

IN THE COURT OF APPEALS OF TENNESSEE

TRINA TUCK, ) TENNESSEE CLAIMS COMMISSION  
Claimant-Appellant, ) C/A NO. 03A01-9510-BC-00355  
)  
)  
)  
)  
v. )  
) HONORABLE MICHAEL S. LACY,  
) COMMISSIONER  
)  
)  
)  
STATE OF TENNESSEE, )  
Defendant-Appellee. )

**FILED**  
**June 11, 1996**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

OPINION CONCURRING IN  
PART AND DISSENTING IN PART

I concur in the result reached in the majority opinion. I also agree with the majority's reasoning except that I am not convinced that Rule 13(d), T.R.A.P. is inapplicable to a trial court's findings of fact in cases where the question is whether the lower court abused its discretion. I dissent from so much of the majority opinion as suggests that Rule 13(d) is not applicable to a trial court's findings of fact when it is exercising its sound discretion in a case involving the preponderance of the evidence standard. I find no exception for "abuse of discretion" cases in the plain language of Rule 13(d); however, even if this case is reviewed as directed by Rule 13(d), I do not find that the evidence preponderates against the trial court's exercise of discretion.

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Charles D. Susano, Jr., J.