

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 9, 2004 Session

**SUSAN BEGLEY v. STATE OF TENNESSEE AND TENNESSEE
DEPARTMENT OF TRANSPORTATION**

**Appeal from the Claims Commission for the Eastern Division
No. 20101735 Vance W. Cheek, Jr., Commissioner**

No. E2004-00202-COA-R3-CV - FILED OCTOBER 7, 2004

DISSENTING OPINION

Assuming *arguendo* that the State's parked vehicle was a contributing proximate cause of the accident, the Commissioner's and the majority's approach by focusing almost exclusively on the defendant's parked vehicle and its location, led them in my view to the wrong conclusion. The majority is unable to point to any specific regulatory or statutory violations by the defendant. In contrast, the deceased violated numerous statutes, as well as common law violations. *See Tenn. Code Ann. § 55-8-101 et seq., Operation of Vehicles - Rules of the Road.*

Clearly, in my opinion, the deceased by leaving the main traveled portion of the road violated several rules of the road. By driving onto the shoulder and striking a stationery vehicle, he was more than 50% at fault for this accident.

I would reverse the Judgment of the Claims Commission.

HERSCHEL PICKENS FRANKS, P.J.