

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 10, 2015 Session

**JOSEPH C. THOMAS, ET AL. V. THE STANDARD FIRE INSURANCE
COMPANY, ET AL.**

**Appeal from the Chancery Court for Hamilton County
No. 12-0328 Jeffrey M. Atherton, Chancellor**

No. E2015-01224-COA-R3-CV-FILED-FEBRUARY 17, 2016

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 a 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.

D. MICHAEL SWINEY, CHIEF JUDGE