

# **SCALES Project**

## ***Appeal Process in a nutshell . . . almost***

**presented on February 12, 2004 by**

**Frank G. Clement, Jr., Judge  
Court of Appeals of Tennessee**

If a person, company, organization or governmental entity is a plaintiff or defendant in a lawsuit, (all of whom we generally identify as a “party”) and is dissatisfied with the result of a decision by a court (Juvenile Court, Probate Court, Circuit Court, Chancery Court, Criminal Court), that party may “appeal” the decision to the appropriate appellate court. There are three Tennessee appellate courts (state appellate courts), the Court of Criminal Appeals of Tennessee, the Court of Appeals of Tennessee and the Supreme Court of Tennessee. But for a few exceptions (workers’ compensation appeals being one of them), appeals go directly to either the Court of Criminal Appeals or the Court of Appeals, not to the Supreme Court.

The appellate courts do not “try” the case anew (the witnesses do not testify again and there is no jury). The role of the appellate court is to review what occurred in the previous court, with the review limited to and based upon the “official record” from the previous court. The official record from the previous court typically includes the legal papers (civil warrant, complaint, indictment, motions, orders of the previous court, etc.), and usually a transcript of the evidence. The transcript of the evidence is prepared by a stenographer (an independent person who attended the hearing(s) and “recorded” what was said verbatim). If there is no stenographic (verbatim) transcript, the parties and the judge may prepare a summary “statement of the evidence” which is a paraphrased recollection of the testimony (which is not favored due to the differing impressions of what was or was not said).

Appeals are generally based upon one or more of four broad complaints: (1) the judgment is contrary to the evidence presented; (2) the wrong law was applied resulting in an incorrect judgment; (3) the correct law was applied but the judge misunderstood and/or misapplied the law, the result of which is an incorrect judgment; or (4) the judgment is incorrect due to a combination of applying the wrong law and/or misapplying or misunderstanding the correct law and/or the evidence.

The Standard of Review by which an appellate court examines a case on appeal varies depending on the nature of the case or the issues presented. For example, if the appeal is based on the evidence, or lack thereof, and the judgment was made by a judge without a jury, then the appellate court examines the judgment with a presumption that it is correct unless the preponderance is otherwise. However, if the appeal is based on the evidence, or lack thereof, and the decision was made by a jury, instead of the judge, the jury’s verdict

may not be overruled unless there is no material evidence to support the jury's verdict. If the issue presented on appeal is limited to the judge's application of the law, the standard is again different for there is no presumption and the appellate court is permitted to reach its own legal conclusion without a presumption for or against the judge's conclusion of law. Of course, there are occasional exceptions to the standards of review, remember *Catch 22*?

The appellant (the party who initiated the appeal) and the appellee (the adverse party) are required to present briefs which identify the issues presented for review, the facts of the case and the applicable law. The law of Tennessee (state law) is primarily comprised of three categories, one is constitutional law, another is statutory law (statutes) and the third is "case law." Constitutional law is that law set forth in the Constitution. Statutes are laws enacted by our state legislature, the General Assembly of Tennessee, which is comprised of our State Senators and State Representatives. "Case law" gets its name from the cases that are decided by the appellate courts, Stated another way, case law is comprised of the opinions that resulted from cases that were appealed. Case law is the result of written appellate opinions wherein the appellate judges interpret and apply the facts and the law to each case. These written opinions are then applicable to future disputes that involved similar facts and law. Accordingly, the next time a judge hears a similar dispute, he or she will refer to the previous similar opinion to hopefully apply the law in a consistent manner.

Statutes are also identified as the Tennessee Code and are found in a set of books identified as the Tennessee Code Annotated, which is also identified by the following: Tenn. Code Ann. and T.C.A. In your materials the Tennessee Uniform Arbitration Act, a statute, is codified (listed) as Tenn. Code Ann. 29-5-301. The numbers stand for the "Title," "Chapter," and "Section" of the Tennessee Code. Therefore, this Act is identified as Title 29, Chapter 5, Section 301. Written opinions are identified by the names of the parties, the book in which the opinion is published, the appellate court that authored the opinion and the year the opinion was filed. For example, one of the cases cited by the appellant in Phillips v. A & H Construction Company is cited as *Sudduth v. Williams*, 517 S.W.2d 520 (Tenn. 1974). In long form, *Sudduth v. Williams* was a dispute involving Marcie Sudduth, widow of Guy Lawrence Sudduth, who sued Harold Williams, doing business as Williams Texaco Service, and Continental Insurance Company. The opinion resulting from that dispute was published in volume 517 of the South Western Reporter, 2<sup>nd</sup> Series, the opinion starts at page 520 of that volume and the opinion was authored by the Supreme Court of Tennessee in 1974. If that opinion had been written by the Court of Appeals in the year 2003, the parenthetical would read (Tenn. Ct. App. 2003) and of course would be published in a more recent volume. The most recent opinions (the ones which do not yet appear in a bound volume) will be released in a yet to be published volume that will be identified as 114 S.W.3d. \_\_\_\_\_.

At the hearing, counsel for the appellant and appellee are typically afforded fifteen minutes each to present their oral argument to the Court. Members of the Court may ask questions. Following the hearing the Court will adjourn and one of the justices will be designated to prepare the opinion of the Court. The draft opinion will be circulated to all five justices who review the opinion and recommend changes, if desired. Once a majority of the Court, at least three justices agree the opinion is ready to be published to become part of the case law of Tennessee.