

Supreme Court Appeals  
Pending Cases  
3-9-23

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1.	Style	Greg Adkisson, et al v. Jacobs Engineering Group, Inc.
2.	Docket Number	M2021-01239-SC-R23-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 6/1/22 in Nashville.
6.	Issue(s)	<p>The U.S. District Court for the Eastern District of Tennessee certified the following questions:</p> <ol style="list-style-type: none"> <li>1. Are the requirements of the TSCPA an affirmative defense that must be pleaded in a responsive pleading, or are they prima facie requirements which can be raised at any stage of litigation?</li> <li>2. Do the TSCPA's requirements apply to all cases involving exposure to silica or mixed dust, or, if coal ash is silica or mixed dust within the meaning of the TSCPA, are plaintiffs' claims exempted from the TSCPA's requirements because they are raised under the common law?</li> <li>3. Does coal ash, which contains silica, fibrogenic dusts, and other components that may cause injury, but are not "fibrogenic dusts," constitute "silica" or "mixed dust" such that the requirements of the TSCPA would apply in these cases?</li> <li>4. If coal ash does qualify as silica or mixed dust, does the TSCPA apply even if plaintiffs' claims are based on injury resulting from exposure to elements of coal ash that are not silica or fibrogenic dusts?</li> </ol>

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1.	Style	Roger Baskin v. Pierce & Allied Construction, Inc.
2.	Docket Number	M2021-00144-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf">https://www.tncourts.gov/sites/default/files/roger.baskin.opn_.pdf</a>
4.	Lower Court Summary	<p>Plaintiff Roger Baskin sued Pierce &amp; Allred Construction, Inc. ("Defendant") for breach of contract and breach of warranty, alleging Defendant failed to construct a house in Muscle Shoals, Alabama, in accordance with the parties' contract. Plaintiff alleged that although he "paid construction costs totaling more than \$1,700,000, [Defendant] failed to complete construction of the house and has left Plaintiff with a home riddled with construction defects that affect every major system of the home." Defendant moved to dismiss the complaint under Tenn. R. Civ. P. 12.02(2) and (3), asserting that the trial court lacked personal jurisdiction over it, and that venue was improper in Davidson County. The trial court dismissed the complaint for lack of personal jurisdiction and improper venue. We hold that Defendant's contacts with</p>

Tennessee, including its purposeful applications for a certificate of authority to transact business and for a contractor's license in Tennessee, are such that Defendant should reasonably anticipate being hauled into court in this state. Consequently, Tennessee courts may exercise personal jurisdiction over Defendant. We further find that Davidson County is a proper venue for this action, and therefore reverse the judgment of the trial court.

5. Status Heard 11/9/22 in Jackson.
6. Issue(s) As stated in the Appellant's application for permission to appeal:
1. Whether the Court of Appeals erred in comparing this case to Crouch by not focusing on the quality of the non-resident party's contacts with the State of Tennessee.
  2. Whether the Court of Appeals erred in considering Pierce's actions in the State of Tennessee after Mr. Baskin's cause of action accrued action in determining whether Pierce is subject to specific personal jurisdiction in the State of Tennessee.
  3. Whether the Court of Appeals erred in construing Ford to apply in situations wherein the non-resident's activities in the forum state, which do not cause any harm, are of the same general nature (construction), as opposed to applying Ford to situations involving the sales of identical vehicles or dialing of identical robocalls.

1. Style Melissa Binns v. Trader Joe's East, Inc.
2. Docket Number M2022-01033-SC-R11-CV
3. Lower Court Decision Links <https://ctrack.tncourts.gov/ctrack/docket/docketEntry.do?action=edit&deID=2098953&csNameID=85090&csIID=85090>
4. Lower Court Summary This matter is before the Court upon the Tennessee Rule of Appellate Procedure 9 application for permission to appeal filed by Trader Joe's East, Inc. Having considered the application and supporting documents, the Court cannot conclude that an interlocutory appeal is necessary to prevent irreparable injury, to develop a uniform body of law, or to prevent needless, expensive and protracted litigation.
5. Status Application granted 1/11/23; Appellate record filed 2/10/23
6. Issue(s) As stated in the Appellants' Rule 11 Application:
1. Whether a plaintiff can assert direct negligence claims against an employer if the employer admits that it will be vicariously liable for the negligent conduct attributed to its employees under the doctrine of *respondeat superior*
  2. Whether direct negligence claims can be asserted against a premises owner concurrently with a premises liability theory of recovery.

1. Style Brittany Borngne ex rel. Miyona Hyter v. Chattanooga-Hamilton County Hospital Authority et al.

2. Docket Number E2020-00158-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/e2020-158\\_bornagne\\_v.\\_chattanooga.pdf](https://www.tncourts.gov/sites/default/files/e2020-158_bornagne_v._chattanooga.pdf)  
[https://www.tncourts.gov/sites/default/files/e2020-158\\_bornagne\\_v.\\_chattanooga\\_sep\\_opin.pdf](https://www.tncourts.gov/sites/default/files/e2020-158_bornagne_v._chattanooga_sep_opin.pdf)
4. Lower Court Summary  
 This health care liability action arises from injuries suffered by a minor, Miyona Hyter, during her birth. Miyona Hyter, a minor by and through her next friend and mother, Brittany Bornagne (“Plaintiff”) sued, among others, Dr. Michael Seeber who delivered the child via cesarean section and certified nurse midwife Jennifer Mercer who assisted with the birthing process. Plaintiff alleged that Nurse Mercer was negligent by failing to recognize concerning signs on the fetal monitoring strip and by failing to call Dr. Seeber for assistance sooner than she did. The Circuit Court for Hamilton County (“the Trial Court”), by agreed order, granted Dr. Seeber partial summary judgment on all claims of direct negligence against him; he remained in the case as a defendant only upon Plaintiff’s theory that he was vicariously liable for Nurse Mercer’s actions as her supervising physician. During his deposition, Dr. Seeber declined to answer questions that he argued required him to render an expert opinion regarding Nurse Mercer’s care during times that Dr. Seeber was not present and had no involvement in Plaintiff’s care. The Trial Court declined to require Dr. Seeber to answer questions that “call[] for an opinion by Dr. Seeber that asks him to comment on the actions of other healthcare providers and does not involve his own actions, as required by *Lewis v. Brooks*,” 66 S.W.3d 883, 887-88 (Tenn. Ct. App. 2001). After Nurse Mercer’s deposition, she submitted an errata sheet that substantively altered her answers to some of the questions. Plaintiff moved to suppress the errata sheet, arguing that Tenn. R. Civ. P. 30.05 does not allow a witness to make substantive changes to her deposition testimony. The Trial Court denied the motion but allowed Plaintiff the opportunity to reopen Nurse Mercer’s deposition and to fully cross-examine her at trial about the changes. The case proceeded to trial before a jury, which returned a verdict in Defendants’ favor. We hold that the Trial Court erred by refusing to order Dr. Seeber to answer the questions at issue in his deposition. Deeming this case distinguishable from *Lewis v. Brooks*, we reverse the Trial Court in its declining to compel Dr. Seeber to testify concerning the conduct of his supervisee, Nurse Mercer, and remand for a new trial. We also reverse the Trial Court in its decision to exclude proof of Miyona Hyter’s pre-majority medical expenses. We affirm the Trial Court as to the remaining issues.
5. Status Heard 5/3/22 in Knoxville.
6. Issue(s) As stated in the Appellants’ Rule 11 Application:
1. Whether a jury verdict reversed by the Court of Appeals on a single issue should be remanded for a new trial as to *all* defendants when the sole reversible error was attributed to one defendant?
  2. Did the Trial Court abuse its discretion and commit reversible error in ruling that, under *Lewis v. Brooks*, 66 S.W. 3d 883 (Tenn. Ct. App. 2001), Dr. Seeber could not be compelled to provide expert opinions regarding the care of another health care practitioner – the care provided by Certified Nurse Midwife (CNM) Mercer – given that Dr. Seeber was only an expert by virtue of his chosen field?
  3. Did the Trial Court commit error in holding that Plaintiff had no claim for pre-majority medical expenses under *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509 (Tenn. 2005) and *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624 (Tenn. Ct. App. 2017)?

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1.	Style	Terry Case v. Wilmington Trust, N.A., et al.
2.	Docket Number	E2021-00378-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/e2021-378_case_v_wilmington.pdf">https://www.tncourts.gov/sites/default/files/e2021-378_case_v_wilmington.pdf</a>
4.	Lower Court Summary	The plaintiff appeals the trial court's order granting the defendants' motions for summary judgment and dismissing the plaintiff's claims for breach of contract, wrongful foreclosure, injunctive relief, and declaratory relief. Having determined that the plaintiff has waived arguments related to his breach of contract claim, we review solely the trial court's dismissal of the plaintiff's claim for wrongful foreclosure. We conclude that the defendants did not strictly comply with the notice requirements of the deed of trust, vacate the portion of the trial court's order granting summary judgment to the defendants with respect to the plaintiff's wrongful foreclosure claim, and set aside the foreclosure sale. We affirm the trial court's order with respect to the plaintiff's breach of contract claim. We decline to award the defendants damages pursuant to Tennessee Code Annotated § 27-1- 122.
5.	Status	Application granted 1/5/23. Appellant's brief filed 3/8/23.
6.	Issue(s)	As stated by Applicant:  1. Does Tennessee recognize an independent cause of action for wrongful foreclosure to set aside a foreclosure sale based entirely on a procedural defect in the sale that causes no harm or prejudice?  2. Tennessee Code Annotated § 35-5-101(f) allows foreclosure sale postponements of less than 30 days to be announced orally. Does the Fannie Mae/Freddie Mac Uniform Tennessee Deed of Trust, which secures over 500,000 residential mortgage loans in Tennessee, nevertheless require written notice of such postponements?

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1.	Style	State of Tennessee v. Johnny Summers Cavin
2.	Docket Number	E2020-01333-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/johnny_cavin_cca_opinion.pdf">https://www.tncourts.gov/sites/default/files/johnny_cavin_cca_opinion.pdf</a>
4.	Lower Court Summary	The Defendant-Appellant, Johnny Summers Cavin, entered guilty pleas to burglary and theft of property valued more than \$2,500 but less than \$10,000. He also entered guilty pleas to unrelated charges from a separate case. Pursuant to a plea agreement, the Defendant received concurrent sentences of two years and six months each on supervised probation, to be served consecutively to the sentences he received in an unrelated probation violation case. In a subsequent restitution hearing, the trial court ordered him to pay a total of \$5,500 in restitution. On appeal, the Defendant contends that the trial court did not have jurisdiction to impose restitution and that, alternatively, the trial court erred in setting the restitution amount at \$5,500, asserting that the victim's pecuniary loss was not substantiated by evidence and that the amount is

unreasonable based on the Defendant's income. Upon review, we conclude that we are without jurisdiction to address the merits of the instant case, and the appeal is dismissed.

5. Status Heard 9/7/22 in Knoxville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:

This case presents a need to secure uniformity of decision and to resolve important questions of jurisdictional and statutory law regarding restitution judgments and orders. Through the three separate opinions in Cavin, plus the two separate opinions in Gevedon, the Court of Criminal Appeals judges have put forth at least three different standards for determining when and how a trial court sets a restitution amount that creates a final judgment ripe for appellate review: (1) trial courts must express the payment terms as a payment schedule of some sort (McMullen, J., and Witt, J., majority); (2) trial courts may express the payment terms as a total amount of restitution with the length of time for repayment as simply the defendant's probationary period (Holloway, J., and Williams, P.J., dissenting); or (3) trial courts must express the payment terms as a monthly installment plan, because failure to do so may amount to the trial court's de facto failure to consider the defendant's ability to pay (Witt, J., concurring).

This Court should grant review to resolve this split of authority and explain what trial courts must do to ensure that final judgments are created, and thus convey appellate jurisdiction, for issues involving restitution

1. Style Bill Charles v. Donna McQueen
2. Docket Number M2021-00878-SC-R11-CV
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/OpinionsPDFVersion/McQUEEN%20-Majority%20Opinion.pdf>
4. Lower Court Summary This case involves a lawsuit alleging claims of defamation and false light arising from an online review. In response to the lawsuit, the defendant filed a petition under the Tennessee Public Participation Act to dismiss the lawsuit. The trial court ultimately granted the petition and dismissed the case. For the reasons stated herein, we affirm in part and reverse in part.
5. Status Application granted 3/9/23
6. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Pursuant to Tennessee Rule of Appellate Procedure 27(b), whether a Defendant/Appellee can "waive" (or forfeit) any claim to mandatory attorneys' fees on appeal under Tennessee's Anti-SLAPP Act by not specifically listing that request in her statement of issues—particularly when the trial court has not yet ruled on the fee request.
  2. Pursuant to Tennessee Rule of Appellate Procedure 27(b), after a trial court dismisses a plaintiff's entire complaint with prejudice, whether a Defendant/Appellee can "waive" (or forfeit) appellate review of alternate grounds for affirmance by not specifically listing that request in her statement of issues.

3. Whether there is admissible evidence in the record to find that Plaintiff—as the HOA President and registered agent who spoke with both the media and the city council regarding the 1,000+ home Durham Farms community—is a limited-purpose public figure for defamation purposes.

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1.	Style	Thomas Edward Clardy v. State
2.	Docket Number	M2021-00566-SC-R11-ECN
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/clardy_t_-_filed_opn.pdf">https://www.tncourts.gov/sites/default/files/clardy t - filed opn.pdf</a>
4.	Lower Court Summary	For a 2005 shooting, a Davidson County jury convicted the Petitioner, Thomas Edward Clardy, of one count of first degree premeditated murder, two counts of attempted first degree premeditated murder, and three counts of reckless endangerment. The trial court imposed a life sentence. On December 8, 2020, the Petitioner filed a petition for a writ of error coram nobis, alleging newly discovered evidence in the form of an affidavit showing that he did not participate in the crime. The Petitioner acknowledged that he did not file the petition within the applicable statute of limitations but said he was entitled to an equitable tolling. The State agreed, and it asked the trial court for an equitable tolling and to hear the case on its merits. The coram nobis court, noting that it was not bound by the State's concession, dismissed the petition as untimely. After review, we conclude that the coram nobis court erred and that the Petitioner is entitled to an equitable tolling of the statute of limitations. As such, we reverse and remand to the coram nobis court for a hearing on the Petitioner's error coram nobis claims.
5.	Status	Application granted 12/19/22; Appellant's brief filed 1/18/23; Appellee's brief filed 2/17/23; Reply brief filed 3/3/23.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application:  A. Whether an error coram nobis petitioner must present evidence of actual innocence to obtain due-process tolling of the statute of limitations.  B. If so, whether the evidence presented in this case—which does not rule out or seriously undermine the petitioner's guilt—meets the standard of actual innocence.

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1.	Style	Vanessa Colley v. John S. Colley
2.	Docket Number	M2021-00731- SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/m2021-731_-_opinion_-_colley.pdf">https://www.tncourts.gov/sites/default/files/m2021-731 - opinion - colley.pdf</a>
4.	Lower Court Summary	Appellant/Husband voluntarily nonsuited his post-divorce lawsuit involving issues of alimony and the parties' alleged settlement of an IRS debt. Appellee/Wife moved for an award of her attorney's fees on alternative grounds, i.e., the abusive lawsuit statute, Tenn. Code Ann. § 29-41-106; the parties' MDA; and Tennessee Code Annotated section 36-5- 103(c). The trial court granted Wife's motion and entered judgment for her attorney's fees and costs. The trial court specifically held that

Husband's lawsuit was not abusive, and Wife does not raise this as an issue on appeal. As such, we conclude that she is not entitled to her attorney's fees under the abusive lawsuit statute. As to her claim for attorney's fees and costs under the MDA and Tennessee Code Annotated section 36-5-103(c), both grounds require that Wife be a "prevailing party" in the underlying lawsuit. Because Husband took a voluntary nonsuit, neither party prevailed in the action, and Wife is not entitled to her attorney's fees and costs. Reversed and remanded.

5. Status Application granted 3/9/23
6. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Is a defendant who defends against a lawsuit that seeks to modify a court-ordered Marital Dissolution Agreement and secures a judgment of dismissal, without prejudice, following the plaintiff's voluntary nonsuit a "prevailing party" within the meaning of Tenn. Code Ann. § 36-5-103(c)?
  2. When "contract language is interpreted according to its plain terms and ordinary meaning," *see BSG, LLC v. Check Velocity, Inc.*, 395 S.W.3d 90, 93 (Tenn. 2012), is a defendant who secures a judgment of dismissal, without prejudice, following a plaintiff's voluntary nonsuit a "prevailing party" within the meaning of a contractual fee-shifting provision when the term "prevailing party" is not otherwise defined?

1. Style Commercial Painting Co., Inc. v. The Weitz Co. LLC et al.
2. Docket Number W2019-02089-SC-R11-CV
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/commercialpaintingopn1.pdf>
4. Lower Court Summary This is the third appeal arising from a commercial construction project. Most recently, the case went to trial before a jury, which awarded the plaintiff subcontractor \$1,729,122.46 in compensatory damages under four separate theories and \$3,900,000.00 in punitive damages. The trial court further awarded the plaintiff pre- and post-judgment interest and attorney's fees and costs. We conclude the economic loss rule is applicable to construction contracts negotiated between sophisticated commercial entities and that fraud is not an exception under the particular circumstances of this case. Because punitive damages and interest are not authorized under the parties' agreement, those damages are reversed. The compensatory damages of \$1,729,122.46 awarded for breach of contract are affirmed. The award of attorney's fees incurred at trial are vacated for a determination of the attorney's fees incurred in obtaining the compensatory damages award. No attorney's fees are awarded on appeal. We therefore reverse in part, affirm in part, and vacate in part.
5. Status Heard 11/9/22 in Jackson.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
1. Whether the Court of Appeals erred in applying this Court's holding in *Milan Supply Chain Solutions, Inc. v. Navistar, Inc.*, 627 S.W.3d 125 (Tenn. 2021), and expanding the application of the economic loss doctrine to the circumstances of this case.

2. Whether the Court of Appeals erred in vacating the trial court's award of attorney's fees and in limiting the scope of recoverable fees on remand, and whether the Court of Appeals erred in denying Commercial Painting Company an award of costs and fees on appeal.

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1.	Style	Robert Crotty, et al. v. Mark Flora, M.D.
2.	Docket Number	M2021-01193-SC-R11-CV
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Heard 10/5/22 in Nashville.
6.	Issue(s)	As stated in Appellant's Rule 11 Application:  1. Should the Trial Court exclude testimony regarding the role of a Non-party Physician in causing the Plaintiff's injuries, when there is no allegation of wrongful conduct by the Non-party Physician?  2. Should the Trial Court limit evidence of medical expenses to only those actual economic losses that were actually paid or are payable?

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1.	Style	Robert Allen Doll, III v. BPR
2.	Docket Number	M2022-01723-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 12/12/22; Motion to dismiss filed 3/3/23 by BPR for failure to file a transcript or statement of the evidence.
6.	Issue(s)	N/A

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1.	Style	Jessie Dotson v. State
2.	Docket Number	W2019-01059-SC-R11-PD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/dotsonjessieopn_0.pdf">https://www.tncourts.gov/sites/default/files/dotsonjessieopn_0.pdf</a>
4.	Lower Court Summary	The Petitioner, Jessie Dotson, appeals the post-conviction court's denial of his postconviction petition, in which he challenged his six convictions for first degree



premeditated murder and three convictions for attempted first degree murder and his resulting sentences of death for each of the first degree murder convictions plus 120 years. On appeal, the Petitioner contends that (1) he received ineffective assistance of counsel at trial and on appeal; (2) the Administrative Office of the Courts (“AOC”) and the Chief Justice of the Tennessee Supreme Court improperly vacated the post-conviction court’s orders granting the Petitioner’s request for funding of experts; (3) the convictions and death sentences were the result of juror misconduct; (4) the State and the trial court committed various errors; (5) the Petitioner’s convictions and death sentences and Tennessee’s execution method are unconstitutional; and (6) cumulative error warrants relief. Upon reviewing the record, the parties’ briefs and oral arguments, and the applicable law, we affirm the judgment of the post-conviction court.

5. Status Application granted 10/25/22; Appellant’s brief filed 1/27/23; Appellee’s brief filed 2/27/23; TBH 4/5/23 in Jackson
6. Issue(s) As stated in the Appellant’s Rule 11 Application:

I. When there is no appellate remedy for the Administrative Office of the Courts (AOC) Director and the Chief Justice of this Court vacating a trial court’s ruling that expert assistance is necessary to effectuate a capital post-conviction petitioner’s constitutional rights, are the state and federal constitutional guarantees of due process, equal protection, freedom from cruel and unusual punishment, and the right to a full and fair post-conviction proceeding violated since capital postconviction petitioners who are denied necessary expert assistance by trial courts are provided appellate remedies? Relatedly, is the denial of an appellate remedy in violation of the open courts provision of the Tennessee Constitution?

II. Whether the Court of Criminal Appeals’ inconsistent application of a standard of review for claims of ineffective assistance of counsel which requires a petitioner to question trial counsel regarding every claim of ineffective assistance of counsel and ask whether trial counsel’s actions or inactions were “strategic” or “tactical” violates state and federal constitutional guarantees of due process, a fair trial, and the right to appeal?

1. Style State of Tennessee v. David Wayne Eady
2. Docket Number M2021-00388-SC-R11-CD
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/eady\\_d\\_-\\_filed\\_opn.pdf](https://www.tncourts.gov/sites/default/files/eady_d_-_filed_opn.pdf)  
[https://www.tncourts.gov/sites/default/files/eady\\_d\\_-\\_filed\\_separate\\_opn.pdf](https://www.tncourts.gov/sites/default/files/eady_d_-_filed_separate_opn.pdf)
4. Lower Court Summary Defendant, David Wayne Eady, was convicted by a jury of eleven counts of aggravated robbery and one count of attempted aggravated robbery. The trial court sentenced Defendant as a repeat violent offender and imposed eleven concurrent sentences of life without the possibility of parole. The trial court ran the life imprisonment sentences concurrently with a fifteen-year sentence for the attempted aggravated robbery conviction. On appeal, Defendant contends 1) the trial court abused its discretion in denying his motion to sever the offenses; 2) the trial court abused its discretion in denying his motion to suppress his statements; 3) the trial court abused its discretion in denying his motion to disqualify the District Attorney General’s Office, 4) the evidence was insufficient to support his conviction for aggravated robbery as charged in count eight of the indictment; and 5) his convictions

for aggravated robbery as charged in counts one and two of the indictment violate Double Jeopardy as a matter of plain error. Because the facts and circumstances support only one conviction for aggravated robbery as charged in counts one and two, we merge the two counts, and remand for entry of amended judgments in counts one and two reflecting the merger. In all other respects, we affirm the judgments of the trial court.

5. Status Application granted 1/31/23; motion for extension to file appellant’s brief granted and due 3/13/23; TBH at Boys State 5/24/23.
6. Issue(s) As stated in the Appellant’s Rule 11 Application:
- (1) Did the Court of Criminal Appeals, in affirming the trial court’s denial of Mr. Eady’s motion to sever offenses, diverge from preexisting severance case law and create a split in authority?
- (2) Did the Court of Criminal Appeals apply an incorrect legal standard when it affirmed the trial court’s denial of Mr. Eady’s motion to disqualify the Davidson County District Attorney’s Office and thereby create a split in authority on the issues of when a district attorney’s office is vicariously disqualified and the appropriate remedy when a district attorney’s office violates the ethical rules concerning conflicts of interest?

1. Style Emergency Medical Care Facilities, P.C. v. Division of TennCare et al.
2. Docket Number M2020-01358-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/emergency.medical.corrected.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/emergency.medical.corrected.opn_.pdf)
4. Lower Court Summary This appeal involves a reimbursement limitation that TennCare imposed on “non-emergent” medical services provided by emergency department physicians. TennCare informed its managed care organizations of the reimbursement limitation via email without engaging in rule-making procedures outlined in the Uniform Administrative Procedures Act (“UAPA”). The trial court concluded the reimbursement limitation was a “rule” subject to the rule-making requirements of the UAPA and invalidated the reimbursement limitation. We hold that the reimbursement limitation falls within the internal management exception of the 2009 version of the UAPA and was therefore not subject to the UAPA’s rule-making requirements. The ruling of the trial court is reversed.
5. Status Heard on 10/5/22 in Nashville.
6. Issue(s) As stated in the Appellant’s Rule 11 Application:
- I. May a State agency impose a rule without rulemaking on the ground that, because the agency contracts with the affected entities, the rule concerns only the internal management of state government and not private rights, privileges or procedures available to the public?
- II. Does Tennessee law require TennCare to engage in rulemaking when

determining payment to Medicaid providers, as expressly set forth by the plain language of Tennessee Code Annotated § 71-5-105(a)(3)(A)?

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1.	Style	Earnest Falls, et al. v. Mark Goins, et al.
2.	Docket Number	M2020-01510-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/majority_opinion_13.pdf">https://www.tncourts.gov/sites/default/files/majority_opinion_13.pdf</a>
4.	Lower Court Summary	This case concerns the restoration of voting rights of a Tennessee citizen who was convicted of a felony in Virginia and subsequently granted clemency by the Governor of Virginia. Because the voting applicant did not provide evidence that he paid outstanding court costs, restitution, and/or child support as is required by Tenn. Code Ann. § 40-29- 202, the election commission denied his application to vote. The voting applicant appealed the election commission’s decision to the circuit court. The circuit court upheld the election commission’s decision as valid. We agree with the trial court and affirm the trial court’s judgment.
5.	Status	Heard on 10/5/22 in Nashville.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application:  Whether Applicant Ernest Falls has been unlawfully disenfranchised under Tennessee Constitution Art. I, § 5 and Tennessee Code § 2-19-143(3)—which states that Tennesseans convicted of felonies in other states are disenfranchised unless they have had their full rights of citizenship restored by the governor of the state of conviction, by the law of the state of conviction, or under the law of Tennessee—where Applicant Falls’ lone felony conviction was in Virginia and he has had his full rights of citizenship restored by the Governor of Virginia

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1.	Style	Beverly Gardner v. Saint Thomas Midtown Hospital
2.	Docket Number	M2019-02237-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/gardner.beverly.opn_.pdf">https://www.tncourts.gov/sites/default/files/gardner.beverly.opn_.pdf</a>
4.	Lower Court Summary	A patient filed a health care liability claim against a hospital, asserting the hospital was vicariously liable for injuries she suffered as a result of the anesthesia providers’ conduct. The hospital moved for summary judgment, arguing that the anesthesia providers were not employed by the hospital and the hospital was, therefore, not liable for the anesthetists’ actions as a matter of law because the statute of limitations had run on the plaintiff’s direct claims against the anesthesia providers by the time the plaintiff filed her complaint against the hospital. The trial court granted the hospital’s motion and dismissed the plaintiff’s complaint, relying on the common law set forth in <i>Abshure v. Methodist Healthcare Memphis Hospitals</i> , 325 S.W.3d 98 (Tenn. 2010). Acknowledging the conflict between provisions of the Tennessee Health Care Liability Act and the common law, we hold that the statute prevails. Accordingly, we reverse the trial court’s judgment and remand the case for further proceedings.

5. Status Heard 4/6/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
1. Does the Court of Appeals' reversal and remand of the trial court's order granting Saint Thomas' Motion for Summary Judgment directly conflict with case law and erroneously create an exception to the mandatory pre-suit notice provisions of the Tennessee Health Care Liability Act ("HCLA") by allowing Plaintiff to do an end run around and avoid the pre-suit notice requirements for claims against Saint Thomas' alleged agents that are otherwise procedurally barred?
  2. Does the Court of Appeals decision violate the legislative intent of the HCLA pre-suit notice provisions applicable to Plaintiff and create a significant public policy change?
  3. In this vicarious liability action, did Tenn. Code Ann. section 29-26-121(a)(5) require Saint Thomas to notify Plaintiff that its alleged non-employed agents were proper defendants?

1. Style State of Tennessee v. Joseph Gevedon
2. Docket Number M2020-00359-SC-R11-CD
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/gevedon\\_joseph-\\_filed\\_opn.pdf](https://www.tncourts.gov/sites/default/files/gevedon_joseph-_filed_opn.pdf)
4. Lower Court Summary The Defendant-Appellant, Joseph Gevedon, pleaded guilty to two counts of driving under the influence and to one count each of leaving the scene of an accident, violation of the financial responsibility law, and simple possession of marijuana. He agreed to serve an effective sentence of three consecutive terms of eleven months, twenty-nine days, with ninety-six hours in confinement and the remainder on probation. He also agreed to a special condition that a restitution hearing would be held at a later time. A violation of probation warrant was issued before the restitution hearing was held, and following a hearing, the trial court found that the Defendant violated the terms of his probation, revoked his probation, and ordered him to serve his sentence in confinement and to pay \$30,490.76 as restitution. On appeal, the Defendant challenges the trial court's order requiring him to serve his sentence in confinement and its restitution order. After review, we conclude that we are without jurisdiction to consider the merits of this appeal.
5. Status Heard on 9/7/22 in Knoxville.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
1. Whether a trial court's judgment is final for purposes of Rule 3 of the Tennessee Rules of Appellate Procedure when the trial court orders restitution pursuant to Tennessee Code Annotated section 40-35-304 but does not specify a payment schedule for restitution.
  2. Whether the trial court in this case abused its discretion by ordering the defendant to pay \$30,490.76 in restitution without considering the defendant's future ability to pay, after revoking the defendant's probation and ordering him to serve three consecutive sentences of eleven months and twenty-nine days in confinement.

3. Whether the trial court erred by converting the judgment ordering restitution into a civil judgment without following the process prescribed by Tennessee Code Annotated section 40-35-304(h).

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1.	Style	Colleen Ann Hyder v. BPR
2.	Docket Number	M2022-01703-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 12/8/22; Motion to dismiss filed 3/3/23 by BPR for failure to file a transcript or statement of the evidence.
6.	Issue(s)	N/A

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1.	Style	George G. Ingram v. Dr. Michael Gallagher et al.
2.	Docket Number	E2020-01222-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/ingram_vs._gallagher_coa_opinion.pdf">https://www.tncourts.gov/sites/default/files/ingram_vs._gallagher_coa_opinion.pdf</a>
4.	Lower Court Summary	This appeal arises from a healthcare liability action wherein the plaintiff initially sued the doctor, the hospital, and two other defendants. The plaintiff voluntarily dismissed the action without prejudice against all defendants except for the doctor. The doctor subsequently filed an answer to the complaint, stating that the action should be dismissed under the Governmental Tort Liability Act because the hospital, a governmental hospital entity and the doctor's employer, was not a party to the action. Shortly thereafter, the plaintiff filed a "Motion to Alter or Amend," seeking to set aside the Trial Court's order of dismissal in order to withdraw his voluntary dismissal of the hospital as a party. The Trial Court denied the plaintiff's motion to alter or amend, determining that the voluntary dismissal order was a final order and that the plaintiff knew about the doctor's employment with the hospital prior to the voluntary dismissal. We determine that the Trial Court erred by treating the plaintiff's motion as a Tennessee Rule of Civil Procedure 60 motion, instead of a motion to revise pursuant to Rule 54.02, and further hold that the Trial Court erred by denying the plaintiff's motion to revise the non-final order of voluntary dismissal.
5.	Status	Heard 5/25/22 in Cookeville; Motion to supplement the record filed 3/6/23.
6.	Issue(s)	As stated in Appellant's Rule 11 Application: <ol style="list-style-type: none"> <li>I. Whether a T.R.C.P. 41.01(1) voluntary dismissal (nonsuit) of less than all defendants removes the dismissed defendants from the lawsuit, such that they are "placed in their original positions prior to the filing of the suit," "as if they had never been sued," or leaves the dismissed defendants subject to T.R.C.P. 54.02 and being reinstated into the lawsuit upon motion of plaintiff, regardless</li> </ol>

of the expiration of the applicable statute of limitations in the interim.

- II. Whether the Court of Appeals erred in not affirm the trial court on the remaining [pretermitted] issues.

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1.	Style	Loring E. Justice v. BPR
2.	Docket Number	E2022-01105-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 8/15/22; Appellant's brief filed 2/27/23.
6.	Issue(s)	N/A

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1.	Style	State of Tennessee v. Ronald Lyons, James Michael Usinger, Lee Harold Cromwell, Austin Gary Cooper, and Christopher Alan Hauser
2.	Docket Number	M2019-01946-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/lyonsusingercromwellcooperandhauser.opn_.pdf">https://www.tncourts.gov/sites/default/files/lyonsusingercromwellcooperandhauser.opn_.pdf</a>
4.	Lower Court Summary	Ronald Lyons, James Michael Usinger, Lee Harold Cromwell, Austin Gary Cooper, and Christopher Alan Hauser, Defendants, were named in a 302-count indictment by the Davidson County Grand Jury for multiple counts of forgery and fraudulently filing a lien for their role in filing a total of 102 liens against 42 different individuals with the office of the Tennessee Secretary of State. Defendant Cooper was also named in a second indictment for five additional counts of forgery and five additional counts of fraudulently filing a lien. Prior to trial, Defendant Hauser filed a motion to dismiss for improper venue. Defendants Cromwell and Cooper joined in the motion. The trial court denied the motion after a hearing. After a jury trial, each defendant was convicted as charged in the indictment. The trial court sentenced Defendant Cromwell to an effective sentence of twenty-five years; Defendant Cooper to an effective sentence of fifty years; Defendant Lyons to an effective sentence of twenty-two years; Defendant Usinger to an effective sentence of twenty-one years; and Defendant Hauser to an effective sentence of twenty years. After motions for new trial and several amended motions for new trial were filed, the trial court held a hearing. The trial court denied the motions in a lengthy and thorough written order. Each defendant appealed, raising various issues challenging their convictions and sentences. After deep review, we affirm the all judgments and all sentences.
5.	Status	Heard 4/6/22 in Nashville.
6.	Issue(s)	According to the Supreme Court's Order granting the application for permission to appeal:

Whether the evidence was sufficient to support the convictions for forgery under Tennessee Code Annotated section 39-14-114.

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1.	Style	Thomas Fleming Mabry v. The Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	E2022-00945-SC-R3-BP consolidated 10/13/22 with E2022-01390-SC-R3-BP filed 9/30/22
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 7/11/22; appellate record filed 2/23/23.
6.	Issue(s)	N/A

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1.	Style	Brian Philip Manookian v. Board of Professional Responsibility of the Supreme Court of Tennessee
2.	Docket Number	M2022-00075-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 1/12/22; Motion to dismiss denied (by Court order 2/3/22); Appellant's motion to consolidate with M2022-00301-SC-R3-BP granted (by Court order 3/14/22); Appellant's brief filed 6/1/22; Appellee's motion for extension to file brief granted 7/7/22; Response to reply brief filed 11/18/22
6.	Issue(s)	N/A

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1.	Style	In re Markus E.
2.	Docket Number	M2019-01079-SC-R11-PT
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/inre.markus.e.opn_.pdf">https://www.tncourts.gov/sites/default/files/inre.markus.e.opn_.pdf</a>
4.	Lower Court Summary	A mother and father appeal the termination of their parental rights. The trial court concluded that there was clear and convincing evidence of two statutory grounds for termination of the mother's rights and one statutory ground for the termination of the father's parental rights. The trial court also concluded that there was clear and

convincing evidence that termination of their parental rights was in their child's best interest. After a thorough review, we affirm.

5.	Status	Heard 9/28/22 via Zoom
6.	Issue(s)	<p>As stated in the Appellant's application for permission to appeal:</p> <p>Whether the father committed severe abuse against the child or failed to protect the child from severe abuse.</p> <p>Additionally, according to the Supreme Court's order granting the application for permission to appeal:</p> <ol style="list-style-type: none"> <li>1. Whether the evidence supports the two grounds for termination of parental rights as to the mother.</li> <li>2. Whether the termination proceeding was fundamentally fair, particularly as to the mother based on the exclusion of her mental health assessment.</li> </ol>

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1.	Style	Peggy Mathes et al. v. 99 Hermitage, LLC
2.	Docket Number	M2021-00883-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/peggymathes.opn_.pdf">https://www.tncourts.gov/sites/default/files/peggymathes.opn_.pdf</a>
4.	Lower Court Summary	<p>This appeal involves a real property dispute. Resolution of the competing interests ultimately turns on the propriety of certain adverse possession claims that have been asserted. Following a bench trial, the trial court determined that there was no adverse possession established due to its finding that Mr. Whiteaker, a former record owner of the property, had "acquiesced in, and permitted" the possession of Mr. Eads, an original plaintiff in this action who is now deceased. Judgment was accordingly entered in favor of the Appellee herein, an entity that purchased the property at a sheriff's sale. The Appellants, who assert rights to the property by dint of Mr. Eads' alleged adverse possession, submit that there is no evidence to support the trial court's view that Mr. Eads' possession was subservient to Mr. Whiteaker. For its part, the Appellee maintains that several considerations countenance against the assertion of adverse possession rights. Having considered the various issues and arguments raised by the parties, we hold that the judgment of the trial court should be reversed, as we conclude that Mr. Eads previously acquired title to the property by common law adverse possession.</p>
5.	Status	Application granted 12/15/22; Appellant's brief filed 2/10/23; Motion for extension to file appellee's brief granted and due 3/24/23.
6.	Issue(s)	<p>As stated in the Appellant's Rule 11 Application:</p> <ol style="list-style-type: none"> <li>1. Whether the true owner of real property by way of an unrecorded deed received from his grantor may establish title by adverse possession.</li> <li>2. Whether an inchoate common law adverse possession claim supersedes a valid, recorded judgment, attachment, order, injunction or other writ affecting title, use or possession of real estate, which is filed pursuant to Tenn. Code Ann. § 66-24-119 and/or Tenn. Code Ann. § 25-5-101.</li> </ol>



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1.	Style	State of Tennessee v. Kemontea Dovon McKinney
2.	Docket Number	M2020-00950-SC-R11-CD
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/mckinney_kemontea_dovon-filed_opn.pdf">https://www.tncourts.gov/sites/default/files/mckinney_kemontea_dovon-filed_opn.pdf</a>
4.	Lower Court Summary	The defendant, Kemontea Dovon McKinney, appeals his Robertson County Circuit Court jury convictions of aggravated robbery, first degree premeditated murder, first degree felony murder, and theft, arguing that the trial court erred by admitting his pretrial statement into evidence, that the evidence was insufficient to support his convictions, and that the evidence established that he acted in self-defense. Because the trial court erred by admitting the defendant's statement into evidence and because the error was not harmless beyond a reasonable doubt, the defendant's convictions are reversed and remanded for a new trial. Because the evidence was insufficient to support a conviction of first degree premeditated murder but sufficient to support a conviction of second degree murder, that conviction must be modified to one of second degree murder. The evidence was sufficient to support the jury verdicts of felony murder, aggravated robbery, and theft. Accordingly, we remand the case to the trial court for a new trial on two counts of felony murder, one count of second degree murder, one count of aggravated robbery, and, one count of theft of property.
5.	Status	Application granted 5/18/22; Appellant's brief filed 6/17/22; Appellee's brief filed 7/15/22; Reply brief filed 7/29/22; Heard 12/6/22 at ETSU (SCALES program). Appellant's supplemental brief filed 1/6/23; State's supplemental brief filed 1/7/23.
6.	Issue(s)	As stated in the Appellant's Rule 11 Application: <p>I. Whether the Court of Criminal Appeals erroneously held that an involuntary-confession claim under the Due Process Clause is so "inextricably linked" to a <i>Miranda</i>-waiver claim that a successful <i>Miranda</i> claim effectively establishes an involuntary confession, which requires exclusion of non-testimonial evidence.</p> <p>II. Whether the Court of Criminal Appeals erred in finding a <i>Miranda</i> violation where the proof—including a video recording of detectives clearly reading the defendant his rights in his mother's presence before the defendant confessed to killing the victim—demonstrated a voluntary waiver of his rights.</p> <p>III. Whether the Court of Criminal Appeals analyzed the sufficiency of the evidence of premeditation by making its own credibility determinations and failing to draw all reasonable inferences from the evidence in favor of the State.</p>

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1.	Style	Paul Zachary Moss v. Shelby County Civil Service Merit Board
2.	Docket Number	W2017-01813-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/mosspaulzachary2opn.pdf">https://www.tncourts.gov/sites/default/files/mosspaulzachary2opn.pdf</a>
4.	Lower Court Summary	This appeal arises from a petition for judicial review of a decision of the Shelby County Civil Service Merit Board. The appellant was a firefighter and paramedic and was terminated from his employment after he was involved in a physical altercation

at a political rally. After a hearing, the Board upheld his termination. The appellant then sought judicial review in chancery court. After reviewing the administrative record, the chancery court likewise upheld termination. On appeal, this Court concluded that the decision upholding the appellant's termination should be reversed due to a violation of his due process rights. The Tennessee Supreme Court found no due process violation and reversed the decision of this Court, remanding for consideration of alternative arguments raised by the appellant that were deemed pretermitted in our previous opinion. Having carefully considered the appellant's alternative arguments, we affirm the chancery court's rulings on some issues but ultimately must vacate in part the decision upholding termination and remand for further proceedings before the Board.

5. Status Application granted 3/25/22; Appellant's brief filed 4/21/22; Appellee's brief filed 5/18/22; Reply brief filed 6/1/22; Heard 11/9/22 in Jackson.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- Civil service merit panels review terminations of government employees to determine whether just cause exists to support the decision to terminate. In this case, the Civil Service Merit Board declined to hear Moss's proposed evidence that other employees in other cases had received lighter disciplines, and instead relied on the extensive proof that Moss's use of a handgun at a political rally and subsequent untruthfulness were inappropriate and terminable. Did the CSMB act within its discretion when it excluded evidence of separate disciplines of other employees in finding that just cause existed to terminate Moss for his conduct?

1. Style Kenneth J. Mynatt v. National Treasury Employees Union, Chapter 39 et al.
2. Docket Number M2020-01285-SC-R11-CV
3. Lower Court Decision Links [https://www.tncourts.gov/sites/default/files/mynatt.kenneth.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/mynatt.kenneth.opn_.pdf)
4. Lower Court Summary This case involves claims of malicious prosecution and civil conspiracy. The trial court dismissed the claims pursuant to Tennessee Rule of Civil Procedure 12.02(6), determining that the plaintiff could not prove that the underlying criminal prosecution had terminated in his favor, a necessary element of a malicious prosecution claim. Regarding the civil conspiracy claim, the court determined that the conspiracy claim was only actionable if the underlying tort were actionable. Having found that the malicious prosecution claim could not stand, the court concluded that the conspiracy claim had to be dismissed as well. The plaintiff timely appealed. Based upon the applicable standard of review, we conclude that the trial court erred in dismissing the plaintiff's claims, and we accordingly reverse the judgment of dismissal and remand this matter to the trial court for further proceedings.
5. Status Heard on 10/5/22 in Nashville.
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- [W]hether the Court of Appeals erred by disregarding *Himmelfarb* [*v. Allain*, 380 S.W.3d 35 (Tenn. 2012)] and allowing Plaintiff Mynatt's malicious prosecution suit to proceed under pre-*Himmelfarb* caselaw, even though (a) Plaintiff's suit is predicated on a prior criminal proceeding that was disposed of through a voluntary retirement and subsequent dismissal of the charges against him, and (b) Plaintiff

concedes that the way he seeks to establish that this disposition reflects his innocence is through fact-intensive discovery that Plaintiff hopes will show that the prosecutor acted in the subjective belief that Plaintiff was innocent.

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1.	Style	Pratik Pandharipande, M.D. v. FSD Corporation
2.	Docket Number	M2020-01174-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://tncourts.gov/pratik.pandharipande.opn.pdf">pratik.pandharipande.opn .pdf (tncourts.gov)</a>
4.	Lower Court Summary	<p>This is a dispute between a property owner and his homeowners' association concerning the scope and applicability of restrictive covenants. Two restrictive covenants are at issue. One is a covenant contained in the neighborhood's 1984 Declaration of Covenants, Conditions, and Restrictions that limited usage of the homes to residential use as "a residence by a single family." The other is a covenant contained in a 2018 Amendment that relaxed the 1984 residential use restriction by authorizing short-term rentals of no less than 30 consecutive days, subject to specific criteria. The plaintiff, who purchased a home in the development in 2015 and has been leasing it on a short-term vacation rental basis to third parties as a business venture, seeks a declaratory judgment that he may lease his home for rentals as short as two days. For its part, the homeowners' association seeks to enforce the restrictive covenants in the 1984 Declaration as well as the 2018 Amendment. The trial court granted summary judgment in favor of the homeowners' association on both issues. In doing so, the court held that restrictions in the 1984 Declaration prohibited nonresidential renting. The court also held that Plaintiff's current use of his property is subject to the 2018 Amendment, which authorized short-term leasing subject to stipulations including that "[t]he length of the lease must be for a minimum of 30 consecutive days." The plaintiff appeals. We affirm.</p>
5.	Status	Heard 2/22/23 in Nashville.
6.	Issue(s)	<p>As stated in the Appellant's Rule 11 Application:</p> <ol style="list-style-type: none"> <li>1. Whether the Court of Appeals erred in upholding the Trial Court's ruling that FSD can retroactively ban STRs for owner-occupied chalets in a lake resort like Four Seasons?</li> <li>2. Whether the Court of Appeals erred in upholding the Trial Court's ruling that FSD's generic residential use restriction somehow prohibits owner-occupied STRs?</li> <li>3. Whether Teffeteller remains applicable law with regard to owner-occupied STRs like Dr. Pandharipande's lake chalet in Four Seasons?</li> <li>4. Whether the Court of Appeals erred in refusing to review the Trial Court's ruling on Dr. Pandharipande's equitable estoppel arguments? and,</li> <li>5. Whether the 2018 Amendment grandfathers Dr. Pandharipande's use of his lake chalet at Four Seasons for STRs?</li> </ol>

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1. Style State of Tennessee v. Ebony Robinson
2. Docket Number M2021-01539-SC-R11-CD
3. Lower Court Decision Links [https://tncourts.gov/sites/default/files/state\\_of\\_tennessee\\_v.\\_ebony\\_robinson\\_-\\_m2021-01539-cca-r3-cd.pdf](https://tncourts.gov/sites/default/files/state_of_tennessee_v._ebony_robinson_-_m2021-01539-cca-r3-cd.pdf)
4. Lower Court Summary Defendant, Ebony Robinson, pled guilty to vehicular homicide by intoxication, aggravated assault, resisting arrest, and driving without a license. The trial court imposed an effective ten-year sentence to be served on probation with periodic confinement each year near Christmas and each victim's birthday. On appeal, the State argues that the trial court erred by granting probation because Defendant was not statutorily eligible. Following our review of the entire record, oral arguments, and briefs of the parties, we reverse the trial court's imposition of probation and remand for execution of Defendant's sentence and entry of amended judgments of conviction.
5. Status Application granted 1/30/23; Appellant's brief filed 3/1/23; TBH at Boys State 5/24/23.
6. Issue(s) As stated in the Appellant's Rule 11 Application:  
  
Did the CCA correctly conclude that the legislature repealed by implication a provision of T.C.A. § 39-13-213(b)(2)(B), setting forth a specific and detailed mandatory-minimum sentencing scheme for the offense of vehicular homicide by intoxication, when it enacted a 2017 amendment to T.C.A. § 40-35-303 providing that no person convicted of that offense is eligible for probation?

1. Style State of Tennessee v. Dashun Shackelford
2. Docket Number E2020-01712-SC-R11-CD
3. Lower Court Decision Links [state\\_of\\_tennessee\\_v.\\_dashun\\_shackelford.pdf \(tncourts.gov\)](#)
4. Lower Court Summary The Defendant-Appellant, Dashun Shackelford, was convicted by a Knox County Criminal Court jury as charged in a twenty-count indictment; four alternative counts each of aggravated robbery against four victims and four corresponding counts of criminal gang offense enhancement. The trial court merged the aggravated robbery convictions into four counts and imposed a total effective sentence of twenty years' incarceration to be served at 85 percent. On appeal, the Defendant argues that (1) the evidence is insufficient to support his gang enhancement convictions; and (2) the gang enhancement counts violate his constitutional rights to due process and expressive association. Upon our review, we conclude that the State failed to sufficiently prove the gang enhancement counts and failed to comply with the notice requirements mandated by Tennessee Code Annotated § 40-35- 121(g). Accordingly, we reverse and vacate the judgments in Counts 13 through 16, and remand for resentencing as to those counts. Because the gang enhancements are no longer applicable to the

Defendant's case, we decline to address the constitutional questions raised in this appeal.

5. Status Application granted 8/9/22; Appellant's brief filed 9/7/22; Motion for extension to file Appellee's brief granted and due 11/7/22; Heard 12/6/22 at ETSU (SCALES project).
6. Issue(s) As stated in the Appellant's Rule 11 Application:
- I. Whether Tenn. Code Ann. § 40-35-121 requires the State to allege in the gang-enhancement counts of the defendant's indictment that the defendant is in the same subset of a criminal gang as the individuals whose criminal activity establishes the gang's pattern of criminal gang activity.
- II. Whether the defendant forfeited plenary review of a variance issue when he did not raise the issue at any point in the trial court or on appeal.

1. Style State of Tennessee v. Tony Thomas and Laronda Turner
2. Docket Number W2019-01202-SC-R11-CD
3. Lower Court Decision Links <https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondaopn.pdf>  
<https://www.tncourts.gov/sites/default/files/thomastonyturnerlarondadis.pdf>
4. Lower Court Summary The Defendants, Tony Thomas and Laronda Turner, were convicted of three counts of first degree premeditated murder and received life sentences on each count. On appeal, they raise the following issues: (1) whether the evidence was sufficient to support their convictions, specifically whether the co-defendant's testimony was reliable and sufficiently corroborated; (2) whether the trial court erred by denying the Defendants' motion to dismiss the indictment due to the State's Ferguson violation by failing to preserve the photographic lineups shown to the witnesses and the co-defendant's cell phone taken upon his arrest; (3) whether the trial court erred by not granting a new trial because the State committed a Brady violation by failing to disclose all inconsistent statements made by the co-defendant during proffer sessions; (4) whether the trial court committed error when it sua sponte prohibited the introduction of the printout of the co-defendant's message to his girlfriend implicating himself in the murders, and in so doing, made an improper comment on the evidence; and (5) whether the trial court erred in instructing the jury by including the language "or either of them" throughout the jury instructions.<sup>1</sup> Following our review, we affirm the judgments of the trial court.
5. Status Application granted 4/14/22; Appellant Thomas's brief filed 5/17/22; Appellant Turner's brief filed 6/14/22 (by Court order 5/9/22); Appellee's brief filed 8/3/22 (by Court order 7/8/22); Appellant's reply brief filed 9/2/22; TBH 4/5/23 in Jackson.
6. Issue(s) According to the Supreme Court's Order granting the application for permission to appeal:
- 1) Whether the prosecution breached its constitutional duty of production under Brady v. Maryland, 373 U.S. 83 (1963), by failing to produce statements made by a co-defendant in proffer conferences, which were allegedly inconsistent with the co-defendant's formal statement to law enforcement.

2) Whether the evidence was sufficient to support Laronda Turner’s convictions for first-degree murder.

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1.	Style	Dennis Harold Ultsch v. HTI Memorial Hospital Corporation
2.	Docket Number	M2020-00341-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf">https://www.tncourts.gov/sites/default/files/ultsch.dennis.opn_.pdf</a>
4.	Lower Court Summary	This appeal concerns the interplay between the Tennessee Health Care Liability Act (“HCLA”) and the common law on vicarious liability with respect to pre-suit notice in a health care liability claim against the principal only. We have determined that the provisions of the HCLA take precedence over the common law and that the plaintiff’s claims in this case were timely filed. Therefore, we reverse the decision of the trial court.
5.	Status	Heard 4/6/22 in Nashville.
6.	Issue(s)	As stated in the Appellant’s Rule 11 Application:  Does pre-suit notice to a health care provider operate to extend the statute of limitations as to each and every person who might be considered an agent of that provider?  Did the trial court properly dismiss Plaintiff’s vicarious liability claims against TriStar Skyline, since by the time of filing the Complaint, Plaintiff’s claims against Tri-Star Skyline’s alleged agents were procedurally barred by operation of law, that is, the statute of limitations?

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1.	Style	Gerald D. Waggoner Jr. v. Board of Professional Responsibility
2.	Docket Number	W2022-01294-SC-R3-BP
3.	Lower Court Decision Links	N/A
4.	Lower Court Summary	N/A
5.	Status	Appeal filed 9/15/22; Appellant’s brief filed 2/23/23; TBH 4/5/23 in Jackson on brief.
6.	Issue(s)	N/A

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1.	Style	James A. Welch et al. v. Oaktree Health and Rehabilitation Center LLC d/b/a Christian Care Centers of Memphis et al.
2.	Docket Number	W2020-00917-SC-R11-CV
3.	Lower Court Decision Links	<a href="https://www.tncourts.gov/sites/default/files/welchjamesaopn.pdf">https://www.tncourts.gov/sites/default/files/welchjamesaopn.pdf</a>

4. Lower Court Summary  
This appeal involves an arbitration agreement executed in connection with a patient’s admission to a nursing home. The arbitration agreement was executed by the patient’s brother, who had been designated as the patient’s attorney-in-fact for health care pursuant to a durable power of attorney for health care executed by the patient several years earlier. When the patient’s brother filed this wrongful death suit in circuit court, the nursing home defendants filed a motion to compel arbitration. The patient’s brother then asserted that he did not have authority to bind the patient to the arbitration agreement because the patient had been mentally incompetent when he executed the durable power of attorney for health care years earlier. The defendants argued that the trial court was not permitted to “look beyond” the durable power of attorney for health care to determine the competency of the patient at the time of its execution. The trial court ruled that it would “look beyond” the power of attorney for health care in order to consider the patient’s competency and allowed the parties to engage in discovery related to the issue of incompetence. Discovery ensued, and the parties submitted additional evidence regarding the patient’s competency. The trial court then found by clear and convincing evidence that the patient was incompetent at the time the durable power of attorney for health care was executed. As a result, the trial court concluded that the patient’s brother lacked authority to sign the arbitration agreement as attorney-in-fact for health care. The trial court denied the motion to compel arbitration, and the defendants appealed. Pursuant to the Tennessee Supreme Court’s decision in *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007), we hold that the trial court erred in looking beyond the durable power of attorney for health care to examine the patient’s competency at the time it was executed. We reverse the decision of the trial court and remand for further proceedings consistent with this opinion.
5. Status  
Application granted 8/4/22; Appellant’s brief filed 9/6/22; Appellee’s brief filed 10/6/22; Reply brief filed 10/20/22; Heard 11/9/22 in Jackson.
6. Issue(s)  
According to the Supreme Court’s Order granting the application for permission to appeal:
1. Whether the Court of Appeals went beyond the permitted scope of review in reversing the circuit court’s decision based on application of the Tennessee Health Care Decisions Act, Tenn. Code Ann. § 68-11-1801 to -1815, a statute not raised by either of the parties on appeal or addressed by the circuit court;
  2. Whether this Court’s citation to Tennessee Code Annotated section 34-6- 208 in footnote 4 in *Owens v. National Health Corp.*, 263 S.W.3d 876 (Tenn. 2007), creates a bright line rule prohibiting trial courts from considering a principal’s lack of capacity to grant a healthcare power of attorney and other healthcare agency appointments; and
  3. Whether the Court of Appeals’ determination that the circuit court erred in looking into the validity of the health care power of attorney to enforce the arbitration agreement improperly favors nursing home arbitration agreements over other contracts, contrary to the requirements of 9 U.S.C.A. § 2, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), and Tennessee contract law?
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1. Style  
James Williams v. Smyrna Residential, LLC, et al.
2. Docket Number  
M2021-00927-SC-R11-CV
3. Lower Court Decision Links  
[https://www.tncourts.gov/sites/default/files/james.williams.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/james.williams.opn_.pdf)

4. Lower Court Summary  
This appeal concerns the enforceability of an arbitration agreement in a wrongful death lawsuit. James Williams (“Plaintiff”), individually as next of kin and on behalf of the wrongful death beneficiaries of Granville Earl Williams, Jr., deceased (“Decedent”), sued Smyrna Residential, LLC d/b/a Azalea Court and Americare Systems, Inc. (“Defendants,” collectively) in the Circuit Court for Rutherford County (“the Trial Court”). Decedent was a resident of Azalea Court, an assisted living facility. Plaintiff alleged his father died because of Defendants’ negligence. Defendants filed a motion to compel arbitration, citing an arbitration agreement (“the Agreement”) entered into by Decedent’s daughter and durable power of attorney Karen Sams (“Sams”) on behalf of Decedent when the latter was admitted to Azalea Court. Notably, the durable power of attorney (“the POA”) did not cover healthcare decision-making. The Trial Court held that Sams lacked authority to enter into the Agreement and that, in any event, the wrongful death beneficiaries would not be bound by the Agreement even if it were enforceable. Defendants appeal. We affirm.
5. Status  
Heard 2/22/23 in Nashville
6. Issue(s)  
As stated in the Appellant’s Rule 11 Application:
1. Whether the Court of Appeals erred in creating a bright line rule that an attorney-in-fact, validly appointed pursuant to a general Durable Power of Attorney and granted with the authority to act on behalf of a principal “in all claims and litigation matters,” has no authority to sign an independent arbitration agreement because it was executed in conjunction with the principal’s admission to a long-term care facility?
  2. Whether the Court of Appeals’ determination that a durable power of attorney who indisputably has the authority to bind the principal to arbitration cannot bind that principal to arbitration in the health care context improperly places nursing home arbitration agreements on unequal footing with other contracts, thereby disfavoring arbitration, contrary to the Federal Arbitration Act, 9 U.S.C. § 2?
  3. Whether the Court of Appeals erred in determining that Defendants waived their surrogate authority argument when the parties presented both the Living Will and the Tennessee Physician Orders for Scope of Treatment (“POST”) to the Circuit Court, and the Circuit Court considered the evidence and made a ruling regarding the agent’s authority based on that evidence?
  4. Whether the Court of Appeals erred in determining that Defendants failed to establish the statutory requirements for surrogate status were met with respect to the Mr. Williams, when Defendants presented a form signed by a designated physician and entered into the clinical record that on its face showed that the Mr. Williams lacked capacity and that the physician recognized Ms. Sams as his surrogate?
  5. Whether the Court of Appeals erred in finding that pursuant to *Beard v. Branson*, 528 S.W.3d 487 (Tenn. 2017), the Decedent’s wrongful death beneficiaries are not bound by the Arbitration Agreement, where it was a validly-executed agreement and Tennessee law establishes that their claims are derivative of the estate’s claim?