



Tennessee Defense Lawyers Association

NEWSLETTER

TDLA Amicus Briefs

TDLA is currently working on several Amicus Briefs. Below is an outline of those Amicus Briefs for our membership.

TDLA's Professional Negligence and Healthcare Committee Co-Chair, Chris Vrettos:

On April 7, 2021, the Supreme Court granted Defendants' application for permission to appeal in *Cooper v. Mandy, et al.* *Cooper* involved claims of a negligently performed breast reduction surgery in which the patient maintained she never would have undergone the procedure but for the physician and his practice group's alleged misrepresentation regarding his credentials. After Plaintiffs' counsel failed to comply with pre-suit notice requirements on both filing and re-filing of the lawsuit, the Trial Court denied Defendants' Motion to Dismiss on the grounds that all of Plaintiffs' claims—including one for medical battery—flowed from the alleged initial misrepresentation. Consequently, Tennessee's Health Care Liability Act did not apply. The Court of Appeals affirmed in November 2020. **Brie Stewart of Spears, Moore, Rebman & Williams** in Chattanooga will prepare an *amicus* brief on behalf of the Tennessee Defense Lawyers Association.

TDLA's Tort Committee Co-Chair, Sean Martin:

Younger v. Okbahhanes is an action for personal injury arising out of a motor vehicle accident. Plaintiff filed a lawsuit against Defendant more than 1 year after the accident. Defendant filed a motion for summary judgment arguing that Plaintiff's action was untimely. Plaintiff argued in response that T.C.A. § 28-3-104(a)(2) operated to extend the statute of limitations to two years because Defendant was issued a traffic citation for failure to exercise due care in violation of § 55-8-136. T.C.A. § 28-3-104(a)(2) extends the statute of limitations to two years if "(A) Criminal charges are brought against any person alleged to have caused or contributed to the injury; (B) The conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year by: (i) A law enforcement officer; (ii) A district attorney general; or (iii) A grand jury; and (C) The cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct."

TDLA Amicus Briefs

(Continued)

The trial court found that T.C.A. § 28-3-104(a)(2) extended the statute of limitations to two years because Defendant was charged with a criminal offense and a criminal prosecution had been commenced against him. Addressing this as a matter of first impression, the Tennessee Court of Appeals affirmed, holding that “the traffic citation issued to Defendant for failure to exercise due care, which had been prepared, accepted, and the original citation filed with the court, [wa]s a criminal charge and a criminal prosecution by a law enforcement officer, such that [T.C.A. § 28-3-104(a)(2) wa]s applicable to extend the statute of limitations to two years.” Therefore, the Court of Appeals upheld the trial court’s denial of summary judgment to Defendant. Defendant filed a Rule 11 Application for Permission to Appeal with the Tennessee Supreme Court at the end of March 2021. Plaintiff filed a timely response in opposition in April 2021. We are currently waiting for the Tennessee Supreme Court to decide whether to grant permission to appeal. **Hannah Lowe of Trammell Adkins & Ward** is working on an amicus brief that will be ready to be filed on behalf of TDLA should the Tennessee Supreme Court accept the application and grant permission for the appeal.

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TDLA Upcoming Events

TDLA/ ADLA Joint Summer Conference - June 17-19, 2021 - Sandestin Golf & Beach Resort - Our TDLA conference chair is **Adrienne Fazio** with *Manier & Herod* in Nashville.



The conference theme is "Mentoring." **Brittany Wagner** will be the keynote speaker and is a nationally respected athletic academic counselor and motivational speaker best known for her role as the breakout star of the hit Netflix documentary series, Last Chance U. Brittany's inadvertent stardom led to feature interviews with ABC's Nightline, The Dan Patrick Show, GQ, The New York Times, The LA Times and Sports Illustrated — to name just a few. Read more about Brittany [here](#).

More information & Registration online [click here](#)

TDLA Annual Meeting - September 1-3, 2021 - Nashville DoubleTree Hilton Downtown - Save the Date and join us for our annual meeting and awards ceremony at the Nashville DoubleTree downtown.

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