

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs, March 16, 2010

BRENDA DUNCAN ALBRIGHT, v. RANDOLPH & SHERRY TALLENT

**Appeal from the Chancery Court for McMinn County
No. 24512 Hon. Jerri S. Bryant, Chancellor**

No. E2009-01983-COA-R3-CV - FILED MAY 12, 2010

D. MICHAEL SWINEY, J., concurring and dissenting.

I concur with the majority's decision to affirm the Trial Court's denial of Plaintiff's claim for adverse possession of the property in dispute. I also concur in the majority's decision to affirm the Trial Court's ruling that Defendants may construct the fence where proposed as that fence is constructed entirely on Defendants' property and does not, as found by the majority, interfere with Plaintiff's use of the easement in any way.

Where I part from the majority's Opinion is its modifying the Chancellor's judgment to require Defendants to construct their fence in a particular way and manner. I would affirm the Trial Court's judgment in its entirety. I know of nothing in Tennessee law that serves as any basis for this Court or any other court, under the evidence as presented in the record now before us, to require Defendants to construct a fence only of a specific type when that fence is entirely on their property and which interferes in no way with Plaintiff's use of the easement. I would affirm the Chancellor's judgment in its entirety.

As I would affirm the Chancellor's judgment in its entirety, I also would tax costs on appeal solely to the Appellant, Brenda Duncan Albright, and her surety.

D. MICHAEL SWINEY, JUDGE