

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

December 4, 2003 Session

SAMUEL TIMOTHY COLLINS v. KNOX COUNTY, TENNESSEE, ET AL.

**Appeal from the Circuit Court for Knox County
No. 03-90-01 Wheeler A. Rosenbalm, Judge**

FILED FEBRUARY 25, 2004

No. E2003-01421-COA-R3-CV

CHARLES D. SUSANO, JR., concurring.

I concur in the result reached by the majority. I do so because I believe the record before us reflects undisputed material facts that negate an essential element of the plaintiff's cause of action, *i.e.*, the element of "proximate causation" of the appellant's damages. I do agree with the appellant that there remains a genuine issue of material fact for the trier of fact as to the element of "cause in fact." I believe a jury could reasonably find that there is a "cause and effect relationship between the defendant's tortious conduct and the plaintiff's injury or loss." *White v. Lawrence*, 975 S.W. 2d 525, 529 (Tenn. 1998). As the Supreme Court has pointed out, "cause in fact" addresses the "'but for' consequences of an act." *Id.* However, in my judgment, the conduct of the Sheriff's Office, once the deputies arrived at the bank and thereafter took the appellant into custody, conclusively militates against a finding of proximate causation tying the bank's conduct to the appellant's damages.

CHARLES D. SUSANO, JR., JUDGE