

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
January 6, 2016 Session

**KATHRYN E. MITCHELL, ET AL. v.  
CHARLES WESLEY MORRIS, ET AL.**

**Appeal from the Circuit Court for Washington County  
No. 32184                      Hon. Jean A. Stanley, Judge**

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**No. E2015-01353-COA-R3-CV-FILED-MARCH 9, 2016**

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D. MICHAEL SWINEY, C.J., concurring.

I concur fully in the majority's decision in this case. I write separately only to express my opinion that the appropriate summary judgment standard to be applied by Tennessee courts now is as set forth in *Rye v. Women's Care Center of Memphis, M PLLC*, \_\_\_ S.W.3d \_\_\_, 2015 WL 6457768 (Tenn. 2015), rather than Tenn. Code Ann. § 20-16-101. I believe our Supreme Court intended for the retroactive application of *Rye* when it stated: "In civil cases, judicial decisions overruling prior cases generally *are applied retrospectively*." *Rye*, \_\_\_ S.W.3d at \_\_\_n.9, 2015 WL 6457768 at \*35 n.9. While there may be very little, if any, difference between the summary judgment standard as set forth in *Rye* and as contained in Tenn. Code Ann. § 20-16-101, I believe *Rye* sets the standard and is controlling on the courts of this State.

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D. MICHAEL SWINEY, CHIEF JUDGE