

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 8, 2018 Session

FILED
01/30/2019
Clerk of the
Appellate Courts

**SHERRY SMITH EX REL. LAUREN TAYLOR AGEE v. HANNAH NICOLE
PALMER**

**Appeal from the Circuit Court for DeKalb County
No. 2016-CV-59 Jonathan L. Young, Judge**

No. M2017-01822-COA-R3-CV

W. NEAL MCBRAYER, J., concurring.

I concur in the reversal of the grant of summary judgment. But, because the basis of the reversal is Hannah Nicole Palmer’s failure to “satisfy her initial burden to produce evidence showing there was not a genuine issue of fact for trial,” I conclude it is unnecessary to reach the merits of the rulings on the motions in limine. I would vacate those rulings without further comment as, in my view, they were premised on the mistaken assumption that Ms. Palmer had shifted the burden to Sherry Smith.

For similar reasons, I would not address Ms. Palmer’s invocation of her Fifth Amendment privilege against self-incrimination. It does not appear from this record that Ms. Smith ever challenged the sufficiency of Ms. Palmer’s answer to the complaint or responses to discovery. If a party does not take issue with the propriety of claiming the privilege, the trial court may assume that an answer or response cannot be compelled. *See Nat’l Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924, 927 (7th Cir. 1983).

W. NEAL MCBRAYER, JUDGE