Archive – Summaries of Tennessee Cases on Mediation (2008-2013)

1. **Jurisdiction of Local Human Rights Commission**

Dispute Resolution through Metro Human Rights Commission Not Available to Terminated NES Employee. In Metropolitan Electric Power Board a/k/a Nashville Electric Service (NES) v. The Metropolitan Government of Nashville and Davidson County, 309 S.W. 3d 474 (Tenn. Ct. App. 2008), a terminated NES employee filed a discrimination complaint with the Metro Nashville Human Rights Commission. NES filed a declaratory judgment action claiming the Metro Charter prevented the Commission from investigating the complaint. It relied on Article 42, Section 24 of the Charter (no "officer, . . . or commission of the metropolitan government shall have or exercise any authority whatsoever over the electric power board . . ., other and except to the extent herein expressly provided . . . .") as giving it exclusive authority regarding employment. The Court of Appeals affirmed the chancery court's decision in favor of NES, rejecting Metro's claims that: 1) it had authority over NES pursuant to Article 2, Section 2.01.40 of the Charter; 2) investigations and non-binding recommendations by the Commission did not constitute "exercising authority"; or 3) the case was not ripe for review

2. **Agreements to Mediate: Enforcement of**

Mediation Agreement Not Enforced; Mediation Confidentiality Not Discussed. In In the Matter of Shelby R. and Sydnee R., 2010 WL 1980195, No. W2009-01172-COA-R3-CV (Tenn. Ct. App. May 18, 2010), the maternal grandparents and father agreed to the grandparents having emergency temporary custody of the children. Subsequently, the trial court enforced a mediation agreement signed by the father and grandparents, and awarded custody to the grandparents. The Court of Appeals reversed and remanded because the father had not knowingly waived his superior parental rights, given the following circumstances: 1) the same attorney represented the father and the maternal grandparents at the mediation; 2) during the mediation, the father expressed concern that he might not want to proceed with the mediation; 3) the attorney stated he thought a conflict of interest had arisen and asked that the mediation be terminated; 4) instead, the father and grandparents met alone in a separate room, returned crying, and said they were "still on the same page;" 5) the parties signed a mediation agreement that provided that the grandparents would "retain" custody (interpreted by the Court to mean continued joint custody by the grandparents and father), but the father thought this was only until the end of the school year; 6) the attorney's explanation to the father centered around legal ramifications of an order being entered, not the consequences of signing a mediation agreement; and 7) after the mediation, the father refused to sign a proposed consent order. The Court of Appeals opinion does not discuss whether the parties had agreed to confidentiality of the mediation.

3. **Quasi-Judicial Immunity**

Rule 31 provides for judicial immunity of an ADR neutral, if the neutral's activity is in the course of a Rule 31 ADR proceeding: "Activity of Rule 31 Neutrals in the course of Rule 31 ADR proceedings shall be deemed the performance of a judicial function and for such acts Rule 31 Neutrals shall be entitled to judicial immunity." Tenn. S. Ct. R. 31, Section 12. "Rule 31 ADR Proceedings" are defined as "proceedings initiated by the court pursuant to this Rule, including 'Case Evaluations', 'Mediations', 'Judicial Settlement Conferences', 'Non-Binding Arbitrations', 'Summary Jury Trials', 'Mini-Trials', or other similar proceedings." Tenn. S. Ct. R. 31, Section 2(n). Some mediators who engage in private mediations (not ordered by a court) include an immunity clause in their contracts with the parties.

Mediators may want to review cases involving the scope of quasi-judicial immunity, such as Charles E. Jackson III v. Metropolitan Government of Nashville et al., 2010 WL 2287639, No. M2009-

01970-COA-R3-CV (Tenn. Ct. App. June 7, 2010). In Jackson the Court of Appeals rejected the claims of a probationer who argued that his probation officer was not entitled to quasi-judicial immunity. The Court of Appeals agreed with the trial court's decision that the defendant was acting in her capacity as plaintiff's probation officer when she failed to recall an arrest warrant, was performing a function essential to the judicial process, and had no discretion but to recall the warrant. The Court distinguished the case, Miller v. Niblack, 942 S.W.2d 533 (Tenn. Ct. App. 1996) (holding that paternity test lab hired by court was not entitled to quasi-judicial immunity; under contract with court, there was no discretion as to which tests to perform or order for performing them, and test results were not subject to different interpretation).

4. Authority of Mediator

Binding vs. non-binding decision of mediator appointed as "Parenting Arbitrator." In Elizabeth Sams Tuetken v. Lance Edward Tuetken, 2009 WL 2391235, No. W2008-00274-COA-R3-CV (Tenn. Ct. App. Aug. 5, 2009), rev'd 320 S.W.3d 262 (Tenn. 2010), the trial court modified an arbitrator's award in a dispute over the parties' parenting plan and child support obligations. On appeal, the Court rejected the argument that the Uniform Arbitration Act did not permit modification of the decision of the court-appointed "Parenting Arbitrator" (a Rule 31 mediator), appointed by the trial court in an order that stated the arbitrator's decision "shall be binding on the parties pending the resolution of the matter by the Trial Court." The Court of Appeals concluded that the Uniform Arbitration Act did not apply. Instead, this was a non-binding dispute resolution proceeding governed by Tennessee Supreme Court Rule 31. The requirements listed in Team Design v. Gottlieb, 104 S.W.3d 512 (Tenn. Ct. App. 2002) for a final and binding ADR proceeding under Rule 31 were not met.

5. Confidentiality.

In State of Tennessee v. William Jeffery Sweet, 2009 WL 2167785, No. E2008-00100-CCA-R3-CD (Tenn. Crim. App. July 21, 2009), a presentence report on the defendant in a criminal case included a letter prepared during mediation of one of the victim's civil suits against the defendant. Upon the defendant's objection, the trial court expunged the letter. On appeal, the Court rejected the defendant's claim that expungement was insufficient to cure the letter's prejudicial effect on the defendant.

Settlement Agreements Subject to Public Records Act. Although no mediated settlement was at issue in the case, the *Friedmann* case is instructive on issues that may arise when a confidential mediated settlement involves a private entity that is the functional equivalent of a governmental entity subject to the Public Records Act, Tenn. Code Ann. § 10-7-301 et seq. In Alex Friedmann, Individually and as an Associate Editor of Prison Legal News v. Corrections Corporation of America, 2013 WL 784584, No. M2012-00212-COA-R3-CV – (Tenn. Ct. App. February 28, 2013) the plaintiff sought copies of settlement agreements and settlement reports from Corrections Corporation of America pursuant to the Public Records Act. The Court held that these documents, arising out of inmate litigation, fell within the statutory definition of public records and were not confidential. Further, the settlement reports were not protected attorney work product because CCA failed to show that the reports were produced "in anticipation of litigation."

In Larry Lynn Averitt, Sr. v. Lynn Binkley Averitt, 2009 WL 2215005, No. M2008-02047-COA-R3-CV - (Tenn. Ct. App. July 24, 2009), the parties signed a handwritten mediated agreement that essentially divided their assets equally, but excluded one of the wife's retirement benefits from the calculation. On appeal, the Court rejected the wife's apparent argument that the trial court had erroneously set aside part of the mediation agreement. Without discussing the confidentiality of mediation (there is no indication that any party or the trial court raised the issue), the Court of Appeals addressed the parties'

dispute as to what was communicated during the mediation process. The Court also noted that it applies contract law to determine whether a judgment may be entered in a case based on a mediated agreement. The party seeking to invalidate the contract bears the burden of proving adequate grounds to invalidate.

In Beth Ann Mason v. Thaddeaus Scott Mason, 2009 WL 537566, No. M2007-02059-COA-R3-CV (Tenn. Ct. App. Mar. 3, 2009), the Court affirmed the trial court's denial of a Rule 60 motion to alter or amend a final divorce decree, and did not need to reach the issue of whether evidence submitted by the moving party was inadmissible hearsay or inadmissible under Tenn. R. Evid. 408 and Tenn. S. Ct. Rule 31(7) as part of settlement negotiations conducted during a mediation.

6. Assistance of Counsel

In James Fitzpatrick Dendy v. Amy Michelle Dendy, 2012 WL 194993, No. E2010-02319-COA-R3-CV (Tenn. Ct. App. Jan. 20, 2012), one of the 20 issues raised on appeal was whether the trial court erred in ordering the mother to attend a mediation without assistance of counsel. This issue was not properly before the Court of Appeals because the trial court's order for mediation and the mediation itself occurred after the mother had filed a notice of appeal in the case.

7. Fees

Post-Mediation Dispute over Attorney Fees. *Hill Boren, P.C. v. Paty, Rymer and Ulin, P.C. and James Eric Hamm,* 2013 WL 1136540, No. W2012-00925-COA-R3-CV (Tenn. Ct. App. March 19, 2013) is an attorney's fee dispute involving two law firms, Hill Boren and Paty, Rymer & Ulin, and their client. The client contracted with both law firms for joint representation in a personal injury suit on a contingency fee basis. Two years later, the client discharged Hill Boren. No new representation contract was entered into and no order of withdrawal was entered in the court case. Prior to or during a subsequent mediation, Paty, Rymer & Ulin agreed to a reduction of its contingency fee from 40% to 33%. The attorney from Paty, Rymer & Ulin did not disclose to the discharged attorney that the case had settled or the favorable terms of settlement because she believed that would violate a confidentiality agreement signed by her client. Hill Boren received fees and expenses in the amount of $5,719.10, while Paty, Rymer & Ulin received a contingency fee in an amount over $480,000. In the fee dispute lawsuit, the trial court found that the client had discharged his attorney for cause and his reasons were objectively reasonable. Hill Boren had been discharged before the case was settled. Therefore Paty, Rymer & Ulin's reduction of the contingency fee percentage did not interfere with Hill Boren's contract with its client and Hill Boren was entitled only to quantum meruit fees, not a share of the contingency fee.

Special Master's Fees for Mediation Disallowed. In Jefferson C. Pennington III and Dan Alan Goostree v. Boundry, Inc.; South Street, Inc.; Chumi, LLC; Lewis Investment Co., Inc.; and James A. Lewis and Bradford Jason Lewis, Ginger Lewis Dollarhide, and James Bryan Lewis v. Boundry, Inc.; South Street, Inc.; and Jefferson C. Pennington III, 2008 WL 1923110, No. M2006-02650-COA-R3-CV (Tenn. Ct. App. May 1, 2008), the trial court had appointed a special master to investigate facts related to a lawsuit seeking judicial dissolution and intervention to prevent future losses. During the investigation, the special master acted as a mediator and conducted settlement discussions. On appeal, one of the issues was whether the portion of the special master's fees awarded for mediation services should be disallowed as outside the scope of the order of reference. The Court of Appeals held that the special master's mediation efforts, even with the consent of the parties, were outside the scope of the special master's authority. Also, the trial court could not ratify the special master's mediation activities after the fact; having the special master attempt to act as a mediator, "while at the same time investigating and preparing a report to the trial court on other issues, is especially problematic." The special master as a judicial officer is expected to report findings and conclusions to the trial court, but a mediator is

required under Rule 2.4(c)(4) of the Rules of Professional Conduct to protect information as confidential and refrain from using that information to the disadvantage of the parties to the mediation. The Court reversed the portion of the fee awarded for the mediation activities.

8. Mediated Settlements

Mediated Settlement Did Not Resolve All Issues. In Reynaldo Collazo et al. v. Joe Haas d/b/a Haas Construction et al., 2011 WL 6351865, No. M2011-00775-COA-R3-CV (Tenn. Ct. App. December 15, 2011), the plaintiff sought recovery of uninsured motorist benefits. The unidentified driver of the defendant's vehicle left the scene of a two vehicles collision accident. The defendant owner of the vehicle denied knowing the identity of the driver and claimed no one had permission to operate the vehicle at the time of the accident. Plaintiffs' uninsured motorist insurance carrier was Nationwide Insurance Co. and the defendant owner had coverage through State Farm Insurance Co. After a mediation in which Nationwide participated with the parties, the plaintiffs settled all claims against the defendant-owner and State Farm for $90,000, which was $10,000 less than the uninsured motorist limits with Nationwide. The plaintiffs asserted the settlement with the vehicle's owner did not bar their claims against the uninsured John Doe driver. The trial court granted Nationwide's motion for summary judgment because there was no "uninsured motor vehicle" under T.C.A. § 56-7-1202(a)(1), given that the defendant vehicle owner had $100,000 of liability insurance, the same amount of coverage as the plaintiffs' uninsured motorist coverage with Nationwide. Reversing the trial court, the Court of Appeals noted that a "UM carrier must pay benefits where: (1) a claimant is legally entitled to recover damages from the uninsured motorist and, (2) the total amount of liability coverage available to the insured is less than the insured's uninsured motorist coverage limits." Opinion at 6. In this case, notwithstanding the $90,000 settlement and full release of the driver, there was no determination of the allocation of fault between the vehicle's owner and the John Doe driver. If the vehicle owner were found to be 100% at fault, there would be no recovery against UM carrier Nationwide. But that determination has not been made. On remand, Nationwide will be entitled to a $90,000 credit against any UM liability under T.C.A. § 56-7-1206(i), which is not affected by principles of comparative fault. Opinion at 11.

Trial Court Must Determine Best Interest of Children Notwithstanding Mediated Agreement on Parenting Issues. Tonya Renee Fletcher v. Glen Allen Fletcher, No. M2010-01777-COA-R3-CV (Tenn. Ct. App. September 26, 2011) is a post-divorce appeal involving parenting issues that were mediated. At the mediation, the parties signed an agreed parenting plan. The next day, the mother repudiated the agreement. The father filed a motion to enforce the mediation agreement. The mother requested an evidentiary hearing on whether the mediated parenting plan was in the best interest of the children. Declining to hear any evidence and citing Barnes v. Barnes, 193 S.W.3d 495 (Tenn. 2006), the trial court found that the mediated parenting plan was a valid, enforceable contract. It entered an order enforcing the mediated parenting plan. Reversing that decision, the Court of Appeals held that the trial court used the wrong legal standard when it applied contract analysis to the mediated parenting plan. It remanded the case for an evidentiary hearing on the best interest of the minor children. The trial court cannot delegate a determination of the best interests of the children. *See* Tenn. Code Ann. § 36-6-106(a) (2010); T.C.A. § 36-6-401(a) (2010); Tuetken v. Tuetken, 320 S.W.3d 262 (Tenn. 2010); Greer v. Greer, No. W2009-01587-COA-R3-CV, 2010 WL 3852321 (Tenn. Ct. App. Sept. 30, 2010).

9. Mediated Settlement: Enforcement

Mediated Settlement Agreement Enforced. In Berkeley Park Homeowners Association, Inc., et al. v. John Tabor, et al., 2010 WL 2836120, No. E2009-01497-COA-R3-CV (Tenn. Ct. App. July 20, 2010), the Court of Appeals affirmed the trial court's decision granting a motion for contempt filed by a homeowners association and co-plaintiff against a construction company and its owner.

The Court rejected the defendants' claim that a purported subsequent agreement superceded a mediated settlement agreement on construction of a house being built by the defendants in a subdivision

Party to Mediated Settlement Filed with Court Cannot Renege Through Nonsuit. In Rebecca Stafford Shell v. Jon E. Shell, 2008 WL 2687529, No. E2007-01209-COA-R3-CV (Tenn. Ct. App. July 9, 2008), the parties resolved all issues in a mediated settlement. After the mediator filed a Final Report in court, the plaintiff voluntarily nonsuited, and refiled on the same date. The Court of Appeals held that the trial court properly set aside the nonsuit, tried the issues raised, approved the mediated settlement, and granted the parties a divorce. The right to a voluntary nonsuit is subject to exceptions in Tenn. R. Civ. P. 41.01(1) and the implied exception prohibiting nonsuit when it would deprive a defendant of a vested right acquired during a lawsuit. Here, the defendant's right to property awarded in the mediation agreement vested during the original suit. Also, the plaintiff failed to establish at trial that the mediated agreement was "'so inadequate as to shock the conscience of the Court.'"

Settlement Agreement Upheld; Mediator's Letter Admitted into Evidence. In Lauren Diane Tew v. Daniel V. Turner et al, 2009 WL 211927, No. E2007-02613-COA-R3-CV (Tenn. Ct. App. Jan. 29, 2009), one of the parties to a mediated settlement moved to set aside an agreed judgment signed by his attorney, on the grounds that he had not authorized his attorney to sign it. The Court of Appeals affirmed the trial court's order denying the motion because an agreement was reached at the mediation. The mediator apparently did not testify at trial; a letter from the mediator, admitted in evidence, stated that "[t]hrough the efforts of all parties, all claims . . . were settled . . . ." The Court does not indicate whether the mediator resisted providing evidence on mediation confidentiality grounds.

Mediated Settlement not Overturned on Fraud in Inducement Grounds. In Tia Gentry v. Dale Larkin, 389 S.W. 3d 329 (Tenn. Ct. App. 2012), a minor child, Tia Gentry, and her stepfather had entered into a mediated settlement of a prior lawsuit in which Gentry alleged that her stepfather had killed her mother, and was therefore not entitled to any life insurance proceeds or inheritance per the "Slayer's Statute," Tenn. Code Ann. § 31-1-106. Later, the stepfather was convicted of first degree murder in the death of the minor's mother. Upon reaching majority, Gentry filed suit seeking to overturn the settlement agreement based upon fraud in the inducement, as her stepfather had represented that he did not kill Gentry's mother. Affirming the trial court's decision to dismiss, the Court of Appeals agreed that the issues in this new lawsuit already had been, or could have been, litigated. The Court noted that Gentry had never relied on her stepfather's assertion that he did not kill her mother. Also, the mediated settlement was entered into as a judicially approved settlement with all the requisite safeguards, given Gentry's minority status at the time.

Fraudulent "Mediated" Settlement Set Aside. In Deborah Gail Davis Morgan Everett v. Charles Scotty Morgan 2009 WL 113262, No. E2007-01491-COA-R3-CV (Tenn. Ct. App. January 16, 2009), a mother petitioned to have her former husband held in contempt for failure to pay child support. Shortly thereafter, she was contacted by a person who claimed he was connected with the court system and had been contacted by her former husband to mediate the child support claim. However, this person, a friend of the father, was not connected to the court system and was not a certified mediator. He convinced the mother to discharge her attorney, "mediated" the claim in a courthouse conference room, and persuaded the mother the most a court would award was $8,750.00. An Agreed Decree entered by the trial court incorporated the settlement from the "mediation." The mother filed a Rule 60.02 motion to set aside the Agreed Decree on the basis of fraudulent misrepresentations made by the "mediator" and/or her former husband. The Court of Appeals affirmed the trial court's judgment.

Mediation of Wrongful Death Case Failed to Include Father of Decedent's Children. *Latony Baugh, et al. v. United Parcel Service, Inc., et al.*, 2012 WL 6697384, No. M2012-00197-COA-R3-CV (Tenn. Ct. App. December 21, 2012) is a wrongful death case involving a mediated settlement for minor children approved by the trial court and placed under seal. The decedent's husband filed suit in circuit court, after which the children's guardian (appointed by the probate court) moved to intervene and the father of the decedent's children also moved to intervene. The father requested a hearing on whether the husband had abandoned the decedent, thereby waiving his right as surviving spouse to participate in the wrongful death action. The trial court did not hold a hearing. Instead, it held that the husband was the proper party to pursue the action, allowed the guardian to represent the children's interest, and dismissed the father's petition. The surviving spouse, guardian, and tortfeasor settled the wrongful death case at a mediation. The court approved the settlement and placed it under seal. On appeal, the Court of Appeals held that the circuit court erred in failing to hold a hearing on the issue of whether the husband was estranged from the mother. It remanded the case for a hearing on whether the husband had waived his right as surviving spouse to participate in the wrongful death pursuant to Tenn. Code Ann. § 20-5-106(c). Although the Court of Appeals stated that it did not sanction the manner in which the case was prosecuted and the failure to notify the father of the settlement and court hearings, particularly given that he had custody of the children, it held that the trial court did not abuse its discretion in approving the terms of the settlement. Subject to the results of the hearing on remand regarding the husband, it affirmed the order approving the settlement. It further held that the trial court erred in placing the settlement documents under seal.

Withdrawn Consent Did Not Preclude Judgment Based on Mediated Settlement. The parties in Thomas Grigsby et al. v. W. Arlen Harris, Sr. et al., 2012 WL 6449782, No. M2012-00370-COA-R3-CV (Tenn. Ct. App. December 12, 2012) sought to resolve a boundary dispute and quiet title. On the day of trial, they announced their agreement to settle. Their agreement was read in open court, the parties' counsel confirmed their client's consent to the settlement, and a diagram of the new boundary line was made an exhibit. The court approved the settlement in open court. Before judgment was entered, the plaintiffs withdrew their consent to the settlement. Over the plaintiffs' objections, the trial court entered judgment based upon the settlement. The Court of Appeals affirmed. There is an exception to the seemingly absolute rule in *Harbour v. Brown for Ulrich*. *Compare Harbour v. Brown for Ulrich*, 732 S.W.2d 598 (Tenn. 1987) (trial court cannot enter a valid consent judgment when one party withdraws consent and makes this known to court before entry of judgment) *with REM Enters. v. Frye*, 937 S.W.2d 920 (Tenn. Ct. App. 1996) (unlike situation in *Harbour,* parties read terms of agreement in open court, expressed their consent to judge, and judge approved settlement). If the terms of a settlement are announced to the court or memorialized in a signed, enforceable contract, the court may enter a judgment on the settlement, even if one party later repudiates. *In re Estate of Creswell*, 238 S.W.3d 263, 268 (Tenn. Ct. App. 2007).

Court Rejects Subcontractor's Claims that General Contractor Failed to Represent Sub's Interests at Mediation and Failed to Communicate During Negotiations. In Sullivan Electric, Inc. v. Robins & Morton Corporation, 2013 WL 776192, No. M2012-00821-COA-R3-CV (Tenn. Ct. App. February 27, 2013) a subcontractor ("sub") sued the general contractor ("general"), claiming breach of the parties' agreement regarding claims that both had against the owner of the construction project. The sub received $300,000 out of a $3.35 million prepayment the general received from the owner. The sub and the general agreed in a Settlement and Joint Prosecution Agreement that the sub would be entitled to a pro rata share of the settlement or judgment amount if the sub's claims were not itemized. Also, the general would make all decisions in negotiations, mediation, arbitration and/or litigation, with any decision to accept or reject a settlement with the owner to be in the sole

discretion of the general. Although the general sought an itemization of the sub's claims by the owner, there was no itemization and the subsequent settlement agreement between the owner and the general amounted to 48% of the general's total claim, including the prepayment. On appeal, the Court held that the general correctly determined the sub was not entitled to anything more from the settlement, as the $300,000 prepayment to the sub was more than 48% of the sub's total claim in the amount of $529,185.68. The trial court erred in deducting the $300,000 from the sub's claim and awarding the sub a pro rata share of the difference. Further, the Court rejected the sub's claims that the general contractor 1) did not adequately represent the sub's interests in a mediation with the owner; and 2) breached its agreement by failing to communicate with the sub during negotiations with the owner.

Intimidation Claim Insufficient to Set Aside Settlement Agreement Where Homeowner Represented by Attorney at Mediation. In Rob Matlock d/b/a Rob Matlock Construction v. Regina M. Rourk, 2010 WL 2836638, No. M2009-01109-COA-R3-CV (Tenn. Ct. App. July 20, 2010), a homeowner and a contractor agreed to use mediation to resolve their dispute over the contractor's bill. The homeowner wanted a friend to attend the mediation in addition to her attorney, for his moral support and expertise in construction matters, but the mediator announced that third parties would not be allowed to attend. The mediation resulted in an agreement, signed by both parties and their attorneys, which provided that the homeowner would pay the contractor $14,000 and the parties would sign mutual releases. The homeowner paid $11,000, but refused to pay the rest. In a suit filed on the deficiency, the trial court granted the contractor's motion for summary judgment. Affirming the trial court, the Court of Appeals rejected the homeowner's argument that she did not owe the money because the mediation procedure was unfair and did not comply with Tenn. S. Ct. Rule 31. First, Rule 31 does not apply because the mediation occurred before any lawsuit was filed and was not ordered by any court. Second, it was not enough for the homeowner to state in her affidavit that the mediation process was very intimidating and that she did not know she could object to exclusion of her friend from the mediation. These statements do not suggest lack of competence, duress, mutual or unilateral mistake induced by fraud, or other legal grounds to set aside the mediated contract.

Mediated Settlement Litigation; Subpoena to Depose Mediator Quashed.

In Timothy L. Wilson v. Memphis Light, Gas & Water Division, 2013 WL 865481, No. W2012-00889-SC-WCM-WC (Tenn. March 7, 2013), an employee agreed to a court-approved settlement of his Workers' Comp claim in 2004. Subsequently, he alleged in this case that he suffered additional compensable injuries in 2005 and 2006, contested by the employer. The employee also filed a third-party tort action arising from the 2004 injury. The employer intervened in the tort case to protect its medical subrogation lien. At a joint mediation, the parties settled all claims. Pursuant to the settlement, the tort defendant paid a sum of money, the employer reduced its medical subrogation lien, and this workers' comp case was dismissed with prejudice. More than a year later, the employee moved to vacate the dismissal, contending that: 1) he had not authorized his lawyer to dismiss the case, and 2) he had not signed the mediated settlement. The employee sought to depose the mediator, the third party's attorney, and the employer's attorney. The trial court quashed the subpoenas. At the evidentiary hearing, the employee's attorney testified that he explained the terms of the settlement agreement and his client agreed to and signed the mediation agreement in his presence. The employee testified that the agreement he signed did not provide for dismissal of his workers' comp action, but admitted receiving payment in accordance with the mediated settlement. After making credibility findings adverse to the employee, the trial court found that the employee had agreed to the dismissal and granted the employer's motion to strike, holding that the mediation agreement was a binding contract. The trial court and Workers' Comp

Appeals Panel did not discuss the separate statute of limitations issue and the Panel declined to address the privilege claims related to the trial court's orders quashing the subpoenas.
Query, what steps might the mediator and lawyers have taken to reduce the likelihood of this type of post-settlement litigation?

Res judicata.

In Zoran Djordjevic v. Grozdana Djordjevic, 2009 WL 2567484, No. E2008-01793-COA-R3-CV (Tenn. Ct. App. Aug. 19, 2009), the Court noted, among other things, that a temporary parenting plan pursuant to a mediated agreement is not a final order and therefore not res judicata, distinguishing the case from Hoalcraft v. Smithson, 19 S.W.3d 822 (Tenn. Ct. App. 1999)