinion of the Court of Appeals create inconsistencies and threaten the uniformity and settlement of important questions of law by failing to impose a duty of good faith and fair dealing in the performance and interpretation of the contract at issue?

See, e.g., German v. Ford, 300 S.W.3d 692, 704 (Tenn. Ct. App. 2009) (“A contractual obligation, however, is not illusory if the party’s discretion must be exercised with reasonableness or good faith”); *Rode Oil Co. v. Lamar Adver. Co.*, No. W2007-02017-COA-R3-CV, 2008 Tenn. App. LEXIS 532, at *34 (Tenn. Ct. App. Sept. 18, 2008) (“Every contract imposes upon the parties a duty of good faith and fair dealing in the performance and interpretation of the contract.” *Id.* at *34 (citing *Elliot v. Elliot*, 149 S.W.3d 77, 84-85 (Tenn. Ct. App. 2004)).

C. Did the Opinion of the Court of Appeals create inconsistencies and threaten the uniformity and settlement of important questions of law by allowing the breaching party to prevent Appellant’s performance under the contract at issue?

See German v. Ford, 300 S.W.3d 692, 706 (Tenn. Ct. App. 2009) (“[E]very contract includes an implied condition that one party will not prevent performance by the other party.”) (citing *Moody Realty Co. v. Huestis*, 237 S.W.3d 666, 678 (Tenn. Ct. App. 2007)).

D. Did the Opinion of the Court of Appeals create inconsistencies and threaten the uniformity and settlement of important questions of law by adopting a 1955 case from Alabama that is inconsistent with current Tennessee law?

1.	Style	State of Tennessee v. Ebony Robinson
2.	Docket Number	M2021-01539-SC-R11-CD
3.	Lower Court Decision Links	https://tncourts.gov/sites/default/files/state_of_tennessee_v_ebony_robinson_-_m2021-01539-cca-r3-cd.pdf
4.	Lower Court Summary	Defendant, Ebony Robinson, pled guilty to vehicular homicide by intoxication, aggravated assault, resisting arrest, and driving without a license. The trial court imposed an effective ten-year sentence to be served on probation with periodic confinement each year near Christmas and each victim’s birthday. On appeal, the State argues that the trial court erred by granting probation because Defendant was not statutorily eligible. Following our review of the entire record, oral arguments, and briefs of the parties, we reverse the trial court’s imposition of probation and remand for execution of Defendant’s sentence and entry of amended judgments of conviction.
5.	Status	Heard at Boys State 5/24/23.

6. Issue(s) As stated in the Appellant's Rule 11 Application:
- Did the CCA correctly conclude that the legislature repealed by implication a provision of T.C.A. § 39-13-213(b)(2)(B), setting forth a specific and detailed mandatory-minimum sentencing scheme for the offense of vehicular homicide by intoxication, when it enacted a 2017 amendment to T.C.A. § 40-35-303 providing that no person convicted of that offense is eligible for probation?

1. Style State of Tennessee v. Tony Thomas and Laronda Turner
2. Docket Number W2019-01202-SC-R11-CD
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondaopn.pdf>
<https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondadis.pdf>
4. Lower Court Summary The Defendants, Tony Thomas and Laronda Turner, were convicted of three counts of first degree premeditated murder and received life sentences on each count. On appeal, they raise the following issues: (1) whether the evidence was sufficient to support their convictions, specifically whether the co-defendant's testimony was reliable and sufficiently corroborated; (2) whether the trial court erred by denying the Defendants' motion to dismiss the indictment due to the State's Ferguson violation by failing to preserve the photographic lineups shown to the witnesses and the co-defendant's cell phone taken upon his arrest; (3) whether the trial court erred by not granting a new trial because the State committed a Brady violation by failing to disclose all inconsistent statements made by the co-defendant during proffer sessions; (4) whether the trial court committed error when it sua sponte prohibited the introduction of the printout of the co-defendant's message to his girlfriend implicating himself in the murders, and in so doing, made an improper comment on the evidence; and (5) whether the trial court erred in instructing the jury by including the language "or either of them" throughout the jury instructions.¹ Following our review, we affirm the judgments of the trial court.
5. Status Heard on 4/5/23 in Jackson.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
- 1) Whether the prosecution breached its constitutional duty of production under Brady v. Maryland, 373 U.S. 83 (1963), by failing to produce statements made by a co-defendant in proffer conferences, which were allegedly inconsistent with the co-defendant's formal statement to law enforcement.
- 2) Whether the evidence was sufficient to support Laronda Turner's convictions for first-degree murder.

1. Style Robert L. Trentham v. Mid-America Apartments, LP et al.
2. Docket Number M2021-01511-SC-R11-CV

3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Trentham%2C%20R%20-%20Opn%20Filed.pdf>
 4. Lower Court Summary This appeal concerns premises liability. The plaintiff slipped and fell on a pedestrian bridge on the defendants' property. The trial court entered judgment in favor of the plaintiff. The defendants appeal. We affirm.
 5. Status Application granted 7/13/23. Appellants' motion for extension granted and brief due 9/22/23.
 6. Issue(s) As stated in the Appellant's Rule 11 Application:

In Tennessee premises-liability law, is the foreseeability of a hazardous condition developing legally sufficient to impute constructive knowledge of the condition's actual existence to the property owner?
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1. Style James A. Welch et al. v. Oaktree Health and Rehabilitation Center LLC d/b/a Christian Care Centers of Memphis et al.
2. Docket Number W2020-00917-SC-R11-CV
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/welchjamesaopn.pdf>
4. Lower Court Summary This appeal involves an arbitration agreement executed in connection with a patient's admission to a nursing home. The arbitration agreement was executed by the patient's brother, who had been designated as the patient's attorney-in-fact for health care pursuant to a durable power of attorney for health care executed by the patient several years earlier. When the patient's brother filed this wrongful death suit in circuit court, the nursing home defendants filed a motion to compel arbitration. The patient's brother then asserted that he did not have authority to bind the patient to the arbitration agreement because the patient had been mentally incompetent when he executed the durable power of attorney for health care years earlier. The defendants argued that the trial court was not permitted to "look beyond" the durable power of attorney for health care to determine the competency of the patient at the time of its execution. The trial court ruled that it would "look beyond" the power of attorney for health care in order to consider the patient's competency and allowed the parties to engage in discovery related to the issue of incompetence. Discovery ensued, and the parties submitted additional evidence regarding the patient's competency. The trial court then found by clear and convincing evidence that the patient was incompetent at the time the durable power of attorney for health care was executed. As a result, the trial court concluded that the patient's brother lacked authority to sign the arbitration agreement as attorney-in-fact for health care. The trial court denied the motion to compel arbitration, and the defendants appealed. Pursuant to the Tennessee Supreme Court's decision in *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007), we hold that the trial court erred in looking beyond the durable power of attorney for health care to examine the patient's competency at the time it was executed. We reverse the decision of the trial court and remand for further proceedings consistent with this opinion.
5. Status Heard 11/9/22 in Jackson.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:

1. Whether the Court of Appeals went beyond the permitted scope of review in reversing the circuit court’s decision based on application of the Tennessee Health Care Decisions Act, Tenn. Code Ann. § 68-11-1801 to -1815, a statute not raised by either of the parties on appeal or addressed by the circuit court;

2. Whether this Court’s citation to Tennessee Code Annotated section 34-6- 208 in footnote 4 in Owens v. National Health Corp., 263 S.W.3d 876 (Tenn. 2007), creates a bright line rule prohibiting trial courts from considering a principal’s lack of capacity to grant a healthcare power of attorney and other healthcare agency appointments; and

3. Whether the Court of Appeals’ determination that the circuit court erred in looking into the validity of the health care power of attorney to enforce the arbitration agreement improperly favors nursing home arbitration agreements over other contracts, contrary to the requirements of 9 U.S.C.A. § 2, AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011), and Tennessee contract law?

1.	Style	James Williams v. Smyrna Residential, LLC, et al.
2.	Docket Number	M2021-00927-SC-R11-CV
3.	Lower Court Decision Links	https://www.tncourts.gov/sites/default/files/james.williams.opn_.pdf
4.	Lower Court Summary	This appeal concerns the enforceability of an arbitration agreement in a wrongful death lawsuit. James Williams (“Plaintiff”), individually as next of kin and on behalf of the wrongful death beneficiaries of Granville Earl Williams, Jr., deceased (“Decedent”), sued Smyrna Residential, LLC d/b/a Azalea Court and Americare Systems, Inc. (“Defendants,” collectively) in the Circuit Court for Rutherford County (“the Trial Court”). Decedent was a resident of Azalea Court, an assisted living facility. Plaintiff alleged his father died because of Defendants’ negligence. Defendants filed a motion to compel arbitration, citing an arbitration agreement (“the Agreement”) entered into by Decedent’s daughter and durable power of attorney Karen Sams (“Sams”) on behalf of Decedent when the latter was admitted to Azalea Court. Notably, the durable power of attorney (“the POA”) did not cover healthcare decision-making. The Trial Court held that Sams lacked authority to enter into the Agreement and that, in any event, the wrongful death beneficiaries would not be bound by the Agreement even if it were enforceable. Defendants appeal. We affirm.
5.	Status	Heard 2/22/23 in Nashville
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application: <p>1. Whether the Court of Appeals erred in creating a bright line rule that an attorney-in-fact, validly appointed pursuant to a general Durable Power of Attorney and granted with the authority to act on behalf of a principal “in all claims and litigation matters,” has no authority to sign an independent arbitration agreement because it was executed in conjunction with the principal’s admission to a long-term care facility?</p> <p>2. Whether the Court of Appeals’ determination that a durable power of attorney who indisputably has the authority to bind the principal to arbitration cannot bind that principal to arbitration in the health care context improperly places nursing home arbitration agreements on unequal footing with other contracts, thereby disfavoring arbitration, contrary to the Federal Arbitration Act, 9 U.S.C. § 2?</p>

3. Whether the Court of Appeals erred in determining that Defendants waived their surrogate authority argument when the parties presented both the Living Will and the Tennessee Physician Orders for Scope of Treatment (“POST”) to the Circuit Court, and the Circuit Court considered the evidence and made a ruling regarding the agent’s authority based on that evidence?

4. Whether the Court of Appeals erred in determining that Defendants failed to establish the statutory requirements for surrogate status were met with respect to the Mr. Williams, when Defendants presented a form signed by a designated physician and entered into the clinical record that on its face showed that the Mr. Williams lacked capacity and that the physician recognized Ms. Sams as his surrogate?

5. Whether the Court of Appeals erred in finding that pursuant to *Beard v. Branson*, 528 S.W.3d 487 (Tenn. 2017), the Decedent’s wrongful death beneficiaries are not bound by the Arbitration Agreement, where it was a validly-executed agreement and Tennessee law establishes that their claims are derivative of the estate’s claim?