

Supreme Court Appeals
Pending Cases
(8-10-10)

1. Style Joann Abshure, et al. v. Jeremiah Upshaw, et al.
 2. Docket Number W2008-01486-SC-R11-CV
 3. Lower Court Decision Link www.tncourts.gov/OPINIONS/TCA/PDF/091/AbshureJoannOPN.pdf
 4. Lower Court Summary

This is a medical malpractice action filed against individual Defendants/Physicians and Defendant Hospital. Following Plaintiffs' second Tennessee Rule of Civil Procedure 41.01 voluntary dismissal of individual Defendants, Defendant Hospital moved for summary judgment. The trial court awarded Hospital summary judgment upon concluding that the evidence demonstrated negligence on part of one Defendant/Physician only, and Plaintiffs had failed to assert a claim of vicarious liability against Hospital for the alleged negligence of its agent, Defendant/Physician prior to twice dismissing Physician. The trial court determined Plaintiffs' cause of action had been extinguished where the statute of repose applicable to claim against Physician had expired, and that Plaintiffs had conferred on Physician an affirmative right not to be sued again. Plaintiffs appeal. We reverse in part, affirm in part, and affirm the award of summary judgment to Defendant Hospital.
 5. Status Oral argument heard 04/07/10 in Jackson
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1. Style B & B Enterprises, et al. v. City of Lebanon, et al.
 2. Docket Number M2008-00572-SC-R11-CV
 3. Lower Court Decision Link www.tncourts.gov/OPINIONS/TCA/PDF/091/B&BEnterprisesOPN.pdf
 4. Lower Court Summary

The issue on appeal is whether the plaintiffs' inverse condemnation action against the City of Lebanon Regional Planning Commission and its members is barred by the one-year statute of limitations. This action arises from the February 26, 2002 decision of the Planning Commission denying approval of the plaintiffs' plans for Phases II and III of Chaparral Subdivision. This inverse condemnation action was not filed until December 2, 2005; however, the plaintiffs filed a petition for a common law writ of certiorari on April 12, 2002, challenging the denial of the plans, which remained on appeal until December 16, 2004. In the writ of certiorari action, the chancellor found that the City abused its discretion in denying approval of the plans and this court affirmed that decision in an opinion filed December 16, 2004. This inverse condemnation action was filed eleven months after this court rendered its ruling in the appeal of the certiorari action. When the plaintiffs subsequently filed this action in 2005, the defendants moved for summary judgment on the ground that the action was time barred because the triggering event in a regulatory takings case such as this

occurred on February 26, 2002, when the plans were denied by the City's Planning Commission. In response, the plaintiffs contended the action was timely because it was filed within one year of this court's decision in the writ of certiorari action. We have determined the triggering event occurred on the date the plaintiffs knew the City was depriving them of the economic use of their property, which at the very latest was April 12, 2002, when the plaintiffs' filed their petition for a writ of certiorari. We therefore reverse the ruling of the trial court and remand with instructions to grant the defendants' motion for summary judgment.

5. Status Oral argument heard 02/11/10 in Nashville.

1. Style Debra M. Barkes, et al. v. River Park Hospital, et al.

2. Docket Number M2006-01214-SC-R11-CV

3. Lower Court Decision Link www.tncourts.gov/OPINIONS/TCA/PDF/084/BarkesDOPNCorr.pdf

4. Lower Court Summary
Wife of patient brought medical malpractice action for the wrongful death of her husband who died at home later in the same day that he was examined in the emergency room. The patient had been examined, diagnosed and discharged by a nurse practitioner without being seen by a physician. The only direct claim against the hospital was whether the hospital was liable because a written policy, which required that every patient presented to the emergency room be seen by a physician, was not followed by the health care providers in the Emergency Department. The jury returned a verdict exonerating all of the individual health care providers directly or indirectly involved with the care of the plaintiff's husband; however, the jury found that the hospital was 100% at fault for his death. The hospital appealed contending the jury's verdict must be set aside because it was inconsistent and irreconcilable. Because the jury found that none of the health care providers were at fault, the only basis for upholding the jury's verdict against the Hospital is upon the doctrine of corporate liability. Tennessee has not adopted the doctrine of corporate liability; therefore, the verdict, exonerating all individual health care providers of fault and finding the hospital 100% at fault, constitutes an inconsistent and irreconcilable verdict. We, therefore, reverse and remand the case for a new trial.

5. Status Oral argument heard 02/10/10 in Nashville.

1. Style Wendell P. Baugh, III et al. v. Herman Novak et al.
2. Docket Number M2008-02438-SC-R11-CV
3. Lower Court Decision Links

Majority:
<http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Wendell%20P%20Baugh%20III%20et%20al%20v%20Herman%20Novak%20et%20al%20OPN.pdf>

Dissent:
<http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Wendell%20P%20Baugh%20III%20et%20al%20v%20Herman%20Novak%20et%20al%20DIS.pdf>
4. Lower Court Summary

This case arises out of a business agreement between the parties. Plaintiffs executed a note to purchase a company. The note contained a stock transfer restriction. Subsequently, Plaintiffs entered into a business agreement with Defendants. The subject of that agreement is disputed in this lawsuit, but Plaintiffs contend that Defendants purchased one-half of the company and executed an indemnity agreement to indemnify Plaintiffs for one-half of the note on the purchase of the company. After operating for nearly ten years, the company failed. At trial, Plaintiffs sought to enforce the indemnity agreement, and Defendants counterclaimed to recover \$73,000.00 that they paid to Plaintiffs before they allegedly executed the contract. The trial court found in Plaintiffs' favor. Defendants now appeal claiming that the trial court made several evidentiary errors, that the contract is unenforceable because it violated the statute of frauds, that parol evidence regarding the terms of the contract was inadmissible, and that the corporation cannot continue its existence and sell stock after dissolution. We reverse the trial court's determination based on our finding that the contract is unenforceable as a matter of public policy.
5. Status Appellant's reply brief due on 08/12/10; Set for oral argument in Nashville on 10/06/10.

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1. Style Estate of Joyce Bell, et al. v. Shelby County Health Care Corp.
 2. Docket Number W2008-02213-SC-S09-CV
 3. Lower Court Decision Link No intermediate appellate court decision
 4. Lower Court Summary No intermediate appellate court decision
 5. Status On 06/24/10, judgment of the circuit court affirmed; Petition for Rehearing filed on 07/07/10.

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1. Style In re: Bernard T., et al.
 2. Docket Number W2008-02803-SC-R11-PT

3.	Lower Court Decision Links	<p>http://www.tncourts.gov/OPINIONS/TCA/PDF/094/State%20v%20Tina%20Temple%20OPN.pdf</p> <p>http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/TempleTDIS.pdf</p>
4.	Lower Court Summary	<p>This a termination of parental rights case. The children were removed from Father’s custody due to his lack of stable housing as well as his allowing Mother to “be with” the children despite her drug use. Numerous permanency plans were entered, which required Father, among other things, to maintain stable housing and income, legitimate the children, complete parenting classes, identify a support system, and attend family and domestic violence counseling. At various times, Father had employment and housing; however, at other times, he did not. In 2008, DCS petitioned to terminate Father’s parental rights. Following a trial, Father’s parental rights were terminated on the grounds of failure to comply with the requirements of the permanency plans, persistence of conditions, as well as three additional grounds available under Tennessee Code Annotated section 36-1-113(g)(9) for the termination of a non-legal parent’s rights. Although this Court finds that Father failed to obtain and maintain stable housing and income or to legitimate the children, we reverse the termination of Father’s parental rights, finding that DCS failed to aid Father in such efforts. The judgment of the trial court is reversed, the petition for termination is dismissed, and the cause is remanded for further proceedings consistent with this opinion.</p>
5.	Status	<p>Oral argument heard 04/07/10 in Jackson; On 05/17/10, order entered permitting DCS to file response to show cause why the Court should not take judicial notice of 11/09/98 order.</p>

1.	Style	Bluebell Creameries, L.P. v. Loren L. Chumley, Commissioner, Dept. of Revenue
2.	Docket Number	M2009-00255-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Blue%20Bell%20v%20Dept%20of%20Revenue%20OPN.pdf
4.	Lower Court Summary	<p>The Tennessee Department of Revenue assessed an excise tax on a nondomiciliary subsidiary corporation which conducted business in the state based on income earned outside the state as a result of the parent corporation’s redemption of outstanding stock held by the subsidiary. The Department’s tax assessment was based on a determination that the income was taxable as “business earnings” under the Tennessee Excise Tax Law. The trial court found that the subsidiary and its parent corporation were not part of a unitary business relationship and, consequently, that the tax assessment was unconstitutional. Finding that the entities were not part of a unitary business relationship, the judgment of the trial court is affirmed.</p>

5. Status Heard in Nashville on 06/03/10

1. Style Board of Professional Responsibility v. F. Chris Cawood

2. Docket Number E2009-01957-SC-R3-BP

3. Lower Court Decision Link None available/Direct Appeal

4. Lower Court Summary None Available/Direct Appeal

5. Status Oral argument heard in Knoxville on 05/05/10

1. Style Board of Professional Responsibility v. Thomas Cowan, Jr.

2. Docket Number E2010-00957-SC-R3-BP

3. Lower Court Decision Link No lower court decision

4. Lower Court Summary No lower court decision

5. Status Oral argument scheduled for Knoxville on 09/02/10; Motion to continue oral argument filed on 08/09/10.

1. Style Board of Professional Responsibility v. David A. Lufkin, Sr.

2. Docket Number M2010-00827-SC-R3-BP

3. Lower Court Decision Link No lower court decision

4. Lower Court Summary No lower court decision

5. Status Appellant's brief due on 08/25/10; Set for oral argument in Nashville on 10/05/10.

1. Style Board of Professional Responsibility v. G. Thomas Nebel

2. Docket Number M2010-00420-SC-R3-BP

3. Lower Court Decision Link No lower court decision

4.	Lower Court Summary	No lower court decision
5.	Status	Appellant's brief due on 08/16/10; Set for oral argument in Nashville on 10/05/10.
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1.	Style	Board of Professional Responsibility v. Lawrence A. Sutter
2.	Docket Number	E2010-00372-SC-R3-BP
3.	Lower Court Decision Link	No lower court decision
4.	Lower Court Summary	No lower court decision
5.	Status	On 08/06/10, the Court entered an order by agreement of the parties that formal disciplinary proceeding are dismissed in their entirety.
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1.	Style	Dawn Brown et al v. Tennessee Title Loans, Inc.
2.	Docket Number	E2008-01758-SC-R11-CV
3.	Lower Court Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Dawn%20Brown%20vs%20Tennessee%20Title%20Loans%20Inc%20OPN.pdf
4.	Lower Court Summary	We accepted this interlocutory appeal to consider “the sole issue of whether the Tennessee Title Pledge Act [“the Act”], Tenn. Code Ann. § 45-15-101, et. seq. [(2007)] provides . . . a private right of action.” Defendant is a “title pledge lender” as defined in the Act. Plaintiffs all allegedly obtained loans from the defendant and, again allegedly, were charged interest and fees, including a “redemption premium,” not allowed by the Act. The trial court granted defendant’s motion to dismiss all claims based on alleged violations of the Act, holding that the Act does not afford a private right of action. The trial court granted plaintiffs’ motion for an interlocutory appeal pursuant to Tenn. R. App. P. 9. Plaintiffs then filed a timely application for permission to appeal to this Court, which we granted, limited to the stated issue. We now vacate the order of dismissal and remand for further proceedings.
5.	Status	Appellant’s Reply Brief filed 05/04/10; Oral argument scheduled for 09/02/10 in Knoxville.
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1.	Style	CAO Holdings, Inc. v. Loren L. Chumley, Commissioner of Revenue
2.	Docket Number	M2008-01679-SC-R11-CV

3.	Lower Court Decision Links	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%20v%20Revenue%20OPN.pdf http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/CAO%20Holdings%20v%20Revenue%20DISSENT.pdf
4.	Lower Court Summary	Commissioner of Revenue assessed a tax based on the taxpayer's use of an airplane which had been purchased out of state. Taxpayer sought review from the Department, but was denied relief following an informal hearing. Taxpayer appealed and the Chancery Court reversed, finding that, because (1) taxpayer provided the seller with a certificate of resale, (2) taxpayer immediately leased the airplane such that it transferred possession and control of the plane to the user, and (3) taxpayer was a validly organized business which observed all corporate formalities, the sale-for-resale exemption pursuant to Tenn. Code Ann. § 67-6-102(34)(A) applied to the transaction. Finding no error, we affirm.
5.	Status	Heard in Nashville on 06/04/10
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1.	Style	Joseph Davis, et al. v. Patrick J. McGuigan, et al.
2.	Docket Number	M2007-02242-SC-R11-CV
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/083/DavisJ-OPN.pdf
4.	Lower Court Summary	Homeowners filed suit against Appraiser for intentional and negligent misrepresentation and violation of the Tennessee Consumer Protection Act. Appraiser moved for summary judgment on all claims. The trial court denied Appraiser's motion on the negligent misrepresentation claim, but dismissed the intentional misrepresentation claim and the Tennessee Consumer Act claim. During the course of the proceedings, the trial court also excluded certain witnesses who were tendered as experts. Both parties appeal. We affirm the trial court's grant of summary judgment on both claims, and decline to address the remaining issues for lack of justiciability.
5.	Status	Oral argument heard 10/06/09 in Nashville.
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1.	Style	Amanda J. Elliott, et al. v. R. Michael Cobb
2.	Docket Number	W2009-00961-SC-S09-CV
3.	Lower Court Decision Link	No lower court decision
4.	Lower Court Summary	No lower court decision
5.	Status	Oral argument heard in Jackson on 04/06/10

1.	Style	Bob Fannon v. City of LaFollette, et al.
2.	Docket Number	E2008-01616-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/TCA/PDF/101/Bob%20Fannon%20Councilman%20v%20LaFollette%20opn.pdf
4.	Lower Court Summary	In this action for declaratory judgment against the City of LaFollette, the City Council, and three City Councilmen, the trial court awarded the plaintiff attorney's fees, costs and discretionary costs. On appeal, the defendants argue that the trial court erred in finding the plaintiff as the "prevailing party" in the litigation and that the trial court's award was unwarranted and erroneous. We hold that the plaintiff was not a prevailing party, and therefore, the trial court erred in awarding the plaintiff attorney's fees and costs on that basis.
5.	Status	Application for permission to appeal granted on 06/21/10. Oral argument scheduled for 09/02/10 in Knoxville.

1.	Style	Estate of Martha S. French v. The Stratford House, et al
2.	Docket Number	E2008-00539-SC-R11-CV
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/091/FrenchmsOPN.pdf
4.	Lower Court Summary	This case involves a complaint for personal injury and wrongful death filed by Kimberly S. French ("the Administratrix"), Administratrix of the Estate of Martha S. French ("the Deceased"), against the owners and operators of a nursing home ("the Defendants"). ¹ The Deceased was a resident of the nursing home – The Stratford House – from April 3, 2003, to July 23, 2003. The Administratrix claims that the Defendants failed to provide the Deceased with basic care such as filling her water pitcher, feeding her, cleaning her after incontinence, bathing her and turning her every two hours to avoid pressure sores. The Administratrix argues that, due to lack of care, the Deceased developed pressure sores that were not properly treated, became infected and ultimately caused her death from sepsis. The Administratrix, who is the daughter of the Deceased, brought suit, alleging claims for ordinary negligence, negligence <i>per se</i> under state and federal regulations of nursing homes, violations of the Tennessee Adult Protection Act ("TAPA"), Tenn. Code Ann. § 71-6-101 <i>et seq.</i> (2004 & Supp. 2008), and medical malpractice under Tenn. Code Ann. § 29-26-115 <i>et seq.</i> (2000 & Supp. 2008). The trial court held that the only cognizable claims against Stratford House were for medical malpractice. The court granted the Defendants summary judgment on all of the Administratrix's non-medical malpractice claims and on her claim for punitive damages. Two of the defendants sought summary judgment as to all of the claims; the court denied their motion. The Administratrix appeals and both sides raise issues. We affirm in part and vacate in part.

5.	Status	Heard in Knoxville on 05/04/10
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1.	Style	Thomas M. Gautreaux v. Internal Medicine Education Foundation, Inc.
2.	Docket Number	E2008-01473-SC-R11-CV
3.	Lower Court Decision Links	<p>Majority: http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Thomas%20M%20Gautreaux%20v%20Internal%20Med%20Educ%20Found%20Inc%20OPN.pdf</p> <p>Dissent: http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Thomas%20M%20Gautreaux%20v%20Internal%20Med%20Educ%20Found%20Inc%20DIS.pdf</p>
4.	Lower Court Summary	This case involves the interpretation of a portion of the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503. The trial court found that despite the fact the defendant foundation qualified for the statutory exemption set forth in Tenn. Code Ann. § 10-7-503(d)(1), the entity is subject to the Tennessee Public Records Act because it is the functional equivalent of a public agency. The foundation has appealed. We affirm.
5.	Status	Appellee's brief filed on 06/17/10. Oral argument scheduled for 09/02/10 in Knoxville.
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1.	Style	Gary M. Gossett v. Tractor Supply Company, Inc.
2.	Docket Number	M2007-02530-SC-R11-CV
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/091/GossettGaryMOPN.pdf
4.	Lower Court Summary	This is a common-law retaliatory discharge action. The trial court awarded summary judgment to Defendant employer where Plaintiff, discharged at-will employee, alleged he was discharged for refusing to participate in, but not reporting, Defendant's allegedly illegal data reporting practices. The trial court awarded summary judgment to Defendant on the grounds that, under <i>Collins v. AmSouth Bank</i> , 241 S.W.3d 879 (Tenn Ct. App. 2007), reporting of the alleged illegal activity is a necessary element of a common-law retaliatory discharge claim. To the extent to which <i>Collins</i> so holds, we disagree with <i>Collins</i> that a common-law retaliatory discharge claim can never be sustained based on an at-will employee's refusal to participate in an illegal act or an act in contravention of a clearly-established public policy. Summary judgment in favor of Defendant is reversed, and this matter is remanded for further proceedings.
5.	Status	Oral argument heard in Nashville on 2/11/10

1.	Style	Martha Graham v. Clinton Caples, et al.
2.	Docket Number	W2009-00200-SC-S09-CV
3.	Lower Court Decision Link	No lower court decision
4.	Lower Court Summary	No lower court decision
5.	Status	Oral argument heard in Jackson on 04/06/10

1.	Style	Gray's Disposal Co., Inc. v. Metro Government of Nashville
2.	Docket Number	M2007-00528-SC-R11-CV
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/091/GraysDisposalOPN.pdf
4.	Lower Court Summary	<p>This is the second appeal in consolidated cases concerning tipping fees charged for residential waste disposal. Privately-owned garbage haulers (“Appellants”) originally sued metropolitan government (“Metro”) challenging the constitutionality of the tipping fees; Metro filed a separate action against Appellants for past-due tipping fees. The trial court granted summary judgment in favor of Metro and Appellants appealed. On December 31, 2002, this Court ruled in Metro’s favor and remanded the matter instructing the trial court to calculate the amount of tipping fees Appellants owed Metro for the period after November 5, 1997. Pending a hearing on remand, Appellants sought to recover the amount of tipping fees paid Metro before November 5, 1997, by filing a separate action in the same court. The trial court dismissed Appellants’ action based on the doctrines of res judicata and collateral estoppel. The final hearing on remand was held June 19, 2007, more than four years after this Court’s decision in the first appeal. In April 2007, just prior to the hearing, the Supreme Court of the United States issued an opinion, <i>United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.</i>, 550 U.S. 330 (2007), which Metro alleged abrogated our earlier decision in 2002. Abiding by our limited instructions for remand, the trial court declined to consider <i>United Haulers</i> or Appellants’ request for a set-off of fees paid prior to November 5, 1997 and determined the amounts owed Metro. Metro’s motion to alter or amend the judgment was denied. Both parties appeal. We have determined that Appellants’ second attempt to recover the tipping fees paid prior to November 5, 1997, was barred by the doctrines of res judicata and collateral estoppel and affirm the trial court’s decision with respect to <i>United Haulers</i>.</p>
5.	Status	Oral argument heard in Nashville on 02/10/10

1.	Style	Billie Gail Hall v. Douglas B. Haynes, Jr., et al
2.	Docket Number	W2007-02611-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/091/HallBGopn.pdf
4.	Lower Court Summary	<p>This appeal involves authority to accept service of process. The plaintiffs filed a medical malpractice lawsuit against the defendant corporation and its employee, the defendant physician. The plaintiffs attempted to serve process in person on both the corporation and the physician at the corporation's business address. Service was accepted on behalf of the physician by a co-worker, who was not specifically authorized to accept service for him. Service was accepted on behalf of the corporation by an employee of the corporation who was not an officer, managing agent, or chief agent, and who was not specifically authorized to accept service for the corporation. Both defendants received a copy of the summons and complaint. The plaintiffs then filed an amended complaint and attempted to serve both defendants via certified mail. The return receipts for both defendants were signed by an employee of the corporation who was not an officer, managing agent, or chief agent of the corporation, and was not specifically authorized to accept service of process on behalf of either the physician or the corporation. The employee who signed the return receipts was, however, authorized to sign for certified mail. The defendants filed a motion for summary judgment based in part on insufficiency of service of process. The trial court denied the motion for summary judgment, relying on this Court's decision in <u>Boles v. Tennessee Farmers Mutual Insurance Co.</u>, No. M1999-00727-COA-R3-CV, 2000 WL 1030837 (Tenn. Ct. App. July 27, 2000). The defendants were granted permission for interlocutory appeal. On appeal, the defendant physician argues that service on him was not effective because he was not personally served and because the persons who accepted service on his behalf were not authorized to do so. The defendant corporation argues that service on it was not effective because neither the corporation's registered agent nor its administrator were served and the persons who accepted service on the corporation's behalf were not authorized to do so. After reconsidering the analysis in Boles, we reverse the trial court's decision, finding that service was not effective on either defendant and the trial court erred in denying the defendants' motion for summary judgment.</p>
5.	Status	Oral argument heard in Jackson on 04/06/10

1.	Style	Patricia Henderson v. SAIA, Inc. and Discover Re
2.	Docket Number	M2009-01723-WC-R3-WC
3.	Lower Court Decision Link	None available/Direct Appeal
4.	Lower Court Summary	None Available/Direct Appeal

5.	Status	Heard in Knoxville on 05/04/10
1.	Style	Elizabeth Leanne Hudson v. Larson Douglas Hudson
2.	Docket Number	M2008-001143-SC-R11-CV
3.	Lower Court Decision Link	Majority Opinion: http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Elizabeth%20L%20Hudson%20v%20Larson%20D%20Hudson%20OPN%20Rehear.pdf
		Dissenting Opinion: http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Elizabeth%20L%20Hudson%20v%20Larson%20D%20Hudson%20DIS%20Rehear.pdf
4.	Lower Court Summary	This case involves an appeal concerning the relocation of Elizabeth Leanne Hudson (“Mother”) and her two minor children from Nashville, Tennessee, to Hopkinsville, Kentucky. Larson Douglas Hudson (“Father”) opposed the relocation. After a three day bench trial, the trial court granted Mother’s request to relocate after finding, pursuant to Tenn. Code Ann. § 36-6-108, that the relocation was reasonable and not vindictive. The trial court also awarded Mother attorney’s fees. For the following reasons, we affirm the holding of the trial court regarding the relocation but reverse concerning the attorney’s fees.1
5.	Status	Appellee’s motion to consider post-judgment facts and to dismiss filed on 06/02/10; Appellant’s response in opposition to the motion filed on 06/04/10; On 06/17/10, motion to dismiss and motion to consider post judgment facts denied. Order filed on 07/13/10 denying appellee’s motion not to set case for October; Appellant’s reply brief filed 08/05/10; Set for oral argument in Nashville on 10/06/10.
1.	Style	Gerry G. Kinsler v. Berkline, LLC
2.	Docket Number	E2007-02602-SC-R11-CV
3.	Lower Court Decision Link	www.tsc.state.tn.us/OPINIONS/TCA/PDF/084/KinslerggOPN.pdf
4.	Lower Court Summary	Gerry G. Kinsler (“Employee”) brought suit for retaliatory discharge after being terminated from his employment with Berkline, LLC, (“Employer”) three days after he backed out of a workers’ compensation settlement. The trial court entered summary judgment for Employer, holding that “timing alone is insufficient to withstand [Employer's] motion for summary judgment” On appeal, Employee argues that the Supreme Court's holding in <i>Allen v. McPhee</i> , 240 S.W.3d 803 (Tenn. 2007) – that “proof of close temporal proximity alone can establish causation, . . .” – is applicable to the facts of this case. We agree. We also hold that genuine issues of material fact concerning the Employer’s explanation for termination preclude summary judgment. Accordingly, we vacate

the trial court's judgment and remand for further proceedings.

5.	Status	Oral argument heard in Knoxville on 09/04/09
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1.	Style	Knox County, Tennessee ex rel. Environmental Termite & Pest Control, et al. v. Arrow Exterminators, et al.
2.	Docket Number	E2007-02827-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Knox%20County,%20TN,%20on%20the%20relationship%20of%20Environmental%20Termite%20&%20Pest%20Control%20OPN.pdf
4.	Lower Court Summary	Plaintiff filed this action as a “ <i>qui tam</i> claim” pursuant to the Tennessee False Claims Act. Tenn. Code Ann. § 4-18-101 <i>et seq.</i> The Trial Court awarded plaintiff proceeds from the settlement under the Act and both parties have appealed. On appeal we hold that plaintiff did qualify under the statute as an original source, and the Trial Court had jurisdiction to award a recovery. However, we hold there is not sufficient evidence to affirm the award. We vacate the award and remand pursuant to Tenn. Code Ann. § 27-3-128.
5.	Status	On 08/09/10, appellant filed motion for extension of time to file reply brief and to continue oral argument.
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1.	Style	Kristen Cox Morrison v. Paul Allen, et al.
2.	Docket Number	M2007-01244-SC-R11-CV
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/091/MorrisonKOPN.pdf
4.	Lower Court Summary	Wife sued the insurance company for failure to pay on Husband’s life insurance policy and the insurance brokers for failure to procure an enforceable life insurance policy, various torts and violation of the Tennessee Consumer Protection Act (“TCPA”). Wife settled with the insurance company before trial and won judgments against the brokers based on failure to procure an enforceable life insurance policy (\$1,000,000.00); negligence, negligent misrepresentation, and breach of fiduciary duty (\$300,000.00); and violation of the TCPA (an additional \$300,000.00) Defendants appeal, claiming that they should receive a credit for the amount of the settlement with the insurance company and that the other awards were improper for various reasons. We affirm the \$1,000,000.00 judgment but find that a credit for the settlement is appropriate. We affirm the tort award. We also affirm the finding of a violation of the TCPA and affirm the award of the additional \$300,000.00.
5.	Status	Heard in Nashville on 06/03/10

1.	Style	Candace Mullins v. State
2.	Docket Number	M2008-01674-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/Candace%20Mullins%20v%20State.pdf
4.	Lower Court Summary	This is a claim filed against the State by a minor-decedent's mother for the wrongful death of her child based on T.C.A. § 9-8-307(a)(1)(E) (Negligent Care, Custody and Control of Person). The child was murdered while in the care of a relative after he had been removed from the mother's home by the Tennessee Department of Children's Services. The mother contended that if the caseworker assigned to her son's case had properly investigated an earlier allegation of abuse at the home in which the child had been placed, the child would have been removed from the placement before the murder occurred. The Claims Commission held that it did not have the subject matter jurisdiction to hear the mother's claims under T.C.A. § 9-8-307(a)(1)(E) because the child was not in the care, custody, or control of the State at the time of the alleged negligence. The mother appeals. We affirm the judgment as modified.
5.	Status	Heard 06/02/10 at Boys' State S.C.A.L.E.S. in Cookeville

1.	Style	Don Nichols v. Jack Cooper Transport, Inc., et al
2.	Docket Number	M2008-00204-SC-WCM-WC
3.	Lower Court Decision Link	Not available
4.	Lower Court Summary	Not available
5.	Status	Heard in Nashville on 06/04/10

1.	Style	Evelyn Nye v. Bayer Cropscience, Inc. et al.
2.	Docket Number	E2008-01596-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Evelyn%20Nye%20v%20Bayer%20Cropscience%20OPN.pdf
4.	Lower Court Summary	Defendants sold materials containing asbestos to the deceased's employer, where he was exposed to asbestos and contracted mesothelioma from which he died. Plaintiff's widow brought this action against the supplier, a jury trial resulted and the jury returned a verdict for the defendant, which the Trial Court approved. On appeal, we hold that certain jury instructions were error and we reverse and remand for a new trial.

5.	Status	Appellant's brief filed on 05/17/10. Scheduled for oral argument in Knoxville on 09/02/10.
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1.	Style	Ana R. Padilla v. Twin City Fire Insurance Co.
2.	Docket Number	M2008-02489-SC-WCM-WC
3.	Lower Court Decision Link	Not available
4.	Lower Court Summary	Not available
5.	Status	Heard in Nashville on 06/03/10
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1.	Style	Pugh's Lawn Landscaping Company, Incorporated v. Jaycon Development Corporation
2.	Docket Number	W2008-01366-SC-R11-CV
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/092/pughOPN.pdf
4.	Lower Court Summary	This is an appeal of the trial court's order confirming an arbitration award entered in favor of Appellee. The arbitration agreement entered between Appellant and Appellee permitted either party to appeal the arbitrator's decision directly to this Court. The agreement specified that this Court would conduct a de novo review of the arbitrator's decision as if it had been reached by the trial court. We find that Tennessee's arbitration statutes do not permit the parties to expand the scope of judicial review. Accordingly, we apply the standard of review specified in the statute and affirm the trial court's order confirming the arbitration award.
5.	Status	Oral argument heard in Jackson on 04/07/10
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1.	Style	Michael Sanford v. Waugh & Co., Inc.
2.	Docket Number	M2007-02528-COA-R3-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/Tca/PDF/093/Sanford%20v%20Waugh%20OPN.pdf
4.	Lower Court Summary	Plaintiff is a creditor of an insolvent corporation that owed him in excess of \$1 million under the terms of a promissory note. Plaintiff sued the corporation and its owner to enforce the note. Defendants are former officers and directors of the corporation who instituted a direct action against Plaintiff shortly after the filing of his complaint alleging he fraudulently misrepresented the financial condition

of the company. During the pendency of both actions, Defendants began winding down the corporation and disposing of assets in which Plaintiff claimed a security interest. Plaintiff believed Defendants were acting to enrich themselves and avoid paying Plaintiff under the note. After Defendants voluntarily dismissed their action against Plaintiff, Plaintiff sued Defendants for breach of fiduciary duty, fraudulent conveyance, malicious prosecution, abuse of process, conspiracy, and conversion. The trial court dismissed the abuse of process, breach of fiduciary duty, and conversion claims on summary judgment, limited the scope of Plaintiff's claim for fraudulent conveyance and conspiracy, and denied summary judgment on the malicious prosecution claim. Following Plaintiff's proof, the trial court granted a directed verdict in favor of Defendants on Plaintiff's claim for punitive damages but denied the motion on the malicious prosecution and fraudulent conveyance claims. The jury returned verdicts in favor of Plaintiff awarding \$51,000 in damages for malicious prosecution, \$176,222 in damages for fraudulent conveyance, and found that Defendants conspired both to maliciously prosecute their claim against Plaintiff and to fraudulently transfer corporation assets. Both parties appeal issues on summary judgment, evidentiary rulings, and directed verdicts. We have determined that Plaintiff sufficiently pled a cause of action for civil conspiracy based on facts alleged in the amended complaint and that, under the circumstances in this case, Plaintiff is entitled to assert a claim for breach of fiduciary duty directly against Defendants. We reverse the directed verdict granted in favor of Defendants on punitive damages and remand for a new trial on these issues. We further find that summary judgment was proper on Plaintiff's conversion claim and affirm the trial court's decisions allowing the claims for fraudulent conveyance and malicious prosecution to proceed to the jury.

5.	Status	Heard in Nashville on 06/04/10
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1.	Style	Shelby County Health Care Corp. v. Nationwide Mutual Ins. Co.
2.	Docket Number	W2008-01922-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/TCA/PDF/091/ShelbyCountyHealthcareOPN.pdf
4.	Lower Court Summary	Appellant hospital filed suit against Appellee insurance company for damages arising from Appellee's alleged impairment of the Appellant's hospital lien. The trial court granted summary judgment in favor of Appellant hospital, finding that Appellant had perfected its lien under Tenn. Code Ann. §29-22-101, and that the Appellee had impaired that lien pursuant to Tenn. Code Ann. §29-22-104. The trial court, however, limited Appellant's recovery to the amount of coverage under the insurance policy. We affirm as modified herein.
5.	Status	Oral argument heard in Jackson on 04/06/10
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1.	Style	Lou Ella Sherrill, et al. v. Bob T. Souder, et al.
2.	Docket Number	W2008-00741-SC-R11-CV

3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/TCA/PDF/091/sherillIOPN.pdf
4.	Lower Court Summary	This is a medical malpractice case. The trial court granted summary judgment in favor of Appellee doctor finding that, based upon the discovery rule, the one year statute of limitations for a medical malpractice claim had expired prior to the filing of the Appellants' complaint. Finding no error, we affirm.
5.	Status	Oral argument heard in Jackson on 04/07/10

1.	Style	Donna Faye Shipley et al. v. Robin Williams, M.D.
2.	Docket Number	M2007-01217-SC-R11-CV
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/Tca/PDF/093/Donna%20Faye%20Shipley%20et%20al%20v%20Robin%20Williams%20MDD%20Opn.pdf
4.	Lower Court Summary	None Available/Direct AppealIn reliance on plaintiff's experts, the trial court granted defendant doctor's motion for partial summary judgment on the medical malpractice claim pertaining to defendant's failure to admit plaintiff into the hospital. The trial court later granted the defendant doctor summary judgment on the remaining malpractice claims finding that the plaintiff's medical expert proof previously relied upon by defendant failed to comply with Tenn. Code Ann. § 29-26-115. We reverse the grant of partial summary judgment on the failure to admit claim since the defendant doctor relied solely on plaintiff's experts, whose testimony was later found inadmissible. We also reverse the summary judgment of the remaining malpractice claims since the defendant doctor never presented proof to negate an element of those claims. Consequently, the plaintiff had no duty to create issues of fact at the summary judgment phase.
5.	Status	Appellee's reply brief filed on 05/24/10; Set for oral argument in Nashville on 10/05/10

1.	Style	State v. Brotherton
2.	Docket Number	W2007-02016-SC-R11-CD
3.	Lower Court Decision Link	www.tncourts.gov/OPINIONS/tcca/PDF/092/brothertonmOPN.pdf
4.	Lower Court Summary	The defendant, Mike Brotherton, pled guilty to the offense of driving under the influence, first offense, and reserved a certified question of law regarding the validity of the traffic stop that resulted in his arrest. After careful review, we conclude that the trooper lacked reasonable suspicion to make the traffic stop and dismiss the charge against the defendant.

5.	Status	Oral argument heard in Jackson on 04/06/10
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1.	Style	State of Tennessee v. Michael Angelo Coleman
2.	Docket Number	W2007-02767-SC-R11-PD
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/TCCA/PDF/101/Michael%20Angelo%20Coleman%20v%20State.pdf
4.	Lower Court Summary	The Petitioner, Michael Angelo Coleman, appeals his motion to reopen his post-conviction petition for the limited purpose of determining whether he is mentally retarded and, thus, ineligible for the death penalty. The Petitioner asserts that the proof established by a preponderance of the evidence that he is mentally retarded, which renders his sentence of death unconstitutional. After a review of the record and the applicable law, we affirm the lower court's denial of relief.
5.	Status	Application for permission to appeal granted on 06/21/10; Appellant's brief due after extension on 08/16/10.
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1.	Style	State v. Ralph Byrd Cooper, Jr.
2.	Docket Number	E2008-02044-SC-R11-CD
3.	Lower Court Link	http://www.tncourts.gov/OPINIONS/tcca/PDF/093/State%20v%20Ralph%20Byrd%20Cooper%20Jr.pdf
4.	Lower Court Summary	The defendant, Ralph Byrd Cooper, Jr., was convicted by an Anderson County Criminal Court jury of aggravated rape. The trial court determined that the defendant was a repeat violent offender pursuant to Tennessee Code Annotated section 40-35-120 and ordered the defendant to serve a sentence of imprisonment for life without the possibility of parole. <i>See</i> T.C.A. § 40-35-120(g) (2003). The defendant appeals, arguing that the convicting evidence was legally insufficient and that the State did not meet its burden in proving that he was a repeat violent offender under the statute. Further, we review under our authority to determine plain error pursuant to Tennessee Rule of Appellate Procedure 36(b) whether the trial court erred in sentencing the defendant as a repeat violent offender when the State filed its notice of such enhancement after the jury's verdict. After a review of these issues, we affirm the trial court's judgment.
5.	Status	Oral argument heard in Knoxville on 05/05/10
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1.	Style	State v. Genaro Edgar Espinosa Dorantes
2.	Docket Number	M2007-01918-SC-R11-CD

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| 3. | Lower Court
Decision Link | http://www.tncourts.gov/OPINIONS/tcca/PDF/094/State%20v%20Genaro%20E%20E%20Dorantes.pdf |
| 4. | Lower Court
Summary | <p>Defendant-Appellant, Genaro Edgar Espinosa Dorantes (“Dorantes”) was convicted by a Davidson County jury of first degree felony murder during the perpetration of aggravated child abuse and aggravated child abuse by infliction of injury. For the felony murder conviction, Dorantes received a mandatory sentence of life imprisonment. The trial court later sentenced him as Range I, standard offender to a consecutive term of twenty-two years’ incarceration for the aggravated child abuse conviction. Dorantes argues: (1) the record is insufficient to support both his conviction for first degree felony murder based on aggravated child abuse and his conviction for aggravated child abuse; (2) the trial court erred in admitting certain photographs of the victim’s body; (3) the trial court erred when it refused to provide a special jury instruction that ensured that the verdicts were based on acts of abuse rather than a continuing course of neglect; (4) the trial court erred in denying his motion to require the State to make an election of offenses; and (5) his sentence of twenty-two years for the aggravated child abuse conviction was excessive. After a careful review of the record and the issues presented, we conclude the evidence is insufficient to support the aggravated child abuse conviction; therefore, we reverse and vacate the conviction for the aggravated child abuse and modify Dorantes’ sentence to life imprisonment. The judgment of the trial court for the felony murder conviction is affirmed.</p> |
| 5. | Status | Appellant’s brief due on 07/16/10. Scheduled for oral argument on 10/07/10 in Centerville as part of the SCALES program. |

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| 1. | Style | State v. Jeremy Garrett |
| 2. | Docket Number | W2007-02700-SC-R11-CD |
| 3. | Lower Court
Decision Link | http://www.tncourts.gov/OPINIONS/TCCA/PDF/094/State%20vs%20Jeremy%20Garrett.pdf |
| 4. | Lower Court
Summary | <p>In two separate indictments, the defendant, Jeremy Garrett, was charged with aggravated robbery, a Class B felony; first degree felony murder; and especially aggravated robbery, a Class A felony. The trial court subsequently granted the State’s motion to consolidate the two indictments without conducting a hearing, and, following a jury trial, the defendant was convicted as charged. He was subsequently sentenced to concurrent sentences of eight years, life, and fifteen years for the respective convictions. On appeal, the defendant raises two issues for our review: (1) whether the trial court erred in granting the State’s motion to consolidate the two indictments without conducting a hearing; and (2) whether the evidence is sufficient to support the conviction for first degree felony murder. Following review of the record, we conclude that, although the trial court did err in failing to conduct a hearing on the motion to consolidate, the error was harmless. Further, we conclude that the evidence presented was</p> |

sufficient to support the conviction. Accordingly, the judgments of conviction are affirmed.

5. Status Appellant's brief filed on 07/11/10.

1. Style State v. John P. Henretta

2. Docket Number E2007-01750-SC-DDT-DD

3. Lower Court Decision Link <http://www.tsc.state.tn.us/OPINIONS/Tcca/PDF/092/HenrettaJohnPOPN.pdf>

4. Lower Court Summary
A Bradley County Criminal Court jury convicted the defendant, John P. Henretta, of premeditated murder, see T.C.A. § 39-2-202(a)(1) (1982), felony murder, see *id.*, two counts of robbery with a deadly weapon, see *id.* § 39-2-501(a), two counts of aggravated rape, see *id.* § 39-2-603(a), and two counts of aggravated kidnapping, see *id.* § 39-2-301. The trial court merged the felony murder and premeditated murder convictions into a single conviction, and the jury imposed a sentence of death after determining that the State had proven four aggravating circumstances and that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt. See *id.* § 39-2-203. The trial court also merged the non-capital convictions into a single conviction of each offense and imposed concurrent, Range II sentences of 45 years for robbery with a deadly weapon, 50 years for aggravated kidnapping, and 50 years for aggravated rape. The court ordered the effective 50-year sentence to be served consecutively to the sentence of death. In this appeal, the defendant challenges his conviction of first degree murder and the accompanying death sentence as well as his conviction of aggravated kidnapping. He contends (1) that the trial court erred by refusing to dismiss the indictment for a lack of jurisdiction; (2) that the trial court erred by refusing to suppress evidence obtained pursuant to a search of his person; (3) that the trial court erred by refusing to dismiss the death penalty notice on the basis of the delay between his confession and indictment; (4) that the evidence is insufficient to support his conviction of aggravated kidnapping; (5) that the trial court's refusal to instruct the jury on the effect of a non-unanimous verdict at the capital sentencing hearing deprived him of due process; and (6) that Tennessee's death penalty scheme violates the constitutional ban on cruel and unusual punishment. Discerning no error, we affirm the judgments of the trial court. Following our mandatory review, see T.C.A. § 39-13-206(c)(1) (2006), we also affirm the sentence of death. [footnote omitted]

5. Status Oral argument heard in Knoxville on 05/04/10.

1. Style State v. H.R. Hester

2. Docket Number E2006-01904-SC-DDT-DD

3. Lower Court Decision Link <http://www.tncourts.gov/OPINIONS/tcca/PDF/091/HesterHROPN.pdf>

4. Lower Court Summary
The McMinn County Grand Jury indicted the defendant, H.R. Hester, on one count each of premeditated first degree murder, attempted premeditated first degree murder, and aggravated arson. Following a jury trial, the defendant was convicted on all three counts. The jury found two aggravating circumstances: (1) the murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death, see Tenn. Code Ann. § 39-13-203(i)(5); and (2) the victim of the murder was seventy years old or older, see Tenn. Code Ann. § 39-13-203(i)(14). The jury imposed the death sentence for the first degree murder conviction, and the trial court imposed sentences of twenty-five years and twenty years, respectively, for the attempted murder and aggravated arson convictions. All sentences were ordered to run consecutively to each other and to an earlier, two-year probationary sentence, for an effective sentence of death plus forty-seven years.
5. Status
Oral argument heard in Knoxville on 05/05/10.

1. Style
State v. Ungandua Ingram
2. Docket Number
M2008-02765-SC-R11-CD
3. Lower Court Decision Link
<http://www.tncourts.gov/OPINIONS/tcca/PDF/094/State%20v%20Ungandua%20Ingram.pdf>
4. Lower Court Summary
The Defendant, Ungandua Ingram, was charged with two counts of selling .5 grams or more of cocaine; two counts of delivery of .5 grams or more of cocaine; two counts of conspiring to sell .5 grams or more of cocaine; one count of possession of .5 grams or more of cocaine with intent to sell; and one count of possession of .5 grams or more of cocaine with intent to deliver, each a Class B felony. See Tenn. Code Ann. § 39-17-417(c)(1). He was also charged with one count of simple possession of marijuana and one count of possession of unlawful drug paraphernalia, each a Class A misdemeanor. See Tenn. Code Ann. §§ 39-17-418(c), -425(c)(2). Following a jury trial, he was convicted of one count of the sale of .5 grams or more of cocaine; one count of conspiring to sell .5 grams or more of cocaine; one count of possession of .5 grams or more of cocaine with intent to sell; one count of simple possession of marijuana; and one count of possession of unlawful drug paraphernalia. The trial court sentenced the Defendant to an effective sentence of eight years and six months, one year of which it ordered to be served in the Marshall County Jail, with the remainder to be served on probation. In this direct appeal, the Defendant argues that: (1) the trial court erred in denying his motion to suppress evidence found on his person and in his home; (2) the trial court erred in upholding the State's use of a peremptory challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986); (3) the State presented evidence insufficient to convict him of conspiring to sell .5 grams or more of cocaine; and (4) the trial court erred in admitting certain statements of his co-defendant. After our review, we conclude that the trial court erred in denying the Defendant's motion to suppress the fruits of a search of his person. Accordingly, we reverse the Defendant's convictions for the sale of .5 grams or more of cocaine and conspiring to sell .5 grams of more of cocaine. We remand those cases for a new trial. We affirm the Defendant's convictions for

possession of .5 grams or more of cocaine with intent to sell, possession of marijuana, and possession of unlawful drug paraphernalia.

5. Status On 06/25/10, motion for extension to file appellant's brief filed. Scheduled for oral argument on 10/07/10 in Centerville as part of the SCALES program.

1. Style State v. Cedric Johnson

2. Docket Number W2008-01593-SC-R11-CD

3. Lower Court Decision Link <http://www.tncourts.gov/OPINIONS/TSC/PDF/094/State%20v%20Cedric%20Johnson%20OPN.pdf>

4. Lower Court Summary The State appeals the Shelby County Criminal Court's dismissal of an aggravated robbery indictment against the Defendant, Cedric Johnson. The dismissal was pursuant to Rule 8(a) of the Tennessee Rules of Criminal Procedure requiring mandatory joinder. Upon our review of the record and applicable authority, we affirm the judgment of the trial court.

5. Status Appellee's brief filed on 06/28/10.

1. Style State v. David Lynn Jordan

2. Docket Number W2007-01272-SC-DDT-DD

3. Lower Court Decision Link <http://www.tncourts.gov/OPINIONS/tcca/PDF/092/State%20v%20David%20Lynn%20Jordan%20OPN.pdf>

4. Lower Court Summary A Madison County jury convicted the defendant, David Lynn Jordan, of three counts of first degree premeditated murder, two counts of first degree felony murder, two counts of attempted first degree murder, two counts of aggravated assault, and one count of leaving the scene of an accident. The trial court merged the felony murder convictions with the premeditated murder convictions involving the same victims and the aggravated assault convictions with the attempted murder convictions. For the three first degree murder convictions, the defendant was sentenced to death. Additionally, he was sentenced as a Range I, standard offender to consecutive terms of twenty-five years for each of the attempted first degree murder convictions, six years for each of the aggravated assault convictions, and thirty days for leaving the scene of an accident. The defendant now seeks review by this court of both his convictions and resulting sentences of death, presenting the following issues for review: (1) whether the trial court erred by failing to provide a limiting instruction regarding the use of hearsay statements during the testimony of the State's expert witness; (2) whether the defendant was denied a fair trial by the use of interpretations of his confession and alleged comments which were not videotaped; (3) whether the trial court erred by prohibiting members of the defendant's family from

remaining in the courtroom during the penalty phase; (4) whether the prosecutorial misconduct during the penalty phase denied the defendant a fair trial; (5) whether the trial court erred in admitting certain victim impact testimony; (6) whether the jury instruction on the felony murder aggravating factor is unconstitutional; (7) whether the trial court erred in admitting certain photographs during the penalty phase; (8) whether the evidence was sufficient to support the application of aggravating factors; (9) whether Tennessee’s death penalty statutes are constitutional; (10) whether cumulative error requires relief; and (11) whether the death sentence in this case is disproportionate to death sentences in other cases. Following review, we affirm the defendant’s convictions and the sentences of death.

5. Status Heard in Nashville on 06/04/10

1. Style State v. Curtis Lee Majors

2. Docket Number M2007-01911-SC-R11-CD

3. Lower Court Decision Link www.tncourts.gov/OPINIONS/tcca/PDF/092/State%20v%20Curtis%20L%20Majors%20OPN.pdf

4. Lower Court Summary The Davidson County Grand Jury indicted the defendant, Curtis Lee Majors, on one count of possession with intent to sell or deliver less than 0.5 grams of cocaine within 1000 feet of a school, a Class B felony, and one count of tampering with evidence, a Class C felony. After a jury trial, the defendant was convicted of the lesser included offense of misdemeanor possession of cocaine, a Class A misdemeanor.¹ The jury also convicted the defendant of evidence tampering as charged in Count 2 of the indictment. The trial court sentenced the defendant to fifteen years in the Department of Correction as a Range III, persistent offender. On appeal, the defendant contends that: (1) the evidence was insufficient to sustain his conviction for tampering with evidence; (2) the trial court gave an erroneous jury instruction regarding tampering with evidence; and (3) the trial court refused to apply one of the mitigating factors proposed by the defendant at his sentencing hearing. After reviewing the record, we affirm the judgment of the trial court.

5. Status Heard on 06/02/10 at Boys’ State S.C.A.L.E.S. in Cookeville

1. Style State v. Sheryl Ann Marshall, et al.

2. Docket Number M2007-02718-SC-R11-CO

3. Lower Court Decision Link www.tncourts.gov/OPINIONS/tcca/PDF/083/ButlerMonicaOPN.pdf

4. Lower Court Summary The Defendants, Monica Butler, Jessica Pickett, and Sheryl Ann Marshall, were each charged with one count of theft of services from Gallatin Housing Authority

valued between \$1,000.00 and \$10,000.00. The Defendants underreported their income to obtain public housing at a lower rate. The Defendants moved to dismiss the indictments, arguing that these circumstances were not within the purview of the theft of services statute. See Tenn. Code Ann. § 39-14-104. The trial court granted the motion, concluding that occupancy of a residence pursuant to a lease term was not a service under the plain meaning of the statute. The State appeals. Following our review of the record, the order of the Sumner County Criminal Court dismissing the indictments is affirmed.

5.	Status	Oral argument heard 02/12/10 at S.C.A.L.E.S. in Murfreesboro
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1.	Style	State v. Terry Phelps
2.	Docket Number	M2008-01096-SC-R11-CD
3.	Lower Court Decision Link	http://www.tsc.state.tn.us/OPINIONS/tcca/PDF/093/State%20v%20Terry%20Phelps.pdf
4.	Lower Court Summary	A Bedford County grand jury indicted the Defendant, Terry Phelps, on charges of violating the sex offender registry statute due to failure to register a change of residence. He pled guilty, agreeing to allow the trial court to determine his sentence. Before the sentencing hearing, the Defendant filed a motion to withdraw his guilty plea, which the trial court denied. The trial court sentenced him to three years in the Tennessee Department of Correction (“TDOC”) as a Range II offender. The Defendant now appeals, contending: (1) the trial court erred when it denied his motion to withdraw his guilty plea; and (2) the trial court erred in setting the length and range of his sentence. After a thorough review of the record and the applicable law, we affirm the trial court’s judgment.
5.	Status	Appellant’s brief filed on 05/26/10; Appellee’s motion for extension granted, and brief now due on 07/26/10; Set for oral argument in Nashville on 10/05/10
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1.	Style	State v. Joel Schmeiderer
2.	Docket Number	M2007-01922-SC-DDT-DD
3.	Lower Court Decision Link	http://www.tncourts.gov/OPINIONS/tcca/PDF/092/SchmeidererJoelRichardOPIN%20DD.pdf
4.	Lower Court Summary	A Maury County jury convicted the Defendant, Joel Richard Schmeiderer, of premeditated first degree murder, and it sentenced him to death. On appeal, the Defendant claims: (1) the trial court erred when it denied his motion for a continuance; (2) the trial court erred when it conducted voir dire; (3) the evidence is insufficient to support his conviction; (4) the trial court erred when it allowed the State to enter and argue non-statutory aggravating circumstances

during the penalty phase of the trial; (5) the prosecutor's closing argument constituted misconduct and plain error; (6) the death penalty was imposed arbitrarily and is excessive or disproportionate to the penalty imposed in similar cases; (7) the Tennessee death penalty statute is unconstitutional; (8) the Tennessee death penalty statute is applied in a cruel and unusual way; and (9) the trial court violated the Defendant's constitutional right to present mitigation evidence. After a thorough review of the record and the applicable law, we affirm the conviction and the sentence of death.

5. Status Heard in Nashville on 06/04/10

1. Style Elizabeth Sams Tuetken v. Lance Edward Tuetken

2. Docket Number W2008-0274-SC-R11-CV

3. Lower Court Decision Link <http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/093/Elizabeth%20S%20Tuetken%20v%20Lance%20E%20Tuetken%20OPN.pdf>

4. Lower Court Summary This appeal involves the trial court's decision to modify an arbitrator's award in a dispute concerning the parties' parenting plan and their child support obligations. Appellant contends that the trial court erred because modification of the arbitrator's award was not permissible under the Uniform Arbitration Act. We have reviewed the trial court's order referring this dispute to the arbitrator and concluded that the Uniform Arbitration Act is inapplicable. Instead, we find that this was a nonbinding dispute resolution proceeding governed by Tennessee Supreme Court Rule 31. Accordingly, we affirm the trial court's decision to modify the arbitrator's award.

5. Status Oral argument heard in Jackson on 04/07/10

1. Style David Lee Wright ex rel. Kaitlyn W. v. Anita J. Wright et al.

2. Docket Number M2008-01181-SC-R11-CV

3. Lower Court Decision Link Pending (second) appeal:
<http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/094/Wright%20v%20Wright%20and%20Wright%20v%20Dunaway%20OPN.pdf>

First appeal:
<http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/074/WrightOPN.pdf>

4. Lower Court Summary This is the second appeal in this case regarding the amount of attorney's fees awarded to counsel for a minor. The minor was injured in a car accident, and her father employed counsel to file suit on her behalf, naming him as her next friend. The trial court appointed a guardian ad litem for the minor. The parties settled the case, and the trial court approved an attorney's fee award for the minor's

