

Supreme Court Appeals  
Pending Cases  
11-27-23

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1. Style Melissa Binns v. Trader Joe's East, Inc.
  2. Docket Number M2022-01033-SC-R11-CV
  3. Lower Court Decision Links <https://ctrack.tncourts.gov/ctrack/docket/docketEntry.do?action=edit&deID=2098953&csNameID=85090&csIID=85090>
  4. Lower Court Summary This matter is before the Court upon the Tennessee Rule of Appellate Procedure 9 application for permission to appeal filed by Trader Joe's East, Inc. Having considered the application and supporting documents, the Court cannot conclude that an interlocutory appeal is necessary to prevent irreparable injury, to develop a uniform body of law, or to prevent needless, expensive and protracted litigation.
  5. Status Heard 10/4/23 in Nashville.
  6. Issue(s) As stated in the Appellants' Rule 11 Application:
    1. Whether a plaintiff can assert direct negligence claims against an employer if the employer admits that it will be vicariously liable for the negligent conduct attributed to its employees under the doctrine of *respondeat superior*
    2. Whether direct negligence claims can be asserted against a premises owner concurrently with a premises liability theory of recovery.
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1. Style Terry Case v. Wilmington Trust, N.A., et al.
2. Docket Number E2021-00378-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/e2021-378\\_case\\_v\\_wilmington.pdf](https://www.tncourts.gov/sites/default/files/e2021-378_case_v_wilmington.pdf)
4. Lower Court Summary The plaintiff appeals the trial court's order granting the defendants' motions for summary judgment and dismissing the plaintiff's claims for breach of contract, wrongful foreclosure, injunctive relief, and declaratory relief. Having determined that the plaintiff has waived arguments related to his breach of contract claim, we review solely the trial court's dismissal of the plaintiff's claim for wrongful foreclosure. We conclude that the defendants did not strictly comply with the notice requirements of the deed of trust, vacate the portion of the trial court's order granting summary judgment to the defendants with respect to the plaintiff's wrongful foreclosure claim, and set aside the foreclosure sale. We affirm the trial court's order with respect to the plaintiff's breach of contract claim. We decline to award the defendants damages pursuant to Tennessee Code Annotated § 27-1- 122.
5. Status Heard 9/6/23 in Knoxville.
6. Issue(s) As stated by Applicant:

1. Does Tennessee recognize an independent cause of action for wrongful foreclosure to set aside a foreclosure sale based entirely on a procedural defect in the sale that causes no harm or prejudice?

2. Tennessee Code Annotated § 35-5-101(f) allows foreclosure sale postponements of less than 30 days to be announced orally. Does the Fannie Mae/Freddie Mac Uniform Tennessee Deed of Trust, which secures over 500,000 residential mortgage loans in Tennessee, nevertheless require written notice of such postponements?

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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                     | Heard 10/4/23 in Nashville.  |
| 6. | Issues(s)                  | <p>As stated in the Appellant's Rule 11 Application:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ol> |

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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. On 8/4/23, the State filed a notice of developments in the Federal habeas case.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- A. Whether an error coram nobis petitioner must present evidence of actual innocence to obtain due-process tolling of the statute of limitations.
- B. If so, whether the evidence presented in this case—which does not rule out or seriously undermine the petitioner's guilt—meets the standard of actual innocence.

1. Style Vanessa Colley v. John S. Colley
2. Docket Number M2021-00731- SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/m2021-731 - opinion - colley.pdf](https://www.tncourts.gov/sites/default/files/m2021-731_-_opinion_-_colley.pdf)
4. Lower Court Summary Appellant/Husband voluntarily nonsuited his post-divorce lawsuit involving issues of alimony and the parties' alleged settlement of an IRS debt. Appellee/Wife moved for an award of her attorney's fees on alternative grounds, i.e., the abusive lawsuit statute, Tenn. Code Ann. § 29-41-106; the parties' MDA; and Tennessee Code Annotated section 36-5- 103(c). The trial court granted Wife's motion and entered judgment for her attorney's fees and costs. The trial court specifically held that Husband's lawsuit was not abusive, and Wife does not raise this as an issue on appeal. As such, we conclude that she is not entitled to her attorney's fees under the abusive lawsuit statute. As to her claim for attorney's fees and costs under the MDA and Tennessee Code Annotated section 36-5-103(c), both grounds require that Wife be a "prevailing party" in the underlying lawsuit. Because Husband took a voluntary nonsuit, neither party prevailed in the action, and Wife is not entitled to her attorney's fees and costs. Reversed and remanded.
5. Status Heard 10/4/23 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:

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

2. When "contract language is interpreted according to its plain terms and ordinary meaning," *see BSG, LLC v. Check Velocity, Inc.*, 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?

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1.	Style	State of Tennessee v. Christopher Oberton Curry, Jr.
2.	Docket Number	W2022-00814-SC-R11-CD
3.	Lower Court Decision Links	<a href="#">CurryChristopherObertonJrOPN.pdf (tncourts.gov)</a>
4.	Lower Court Summary	A Madison County jury convicted the Defendant, Christopher Oberton Curry, Jr., of being a convicted felon in possession of a firearm, evading arrest while operating a motor vehicle, reckless driving, driving while unlicensed, violation of the registration law, and disobeying a stop sign. The trial court sentenced the Defendant to an effective sentence of ten years. On appeal, the Defendant contends that the evidence is insufficient to support his conviction for felony possession of a weapon and that an item of evidence was erroneously admitted. He further contends that the jury instructions were inaccurate and incomplete. After review, we affirm the trial court's judgments.
5.	Status	Application granted 10/13/23; Appellant's brief filed 11/13/23
6.	Issue(s)	As stated by Applicant:  A. Whether the State's evidence is legally insufficient to find a person guilty of unlawfully possessing a firearm after having been convicted of a felony crime of violence when the previous conviction (here, robbery) is not included in the statutory list of "crimes of violence," the previous conviction is not a greater or inchoate version of one of the statutorily listed offenses, and there is no proof as to how the prior offense was committed and thus no proof to establish, beyond a reasonable doubt, that the previous conviction involved violence.  B. Whether the trial court's jury instructions were inaccurate and incomplete because they failed to provide either a statutory or jurisprudential definition for "felony crime of violence," and when the trial court instead told the jury that robbery is a crime of violence, thus depriving the jury of the ability to assess an essential element of the offense of unlawful possession of a weapon after having been convicted of a felony crime of violence.

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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	Heard 10/4/23 on-briefs.
6.	Issue(s)	N/A

1.	Style	State of Tennessee v. David Wayne Eady
2.	Docket Number	M2021-00388-SC-R11-CD
3.	Lower Court Decision Links	<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	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	<a href="https://tncourts.gov/sites/default/files/family_trust_-_majority_opinion.pdf">https://tncourts.gov/sites/default/files/family_trust_-_majority_opinion.pdf</a>
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	Heard 10/4/23 in Nashville. Supplemental Authority filed 11/22/23.
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	Robert E. Lee Flade v. City of Shelbyville, TN, et al.
2.	Docket Number	M2022-00553-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-553-COA.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-553-COA.pdf</a>
4.	Lower Court Summary	This appeal involves application of the Tennessee Public Participation Act (TPPA). Plaintiff filed multiple causes of action against the City of Shelbyville, the Bedford County Listening Project, and several individuals – one of whom is a member of the Shelbyville City Council. Defendants filed motions to dismiss for failure to state a claim under Tennessee Rules of Civil Procedure 12.06, and two of the non-governmental Defendants also filed petitions for dismissal and relief under the TPPA. The non-governmental Defendants also moved the trial court to stay its discovery order with respect to Plaintiff's action against the City. The trial court denied the

motion. The non-governmental Defendants filed applications for permission for extraordinary appeal to this Court and to the Tennessee Supreme Court; those applications were denied. Upon remand to the trial court, Plaintiff voluntarily nonsuited his action pursuant to Tennessee Rule of Civil Procedure 41.01. The non-governmental Defendants filed motions to hear their TPPA petitions notwithstanding Plaintiff's nonsuit. The trial court determined that Defendants' TPPA petitions to dismiss were not justiciable following Plaintiff's nonsuit under Rule 41.01. The Bedford County Listening Project and one individual Defendant, who is also a member of the Shelbyville City Council, appeal. We affirm the judgment of the trial court.

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| 5. | Status   | Application granted 8/9/23. Fully briefed.   |
| 6. | Issue(s) | As stated in the Appellant's Rule 11 Application:<br><br>When a defendant has petitioned for relief under Tennessee Code Annotated § 20-17-104(a), do the defendant's claims survive a plaintiff's subsequent nonsuit? |
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| 1. | Style                      | Leah Gilliam v. David Gerregano, Commissioner of the Tennessee Department of Revenue et al..  |
| 2. | Docket Number              | M2022-00083-SC-R11-CV   |
| 3. | Lower Court Decision Links | <a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-083-COA_0.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-083-COA_0.pdf</a>   |
| 4. | Lower Court Summary        | Citizens of Tennessee may apply to the Tennessee Department of Revenue (the "Department") for license plates featuring unique, personalized messages. Tennessee Code Annotated section 55-4-210(d)(2) provides that "[t]he commissioner shall refuse to issue any combination of letters, numbers or positions that may carry connotations offensive to good taste and decency or that are misleading." After her personalized plate featuring the message "69PWNDU" was revoked by the Department, Leah Gilliam ("Plaintiff") filed suit against David Gerregano (the "Commissioner"), commissioner of the Department, as well as the then-Attorney General and Reporter. Plaintiff alleged various constitutional violations including violations of her First Amendment right to Free Speech. The Department and the State of Tennessee (together, the "State") responded, asserting, <i>inter alia</i> , that the First Amendment does not apply to personalized plate configurations because they are government speech. The lower court, a special three judge panel sitting in Davidson County, agreed with the State. Plaintiff appeals, and we reverse, holding that the personalized alphanumeric configurations on vanity license plates are private, not government, speech. We affirm, however, the panel's decision not to assess discovery sanctions against the State. Plaintiff's other constitutional claims are pretermitted and must be evaluated on remand because the panel did not consider any issues other than government speech. This case is remanded for proceedings consistent with this opinion. |
| 5. | Status                     | Application granted 11/21/23.   |
| 6. | Issue(s)                   | Are the personalized alphanumeric registration characters on state-issued vanity license plates government or private speech under the First Amendment's Free Speech Clause?  |

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1.	Style	Daryl A. Gray v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	W2023-01265-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 9/5/23
6.	Issue(s)	N/A

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1.	Style	State of Tennessee v. Andre JuJuan Lee Green
2.	Docket Number	M2022-00899-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-899-CCA.pdf">https://tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-899-CCA.pdf</a>
4.	Lower Court Summary	The State appeals the trial court's order granting the defendant's motion to suppress evidence recovered during the search of the car in which the defendant was a passenger. The State asserts that the trial court erred because the scent of marijuana provided probable cause for the search regardless of the possibility that legal hemp was the source of the odor. After review, we conclude the trial court erred in granting the defendant's motion to suppress. Therefore, we reverse the trial court's order granting the defendant's motion for suppression, reinstate the indictments against the defendant, and remand to the trial court for further proceedings.
5.	Status	Application granted 11/20/23.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:  Whether the scent of marijuana detected by a canine during a protective sweep can provide probable cause for a warrantless search where the canine cannot distinguish between the illegal marijuana or the legal hemp, which are indistinguishable by smell.

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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



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| 4. | Lower Court Summary | N/A                      |
| 5. | Status              | Heard 10/4/23 on-briefs. |
| 6. | Issue(s)            | N/A                      |
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| 1. | Style                      | Annie J. Jones, by and through her Conservatorship, Joyce Sons a/k/a Calisa Joyce Sons v. Life Care Centers of America d/b/a Life Care Center of Tullahoma   |
| 2. | Docket Number              | M2022-00471-SC-R11-CV  |
| 3. | Lower Court Decision Links | <a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%20M2022-00471-COA-R3-CV.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%20M2022-00471-COA-R3-CV.pdf</a>  |
| 4. | Lower Court Summary        | <p>This appeal arises from an incident in which the nude body of a resident at an assisted living facility was exposed on a video call via telephone when an employee of the healthcare facility engaged in a personal call while assisting the resident in the shower. The resident, by and through her conservator/daughter (“Plaintiff”), sued the owner and operator of the healthcare facility, Life Care Centers of America d/b/a Life Care Center of Tullahoma (“Defendant”), asserting a claim of “Negligence Pursuant to the Tennessee Medical Malpractice Act” and a generalized claim for invasion of privacy with allegations of “Gross Negligence, Willful, Wanton, Reckless, Malicious and/or Intentional Misconduct.” Relying on the undisputed fact that the resident was unaware and never informed that the incident occurred, Defendant moved for summary judgment due to the lack of a cognizable injury or recoverable damages. Plaintiff opposed the motion, contending that actual damages were not an essential element of her claims and, in the alternative, moved to amend the complaint to specifically assert a claim for invasion of privacy based on intrusion upon the resident’s seclusion and a claim for negligent supervision. The trial court summarily dismissed the complaint on the ground “that damages for invasion of privacy . . . cannot be proven as it would be impossible to suffer from personal humiliation, mental anguish or similar damages since [the resident] is unaware that the incident happened” and denied the motion to amend the complaint on the basis of futility. Plaintiff appealed. We have determined that the gravamen of the complaint states a claim for invasion of privacy based upon the distinct tort of intrusion upon seclusion. We have also determined that actual damages are not an essential element of a claim for invasion of privacy based on the distinct tort of intrusion upon seclusion. Thus, Defendant was not entitled to summary judgment. Moreover, granting leave to amend the complaint would not have been futile. Accordingly, we reverse the trial court’s decision to summarily dismiss the complaint, reverse the decision to deny the motion to amend the complaint, and remand with instruction to reinstate the complaint, grant the motion to amend the complaint, and for further proceedings consistent with this opinion.</p> |
| 5. | Status                     | Application granted 11/21/23.  |
| 6. | Issue(s)                   | <p>As stated by Applicant:</p> <p>1. In Tennessee, does a cause of action for invasion of privacy for intrusion upon seclusion survive the death of the individual whose privacy was invaded?</p>  |

2. Is Tenn. Code Ann. § 20-5-102 a “particular” type of statute that provides an exception to § 652I of the Restatement (Second) of Torts (1977, adopted by The Supreme Court in 2001 in *West v. Media Gen. Convergence, Inc.*)?

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7.	Style	Loring E. Justice v. BPR
8.	Docket Number	E2022-01105-SC-R3-BP
9.	Lower Court Decision Links	N/A
10.	Lower Court Summary	N/A
11.	Status	Heard 6/1/23 on-briefs.
12.	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	Heard 9/6/23 on-briefs.
6.	Issue(s)	N/A

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7.	Style	Brian Philip Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee
8.	Docket Number	M2022-00075-SC-R3-BP
9.	Lower Court Decision Links	N/A
10.	Lower Court Summary	N/A
11.	Status	Heard 10/21/22 on-briefs.

12. Issue(s) N/A

1. Style Peggy Mathes et al. v. 99 Hermitage, LLC

2. Docket Number M2021-00883-SC-R11-CV

3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/peggymathes.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/peggymathes.opn_.pdf)

4. Lower Court Summary 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.

5. Status Heard 6/1/23 in Nashville

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

1. Whether the true owner of real property by way of an unrecorded deed received from his grantor may establish title by adverse possession.

2. Whether an inchoate common law adverse possession claim supersedes a valid, recorded judgment, attachment, order, injunction or other writ affecting title, use or possession of real estate, which is filed pursuant to Tenn. Code Ann. § 66-24-119 and/or Tenn. Code Ann. § 25-5-101.

1. Style Pharma Conference Education, Inc. v. State of Tennessee

2. Docket Number W2021-00999-SC-R11-CV

3. Lower Court Decision Links [PharmaConferenceEducationOPN.pdf \(tncourts.gov\)](#)

4. Lower Court Summary This appeal arises from a breach of contract case that concerned whether the contract at issue lacked consideration due to an illusory promise. Specifically, the terms of the contract provided that the plaintiff would produce as many programs “as is feasible.” The parties filed competing motions for summary judgment. The claims commission granted the State of Tennessee’s motion for summary judgment finding that the contract between the parties was devoid of consideration due to an illusory promise and was therefore unenforceable. Additionally, the claims commission denied the plaintiff’s motion for summary judgment as to liability and

denied the plaintiff's motion for summary judgment as to damages finding that the issue was moot. The plaintiff appeals. We affirm.

5. Status Application granted 8/9/23. Fully briefed. TBH 12/6/23 SCALES at Martin

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

Did the Court of Appeals of Tennessee err by affirming the Tennessee Claims Commission's finding that the contract at issue lacks consideration due to an illusory promise and is unenforceable when such a finding undermines the uniformity and consistency of Tennessee law governing contract interpretation?

Pharma included the following sub-issues, which are largely in the nature of arguments:

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

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

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

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

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

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

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

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1.	Style	State of Tennessee v. William Rimmel, III
2.	Docket Number	M2022-00794-SC-R11-CD

3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Majority%20Opinion%202022-794-CCA.pdf>
4. Lower Court Summary Defendant, William Rimmel, III, was indicted by the Marion County Grand Jury for one count of aggravated assault, two counts of reckless endangerment, one count of false imprisonment, one count of vandalism over \$2,500, and one count of burglary of an automobile. The charge of false imprisonment was dismissed prior to trial. A jury found Defendant guilty of attempted aggravated assault, reckless endangerment, attempted reckless endangerment, vandalism under \$1,000, and attempted burglary of an automobile. Following a sentencing hearing, the trial court denied Defendant's request for judicial diversion and imposed an effective sentence of two years on probation following service of 11 months and 29 days in confinement. On appeal, Defendant contends that the evidence was insufficient to support his convictions, that the trial court abused its discretion in denying Defendant's request for an alternative sentence and in ordering consecutive sentencing, that his convictions should be vacated due to the State's failure to preserve evidence, and that the trial court gave confusing jury instructions. Based on the record, the briefs, and oral arguments, we affirm the judgments of the trial court but remand for entry of a judgment in Count 4 and amended judgment in Count 3, reflecting that those counts were dismissed, and for entry of corrected judgments in Counts 5 and 6.
5. Status Application granted 11/20/23.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- A. Whether the convictions for attempted aggravated assault with a handgun and reckless endangerment with a handgun where the victim is unaware of the handgun conflict with the Supreme Court's opinion and other opinions of the Court of Criminal Appeals that the victim must be reasonably in fear of imminent bodily injury?

1. Style Heather Smith v. Blue Cross Blue Shield of Tennessee
2. Docket Number E2022-01058-SC-R11-CV
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/E2022-1058.pdf>
4. Lower Court Summary This appeal concerns a claim of retaliatory discharge. Heather Smith ("Smith"), then an at-will employee of BlueCross BlueShield of Tennessee, Inc. ("BlueCross"), declined to take a Covid-19 vaccine. Smith emailed members of the Tennessee General Assembly expressing her concerns and grievances about vaccine mandates. BlueCross fired Smith after it found out about her emails. Smith sued BlueCross for common law retaliatory discharge in the Chancery Court for Hamilton County ("the Trial Court"). For its part, BlueCross filed a motion to dismiss for failure to state a claim. After a hearing, the Trial Court granted BlueCross's motion to dismiss. Smith appeals. We hold that Article I, Section 23 of the Tennessee Constitution, which guarantees the right of citizens to petition the government, is a clear and unambiguous statement of public policy representing an exception to the doctrine of employment-at-will. Smith has alleged enough at this stage to withstand BlueCross's motion to dismiss for failure to state a claim. We reverse the Trial Court and remand for further proceedings consistent with this Opinion.

5. Status Application granted 11/20/23.
6. Issue(s) As stated in the Appellant's Rule 11 Application:  
  
Whether the Court of Appeals erred when it created a new public policy exception to the employment-at-will doctrine not recognized by or otherwise linked to action by the Tennessee General Assembly.

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

1. Style Robert L. Trentham v. Mid-America Apartments, LP et al.

2.	Docket Number	M2021-01511-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Trentham%2C%20R%20-%20Opn%20Filed.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/Trentham%2C%20R%20-%20Opn%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. Fully briefed. TBH 12/6/23 SCALES at Martin
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:  In Tennessee premises-liability law, is the foreseeability of a hazardous condition developing legally sufficient to impute constructive knowledge of the condition's actual existence to the property owner?

1.	Style	James Williams v. Smyrna Residential, LLC, et al.
2.	Docket Number	M2021-00927-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/james.williams.opn_.pdf">https://www.tncourts.gov/sites/default/files/james.williams.opn_.pdf</a>
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?

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1.	Style	Charles Youree, Jr. v. Recovery House of East Tennessee, LLC et al.
2.	Docket Number	M2021-01504-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/E-SIGNED%20-%20M2021-1504-COA-YOUREE.pdf">https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/E-SIGNED%20-%20M2021-1504-COA-YOUREE.pdf</a>
4.	Lower Court Summary	A landlord leased property to company A. When company A breached the lease, the landlord filed suit against the company to recover monetary damages. A default judgment was entered against company A and, when company A failed to make any payments on that judgment, the landlord filed suit against company B and company C. The landlord alleged that the corporate veil should be pierced to hold company B and company C liable for company A’s debt because they were the alter egos of company A. After a default judgment was entered against company B and company C, they motioned to have the judgment set aside because the landlord’s complaint failed to allege sufficient facts to state a claim for piercing the corporate veil. The trial court denied the motion to set aside, and the two companies appealed. Discerning that the complaint does not state sufficient factual allegations to articulate a claim for piercing the corporate veil, we reverse and remand.
5.	Status	Application granted 11/21/23.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application:  “Whether a defaulting party may have a default judgment set aside when it concedes that it cannot show excusable neglect for failing to respond to the complaint.”  “Whether the Chancellor abused her discretion when she ruled that the complaint stated a claim for relief sufficient to pierce the corporate veil.”