



Tennessee Supreme Court
DISCRETIONARY APPEALS
Grants & Denials List
September 14, 2020 - September 18, 2020

GRANTS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
<u>Knoxville</u>			
STATE OF TENNESSEE v. TYSHON BOOKER E2018-01439-SC-R11-CD	Knox County Criminal Court G. Scott Green 108568	McMullen, Camille R.: Affirm	Granted: Application of Tyshon Booker Order filed 9-16-20 (See Attached Order)
<u>Jackson</u>			
REGIONS BANK v. NATHAN I. PRAGER W2019-00782-SC-R11-CV	Shelby County Circuit Court James F. Russell CT-003321-17	McGee, Carma Dennis: Affirm Stafford, J. Steven: Dissent	Granted: Application of Regions Bank Order filed 9-18-20 (See Attached Order)

DENIALS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
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Nashville

STATE OF TENNESSEE v. KAVARIS LEQUAN
KELSO
M2018-00494-SC-R11-CD

Bedford County Circuit Court
Forest A. Durard, Jr.
18385

Thomas Jr., D. Kelly: Affirm

Denied: Application of Kavaris
Lequan Kelso

Order filed 9-16-20

STATE OF TENNESSEE v. JEMEL JOHNSON
M2018-01346-SC-R11-CD

Sumner County Criminal Court
Dee David Gay
2011-CR-135, 2012-CR-231

Montgomery Jr., Robert H.: Affirm

Denied: Application of Jemel
Johnson

Order filed 9-16-20

STATE OF TENNESSEE v. DERRICK DARNELL
MOORE and DEMICHAEL TYRONE MOORE
M2018-01764-SC-R11-CD

Davidson County Criminal Court
Steve R. Dozier
2014-B-907

Montgomery Jr., Robert H.: Affirm

Denied: Application of Derrick
Darnell Moore, and Demichael
Tyrone Moore

Order filed 9-16-20

CHRISTOPHER MAYBERRY v. STATE OF
TENNESSEE
M2018-02109-SC-R11-PC

Humphreys County Circuit Court
Suzanne Lockert-Mash
12911, 2010-CC-12044

Wedemeyer, Robert W.: Affirm

Denied: Application of
Christopher S. Mayberry

Order filed 9-16-20

ROBERT NELSON BUFORD, III v. STATE OF TENNESSEE M2018-02176-SC-R11-PC	Davidson County Criminal Court Angelita Blackshear Dalton 2008-B-1355	Woodall, Thomas T.: Affirm	Denied: Application of Robert Nelson Buford, III Order filed 9-16-20
STATE OF TENNESSEE v. KENNETH LLOYD HILL M2019-00032-SC-R11-CD	Davidson County Criminal Court Angelita Blackshear Dalton 2017-B-1385	Ogle, Norma McGee: Affirm	Denied: Application of Kenneth Lloyd Hill Order filed 9-16-20
FREDDIE LEWIS OSBORNE v. STATE OF TENNESSEE M2019-00284-SC-R11-PC	Montgomery County Circuit Court Jill Bartee Ayers 39059	Wedemeyer, Robert W.: Affirm	Denied: Application of Freddie Lewis Osborne Order filed 9-16-20
HENRY FLOYD SANDERS v. STATE OF TENNESSEE M2019-00397-SC-R11-PC	Davidson County Criminal Court Cheryl A. Blackburn 2008-D-3408	Wedemeyer, Robert W.: Affirm	Denied: Application of Henry Floyd Sanders Order filed 9-16-20
JOHN ALAN CHAPMAN V. STATE OF TENNESSEE M2019-00429-SC-R11-PC	Grundy County Circuit Court Thomas W. Graham 6321	Dyer, J. Ross: Affirm	Denied: Application of John Alan Chapman Order filed 9-16-20

STATE OF TENNESSEE v. CLARENCE GROVES
M2019-00536-SC-R11-CD

Davidson County Criminal Court
Mark J. Fishburn
2011-A-568

McMullen, Camille R.: Affirm in Part

Denied: Application of Clarence Groves

Order filed 9-16-20

WANDA TUBBS v. JEFF LONG, AS
COMMISSIONER OF SAFETY AND HOMELAND
SECURITY
M2019-00627-SC-R11-CV

Davidson County Circuit Court
Kelvin D. Jones
18C2254

Frierson II, Thomas R.: Affirm

Denied: Application of Wanda Tubbs

Order filed 9-16-20

HOME BUILDERS ASSOCIATION OF MIDDLE
TENNESSEE ET AL. v. WILLIAMSON COUNTY,
TENNESSEE ET AL.
M2019-00698-SC-R11-CV

Williamson County Chancery Court
James G. Martin, III
46451

Bennett, Andy D.: Affirm

Denied: Application of Home Builders Association of Middle Tennessee, Et Al., Opinion of COA is designated "Not for Citation" accordance with SCT Rule 4(E)

Order filed 9-16-20 (See Attached Order)

STATE OF TENNESSEE v. JONATHAN
MONTGOMERY
M2019-00757-SC-R11-CD

Rutherford County Circuit Court
(CRIMINAL)
David M. Bragg
F-77199

McMullen, Camille R.: Affirm

Denied: Application of Jonathan Montgomery

Order filed 9-16-20

CONNIE ELLIS v. MIKE K. MODI
M2019-01161-SC-R11-CV

Davidson County Circuit Court
Joseph P. Binkley, Jr.
15C3816

Goldin, Arnold B.: Vacate

Denied: Application of Connie
Diane Ellis

Order filed 9-16-20

CHARLIE CLARK v. STATE OF TENNESSEE
M2019-01212-SC-R11-HC

Trousdale County Circuit Court
John D. Wootten, Jr.
2018-CV-4735

Wedemeyer, Robert W.: Affirm

Denied: Application of Charlie
Anderson Clark, Jr.

Order filed 9-16-20

KELLY LOVE MCGUFFEY v. BELMONT
WEEKDAY SCHOOL ET AL.
M2019-01413-SC-R11-CV

Davidson County Circuit Court
Kelvin D. Jones
15C2811

Bennett, Andy D.: Affirm

Denied: Application of Kelly Love
McGuffey

Order filed 9-16-20

JACOB DICUS ET AL. v. LISA SMITH
M2019-01495-SC-R11-CV

Williamson County Chancery Court
James G. Martin, III
45683

McGee, Carma Dennis: Affirm

Denied: Application of Jacob
Dalton Dicus and Estate of James
Randall Dicus

Order filed 9-17-20

LEGACY FIVE LEASING, LLC , ET AL. v.
BUSFORSALE.COM, LLC
M2019-01615-SC-R11-CV

Sumner County Circuit Court
Joe Thompson
83CC1-2018-CV-530

Bennett, Andy D.: Affirm

Denied: Application of Legacy
Five Leasing, LLC and Legacy
Five, Inc.

Order filed 9-17-20

STATE OF TENNESSEE v. LAVONTA
CHURCHWELL
M2019-01673-SC-R11-CD

Davidson County Criminal Court
Jennifer Smith
2009-A-260

Holloway Jr., Robert L.: Affirm

Denied: Application of Lavonta
Churchwell

Order filed 9-16-20

STATE OF TENNESSEE v. DONQUISE
TREMONT ALEXANDER
M2019-01715-SC-R11-CD

Davidson County Criminal Court
Mark J. Fishburn
2011-A-317

Thomas Jr., D. Kelly: Affirm

Denied: Application of Donquise
Tremont Alexander

Order filed 9-16-20

IN RE SHYANNE H. ET AL.
M2019-02127-SC-R11-PT

Williamson County Juvenile Court
Sharon Guffee
LF 37368

Goldin, Arnold B.: Affirm

Denied: Application of mother,
Latasha H. and the father, Wayne
H.

Order filed 9-18-20

REBECCA GENTRY SULLIVAN V. GEORGE P.
MAXWELL, M.D. AND MAXWELL AESTHETICS
PLLC F/K/A NASHVILLE PLASTIC SURGERY,
PLLC
M2020-00642-SC-R11-CV

Davidson County Circuit Court
Amanda Jane McClendon
19C61

Per Curiam: Case Dispositional
Decision

Denied: Application of George P.
Maxwell, and Maxwell Aesthetics
PLLC, f/k/a Nashville Plastic
Surgery, PLLC

Order filed 9-16-20

SANTOS AJUALIE MORENTE v. ASHLEY GENTRY
M2020-00708-SC-R11-CV

Davidson County Circuit Court
Phillip R. Robinson
19-D-2064

Per Curiam: Case Dispositional
Decision

Denied: Application of Santos
Ajualie Morente

Order filed 9-17-20

Knoxville

ANDERSON COUNTY TENNESSEE ET AL. v.
TENNESSEE STATE BOARD OF EQUALIZATION
ET AL.
E2018-00142-SC-R11-CV

Anderson County Chancery Court
M. Nichole Cantrell
16CH8375

Dinkins, Richard H.: Reverse

Denied: Application of Anderson
County, Tennessee, and
Anderson County Assessor of
Property

Order filed 9-16-20

STATE OF TENNESSEE v. ALFRED MARON
WILLIAMS, ET AL.
E2018-00670-SC-R11-CD

Knox County Criminal Court
Steven Wayne Sword
102707

Wedemeyer, Robert W.: Affirm

Denied: Application of Alfred
Maron Williams, Eric Martel
Abrams, and Jamie Paul Click

Order filed 9-16-20

SHERILYN MARY DAWSON v. DANA LEE
DAWSON
E2018-00990-SC-R11-CV

Knox County Chancery Court
John F. Weaver
162548-1

Frierson II, Thomas R.: Affirm

Denied: Application of Dana Lee
Dawson

Order filed 9-16-20

JILL ST. JOHN-PARKER v. VIRGIL DUANE
PARKER
E2018-01536-SC-R11-CV

Bradley County Circuit Court
Lawrence Howard Puckett
V-12-473

McGee, Carma Dennis: Affirm

Denied: Application of Virgil
Duane Parker

Order filed 9-16-20

JESSICA OWENS ET AL. v. GARY W STEPHENS D
O ET AL.
E2018-01564-SC-R11-CV

Knox County Circuit Court
Kristi M. Davis
1-80-18

McClarty, John W.: Affirm

Denied: Application of Jessica M.
Owens, and Jimmy L. Owens

Order filed 9-16-20

STATE OF TENNESSEE v. BARENTON BARNETT
E2018-01735-SC-R11-CD

Polk County Criminal Court
Andrew M. Freiberg
17CR118

Woodall, Thomas T.: Affirm

Denied: Application of Barenton
Barnett

Order filed 9-16-20

STATE OF TENNESSEE v. JOSEPH WAYNE WETHINGTON E2018-02140-SC-R11-CD	Grainger County Circuit Court James L. Gass 5945	Witt Jr., James Curwood: Affirm	Denied: Application of Joseph Wayne Wethington Order filed 9-17-20
STATE OF TENNESSEE v. RHASEAN LOWRY E2019-00113-SC-R11-CD	Hamilton County Criminal Court Don W. Poole 294418	Witt Jr., James Curwood: Affirm Woodall, Thomas T.: Concur in Part	Denied: Application of Rhasean Lowry Order filed 9-16-20
LARRY E. RATHBONE v. STATE OF TENNESSEE E2019-00447-SC-R11-PC	Campbell County Criminal Court E. Shayne Sexton 16073	Montgomery Jr., Robert H.: Reverse	Denied: Larry E. Rathbone Order filed 9-16-20
ELIZABETH JONES ET AL. v. EARTH FARE INC. ET AL. E2019-00450-SC-R11-CV	Knox County Circuit Court William T Ailor 2-54-16	McClarty, John W.: Reverse	Denied: Application of Earth Fare, Inc. Order filed 9-16-20
TAMMY COMBS ET AL. V. LESLIE MILLIGAN, M.D. ET AL. E2019-00485-SC-R11-CV	Jefferson County Circuit Court Rex H. Ogle 24-334-III	McClarty, John W.: Reverse	Denied: Application of Leslie Milligan, M.D., and Hyan Ah Kim, M.D. Order filed 9-16-20

STATE OF TENNESSEE v. KENDALL ALLISON
CLARK
E2019-00515-SC-R11-CD

Hamblen County Criminal Court
Alex E. Pearson
17-CR-076

Montgomery Jr., Robert H.: Affirm

Denied: Application of Kendall
Allison Clark

Order filed 9-18-20

STATE OF TENNESSEE v. GLEN ALLEN
DONALDSON
E2019-00543-SC-R11-CD

Hamilton County Criminal Court
Don W. Poole
300677

Witt Jr., James Curwood: Affirm

Denied: Application of Glen Allen
Donaldson

Order filed 9-16-20

JOSEPH NATHANIEL NANCE v. STATE OF
TENNESSEE
E2019-00566-SC-R11-PC

Campbell County Criminal Court
E. Shayne Sexton
16386

Wedemeyer, Robert W.: Affirm

Denied: Application of Joseph
Nathaniel Nance

Order filed 9-16-20

STATE OF TENNESSEE v. KURT DOUGLAS
BROWN
E2019-01068-SC-R11-CD

Campbell County Criminal Court
E. Shayne Sexton
17164

Montgomery Jr., Robert H.: Affirm

Denied: Application of Kurt
Douglas Brown

Order filed 9-16-20

ALYSIA REESE MCCRACKEN HANCOCK v. BJR ENTERPRISES, LLC ET AL E2019-01158-SC-R11-CV	Knox County Circuit Court Deborah C. Stevens 3-416-18	McClarty, John W.: Affirm Swiney, D. Michael: Concur	Denied: Application of Alysia Renee McCracken Hancock Order filed 9-16-20
STATE OF TENNESSEE v. CHRISTOPHER ALLEN SMITH E2019-01345-SC-R11-CD	Hamilton County Criminal Court Don W. Poole 285655, 292165	Holloway Jr., Robert L.: Affirm	Denied: Application of Christopher Allen Smith Order filed 9-16-20
LARRY ADAMS v. STATE OF TENNESSEE E2019-01749-SC-R11-PC	Knox County Criminal Court Steven Wayne Sword 116093	Montgomery Jr., Robert H., Thomas Jr., D. Kelly, Witt Jr., James Curwood: Case Dispositional Decision	Denied: Application of Larry A. Adams Order filed 9-17-20
STEPHEN B. WLODARZ v. STATE OF TENNESSEE E2020-00369-SC-R11-PC	Hawkins County Criminal Court Alex E. Pearson 07CR470	Montgomery Jr., Robert H., Ogle, Norma McGee, Thomas Jr., D. Kelly: Case Dispositional Decision	Denied: Application of Stephen B. Wlodarz Order filed 9-17-20
<u>Jackson</u>			
STATE OF TENNESSEE v. TREVENO CAMPBELL W2017-01101-SC-R11-CD	Shelby County Criminal Court James C. Beasley, Jr. 13-03166	Dyer, J. Ross: Affirm	Denied: Application of Treveno Campbell, Opinion of the CCA is designated "Not For Citation" in accordance with Supreme Court

Rule 4(E)

Order filed 9-17-20 (See Attached Order)

RODRIQUEZ MCNARY v. STATE OF TENNESSEE
W2019-00048-SC-R11-PC

Shelby County Criminal Court
J. Robert Carter, Jr.
14-02782

Woodall, Thomas T.: Affirm

Denied: Application of Rodriguez McNary

Order filed 9-17-20

TIFFANY C. ROBY v. NATIONSTAR MORTGAGE
LLC ET AL.
W2019-00730-SC-R11-CV

Shelby County Circuit Court
Mary L. Wagner
CT-001283-16

McGee, Carma Dennis: Affirm

Denied: Application of Tiffany Roby

Order filed 9-18-20

STATE OF TENNESSEE v. JOCQUEZ PARHAM
W2019-00868-SC-R11-CD

Shelby County Criminal Court
James M. Lammey
17-01986

Dyer, J. Ross: Affirm

Denied: Application of Jocquez Parham

Order filed 9-18-20

STATE OF TENNESSEE v. GORDON DUNKIN
W2019-01684-SC-R11-CD

Henderson County Circuit Court
Donald H. Allen
19041-2

Holloway Jr., Robert L.: Affirm

Denied: Application of Gordon Lynn Dunkin

Order filed 9-16-20

FILED

09/10/2020

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: JACKIE LYNN GARTON, BPR #016106

An Attorney Licensed to Practice Law in Tennessee
(Dickson County)

No. M2020-01162-SC-BAR-BP

BOPR Nos. 2018-2864-6-AW, 2019-3004-6-AW-22.3

ORDER OF ENFORCEMENT

This matter is before the Court upon a Petition for Discipline filed against Jackie Lynn Garton on May 17, 2018; upon a Petition for Final Discipline filed against Mr. Garton on June 4, 2019; upon the Board's Motion for Default Judgment and That Charges in Petition for Discipline Be Deemed Admitted filed August 21, 2018; upon the Order for Default Judgment entered September 11, 2018; upon the Executive Secretary of the Board forwarding a copy of the Order for Default Judgment to Mr. Garton on September 11, 2018; upon the Board's Supplemental Petition for Discipline against Mr. Garton filed November 21, 2018; upon the Board's Motion to Consolidate Docket No. 2019-3004-6-AW-22.3 filed August 30, 2019; upon the Board's Order to Consolidate Docket No. 2019-3044-6-AW-22.3 entered September 4, 2019; upon the Board's Motion for Default Judgment and That Charges in the Supplemental Petition for Discipline Be Deemed Admitted filed November 15, 2019; upon the Order for Default Judgment entered December 4, 2019; upon the Executive Secretary of the Board serving a copy of the Order for Default Judgment on Mr. Garton on December 4, 2019; upon the Order for Default Judgment entered February 5, 2020; upon the Executive Secretary of the Board serving a copy of the Order for Default Judgment on Mr. Garton on February 5, 2020; upon the Hearing Panel's Findings of Facts and Conclusions of Law and Order on Discipline entered April 7, 2020 and the Executive Secretary of the Board serving the same upon Mr. Garton on April 7, 2020; upon the Board's Application for Assessment of Costs filed April 22, 2020; upon Findings and Judgment for Assessment of Costs entered May 14, 2020 and the Executive Secretary of the Board serving the same on Mr. Garton on May 14, 2020; upon the Board of Professional Responsibility's consideration and approval of the Findings of Facts and Conclusions of Law and Order on Discipline of the Hearing Panel on April 7, 2020; upon consideration and approval by the Board on June 12, 2020; upon the period for appeal expiring with no appeal taken; and upon the entire record in this cause.

From all of which the Court approves the Order of the Hearing Panel and adopts the Hearing Panel's Findings of Fact and Conclusions of Law as the Court's Order.

On May 29, 2019, Mr. Garton was suspended by this Court pending further orders of the Court pursuant to Tenn. Sup. Ct. R. 9, § 22.3 (Case No. M2019-00938-SC-BPR-BP) and has not been granted reinstatement to the practice of law.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

- (1) Pursuant to Tenn. Sup. Ct. R. 9, § 12.1, Jackie Lynn Garton is permanently disbarred from the practice of law in Tennessee.
- (2) Pursuant to Tenn. Sup. Ct. R. 9, §12.7, Mr. Garton shall be required to make restitution to the following individuals. In the event restitution is made by the Tennessee Lawyer's Fund for Client Protection ("TLFCP"), Mr. Garton will be responsible for reimbursement to the TLFCP in the same amount:
 - a. Carina Larkins Trust - \$1,199,721.30
 - b. The Estate of Steven Browne - \$41,063.42
 - c. The Estate of Joe B. Allen - \$25,083.56
 - d. The Estate of Franklin Reynolds - \$7,924.84
 - e. The Trust of Bridget Nicole Smith - \$20,706.63
 - f. Betty Jo Daughtery - \$15,415.87
 - g. Regen Law Firm Trust Account - \$55,287.80
- (3) The temporary suspension entered in this matter by the Court on May 29, 2019 in M2019-00938-SC-BAR-BP, pursuant to Tenn. Sup. Ct. R. 9, § 22.3 is hereby dissolved.
- (4) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.
- (5) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3(d), Mr. Garton shall pay to the Board of Professional Responsibility the expenses and costs of this matter in the amount of \$742.35 and shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.
- (6) Mr. Garton shall comply in all aspects with Tenn. Sup. Ct. R. 9, § 28 regarding the obligations and responsibilities of disbarred attorneys.
- (7) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

FILED

NOV 26 1974

JOHN A. PARKER, Clerk

By _____

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION SITTING AT KNOXVILLE

CHARLENE GROSS and her
husband, CECIL GROSS

APPELLANTS

UNION LAW

VS.

EARL HOBSON SMITH, JACK
WHEELER, MRS. JACK WHEELER,
and TENNESSEE VALLEY AUTHORITY

APPELLEES

Honorable George Shepherd,
Judge

Lee B. Ledford, Gault, Combs & Stegall of Knoxville for the appellants

Charles R. Moore for appellees Smith and Wheeler

Robert H. Marquis, Beauchamp E. Brogan, Charles A. Wagner, III
and James E. Fox for appellee Tennessee Valley Authority

AFFIRMED

OPINION FILED:

MATHERNE, J.

The plaintiffs' lawsuit is based upon personal injuries sustained by Charlene Gross due to the alleged gross negligence of the defendants in maintaining a certain camping area on the bank of Norris Lake. The trial judge sustained a motion by the defendants for summary judgment and dismissed the lawsuit. The defendants appeal insisting there are material issues of fact to be determined, and the trial judge erred in rendering summary judgment.

By affidavits and counter-affidavits it is established the defendant Smith owns a floating boat dock known as Straight Branch Boat Dock, which is located on the Straight Branch Embayment of the Powell River Arm of Norris Lake. This boat dock facility is leased to either Jack Wheeler or to Jack Wheeler and wife, Mrs. Jack Wheeler, the evidence

conflicts on that point. At a point 1.7 miles southeast of the boat dock there is a boat launching ramp, and at this point the defendant Smith owns the land above the 1,044 foot contour elevation. The United States of America owns the land below that contour elevation.

On September 14, 1972, the plaintiffs and another couple and their children proposed to camp in the area of the boat launching ramp and fish in Norris Lake. The party drove to the defendant's boat dock, whereupon the two men rented a boat, bought minnows for fish bait and proceeded to the boat launching ramp by water. The women and children drove the automobile from the boat dock along a public road to a point immediately above the boat launching ramp and proceeded to walk along a path down toward the launching ramp. While so walking along this path the plaintiff Charlene Gross observed a trash can overflowed with trash, and considerable debris had fallen on the path. This plaintiff stated she walked as carefully as possible in that immediate area, but she stepped on a bottle which was hidden by fallen leaves, fell and broke her ankle. It is established the plaintiff fell at a point below the 1,044 foot contour elevation.

By supporting affidavit the Tennessee Valley Authority states that as an agent of the Federal Government it has been entrusted with all lands constituting Norris Lake and its shore line below the 1,044 foot contour elevation; neither of the other defendants possessed any license to use, nor any right, title or interest in the land below that contour elevation, including the point where the plaintiff Charlene Gross fell. Further, even though persons and the public in general are not precluded from coming onto the shoreline property of Norris Lake, the Tennessee Valley Authority does not invite persons thereon, nor does that agency make any charge for, nor derive any benefit from the public use of such area.

By supporting affidavit the defendants Smith and Wheeler state the accident occurred on property owned and controlled by the Tennessee

Valley Authority; that the defendant Smith owns the Straight Branch Boat Dock and the same is leased to the defendant Jack Wheeler. The defendant Wheeler deposed that the plaintiff was injured at a point about 1.7 miles from the boat dock, and in an area over which he had no control and exercised no authority.

By counter-affidavit the plaintiffs show the boat launching ramp area is where members of the public who so desire do camp and launch boats. Plaintiffs' affiant Marie Caldwell, who was with Mrs. Gross when she fell, states the boat dock operator gave the impression the launching ramp area was in his control because a payment to the boat dock operator was required in order to launch boats from the ramp. The plaintiffs by affidavit state they operated the boat dock at one time, and they charged one dollar for the launching of a boat at the launching ramp. The plaintiffs further claim that while operating the boat dock they benefited from the use of the launching ramp by the public wherein they sold food, bait, drinks, etc., to the members of the public using the launching ramp. These plaintiffs' impression was that the launching ramp camp site was a part of the property leased along with the boat dock. The plaintiffs further aver there is a sign on the road to the launching ramp to the effect a one dollar fee is required for launching a boat at that point.

The plaintiffs do not state they paid a fee for the use of the camping area nor for launching a boat on the occasion under consideration. The defendants Smith and Wheeler aver they have no control and have not attempted to exercise control over the camping area and launching ramp. The defendant Tennessee Valley Authority denies any consideration paid to it. We must conclude there was no fee paid by the plaintiffs to the defendants for the use of the camping area and launching ramp.

We are mindful of the recent decision of our Supreme Court in Hall v. Duke, filed at Nashville on July 22, 1974, wherein the Court adop-

ted the definition of an invitee as stated at Section 332, Restatement of Torts, Second. And, in the present lawsuit we would be inclined to reason our conclusion from that definition were it not for T.C.A. §§51-801-805, enacted as Chapter 177 of the Public Acts 1963.

"51-801. "Land owner" defined. — For the purpose of this chapter the word "land owner" is hereby defined as being the legal title holder or owner of said land or premises, and it shall likewise include any lessee, occupant or any other person in control of said land or premises. [Acts 1963, ch. 177 §1.]

"51-802. "Land" and "premises" defined. — For the purpose of this chapter the words "land" or "premises" are hereby defined and shall include all real property, waters, private ways, trees and any building or structure which might be located on said real property, waters and private ways. [Acts 1963, ch. 177 §2.]

"51-803. Land owner's duty of care. — The land owner, lessee, occupant or any person in control of said land or premises shall owe no duty of care to keep such land or premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, hiking, or sightseeing, nor shall such land owner be required to give any warning of hazardous conditions, uses of, structures, or activities on such land or premises to any person entering on such land or premises for such purposes, except as provided for in §51-805. [Acts 1963, ch. 177, §3.]

"51-804. Land owner granting permission to be on land— Effect on duty of care. — Any land owner, lessee, occupant, or any person in control of said land or premises who gives permission to another person to hunt, fish, trap, camp, hike, sightsee, upon such land or premises does not thereby

(1) extend any assurance that the premises are safe for such purpose, or

(2) constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or

(3) assume responsibility for or incur liability for any injury to such person or purposely caused by any act of such person to whom permission has been granted except as provided in §51-805. [Acts 1963, ch. 177, §4.]

"51-805. Conditions under which liability unaffected. — This chapter does not limit the liability which otherwise exists

(1) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or

(2) for injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, or any other legal purpose was granted for a consideration other than the consideration, if any, paid to said land owner by the state of Tennessee, the federal government, or any other governmental agency; or

(3) for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, sightsee, or any other legal purpose

was granted; to third persons or to persons to whom the person granting permission, or the land owner, lessee, occupant, or any person in control of said land or premises owed a duty to keep the land or premises safe or to warn of danger. [Acts 1963, ch. 177, §5.] "

We first conclude T.C.A. §51-805 is not applicable because:

(1) There is no evidence from which willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity could be inferred; (2) There was no consideration paid by the plaintiffs for the use of the camping area; and (3) The plaintiffs are not third persons to whom the defendants owed a duty to keep the premises safe or to warn of danger, and who were subsequently injured by acts of persons to whom the defendants had granted permission to camp and fish on the premises.

If we assume the defendants are landowners as defined in the Act, and they gave permission to the plaintiffs to camp and fish on the premises, the legislature expressly denied the plaintiffs the legal status of an invitee to whom the duty of care is owed, T.C.A. §51-804 (2). We therefore conclude that regardless of the definition of an invitee, the plaintiffs cannot under the Act assert that position as against the defendants.

Summary judgment will be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56.03. The record presents a factual issue as to whether the defendants Smith and Wheeler control the launching ramp area, and whether the plaintiffs had the permission of the defendants to use the premises for camping and fishing, but those facts under the statute cited become immaterial.


In *Arney v. U. S.* 479 F.2d 653 (1973), when considering a motion for summary judgment the Court said:

"In addition to the defense of a genuine dispute of material fact, to successfully resist summary judgment, there must be at least one viable theory of law under the asserted version of the facts that would, if true, entitle the opponent of the motion to judgment as a matter of law."

The "viable theory of law" propounded by the plaintiffs is that Mrs. Gross was an invitee on the premises and the defendants owed a duty of care to her. Under the facts as governed by T.C.A. §§51-801, et seq., there is no way Mrs. Gross could be an invitee on the property. We conclude that should such issues of facts which are in conflict be resolved in favor of Mrs. Gross, the plaintiffs must still fail for lack of a viable theory of law upon which they could recover.

It results the judgment of the trial court is affirmed. The cost of the appeal is adjudged against the appellants.


MATHERNE, J.


CARNEY, P. J. (Concurs)


NEARN, J. (Concurs)

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
09/16/2020
Clerk of the
Appellate Courts

**HOME BUILDERS ASSOCIATION OF MIDDLE TENNESSEE ET AL. v.
WILLIAMSON COUNTY, TENNESSEE ET AL.**

**Chancery Court for Williamson County
No. 46451**

No. M2019-00698-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Home Builders Association of Middle Tennessee, Drees Premier Homes, Inc., Ole South Properties, Inc., Regent Homes, LLC, Aspen Construction, LLC, Barlow Builders, LLC, The Jones Company of Tennessee, LLC, Ridgemont Homes, LLC, and Gateway Mosby Cool Springs, LLC and the record before us, the application is denied.

The opinion of the Court of Appeals is designated “Not For Citation” in accordance with Supreme Court Rule 4, § E.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED
09/18/2020
Clerk of the
Appellate Courts

REGIONS BANK v. NATHAN I. PRAGER

**Circuit Court for Shelby County
No. CT-003321-17**

No. W2019-00782-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Regions Bank and the record before us, the application is granted.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

PER CURIAM