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Opinion No. 07-98

Court of Appeals Precedent

QUESTION

Whether the ruling of the Western Section Court of Appeals in *Wells v. Wharton*, 2005 WL 3309651 (Tenn. Ct. App. 2005), sets a binding precedent for the entire state of Tennessee, or is the ruling limited to the cities and counties within that court's jurisdiction.

OPINION

There is only one Tennessee Court of Appeals and, therefore, a decision from any section of that court is applicable to the entire state. Whether such a decision constitutes a binding precedent is determined by Tenn.Sup.Ct.R. 4(H). Pursuant to that rule, the decision of the Western Section Court of Appeals in *Wells v. Wharton* is not considered controlling authority; however, it is to be considered as persuasive authority applicable to the entire state.

ANALYSIS

In *Wells v. Wharton*, the Western Section Court of Appeals held, *inter alia*, that the Tennessee Public Records Act does not permit a government official to deny access to public records merely because a citizen has not first requested access in writing. 2005 WL 3309651, slip op. at 10 (Tenn.Ct.App. 2005), *p.t.a. denied* (2006). You have asked whether this ruling sets a binding precedent for the entire state of Tennessee or is the ruling limited to the cities and counties within the western grand division.

Tenn. Code Ann. § 16-4-101 provides that "[t]here shall be an appellate court composed of twelve (12) judges, styled 'the court of appeals'." Tenn. Code Ann. §16-4-118 further provides that:

> In order to expedite the trial and decision of cases, the court of

> appeals, when the court deems it advisable so to do, is authorized and empowered to sit in sections of three (3) judges each, at Knoxville, Nashville and Jackson, to hear and determine cases just as though all twelve (12) members were present and participating, and the presiding judge of the court of appeals shall in such event have the right, from time to time, to assign and reassign the judges and sections.

Thus, pursuant to these statutes, there is only one Court of Appeals, and, when a section of three judges hears and determines a case in one of the three grand divisions in this state, that decision is a decision of the entire court of appeals and not simply of the judges assigned to hear cases in that division. Thus, the decision of the Western Section Court of Appeals in *Wells v. Wharton* is not limited merely to the cities and counties located within the western grand division. It applies statewide.

You have also asked whether the opinion establishes a binding precedent. Tenn.Sup.Ct.R. 4(H) addresses the precedential value of decisions of the Court of Appeals. That rule provides as follows:

> (H)(1) An unpublished opinion shall be considered controlling authority between the parties to the case when relevant under the doctrines of the law of the case, res judicata, collateral estoppel, or in a criminal, post-conviction, or habeas corpus action involving the same defendant. Unless designated "Not For Citation," "DCRO" or "DNP" pursuant to subsection (F) of this Rule, unpublished opinions for all other purposes shall be considered persuasive authority. Unpublished opinions of the Special Workers' Compensation Appeals Panel shall likewise be considered persuasive authority.
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> (2) Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.

The opinion in *Wells v. Wharton* is an unpublished opinion. Accordingly, it is not considered controlling authority. However, since it has not been designated "Not for Citation," "DCRO" or "DNP," it is considered persuasive authority.

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