

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 10, 2015 Session

**JAMES R. STERCHI, JR. v. LOUIS B. SAVARD, JR., AS EXECUTOR OF
THE ESTATE OF L. BASIL SAVARD, SR.**

**Appeal from the Circuit Court for Bradley County
No. V12500 Don R. Ash, Senior Judge**

No. E2015-00928-COA-R3-CV-FILED-MARCH 11, 2016

THOMAS R. FRIERSON, II, J., concurring.

I concur fully in the majority’s decision in this case. I write separately solely to express my opinion that inasmuch as this action was initiated subsequent to July 1, 2011, the standard of review for summary judgment delineated in Tennessee Code Annotated § 20-16-101 (Supp. 2015) applies. *See Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 249 (Tenn. 2015) (noting that in contrast to the action in *Rye*, which was initiated in 2009, Tenn. Code Ann. § 20-16-101 “applies to actions filed on or after July 1, 2011.”) (citing Act of May 20, 2011, ch. 498, 2011 Tenn. Pub. Acts § 3 at 471). The statute provides:

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

- (1) Submits affirmative evidence that negates an essential element of the nonmoving party’s claim; or
- (2) Demonstrates to the court that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim.

Tenn. Code Ann. § 20-16-101. *See also Rye*, 477 S.W.3d at 264 n.10 (stating that the *Rye* majority analyzed the summary judgment standard “independent of and unrelated to legislative action.”).

THOMAS R. FRIERSON, II, JUDGE