

SUPREME COURT OF TENNESSEE
 SUPREME COURT DISCRETIONARY APPEALS
Grants & Denials List

Monday, January 23, 2012

GRANTS

STYLE/APPEAL NUMBER	COUNTY TRIAL JUDGE TRIAL COURT NO.	APPELLATE JUDGE JUDGMENT	NATURE OF APPEAL	ACTION
<u>Nashville</u>				
Lacey Chapman v. Davita, Inc. M2011-02674-SC-R10-WC	Marshall County Circuit Court Judge Franklin L. Russell No. 11-CV-30	N/A	Rule 10	Granted - Application of Davita, Inc. (Order filed 1-20-2012; copy attached)
<u>Knoxville</u>				
NONE				
<u>Jackson</u>				

Elmer Harris v. State of Tennessee W2010-00781-SC-R11-PC	Shelby County Criminal Court Judge Paula Skahan Nos. 0501714 & 0501715	McMullen, J., Affirmed in Part and Reversed in Part	Rule 11	Granted for Purpose of Remanding to Trial Court - Application of Elmer Harris (Order filed 1-18-2012; copy attached)
In Re DeAndre C. et al. W2011-00037-SC-R11-JV	Shelby County Circuit Court Judge Karen R. Williams Nos. CT-002917-09 & CT-002918-09	Stafford, J., Affirmed	Rule 11	Granted - Application of Mother; Upon consideration of the entire record, this Court finds and concludes that the judgment of the Court of Appeals should be affirmed in part and reversed in part, per Supreme Court Memorandum Opinion - Designated "Not For Publication" (Supreme Court Memorandum Opinion and Judgment filed 1-19-2012; Judgment copy attached)

**SUPREME COURT OF TENNESSEE
SUPREME COURT DISCRETIONARY APPEALS**

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DENIALS

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Nashville

Michael G. Medina v. State of Tennessee M2011-01203-SC-R11-PC	Smith County Circuit Court Judge John D. Wootten, Jr. No. 99270	Woodall, J., Smith, J., Wedemeyer, J., Rule 10 Denied; Appeal Dismissed	Rule 11	Dismissed - Application of Michael G. Medina (Order filed 1-18-2012)
State of Tennessee v. Lawrence E. Ralph M2009-02617-SC-R11-CD	Warren County Circuit Court Judge Larry B. Stanley No. M11889	Witt, J., Affirmed	Rule 11	Denied - Application of Lawrence E. Ralph; <i>The opinion of the Court of Criminal Appeals is designated "Not For Citation" in accordance with Tennessee Supreme Court Rule 4(E).</i> (Order filed 1-19-2012)

Knoxville

Walter J. Brumit v. Stefanie (Brumit) Durham E2010-01999-SC-R11-CV	Greene County Chancery Court Judge John K. Wilson No. 9310	McClarty, J., Affirmed	Rule 11	Denied - Walter J. Brumit's Motion to Rehear, Motion to Recall Mandate, Amended Motion to Recall Mandate and Motion to Recuse (Order filed 1-18-2012)
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In Re Maddox S. et al E2011-00645-SC-R11-PT	Hamilton County Chancery Court Chancellor W. Frank Brown, III Nos. 10-A-044 & 10-A-045	McClarty, J., Affirmed	Rule 11	Denied - Application of James S. and Veronda S.; <i>The opinion of the Court of Appeals is designated "Not for Citation" in accordance with Tenn. Sup. Ct. R. 4(E).</i> (Order filed 1-20-2012)
Jesse L. Rogers v. State of Tennessee E2011-01858-SC-R11-PC	Knox County Criminal Court Judge Mary Beth Leibowitz No. 58905	Witt, J., Ogle, J., Thomas, J., Denied Rule 28	Rule 11	Denied - Jesse L. Rogers' "Motion for Review by Entire Court..." (Order filed 1-19-2012)
<u>Jackson</u>				
State of Tennessee v. Elmer Harris W2006-02516-SC-R11-CD	Shelby County Criminal Court Judge Chris Craft Nos. 0501714 & 0501715	Hayes, J., Affirmed; Remanded for Purposes of Merger	Rule 11	Denied - Application of Elmer Harris (Order filed 1-18-2012)

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LACEY CHAPMAN v. DAVITA, INC.

**Circuit Court for Marshall County
No. 11-CV-30**

No. M2011-02674-SC-R10-WC - Filed January 20, 2012

ORDER

The motion for review filed by Davita, Inc. - Nashville, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), has been considered by the Court and is granted.

The parties shall submit supplemental briefs in accordance with Tenn. R. App. P. 29. The appellant's brief shall be filed within thirty days of the date of this order, and any responsive brief of appellee, Lacey Chapman, is due within fifteen days of the filing of appellant's brief. The Clerk of the Court is directed to schedule this case for oral argument when the briefing is complete.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ELMER HARRIS v. STATE OF TENNESSEE
Criminal Court for Shelby County
Nos. 0501714, 0501715

No. W2010-00781-SC-R11-PC - Filed January 18, 2012

ORDER

Upon consideration of the application for permission to appeal of Elmer Harris and the record before us, the application is granted for the purpose of remanding this case to the trial court for further proceedings consistent with this order. Although the Court of Criminal Appeals correctly determined that the Petitioner was entitled to pursue a delayed application for permission to appeal in State v. Elmer Harris, No. W2006-02516-SC-R11-CD, the Court of Criminal Appeals failed to stay its review of the above-styled post-conviction appeal pending completion of the delayed direct appeal. See Tenn. Sup. Ct. R. 28 §9(D)(2)(b)(i) (“If . . . the Court of Criminal Appeals determines that the trial court erred in denying the delayed appeal, the Court of Criminal Appeals shall enter an order granting the petitioner a delayed appeal and staying the post-conviction proceedings pending the final disposition of the delayed appeal.”).

This Court, by separate order, has denied the delayed application for permission to appeal in State v. Elmer Harris, No. W2006-02516-SC-R11-CD. Pursuant to Rule 28, “[w]here a delayed appeal is granted and the petitioner is unsuccessful on appeal, and new issues cognizable in a post-conviction proceeding result from the handling of the delayed appeal, the petitioner may amend the original post-conviction petition to include such new issues.” Tenn. Sup. Ct. R. 28 §9(D)(3)(a). Thus, “[w]here the post-conviction appeal has been stayed in the Court of Criminal Appeals, the case may be remanded to the trial court for the taking of evidence on any new issues resulting from an unsuccessful delayed appeal.” Tenn. Sup. Ct. R. 28 §9(D)(3)(b).

Accordingly, we conclude the Court of Criminal Appeals’ decision in this post-conviction case must be vacated because the appeal should have been stayed pending the completion of the delayed direct appeal in State v. Elmer Harris, No. W2006-02516-SC-R11-CD. In addition, the case must be remanded to the trial court for the Petitioner to have an opportunity to amend his post-conviction petition to include any new issues arising from the delayed appeal pursuant to Rule 28. Finally, because the Petitioner’s post-conviction counsel also filed the delayed application for permission to appeal, the trial court shall determine whether the Petitioner waives any potential conflict of interest under Frazier v. State, 303 S.W.3d 674 (Tenn. 2010), or whether new post-conviction counsel should be appointed. At the completion of such proceedings, the trial court shall enter an appropriate order and appellate proceedings shall proceed in the Court of Criminal Appeals pursuant to the Tennessee Rules of Appellate Procedure.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

IN RE DEANDRE C. ET AL.

**Circuit Court for Shelby County
Nos. CT-002917-09 & CT-002918-09**

No. W2011-00037-SC-R11-JV - Filed January 19, 2012

JUDGMENT

This cause came to be heard upon the Tenn. R. App. P. 11 application for permission to appeal, the response filed thereto, and the record on appeal from the Court of Appeals. The Tenn. R. App. P. 11 application for permission to appeal is granted. Upon consideration of the entire record, this Court finds and concludes that the judgment of the Court of Appeals should be affirmed in part and reversed in part.

In accordance with the memorandum opinion filed contemporaneously with this judgment, it is, therefore, ordered, adjudged, and decreed that the judgment of the Court of Appeals be and is hereby affirmed in part and reversed in part, and that the cause be remanded to the juvenile court for further proceedings consistent with this Court's opinion.

It is further ordered that the costs of this appeal be taxed to the Department of Children's Services.