2021 Domestic Case Law Update
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“All of the fun cases and most of the important ones”

I. Alimony

Himes: Alimony Modification (p. 3)

- Husband sought to terminate his alimony, and wife asked to restore it to the original amount of $5,000 per month;
- Trial court set ongoing support at $1,500 per month and awarded a small amount of retroactive support accrued from the date of filing;
- Court of Appeals held that the proceeds earned by husband from the sale of the marital residence should not be considered in an alimony modification action, citing *Norvell*, a 1990 case.
- The court of appeals also referenced and considered an inheritance to be received by the wife, and an inheritance husband might receive from an uncle.

Egan: Three words: $17,500 (p. 3)

- Husband's income was calculated at $134,000 per month;
- "Although we agree with husband that wife had the capacity for self-sufficiency, the record supports the court's finding that wife lacked the capacity to achieve...an earning capacity that will permit her to enjoy the same standard of living expected to be available to husband."

Blakemore: Imputed Income (p. 4)

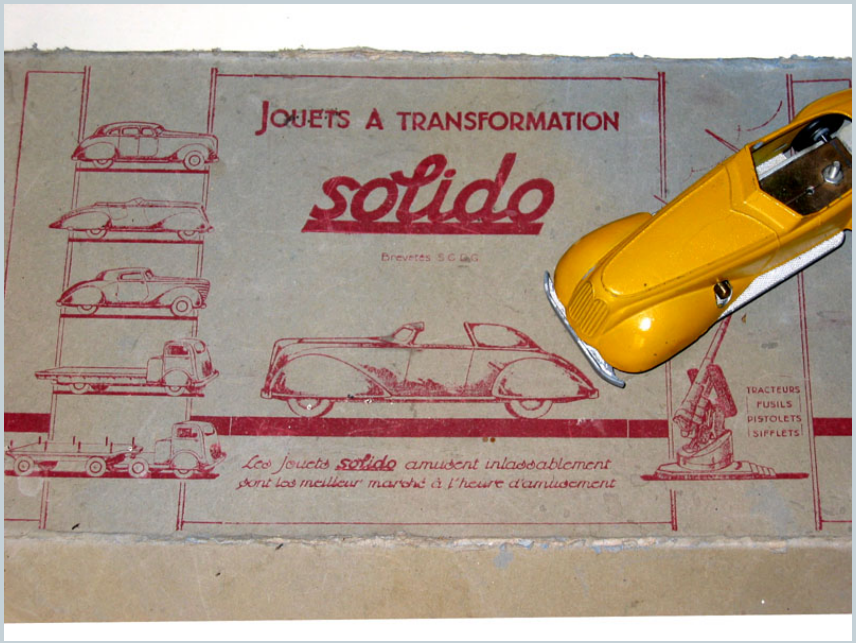
- Trial court imputed minimum wage to wife for child support and alimony, although wife had history of much higher earnings (she left outside employment in 2013);
- Reversed: trial court should have imputed income "commensurate with her education and employment history."

Turk: History of high earnings (p. 4)

- June 24, 2020
- Wife with a history of high earnings not awarded alimony even though her present wage is $11 per hour at a pet shop;
- As the trial court stated, and the court of appeals agreed, “The court would consider this to be only a temporary hiccup in [Mother’s] employment and believes she will return to the relative earnings she has had in the past.”
- Note: there was no finding of voluntary underemployment, and both courts were comfortable with speculating that the wife’s good fortune would return, and using a history of earnings as a guide.

Smith: In Solido Attorneys' Fees (p. 5)

- Wife awarded an interest in assets built by husband during a lengthy separation (years) between the parties;
- Court divided estate equally, also against husband's preference, despite substantially larger financial contribution by husband;
- On fees, court held that "in light of husband's substantial debt burden" there was no abuse in trial court's finding that husband lacked the ability to pay wife's legal fees.



II. Child Support

Bastone: Joint Decision-Making, Anybody? (p. 7)

- Parties agree in divorce order to joint educational decisions;
- Mother, who makes $16,000 per year, enrolls child at Baylor, a private school in Chattanooga;
- Father, who earned $115,000 per year, objected;
- Nonetheless, trial court found and court of appeals affirmed, that it was in the child's best interest to attend Baylor and assessed father with up to 50% of child's tuition;
- Court of appeals found that the enrollment in Baylor presented more of a child support modification question than a joint decision question, and left the joint decision provision in the parenting plan in place.

Crafton: Another Goodbye to Private School Limits (p. 8)

- Parties divorced and agreed that the children would attend private school until a certain school was no longer an option, at which time father's private school obligation would cease;
- Like Bastone, the court of appeals found this to be a child support obligation subject to modification when circumstances change.

Hester: Insurance to Secure Child Support (p. 8)

- At divorce, each party was ordered to maintain a $300,000 life insurance policy for the children; father did so, for a while, mother did not;
- Father's child support was reduced twice, and he left his entire $500,000 policy to his new wife;
- Upon father's death, the trial court awarded the mother an amount equal to father's remaining child support obligation; the court of appeals reversed, finding that the contract between the parties was clear.
- The court of appeals also held that the mother was not entitled to fees for litigating against the new wife, either as a contractual matter or a discretionary matter.

Mercer: Voluntary Underemployment (p. 9)

- Court of Appeals affirmed the trial court in finding that the issue of voluntary underemployment of the father was not raised in the pleadings or at trial, and was therefore waived;
- Also, the burden of proving willful underemployment is on the party making that assertion– the guidelines do not presume that a party is willfully underemployed;
- After ruling in father's behavior on other issues, mother was assessed with $14,080 in attorneys' fees, as the prevailing party.

Baker: Military Pension and Child Support (p. 11)

- There is a lot to unpack in this case, most of which is fairly easy: (1) the division of a pension is a property division, and not considered in the calculation of child support ("assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the divorce." See also Stark, p. 12;
- Father's concern about whether the court improperly treated the $130,000 he paid in a failed Hague lawsuit as dissipation was put to rest: the court of appeals found that the money was not treated as having been dissipated, only as a factor in an equitable division.

Tigart: Modification of Deviation (p. 12)

- Trial court dismisses contempt charges against father; court of appeals reverses and remands for new hearing; fees still awarded to wife. ("The MDA did not require the party seeking enforcement of the MDA to be the prevailing party," just that it be reasonably necessary to institute legal proceedings to secure enforcement of the MDA.")
- Original parenting plan included deviation from child support guidelines. Father sought to modify child support and eliminate deviation. Trial court agreed, then disagreed with father in Rule 59 ruling. Father appealed.
- Court of appeals affirmed. "If the circumstances that result in the deviation have not changed, the order may be modified only if there exist other circumstances...that would lead to a significant variance between the amount of the current order, excluding the deviation, and the amount of the proposed order."

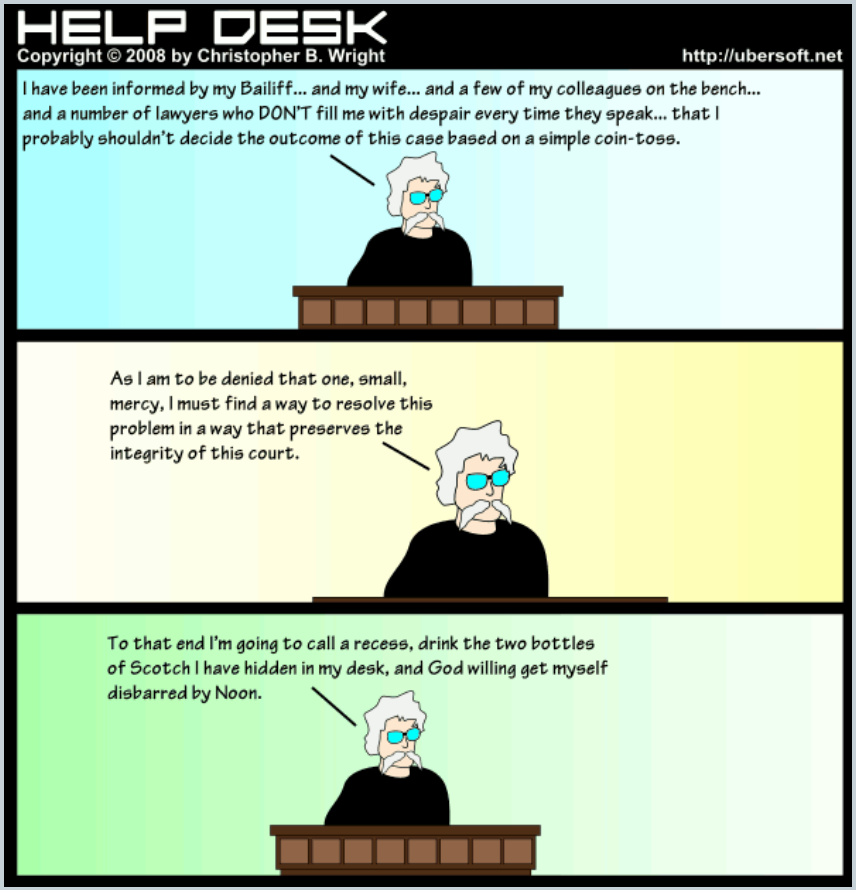
III. Civil Procedure/Evidence

Proctor: Statute of Limitations and Contempt (p. 15)

- Husband ordered to pay wife $50,000 within five years of the date of the divorce decree. No payment;
- 11 years after divorce, wife files contempt action, and is granted a judgment by the trial court;
- Reversed: 10 year statute of limitations began to run on the date of the judgment, not the due date of the obligation.

Adkins: Rule 10B (p. 15)

- In an extremely difficult, wide-ranging dispute that was born from an attempt to set aside a mediated/negotiated settlement order, *Adkins* has found a new purpose: to educate us on Rule 10B recusal motions.
- Here, the court of appeals affirmed the denial of a Rule 10B motion, finding, among other things, that (1) waiting 3 years to file a 10B motion does not meet the "prompt" requirement under the rule; (2) a court which makes an oral ruling prior to the filing of a 10B motion may still reduce that oral ruling to writing after the filing of a 10B motion.



Napier: Be Careful How You Plead (p. 18)

- July 27, 2020
- Child support order entered; wife brings action for failure to pay support; serves husband with motions at last known address
- Judgment for wife: $50,000+
- Husband seeks to set aside judgment using Rule 60.02 fraud section
- No proof of fraud, motion dismissed
- Affirmed

Shannon: Rule 59 and Contracts (p. 19)

- Trial court approved the parties' MDA;
- Wife filed a Rule 59 motion based on failure to divide husband's military retirement account;
- Trial court found that it had not complied with its responsibility under T.C.A. 36-4-103(b) to affirmatively find the parties have made adequate and sufficient provisions for an equitable settlement of their property rights. While that language was specifically set out in the final decree, the trial court found that it was mistaken in making that finding; Affirmed on appeal.
- Why is this important? Because it is unusual to find a court setting aside an agreed final decree without a finding of fraud or duress, or a change in the law, or new facts that could not have been discovered earlier.

Kautz: Rule 60 (p. 20)

- Four years after divorce, wife filed a petition under Rule 60.02 to set aside divorce decree and the parties' negotiated MDA, on the ground of fraud by husband. The trial court originally granted the motion, and then, after hearing proof, reversed itself and declined to modify the agreement.
- The court of appeals affirmed the trial court's denial of relief under Rule 60, and affirmed the attorney fee award to wife. Why affirm the attorney fee award? Because neither party raised the issue of attorneys' fees in their statement of issues in their brief, but rather argued the attorney fee question in their conclusion.
- Practice tip: the court of appeals is not there to construct issues– the party or his or her attorney is responsible for that.

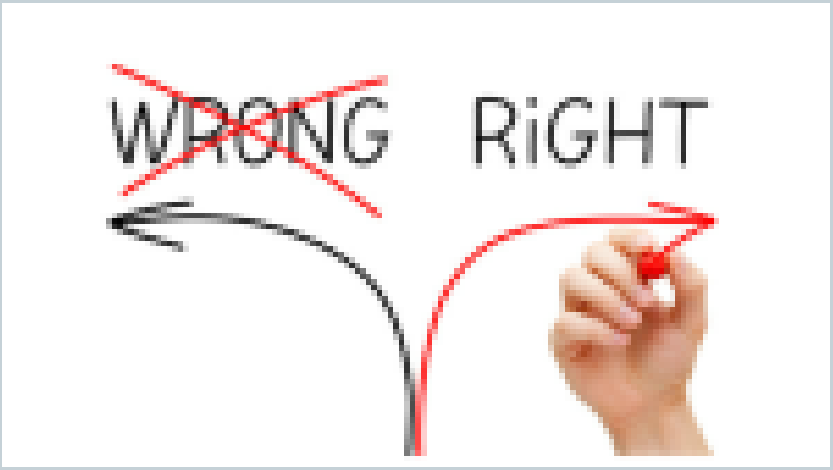
St. John-Parker: Attorneys' Fees in Related Proceedings (p. 21)

- $240,507.70 attorney fee awarded and upheld in contempt action;
- Can attorney fees incurred in related enforcement proceedings in courts other than divorce court (bankruptcy, probate, etc.) be awarded in the divorce court?
- Absolutely. See *Shofner*, *Stack* and *Lovlace*. "Fees at issue do not necessarily have to be incurred before the same court that entered the custody or support order.

Brunkhorst: Attorney's Fee Lien (p. 22)

- *Brunkhorst* is a complicated case because husband died after the divorce but before assets were transferred as required by the final decree. The trial court granted a motion by wife's former counsel to perfect and enforce its attorney's lien. The administrator of husband's estate then filed a Rule 59.04 motion to alter or amend, arguing that "[T]here was no legal basis for allowing Wife's attorneys to file a charging lien against properties awarded to Husband in the final divorce."
- The trial court denied the motion and the administrator appealed.
- Affirmed, because the administrator's Rule 59.04 motion was not based on a change in the law, previously unavailable evidence, or a clear error of law.

Bachelor: Remember *Eberbach* (p. 23)



- Trial court refused to award fees to wife in a post-divorce dispute, finding that the husband's actions were not willful;
- Court of appeals reversed: the parties' contract provided that the defaulting party should be required to pay fees of the non-defaulting party who incurred fees and expenses due to non-compliance or breach. Willfulness is not part of that test, even if it is part of a "contempt" finding.

Easton: Juvenile trap (p. 25)

- July 1, 2020
- Petition filed as a "dependent and neglect petition" in juvenile court
- Tried as a custody case
- Appealed by mother to circuit court
- Father files motion to alter or amend order describing case as a dependent and neglect case; granted, and case dismissed.
- Affirmed on appeal

Knop: Concurrent Findings (p. 25)

- Interesting case about concurrent findings of fact by a special master and judge.
- The standard of review is set forth in Tenn. Code Ann. § 27-1-113: "Where there has been a concurrent finding of the master and chancellor... the court of appeals shall not have the right to disturb such finding." *Bradley v. Bradley*, No. M2009-01234-COA-R3-V, 2010 WL 2712533, at *6 (Tenn. Ct. App. July 8, 2010). Under this standard, concurrent findings of fact by a special master and a trial court are conclusive and cannot be overturned on appeal.
- Note: look carefully at the court of appeals work in distinguishing findings of fact from conclusions of law.

Bottorff: "Under Seal" (p. 27)

- Who knew there would be more than one standard on whether are court can modify a protective order?
- Well, the court of appeals knows that, and we should, too.
- Here, the court of appeals reversed a trial court's decision not to modify a protective order which prohibited a party from sharing documents under that order with an expert in a separate professional malpractice case.

Polster: Rule 59, again (p. 28)

- Husband who entered into a marital dissolution agreement unable to get out of it, notwithstanding letter to court stating, "If she wants a divorce she can have it, but I want three months of marriage counseling first."
- And, duress doesn't work here.
- Test for duress: "A condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party." Also: "Duress consists of unlawful restraint, intimidation, or compulsion that is so severe that it overcomes the mind or will or ordinary persons."

McCartney: Recipient of the 2021 Judicial Patience Award (p. 29)

- Case began in 2003 as a petition for legal separation, became a divorce action in 2015, and was tried in 2020.
- Trial court and the court of appeals waded through many, many legal issues raised by the parties– a number of which were not briefed properly, and others which were controlled by long-standing legal principles. For example:
  - You can't argue the intentions of the parties without proof of those intentions;
  - If you want to retain the appreciation on separate retirement benefits, you have to prove that appreciation;
  - Transmutation from separate property to marital property does happen, especially in a long marriage and substantial contributions by the other party;
  - And more.

The award goes to Judges Melissa Blevins-Willis (trial) and Kenny Armstrong (appeals)

Felker: Statute of Limitations and MDAs (p. 30)

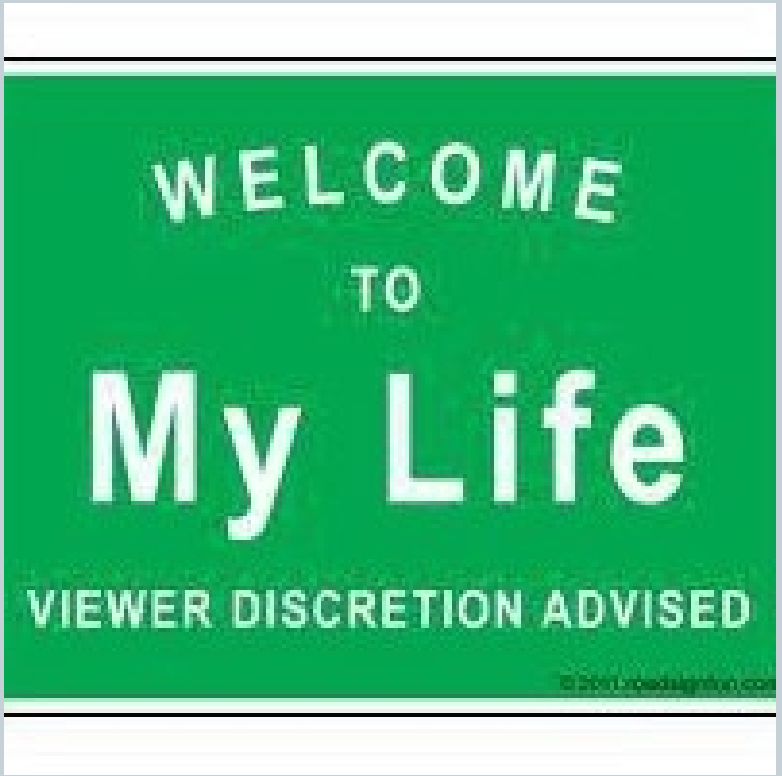
- Parties divorced in 2005;
- Wife obtained knowledge in 2005 that husband may not have maintained an insurance policy required by the divorce agreement;
- Wife sues husband in 2019 for failure to maintain policy;
- Trial court found breach occurred in 2016 and granted relief;
- Reversed: cause of action accrued in 2005 when husband failed to provide proof of insurance

Gilliam: Psychological Evaluations (p. 31)

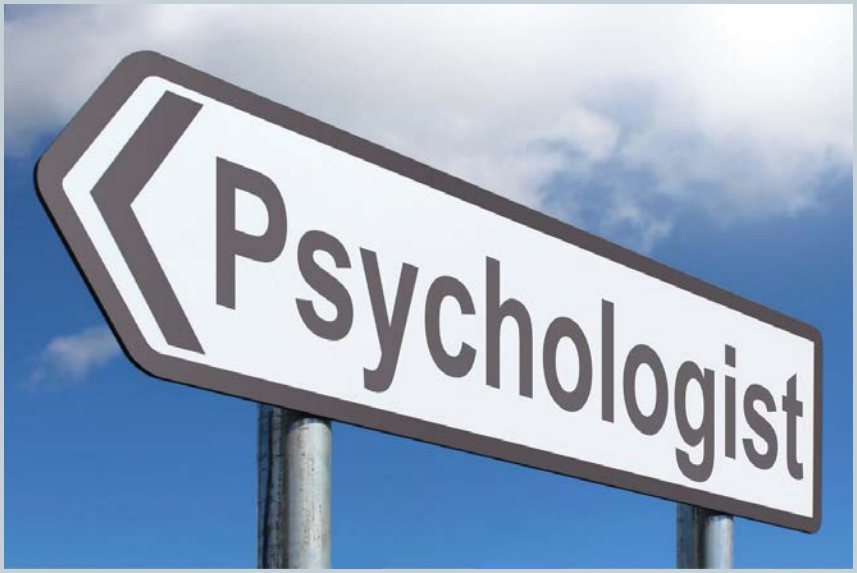
- Trial court ordered parties' children to undergo psychological evaluations;
- Expert conducted "forensic custody evaluation"
- Father's objection to introduction of "forensic custody evaluations" sustained by the trial court and on appeal. "Forensic psychological evaluation is not the same thing as a forensic custody evaluation."
- Expert and the report were excluded entirely.

Cole: Sexually Transmitted Disease (p. 32)

- Wife sued husband for transmitting HSV-2 to her after she tested positive;
- Husband was tested twice and found negative for both HSV-2 and HIV;
- Trial court granted summary judgment to husband; wife appealed;
- Court of appeals affirmed, citing test results and doctor's affidavit;
- Question: why keep the wife's name confidential, but name the husband?



Lucas H.: *Culbertson*, redux (p. 33)



- Juvenile court and circuit court each entered orders requiring mother to release her psychological records to father; court of appeals, citing Culbertson, reversed.
- These records are protected "upon the same basis as those provided by law between attorney and client."
- Specific finding made that the records are not available for disclosure under T.C.A. 37-1-411. Specific requirements of that statute were not met at trial and would not be treated as being met on appeal.

Cowan: Remember to Submit Evidence (p. 34)

- Court found husband in civil contempt, which was affirmed on appeal;
- On appeal, husband sought to use certain depositions for his appeal; these depositions were filed with the court but not introduced into evidence at trial;
- "Mere filing of a discovery deposition with the clerk does not make the deposition a part of the record on appeal."

Pagliara 1 and 2: Protect the Privilege (p. 35)

- Client insists, in spite of counsel's recommendation otherwise, that a friend sit in on lawyer meetings;
- Husband later seeks evidence of discussions held in those meetings;
- Trial court found waiver of privilege, and court of appeals affirmed, with a significant change: no endorsement of the "subject matter" privilege waiver found by the trial court.
- *Pagliara 2*: no wrongdoing in lawyer urging client to report potential criminal conduct to the police.

In re Sitton: Facebook and the BPR (p. 36)

- According to the Supreme Court's opinion, in response to a posting by a Facebook "friend," an attorney posted comments on the potential escalating use of force: lure the ex to her home, claim he broke in, claim she feared for her life, keep mum about these Facebook conversations, and delete the entire thread because premeditation could be used against her at trial.
- The BPR suspended the attorney's law license for 60 days; the Supreme Court increased that punishment to four year suspension with one year on active suspension and the remainder on probation. "The social media posts fostered a public perception that a lawyer's role is to manufacture false defenses...They projected a public image of corruption of the judicial process."

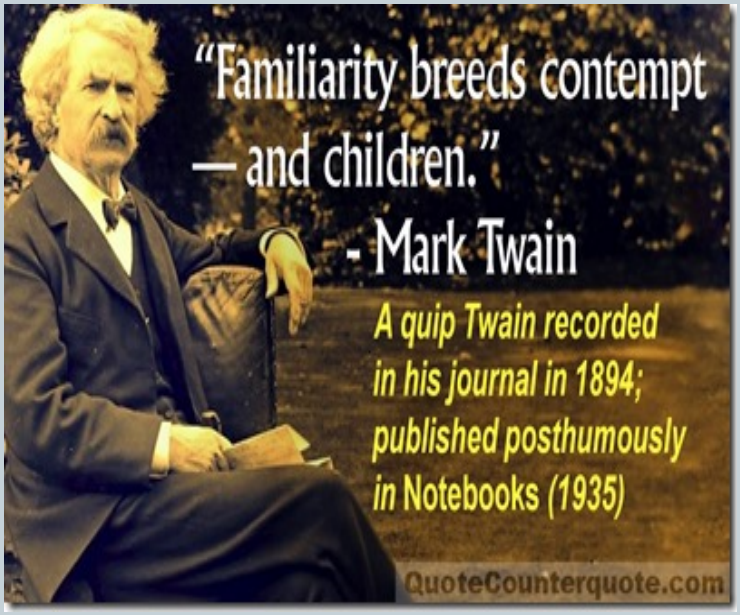
IV. Contempt

Faucon: What about Hamm radio? (p. 38)

- June 11, 2020
- Order of protection entered against ex-husband;
- Ex-husband prohibited from contacting wife by text, email, phone or other electronic devise;
- Question: What about Hamm radio?
- Answer: Yeah, that too;
- And, no, prohibition is not preempted by federal law governing radio…

Billingsley: Stalking Victims (p. 38)

- Individual found guilty of stalking the wife of a former boyfriend appealed from the entry of an order of protection in favor of the wife;
- "Stalking victim means any person, regardless of relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking, as defined in 39-17-315"
- Stalking is a "willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested…"



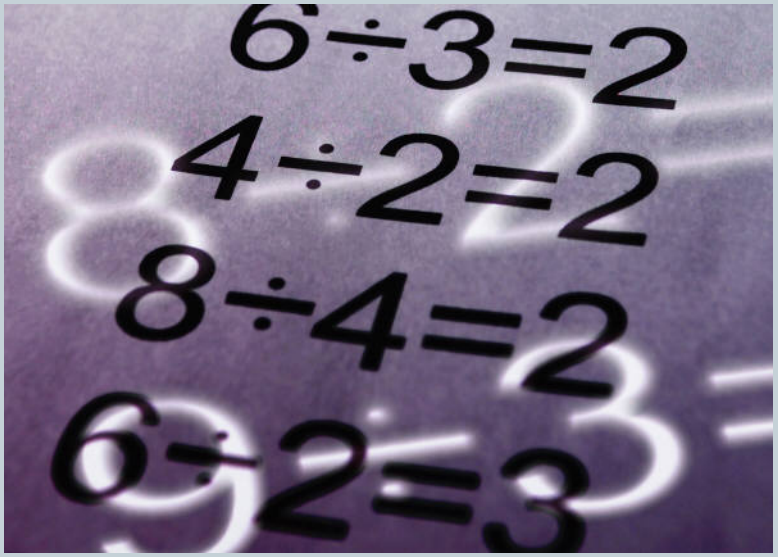
Murray: Not Willful=Not Contempt (p. 39)

- Husband held in contempt for failure to pay wife retirement benefits to which she was entitled pursuant to the divorce decree. Wife awarded $25,000 in attorneys' fees;
- Reversed. Court of appeals found that wife failed to prove that husband was in willful contempt of the decree. The problem: the federal government does not accept QDROs, but did accept COAPs, which husband had pointed out at the time of the divorce.

Daley: 336 Days for Criminal Contempt (p. 40)

- Court of appeals affirmed a 336 day sentence for criminal contempt against ex-wife;
- Found that defendant was adequately informed of her right to counsel and her right against self-incrimination.
- "The record overwhelmingly establishes Mother's refusal to follow the court's orders in, at the very least, 35 instances."

V. DIVISION OF THE MARITAL ESTATE



Lewis: Transmutation, Explained (p. 41)

- August 11, 2020
- Wife purchases house; parties marry; house remains titled to wife; 10 year marriage
- At divorce, trial court finds house is wife's separate property
- Husband appeals; reversed;
- Transmuted to marital property by wife, due to using marital monies to pay mortgage, and efforts by both parties to maintain it.

Haltom: Transmutation, Explained Again (p. 42)

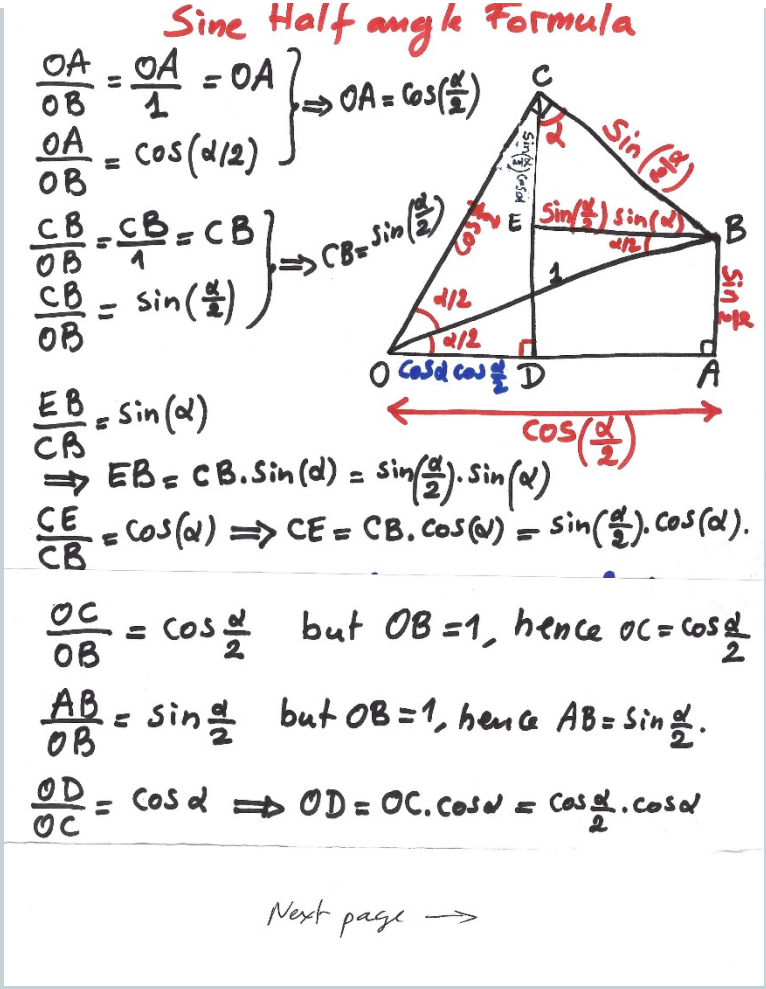
- Wife owned property prior to the marriage;
- Property sold, and proceeds used to purchase property placed in the parties' joint names;
- Trial court found, and the court of appeals affirmed, that placing the property in joint names evidenced an intent that the equity from the first house be marital property rather than separate property.
- Wife's argument that the marital property should be divided unequally in wife's favor also rejected by both courts.

Dailey: Missing Gold (p. 42)

- July 13, 2020
- $600,000 in gold goes missing
- Judgment against husband for $300,000 in favor of wife
- Appeal: it's gone, Supreme Court says you can't include it in marital estate
- Affirmed

Bates: Revenue Ruling 59/60 (p. 44)

- July 9, 2020
- Once upon a time, I thought Revenue Ruling 59/60 was the be all and end all guide to business valuations. Not true (*see, e.g., Wright v. Quillen*)
- *Bates* has brought it back: a clear decision that uses as its base 59/60; includes a shareholder receivable outstanding at the time of the divorce, and reminds us that the business partners' and owners' formula for valuing an interest rarely controls the determination of value– especially when the valuation event addressed by the formula has not occurred.

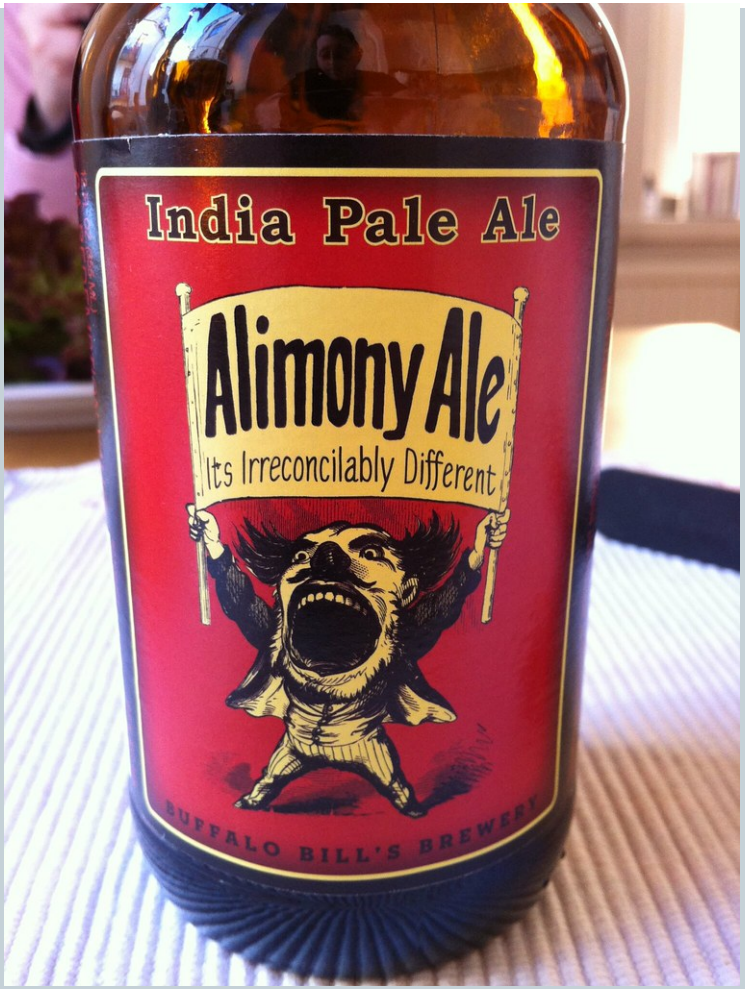


Green: Value, then Divide (p. 44)

- Trial court's failure to classify the parties' property and then value it left the court of appeals "unable to determine if the property distribution was equitable."
- "It is essential that the trial court value this property under one of the methods outlined by the Tennessee supreme court," citing *Cohen* and *Kendrick*, and T.C.A. 36-4-121

Wiggins: Fault, in Alimony Cases (p. 45)

- Trial court awarded wife alimony in futuro, transitional alimony, and alimony in solido for attorneys' fees. Husband appealed the in futuro award and the in solido award, which he said were awarded to wife to punish his affairs during the marriage. Affirmed.
- "As a practical matter, had husband not 'strayed,' there would probably not have been a divorce and no attorneys' fees to be paid in the first place," citing *Olinger v. Olinger (2019)*.



Sekik: Kitchen Sink case #1 (p. 46)

- Sekik contains 48 pages of thoughtful analysis by the court of appeals, finding, among other things:
  - Court had in rem jurisdiction over property in the Gaza strip;
  - Court had authority to impose liability to non-spouse parties for civil conspiracy to dissipate marital assets;
  - Court's valuation of Gaza strip property was appropriate;
  - The court properly found civil conspiracy between the husband and third parties, and that dissipation is a predicate tort to sustain a claim for civil conspiracy

Long: Independent Thinking (p. 48)

- Interesting case, especially on the independent thinking requirement for court orders;
- After pretrial briefs and trial, each party submitted proposed orders;
- Trial court adopted husband's proposed order wholesale, with no modifications;
- Husband appealed; court of appeals affirmed.
- "We agree with wife that the trial court's practice was not fully compliant with the letter or the spirit of Smith....We exercise our discretion to consider the merits of this appeal...while cautioning litigants and trial courts that this court may not choose to do so under similar circumstances in the future."
- Part of the reasoning: seven years of litigation is enough.

Kholghi: Kitchen Sink case #2 (p. 49)

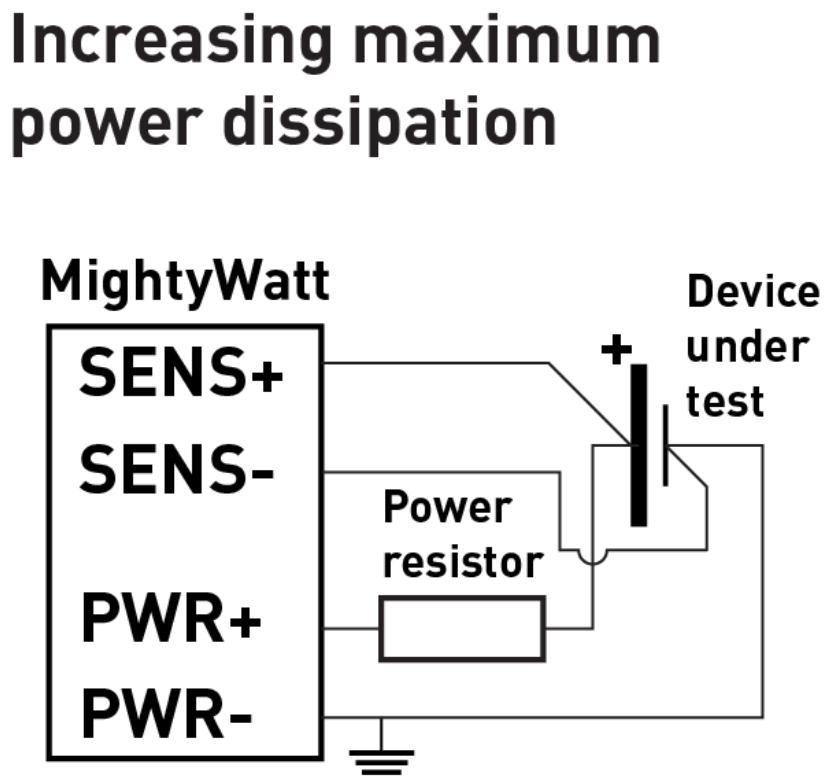
- A lot was happening in this case, upheld in full, tried by Judge Phillip Robinson;
- Trial court properly imputed $1,500/month in wage income to wife who struggled with speaking English and had no formal education beyond high school; the court of appeals found no error in the mix of dissipation and unrepaid shareholder loans assessed to husband; and agreed with trial court in its refusal to reopen case under Rule 59.04 to address attorneys' fees.

Mitchell: Kitchen Sink #3 (p. 50)

- Nine issues raised on appeal by wife. As found by the court of appeals:
- Res judicata does not bar parties in a custody case from referring to events which occurred prior to the entry of the last final order;
- Payment of college expenses for children from a prior marriage does not constitute dissipation;
- "If funds are not accounted for, they are just that. Wife never proved that husband's expenditures were for a purpose contrary to the marriage."

Mitchell: Kitchen Sink #3– Page 2

- Husband's interest in a large law firm found to have no value for divorce purposes, since he could not liquidate that interest;
- Mother who earned $192,000 per year could pay a share of the children's medical expenses (father earned substantially more);
- Trial court properly refused to reopen the proof to obtain more current values of the parties' assets after a trial that spanned more than a year, as no motion to modify the stipulation of the values of the assets was filed by either party;
- Court of appeals reversed trial court on the issue of whether the trial court put more emphasis on the age of the parties as opposed to their income; the supreme court vacated this finding by the court of appeals; final outcome yet to be determined on this issue.



VI. Jurisdiction

Pippin: No Standing (p. 54)

- Court of Appeals affirmed trial court's decision that former domestic partner of biological mother had no standing to seek visitation with the minor child; classic case of hard facts versus law;
- Supreme Court rejected a rule 11 application by former domestic partner. In short, the trial court and the appellate court found no statute which would afford standing to pursue visitation or parenting time in this situation.

VII. Marriage

Not much new in 2021

VIII. Mediation

Moore: Reformation or Rescission? (p. 57)

- Case involves a settlement, which may or may not have been a mediated settlement;
- Agreement provided that each party would release his or her claims to the retirement benefits of the other; husband's pension turned out not to allow a change of beneficiaries;
- Trial court "reformed" the agreement; Court of appeals reversed
- No proper showing of mutual mistake; no authority to reform an agreement to add obligations to a party.

Wheeler: Bad Agreement? Too Bad (p. 58)

- Husband entered into an agreement with wife which awarded certain properties to him– ten years later, after he had met his obligation to wife.
- Husband sought relief under Rule 60.02; denied by the trial court and on appeal: no proof of problems with education or stress, and no argument at trial that agreement was unconscionable.
- Wife's request for attorneys' fees denied because she did not designate this as an issue on appeal.

Lee: Partial Agreement? (p. 59)

- Parties successfully mediated every issue except for the division of two insurance policies, alimony and earning capacity;
- At trial, husband sought to set aside mediated agreement; Denied: "To rescind a contract based on mistake, the mistake must be innocent, mutual and material to the transaction." Husband failed to establish a mutual mistake.
- Court of appeals also affirmed alimony determination by trial court, and the insurance policy required on husband's life. "We find no abuse of discretion."

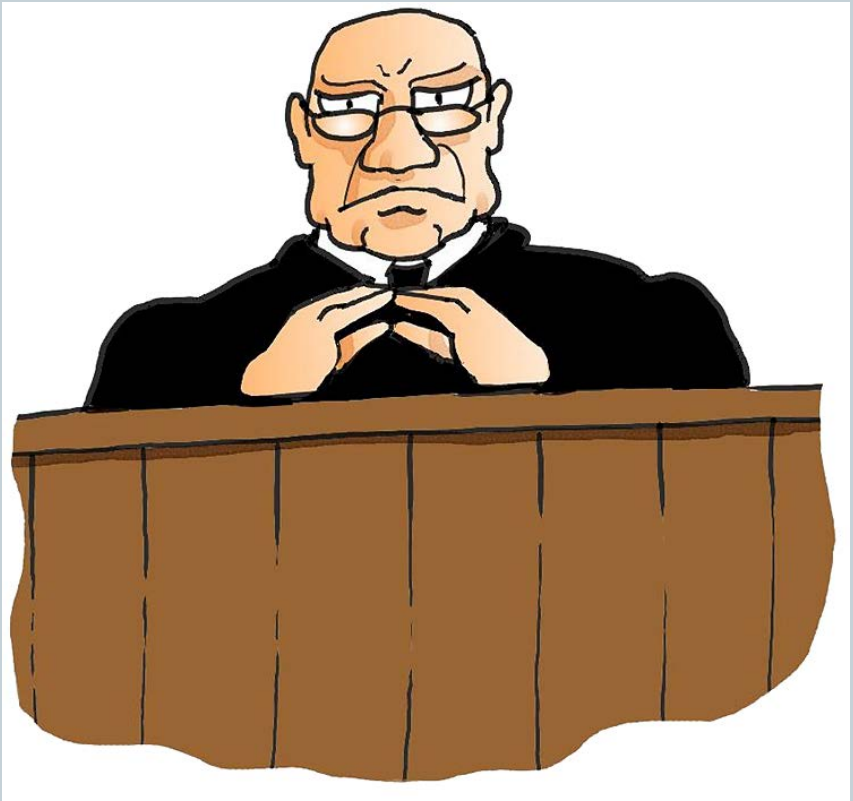
VIII. PARENTING ISSUES

Hoppe: Sex Abuse Allegations (p. 61)

- After a long, tortured history of sex abuse allegations by mother against father involving the parties' son, the trial court which had restricted mother's time restored it, based on mother's progress in therapy;
- Trial court denied attorneys' fees requested by mother;
- Court of appeals affirmed on all issues except for court ordered therapy between mother and child, finding this was not requested by either party and therefore the trial court had no authority to order it.

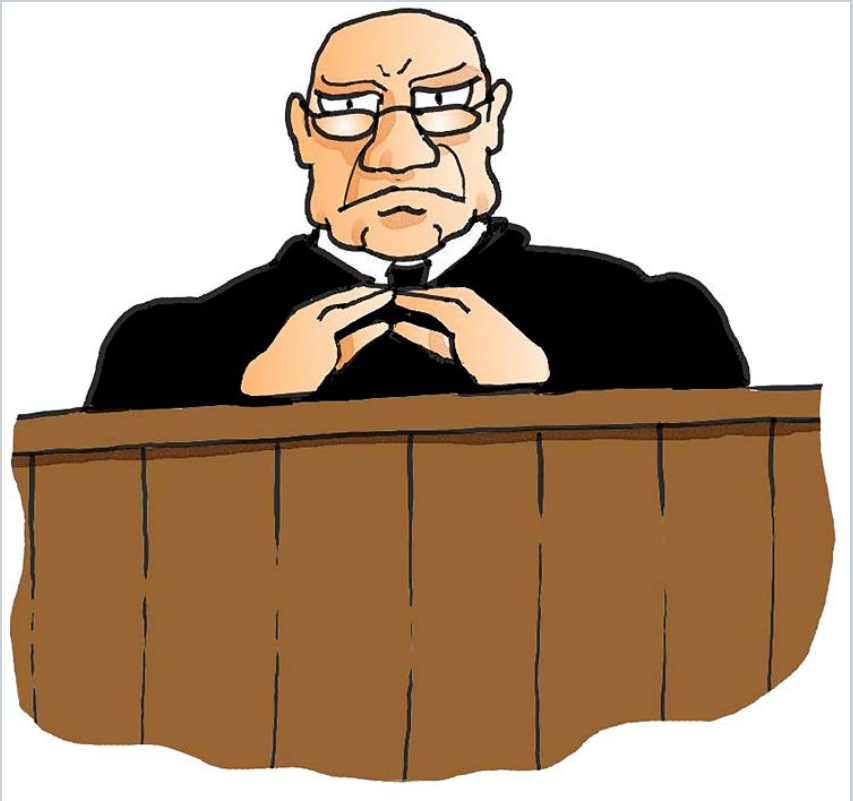
Colvard: In Chambers Interview (p. 61)

- Failure by the trial court to state specifically what the court had learned from an in-chambers interview with the parties' six children was error. Reversed and remanded. "Statement of the evidence" from the court was more of a statement of the case, without reference to facts or testimony adduced in the interview.



Potts: In Vitro Fertilizatin (p. 62)

- Thoughtful opinion and thoughtful affirmation in a difficult case;
- Parties became pregnant with twins through in vitro fertilization; parties later divorced and entered into a parenting plan; two months later, the plaintiff filed a Rule 60.02 action alleging that the court did not have jurisdiction to enter a parenting plan because the defendant was not a "parent" under Tennessee law. The trial court disagreed, and the court of appeals affirmed.
- Defendant was a parent under T.C.A.36-2-403 because she was a party to the written contract for the in vitro procedure, and she accepted full legal rights and responsibilities for the embryos and any children that resulted, and she held the children out as her natural children.
- "Because both parties contractually agreed to accept legal responsibility for the embryos and any children born as a result, they are on an equal footing as parents of the children."

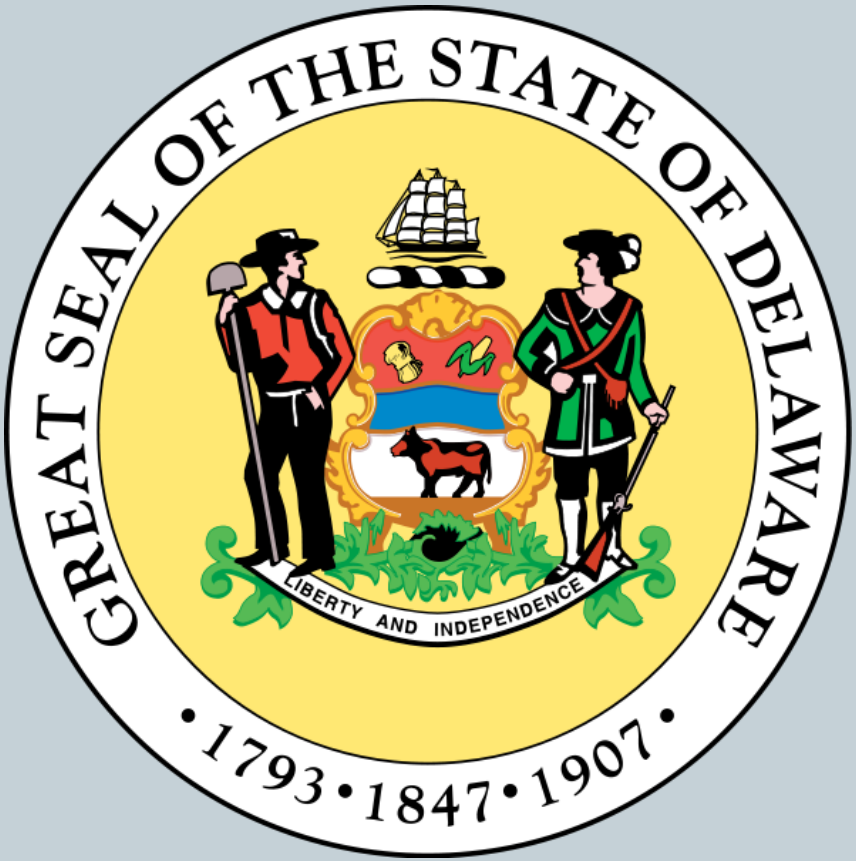


Abrahams: Modification Caution (p. 63)

- Original parenting plan contained provisions for college fund contributions by father;
- Modified plan did not;
- Mother sued when father failed to make contributions; Dismissed by trial court, affirmed by court of appeals.
- Fatal flaw: new plan replaces old plan, including old plan's financial terms.

Gravatt: Year on/Year off (p. 64)

- Original Parenting Plan provided that the parties' child would live in Delaware for a year with father, and then in Tennessee for a year with the mother, and continue to alternate thereafter.
- On a subsequent petition, the parties agreed that the plan was not workable.
- The only real question here is this: how did the parents believe this plan would be satisfactory in the first place?



Horton: The Good Son (in law) (p. 64)

- Grandparents and mother became estranged; the grandparents continued to have a good relationship with mother's ex-husband;
- Grandparents file petition for grandparent's rights
- Rejected: grandparents continue to see children through their former son-in-law, and mother had a reasonable ground for her disagreement with her parents.
- See also *Morisch* (p. 66)
- Affirmed on appeal.

Honea: Allegations of Abuse (p. 67)

- Trial court changed primary custody from mother to father based on mother's repeated allegations of abuse by father;
- Record showed 15-18 referrals by mother to DCS– none of which had been substantiated;
- Trial court found mother was not likely to encourage a good relationship between the children and their father. Also provided a definition of parental alienation (see page 68)

Powers: "Maximum Time" is not "Equal Time" (p. 69)

- "We note that although several factors weighed in favor of both mother and father, 'child custody litigation is not a sport that can be determined by simply tallying up wins and losses;"
- "Section 36-6-106(a) directs courts to order custody arrangements that allow each parent to enjoy the maximum possible participation in the child's life only to the extent that doing so is consistent with the child's best interests."

Lillard: Support for Disable Child (p. 70)

- Trial court found that support should continue for the parties' disabled child beyond the age of 21. The child had a mental disability and was living under the mother's care. The father contended that the child could perform menial but paying tasks.
- The court of appeals affirmed, finding that the trial court had correctly identified and applied the relevant legal principles, that the evidence supported its decisions, and that the child support was within the range of acceptable alternatives."

Audirsch: No Parenting Rights for a Non-Parent (p. 71)

- Child born during the marriage was proven not to be the child of the husband.
- The husband sought to be awarded some rights to the child, and the trial court denied his motion. The court of appeals affirmed, stating that "where…the presumption of paternity is rebutted…the man shall no longer be a legal parent for purposes of this chapter and no further notice or termination of parental rights shall be required as to this person." T.C.A. 36-1-102(29)(C).

Canzoneri: No Material Change of Circumstances (p. 72)

- Mother's boyfriend threatened the children and the mother, and mother sent the children to live with father before obtaining an order of protection against boyfriend. Father sought to change parenting plan; trial court agreed and made changes to the plan.
- Court of appeals found that the change relied on by the trial court was not shown to have had a material effect on the lives of the children, and reversed. "If a material change in circumstances has not occurred, then the parenting plan should not be changed in any way."

Rajendran: Equal time and custody reversed (p. 73)

- Trial court found the parties were unable to cooperate with each other in parenting issues, but still awarded equal time and joint decision-making;
- Court of appeals reversed: "Divided or split custody should only be ordered when there is specific, direct proof that the child's interest will be served best by dividing custody between the parents." Also, the "maximize time" provision of the statute "does not mandate that the trial court establish a parenting schedule that provides equal parenting time."

Prenuptial Agreements

"YOU WANT TO GET OUT OF YOUR WEDDING? I HAVE TWO WORDS OF ADVICE: "PRE NUP"

KRAMER TO GEORGE COSTANZA, ON HIS IMPENDING MARRIAGE TO SUSAN

Howell: Duress and Prenuptial Agreements (p. 76)

- Trial court found that wife was aware that husband would not marry her without a prenuptial agreement;
- Prenuptial agreement presented to wife shortly before marriage;
- Trial court found that, in light of wife's knowledge of husband's need for a prenuptial, wife was not pressured or coerced into signing the agreement.
- Affirmed on appeal.

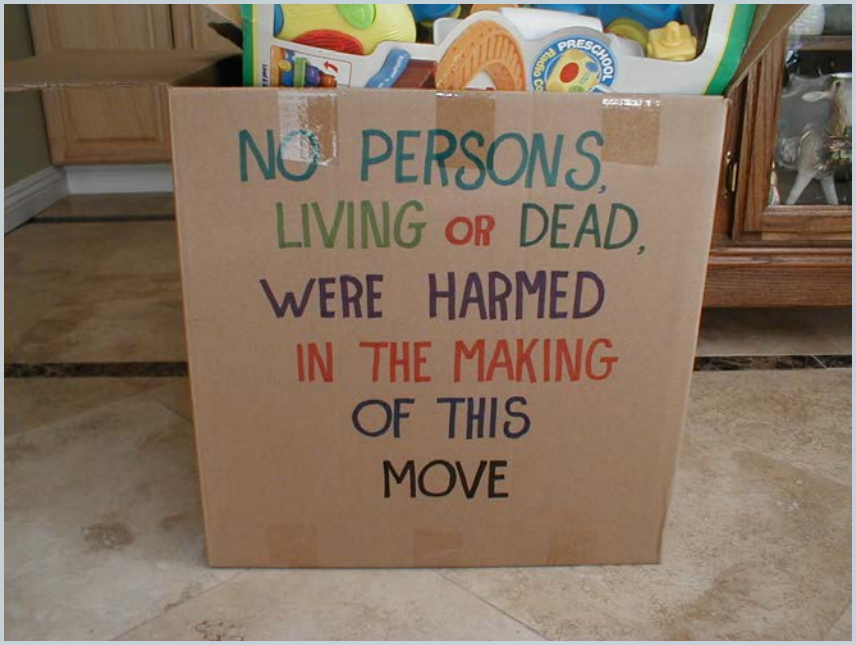
XII. RELOCATION CASES: Read Aragon! Then Forget It!

Griffin: School Choice? (p. 78)

- Father appealed from trial court order which would likely result in mother relocating to a different part of the county, and to another school.
- Affirmed on appeal: best interest of the children was found by trial court to be in mother's care, and no reason to change that.
- Trial court incorrectly included in husband's income the full amount of husband's royalties, since his royalties were divided between the parties.

Payne: Too Easy, Sometimes (p. 79)

- Remember:
  - Disagreements between parents don't automatically translate to an inability to co-parent;
  - A child becoming 8 months older than the child was at the entry of the last order is not a change of circumstances; and
  - If you had already relocated to your existing home when the original plan was adopted, "relocation" is not a change of circumstances.



Chambers: Radial Radius (p. 79)

- Having trouble determining which distance to use in calculating that 50-mile rule, and how to do the calculation? First, use Google Maps, which the court of appeals held can be relied upon to determine distances; Second, the relocation statute is based on radial distance– i.e., as the crow flies distance– not the travel distance– i.e., as the car rolls.
- Trial court did not commit error by commenting favorable on father's school choice, or in "breaking the tie" in deciding where the child should attend school when the parties could not agree on the school in a "joint decision-making" plan.

Finally, Mercifully…