

Supreme Court Appeals  
Pending Cases  
7-17-23

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1.	Style	Greg Adkisson, et al v. Jacobs Engineering Group, Inc.
2.	Docket Number	M2021-01239-SC-R23-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 6/1/22 in Nashville. Order staying appeal filed 4/25/23; Agreed Stipulation of Dismissal filed in the U.S. District Court on 6/30/23.
6.	Issue(s)	<p>The U.S. District Court for the Eastern District of Tennessee certified the following questions:</p> <ol style="list-style-type: none"> <li>1. Are the requirements of the TSCPA an affirmative defense that must be pleaded in a responsive pleading, or are they <i>prima facie</i> requirements which can be raised at any stage of litigation?</li> <li>2. Do the TSCPA's requirements apply to all cases involving exposure to silica or mixed dust, or, if coal ash is silica or mixed dust within the meaning of the TSCPA, are plaintiffs' claims exempted from the TSCPA's requirements because they are raised under the common law?</li> <li>3. Does coal ash, which contains silica, fibrogenic dusts, and other components that may cause injury, but are not "fibrogenic dusts," constitute "silica" or "mixed dust" such that the requirements of the TSCPA would apply in these cases?</li> <li>4. If coal ash does qualify as silica or mixed dust, does the TSCPA apply even if plaintiffs' claims are based on injury resulting from exposure to elements of coal ash that are not silica or fibrogenic dusts?</li> </ol>

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1.	Style	Roger Baskin v. Pierce & Allied Construction, Inc.
2.	Docket Number	M2021-00144-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf">https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf</a>
4.	Lower Court Summary	<p>Plaintiff Roger Baskin sued Pierce &amp; 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</p>

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.

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| 5. | Status   | Heard 11/9/22 in Jackson.  |
| 6. | Issue(s) | <p>As stated in the Appellant's application for permission to appeal:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ol> |
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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 | <a href="https://ctrack.tncourts.gov/ctrack/docket/docketEntry.do?action=edit&amp;deID=2098953&amp;csNameID=85090&amp;csIID=85090">https://ctrack.tncourts.gov/ctrack/docket/docketEntry.do?action=edit&amp;deID=2098953&amp;csNameID=85090&amp;csIID=85090</a>   |
| 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; Appellate record filed 2/10/23; Joint motion for extensions granted. Appellant's brief filed 5/17/23; Appellee's brief due 7/17/23   |
| 6. | Issue(s)                   | <p>As stated in the Appellants' Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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 <i>respondeat superior</i></li> <li>2. Whether direct negligence claims can be asserted against a premises owner concurrently with a premises liability theory of recovery.</li> </ol> |
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| 1. | Style | Terry Case v. Wilmington Trust, N.A., et al. |
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2.	Docket Number	E2021-00378-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/e2021-378_case_v_wilmington.pdf">https://www.tncourts.gov/sites/default/files/e2021-378_case_v_wilmington.pdf</a>
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.
6.	Issue(s)	<p>As stated by Applicant:</p> <ol style="list-style-type: none"> <li>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?</li> <li>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?</li> </ol>

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1.	Style	Bill Charles v. Donna McQueen
2.	Docket Number	M2021-00878-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/McQUEEN%20-Majority%20Opinion.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/McQUEEN%20-Majority%20Opinion.pdf</a>
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. Joint motion for extensions granted. Appellant's brief filed 5/8/23; Appellee's brief filed 7/7/23.

6. Issues(s) As stated in the Appellant's Rule 11 Application:
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.
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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](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.
  5. Status Heard on 6/1/23 in Nashville
  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	<a href="https://www.tncourts.gov/sites/default/files/m2021-731 - opinion - colley.pdf">https://www.tncourts.gov/sites/default/files/m2021-731 - opinion - colley.pdf</a>
4.	Lower Court Summary	<p>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.</p>
5.	Status	Application granted 3/9/23. Fully briefed.
6.	Issue(s)	<p>As stated in the Appellant's Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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)?</li> <li>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?</li> </ol>

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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	<a href="https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf">https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf</a>
4.	Lower Court Summary	<p>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</p>

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.

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| 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> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> |
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| 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)                   | <p>As stated in Appellant's Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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?</li> <li>2. Should the Trial Court limit evidence of medical expenses to only those actual economic losses that were actually paid or are payable?</li> </ol> |
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| 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; Appellate record filed 5/19/23. Appellant's brief filed 7/7/23. |
| 6. | Issue(s)                   | N/A  |

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1.	Style	Jessie Dotson v. State
2.	Docket Number	W2019-01059-SC-R11-PD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/dotsonjessieopn_0.pdf">https://www.tncourts.gov/sites/default/files/dotsonjessieopn_0.pdf</a>
4.	Lower Court Summary	The Petitioner, Jessie Dotson, appeals the post-conviction court's denial of his postconviction petition, in which he challenged his six convictions for first degree premeditated murder and three convictions for attempted first degree murder and his resulting sentences of death for each of the first degree murder convictions plus 120 years. On appeal, the Petitioner contends that (1) he received ineffective assistance of counsel at trial and on appeal; (2) the Administrative Office of the Courts ("AOC") and the Chief Justice of the Tennessee Supreme Court improperly vacated the post-conviction court's orders granting the Petitioner's request for funding of experts; (3) the convictions and death sentences were the result of juror misconduct; (4) the State and the trial court committed various errors; (5) the Petitioner's convictions and death sentences and Tennessee's execution method are unconstitutional; and (6) cumulative error warrants relief. Upon reviewing the record, the parties' briefs and oral arguments, and the applicable law, we affirm the judgment of the post-conviction court.
5.	Status	Heard on 4/5/23 in Jackson; Opinion filed 7/7/23
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:
		I. When there is no appellate remedy for the Administrative Office of the Courts (AOC) Director and the Chief Justice of this Court vacating a trial court's ruling that expert assistance is necessary to effectuate a capital post-conviction petitioner's constitutional rights, are the state and federal constitutional guarantees of due process, equal protection, freedom from cruel and unusual punishment, and the right to a full and fair post-conviction proceeding violated since capital postconviction petitioners who are denied necessary expert assistance by trial courts are provided appellate remedies? Relatedly, is the denial of an appellate remedy in violation of the open courts provision of the Tennessee Constitution?
		II. Whether the Court of Criminal Appeals' inconsistent application of a standard of review for claims of ineffective assistance of counsel which requires a petitioner to question trial counsel regarding every claim of ineffective assistance of counsel and ask whether trial counsel's actions or inactions were "strategic" or "tactical" violates state and federal constitutional guarantees of due process, a fair trial, and the right to appeal?

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1.	Style	State of Tennessee v. David Wayne Eady
2.	Docket Number	M2021-00388-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/eady_d_-filed_opn.pdf">https://www.tncourts.gov/sites/default/files/eady_d_-filed_opn.pdf</a> <a href="https://www.tncourts.gov/sites/default/files/eady_d_-filed_separate_opn.pdf">https://www.tncourts.gov/sites/default/files/eady_d_-filed_separate_opn.pdf</a>

4. Lower Court Summary 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?
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1. Style Earnest Falls, et al. v. Mark Goins, et al.
2. Docket Number M2020-01510-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/majority\\_opinion\\_13.pdf](https://www.tncourts.gov/sites/default/files/majority_opinion_13.pdf)
4. Lower Court Summary This case concerns the restoration of voting rights of a Tennessee citizen who was convicted of a felony in Virginia and subsequently granted clemency by the Governor of Virginia. Because the voting applicant did not provide evidence that he paid outstanding court costs, restitution, and/or child support as is required by Tenn. Code Ann. § 40-29-202, the election commission denied his application to vote. The voting applicant appealed the election commission's decision to the circuit court. The circuit court upheld the election commission's decision as valid. We agree with the trial court and affirm the trial court's judgment.
5. Status Heard on 10/5/22 in Nashville. Opinion filed 6/29/23

6. Issue(s) As stated in the Appellant's Rule 11 Application:
- Whether Applicant Ernest Falls has been unlawfully disenfranchised under Tennessee Constitution Art. I, § 5 and Tennessee Code § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised unless they have had their full rights of citizenship restored by the governor of the state of conviction, by the law of the state of conviction, or under the law of Tennessee—where Applicant Falls' lone felony conviction was in Virginia and he has had his full rights of citizenship restored by the Governor of Virginia
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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](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.
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1. Style Beverly Gardner v. Saint Thomas Midtown Hospital
2. Docket Number M2019-02237-SC-R11-CV

3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/gardner.beverly.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/gardner.beverly.opn_.pdf)
4. Lower Court Summary A patient filed a health care liability claim against a hospital, asserting the hospital was vicariously liable for injuries she suffered as a result of the anesthesia providers' conduct. The hospital moved for summary judgment, arguing that the anesthesia providers were not employed by the hospital and the hospital was, therefore, not liable for the anesthetists' actions as a matter of law because the statute of limitations had run on the plaintiff's direct claims against the anesthesia providers by the time the plaintiff filed her complaint against the hospital. The trial court granted the hospital's motion and dismissed the plaintiff's complaint, relying on the common law set forth in *Abshire v. Methodist Healthcare Memphis Hospitals*, 325 S.W.3d 98 (Tenn. 2010). Acknowledging the conflict between provisions of the Tennessee Health Care Liability Act and the common law, we hold that the statute prevails. Accordingly, we reverse the trial court's judgment and remand the case for further proceedings.
5. Status Heard 4/6/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Does the Court of Appeals' reversal and remand of the trial court's order granting Saint Thomas' Motion for Summary Judgment directly conflict with case law and erroneously create an exception to the mandatory pre-suit notice provisions of the Tennessee Health Care Liability Act ("HCLA") by allowing Plaintiff to do an end run around and avoid the pre-suit notice requirements for claims against Saint Thomas' alleged agents that are otherwise procedurally barred?
  2. Does the Court of Appeals decision violate the legislative intent of the HCLA pre-suit notice provisions applicable to Plaintiff and create a significant public policy change?
  3. In this vicarious liability action, did Tenn. Code Ann. section 29-26-121(a)(5) require Saint Thomas to notify Plaintiff that its alleged non-employed agents were proper defendants?
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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 motion for extension to file brief granted and due 7/31/23.
6. Issue(s) N/A
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1. Style Loring E. Justice v. BPR

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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 brief
  6. Issue(s) N/A
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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 Appeal filed 7/11/22; appellate record filed 2/23/23. Appellant's brief filed 5/15/23; Appellee's brief filed 7/14/23.
  6. Issue(s) N/A
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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-brief
  6. Issue(s) N/A
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1. Style Peggy Mathes et al. v. 99 Hermitage, LLC
2. Docket Number M2021-00883-SC-R11-CV

3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/peggymathes.opn.pdf">https://www.tncourts.gov/sites/default/files/peggymathes.opn.pdf</a>
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"> <li>1. Whether the true owner of real property by way of an unrecorded deed received from his grantor may establish title by adverse possession.</li> <li>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.</li> </ol>

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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	<a href="pratik.pandharipande.opn.pdf(tncourts.gov)">pratik.pandharipande.opn.pdf(tncourts.gov)</a>
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</p>

Amendment, which authorized short-term leasing subject to stipulations including that “[t]he length of the lease must be for a minimum of 30 consecutive days.” The plaintiff appeals. We affirm.

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| 5. | Status   | Heard 2/22/23 in Nashville.  |
| 6. | Issue(s) | <p>As stated in the Appellant’s Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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?</li> <li>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?</li> <li>3. Whether Teffeteller remains applicable law with regard to owner-occupied STRs like Dr. Pandharipande’s lake chalet in Four Seasons?</li> <li>4. Whether the Court of Appeals erred in refusing to review the Trial Court’s ruling on Dr. Pandharipande’s equitable estoppel arguments? and,</li> <li>5. Whether the 2018 Amendment grandfathered Dr. Pandharipande’s use of his lake chalet at Four Seasons for STRs?</li> </ol> |
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| 1. | Style                      | State of Tennessee v. Ebony Robinson  |
| 2. | Docket Number              | M2021-01539-SC-R11-CD   |
| 3. | Lower Court Decision Links | <a href="https://tncourts.gov/sites/default/files/state_of_tennessee_v._ebony_robinson_-m2021-01539-cca-r3-cd.pdf">https://tncourts.gov/sites/default/files/state_of_tennessee_v._ebony_robinson_-m2021-01539-cca-r3-cd.pdf</a>   |
| 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)                   | <p>As stated in the Appellant’s Rule 11 Application:</p> <p>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?</p>   |

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1.	Style	State of Tennessee v. Dashun Shackleford
2.	Docket Number	E2020-01712-SC-R11-CD
3.	Lower Court Decision Links	<a href="http://www.tncourts.gov/sites/default/files/state_of_tennessee_v._dashun_shackleford.pdf">state of tennessee v. dashun shackleford.pdf (tncourts.gov)</a>
4.	Lower Court Summary	The Defendant-Appellant, Dashun Shackleford, was convicted by a Knox County Criminal Court jury as charged in a twenty-count indictment; four alternative counts each of aggravated robbery against four victims and four corresponding counts of criminal gang offense enhancement. The trial court merged the aggravated robbery convictions into four counts and imposed a total effective sentence of twenty years' incarceration to be served at 85 percent. On appeal, the Defendant argues that (1) the evidence is insufficient to support his gang enhancement convictions; and (2) the gang enhancement counts violate his constitutional rights to due process and expressive association. Upon our review, we conclude that the State failed to sufficiently prove the gang enhancement counts and failed to comply with the notice requirements mandated by Tennessee Code Annotated § 40-35-121(g). Accordingly, we reverse and vacate the judgments in Counts 13 through 16, and remand for resentencing as to those counts. Because the gang enhancements are no longer applicable to the Defendant's case, we decline to address the constitutional questions raised in this appeal.
5.	Status	Heard 12/6/22 at ETSU (SCALES project). Opinion filed 7/14/23.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:
		I. Whether Tenn. Code Ann. § 40-35-121 requires the State to allege in the gang-enhancement counts of the defendant's indictment that the defendant is in the same subset of a criminal gang as the individuals whose criminal activity establishes the gang's pattern of criminal gang activity.
		II. Whether the defendant forfeited plenary review of a variance issue when he did not raise the issue at any point in the trial court or on appeal.

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1.	Style	State of Tennessee v. Tony Thomas and Laronda Turner
2.	Docket Number	W2019-01202-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondaopn.pdf">https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondaopn.pdf</a> <a href="https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondadis.pdf">https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondadis.pdf</a>
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.<sup>1</sup> Following our review, we affirm the judgments of the trial court.

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| 5. Status   | Heard on 4/5/23 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 prosecution breached its constitutional duty of production under <i>Brady v. Maryland</i>, 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.</p> <p>2) Whether the evidence was sufficient to support Laronda Turner's convictions for first-degree murder.</p> |
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| 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 | <a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Trentham%2C%20R%20-%20Open%20Filed.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Trentham%2C%20R%20-%20Open%20Filed.pdf</a>   |
| 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.  |
| 6. Issue(s)                   | <p>As stated in the Appellant's Rule 11 Application:</p> <p>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?</p> |
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| 1. Style                      | Dennis Harold Ultsch v. HTI Memorial Hospital Corporation   |
| 2. Docket Number              | M2020-00341-SC-R11-CV   |
| 3. Lower Court Decision Links | <a href="https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf">https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf</a> |

4. Lower Court Summary This appeal concerns the interplay between the Tennessee Health Care Liability Act (“HCLA”) and the common law on vicarious liability with respect to pre-suit notice in a health care liability claim against the principal only. We have determined that the provisions of the HCLA take precedence over the common law and that the plaintiff’s claims in this case were timely filed. Therefore, we reverse the decision of the trial court.

5. Status Heard 4/6/22 in Nashville.

6. Issue(s) As stated in the Appellant’s Rule 11 Application:

Does pre-suit notice to a health care provider operate to extend the statute of limitations as to each and every person who might be considered an agent of that provider?

Did the trial court properly dismiss Plaintiff’s vicarious liability claims against TriStar Skyline, since by the time of filing the Complaint, Plaintiff’s claims against Tri-Star Skyline’s alleged agents were procedurally barred by operation of law, that is, the statute of limitations?

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1. Style Gerald D. Waggoner Jr. v. Board of Professional Responsibility

2. Docket Number W2022-01294-SC-R3-BP

3. Lower Court Decision Links N/A

4. Lower Court Summary N/A

5. Status Heard 4/5/23 on brief. Opinion filed 7/11/23.

6. Issue(s) N/A

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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:
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?
  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?
  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?