

LITIGATION**TENNESSEE SUPREME COURT MODIFIES SUMMARY JUDGMENT STANDARD**

by John E. Anderson, Sr.

Recently the Tennessee Supreme Court modified the summary judgment standard in state courts in the state of Tennessee. The Tennessee Supreme Court returned the state's summary judgment standard to be consistent with the Federal Rules of Civil Procedure by overturning the seven-year old precedent in *Hannan v. Alltel Publishing Co.* that it said "frustrate[d] the purposes for which summary judgment was intended."

In *Rye v. Women's Care Center of Memphis*, the court ruled that Rule 56 of the Tennessee Rules of Civil Procedure, which governs summary judgment proceedings, should be interpreted like the nearly identical Federal Rule 56 after which it was modelled.

In general, summary judgment is a weapon used by a litigant, usually a defendant, to force the opposing party to show its proverbial poker hand. Under the federal standard, the moving party either 1) provides affidavits or evidence collected through discovery to show that no genuine issue of material fact exists between the parties for a factfinder to resolve, or 2) argues that the nonmoving party has no evidence to support his claim or defense. The burden of proof is then shifted to the nonmoving party to produce any evidence that either creates a question of fact or supports that he has a claim. Any evidence is weighed to the benefit of the nonmoving party. If the judge finds that the evidence shows no genuine issue of material fact or that the nonmoving party doesn't have an adequate claim or defense, the case is dismissed with prejudice and cannot be refiled.

But Tennessee courts have long struggled with interpreting Rule 56, leading to debate over whether the state followed the federal standard or offered a higher standard for summary judgment. The majority in *Rye* said the confusion was created by the 1993 decision in *Byrd v. Hall*, in which the court didn't clearly explain whether the state followed the federal standard or applied a higher standard that required the moving party to affirmatively negate the nonmoving party's claims. Then *Hannan* happened.

In an attempt to clarify the standard, the *Hannan* court declared that Tennessee's standard for summary judgment was higher than the federal one, and required the moving party to "affirmatively negate an essential element of the nonmoving party's claim or ... show that the nonmoving party cannot prove an essential element at trial."

The unintended effect of the *Hannan* court's use of the phrase "at trial," commentators have noted, was to shift the burden of proof away from the nonmoving party, usually a plaintiff that would ordinarily have the burden of proving his claim, and force the defendant to completely disprove the claim. Essentially, the nonmoving party could

usually prevail without having to produce evidence to support his claim because the moving party could rarely completely disprove the case. Rather than clarify how summary judgment could be obtained, the *Hannan* decision actually clarified that summary judgment was virtually unattainable.

The *Rye* court criticized the *Hannan* rule as "unworkable," and revived the burden-shifting federal standard. While litigants, particularly defendants, may feel some relief by the *Rye* decision, the effect will be somewhat dampened by the fact that it only applies to cases filed before July 1, 2011. Cases filed on or after that date are governed by Tenn. Code. Ann. 20-16-101, in which the Tennessee Legislature mandated the courts follow a procedure similar to the burden-shifting federal standard. *Rye* ensures that all litigants are playing under the same rules regardless of when the claim was filed.

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