

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
June 25, 2009 Session

**COREY GREENE, ET AL. v. YASEEN TITI  
d/b/a CRUSH NIGHT CLUB, ET AL.**

**Appeal from the Circuit Court for Davidson County  
No. 06C118 Thomas Brothers, Judge**

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**No. M2008-02788-COA-R3-CV - Filed January 11, 2010**

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JUDGE D. MICHAEL SWINEY, concurring in part and dissenting in part.

I concur in the majority's decision to affirm the judgment of the Trial Court granting summary judgment to Tennessee Protection Agency ("T.P.A."). I, however, do not concur with the majority's determination that the T.P.A. owed no duty to the Plaintiff other than to refrain from gross negligence or willful misconduct.

For purposes of its motion for summary judgment before the Trial Court, T.P.A. assumed that it owed a duty of care to Plaintiff. The Trial Court granted T.P.A.'s motion for summary judgment upon its determination that T.P.A. had shown that it did not breach any duty of care owed to Plaintiff. Having successfully done this, T.P.A. had satisfied its burden of production by "affirmatively negate[ing] an essential element of [Plaintiff's] claim...." *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1, 5 (Tenn. 2008). The burden then shifted to Plaintiff "to show that a genuine issue of material fact exists." *Id.* Plaintiff failed to meet this burden.

I agree with the Trial Court's determination that T.P.A. successfully negated an essential element of Plaintiff's claim by showing no breach of any duty of care owed by T.P.A. to Plaintiff, and Plaintiff thereafter failed to create a genuine issue of material fact. I would affirm the Trial Court's decision on that basis and that basis alone.

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D. MICHAEL SWINEY, JUDGE