

# **Standards of Review and Standards for Appeal in Tennessee**

## **I. ABUSE OF DISCRETION**

As set forth in the Tennessee Supreme Court decision in *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010):

Discretionary decisions must take the applicable law and the relevant facts into account. *Konvalinka v. Chattanooga–Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn.2008); *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn.1996). An abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision. *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn.2007). A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence. *State v. Ostein*, 293 S.W.3d 519, 526 (Tenn.2009); *Konvalinka v. Chattanooga–Hamilton County Hosp. Auth.*, 249 S.W.3d at 358; *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d at 42.

## **II. MATERIAL EVIDENCE**

The standard of review by the appellate court of a jury verdict in a civil action is whether there is material evidence to support the verdict. Thus, the appellate court’s scope of review is limited to searching “the record to ascertain if material evidence is present to support the verdict. It matters not a whit where the weight or preponderance of the evidence lies . . . .” See *Leonard Plating Co. v. Metro. Gov’t of Nashville and Davidson County*, 213 S.W.3d 898, 904 (Tenn. Ct. App. 2006), *perm. app. denied* (Dec. 27, 2006) (stating court may review the record solely to determine whether it contains any material evidence to support the decision because a decision without evidentiary support is an arbitrary one).

## **III. DE NOVO**

In a bench trial, the appellate courts’ review after a bench trial is de novo upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court’s conclusions of law are subject to a de novo review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

#### **IV. INTERLOCUTORY APPEAL**

Tennessee Rule of Appellate Procedure 9 sets forth the factors the Courts consider when deciding whether to grant an interlocutory appeal. These factors are:

- (1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective;
- (2) the need to prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in duration and expense of the litigation if the challenged order is reversed; and
- (3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of final judgment.

#### **V. EXTRAORDINARY APPEAL**

Tennessee Rule of Appellate Procedure 10 states that an extraordinary appeal may be granted when “the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review” or “if necessary for complete determination of the action on appeal as otherwise provided in these rules.”

The Tennessee Supreme Court elaborated on the standards for extraordinary appeals in 2014 in a decision that held the Tennessee Court of Appeals “improvidently” granted an application for extraordinary appeal. The Court stated:

Unlike Rule 9 appeals, Rule 10 appeals are reserved only for *extraordinary* departures from the accepted and usual course of judicial proceedings. *See, e.g., Jones v. Vasu*, 326 S.W.3d 577, 578 (Tenn. Ct. App. 2010) (granting extraordinary appeal in a health care liability suit where the trial court denied the defendant's motion to dismiss despite the plaintiff's intentional delay in service of process which had rendered the filing of the complaint statutorily ineffective); *Joiner v. Joiner*, No. E2005-01619-COA-R10-CV, 2005 WL 2805566, at \*8 (Tenn. Ct. App. Oct. 27, 2005) (granting extraordinary appeal where a trial judge disqualified an attorney from representing a litigant simply because the attorney had announced his candidacy for the judge's position); *Pykosh v. Earps*, No. M2004-01507-COA-R10-CV, 2004 WL 1839489, at \*1 (Tenn. Ct. App. Aug. 17, 2004) (granting extraordinary appeal where the trial court denied a defendant's motion for a physical examination of the plaintiff, though the plaintiff had been granted the opportunity to have his own doctor testify); *State ex rel. Dean v. Nelson*, 169 S.W.3d 648, 649 (Tenn. Ct. App. 2004) (granting extraordinary

appeal in an action to close an adult business where the court issued a temporary restraining order without five days written notice and then allowed the restraining order to remain in effect pending the trial); *Korthoff v. Korthoff*, No. W2001–01712–COA–R10–CV, 2001 WL 34151700, at \*2 (Tenn. Ct. App. Sept. 24, 2001) (granting extraordinary appeal where the trial court, absent authority, ordered “a partial distribution of marital property prior to a final adjudication”).

4It is important for appellate courts to exercise restraint in granting Rule 10 appeals. Under our Rules, the appellate courts have no authority to unilaterally interrupt a trial court's orderly disposition of a case unless the alleged error rises to the level contemplated by the high standards of Rule 10. We note that parties who are unsuccessful in obtaining the trial court's permission for a Rule 9 appeal sometimes respond by petitioning the appellate court for permission to appeal under Rule 10. However, unless the trial court's alleged error qualifies for immediate review under the specific criteria indicated by Rule 10, the appellate court must respect the trial court's discretionary decision not to grant permission to appeal under Rule 9 and refrain from granting a Rule 10 appeal. Those alleged errors not rising to the level required by Rule 10 can be reviewed in the normal course of an appeal after a final judgment has been entered.

*Gilbert v. Wessels*, 458 S.W.3d 895, 898–99 (Tenn. 2014).

## **VI. PERMISSION TO APPEAL TO THE TENNESSEE SUPREME COURT**

Tennessee Rule of Appellate Procedure 11 provides that the Tennessee Supreme Court will consider, in determining whether to grant permission to appeal, the following factors:

- (1) the need to secure uniformity of decision,
- (2) the need to secure settlement of important questions of law,
- (3) the need to secure settlement of questions of public interest, and
- (4) the need for the exercise of the Supreme Court's supervisory authority.