

SUPREME COURT OF TENNESSEE

John M. Clinard v. C. Roger Blackwood

46 S.W.3d 177 (Tenn. 2001) · Decided May 18, 2001

SUMMARY

The Tennessee Supreme Court held that adequate screening procedures may rebut the presumption of shared confidences and avoid automatic vicarious disqualification of a law firm under Tenn. Sup. Ct. R. 8, Canon 5, DR 5-105(D). The court nevertheless affirmed disqualification of the firm because the attorney's switch from representing the Blackwoods to joining the firm representing their adversaries in the same litigation created a serious appearance of impropriety.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Janice M. Holder; E. Riley Anderson; William C. Birch
JURISDICTION	Tennessee
DECIDED	May 18, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Blackwoods moved to disqualify the Waller law firm from representing the Clinards and American Limestone because a Waller attorney, Maclin P. Davis, had previously represented the Blackwoods in the same litigation. The trial court denied disqualification, the Court of Appeals reversed, and the Tennessee Supreme Court affirmed the Court of Appeals.
STANDARD OF REVIEW	Attorney-disqualification rulings are reviewed for abuse of discretion. Interpretation and application of the Tennessee Supreme Court's ethical rules are reviewed plenary, and the Court closely scrutinizes a trial court's disqualification ruling for an abuse of discretion arising from an improper legal standard.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; binding precedent in Tennessee.
PARTIES	John M. Clinard, Edward Clinard, American Limestone Company, Inc. v. C. Roger Blackwood, Nancy Dods Blackwood

TOPICS

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motions to dismiss

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether adequate screening procedures can rebut the presumption of shared confidences and prevent automatic vicarious disqualification of a law firm under Tenn. Sup. Ct. R. 8, Canon 5, DR 5-105(D).
2. Whether the appearance of impropriety constitutes an independent basis for disqualifying a law firm even when screening procedures have effectively prevented the sharing of confidential information.
3. Whether the trial court abused its discretion by failing to apply the appearance-of-impropriety standard.

HOLDINGS

1. DR 5-105(D) does not require automatic vicarious disqualification of an attorney's law firm when the attorney has a former-client conflict. Adequate screening procedures may rebut the presumption that confidential information was shared with the attorney's new firm.
2. The Waller firm's screening procedures were sufficient to rebut the presumption that Davis and his secretary shared the Blackwoods' confidential information with the Waller attorneys representing the Clinards and American Limestone.
3. Even when screening effectively prevents actual sharing of confidences, a serious and objectively established appearance of impropriety may independently require vicarious disqualification. Because Davis's new firm represented the Blackwoods' adversary in the very litigation in which Davis had previously represented and obtained confidences from the Blackwoods, the appearance of impropriety required disqualification.

KEY QUOTATIONS

“When an attorney has a conflict of interest arising from a former representation that would prohibit representation of a present client, DR 5-105(D) does not require automatic vicarious disqualification of that attorney's law firm.” (181)

“When screens can eliminate the sharing of confidences, a client's right to counsel of choice should be preserved.” (184)

“The appearance of impropriety is therefore an independent ground upon which disqualification may be based.” (187)

“We further find that the appearance of impropriety in this case is undiminished by the screening procedures put in place by the Waller firm.” (189)

FACTUAL BACKGROUND

Maclin P. Davis represented C. Roger and Nancy Dods Blackwood, including in the property-line and blasting-damage litigation underlying the case. Davis later left the firm representing the Blackwoods and joined the Waller firm, which represented the Clinards and American Limestone against the Blackwoods in the same litigation. When Davis returned to the Waller firm, the firm screened him and his secretary from the matter through written restrictions, file-access limitations, communication prohibitions, physical separation, and exclusion from fees. Despite finding no actual sharing of confidences, the Supreme Court concluded that Davis's change of sides in the same litigation created a serious appearance of impropriety requiring disqualification.

PROCEDURAL HISTORY

The trial court ruled that the Waller firm was not disqualified after implementing screening procedures to isolate Davis and his secretary from the litigation. The Blackwoods obtained an interlocutory appeal, and the Court of Appeals held that the screening procedures were insufficient to rebut the presumption of shared confidences. The Tennessee Supreme Court granted review, held that the screening procedures did rebut that presumption, but concluded that the trial court nevertheless abused its discretion by failing to consider the appearance-of-impropriety standard.

DISPOSITION

affirmed

CASES CITED

- State v. Culbreath, 30 S.W.3d 309 (Tenn. 2000)
- State v. Tate, 925 S.W.2d 548 (Tenn. Crim. App. 1995)
- Whalley Dev. Corp. v. First Citizens Bancshares, Inc., 834 S.W.2d 328 (Tenn. Ct. App. 1992)
- State v. Shirley, 6 S.W.3d 243 (Tenn. 1999)
- Smith County Educ. Ass'n v. Anderson, 676 S.W.2d 328 (Tenn. 1984)
- Swafford v. Harris, 967 S.W.2d 319 (Tenn. 1998)
- Petition of Tenn. Bar Ass'n, 539 S.W.2d 805 (Tenn. 1976)
- In re Burson, 909 S.W.2d 768 (Tenn. 1995)
- Belmont v. Bd. of Law Examiners, 511 S.W.2d 461 (Tenn. 1974)
- Cheves v. Williams, 993 P.2d 191 (Utah 1999)
- Brown v. Eighth Judicial Dist. Court, 14 P.3d 1266 (Nev. 2000)
- Lazy Seven Coal Sales, Inc. v. Stone & Hinds, P.C., 813 S.W.2d 400 (Tenn. 1991)
- Schiessle v. Stephens, 717 F.2d 417 (7th Cir. 1983)
- Lovell v. Winchester, 941 S.W.2d 466 (Ky. 1997)
- Davis v. Liberty Mut. Ins. Co., 38 S.W.3d 560 (Tenn. 2001)
- United States v. Smith, 653 F.2d 126 (4th Cir. 1981)
- Lee v. Todd, 555 F. Supp. 628 (W.D. Tenn. 1982)
- Roberts & Schaefer Co. v. San-Con, Inc., 898 F. Supp. 356 (S.D.W. Va. 1995)

- *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (7th Cir. 1983)
- *Heringer v. Haskell*, 536 N.W.2d 362 (N.D. 1995)
- *Penn Mut. Life Ins. Co. v. Cleveland Mall Assocs.*, 841 F. Supp. 815 (E.D. Tenn. 1994)

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