

2022 Domestic Case Law Update  
Tennessee Judicial Conference  
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“All of the fun cases and most of the important ones”



# I. Alimony



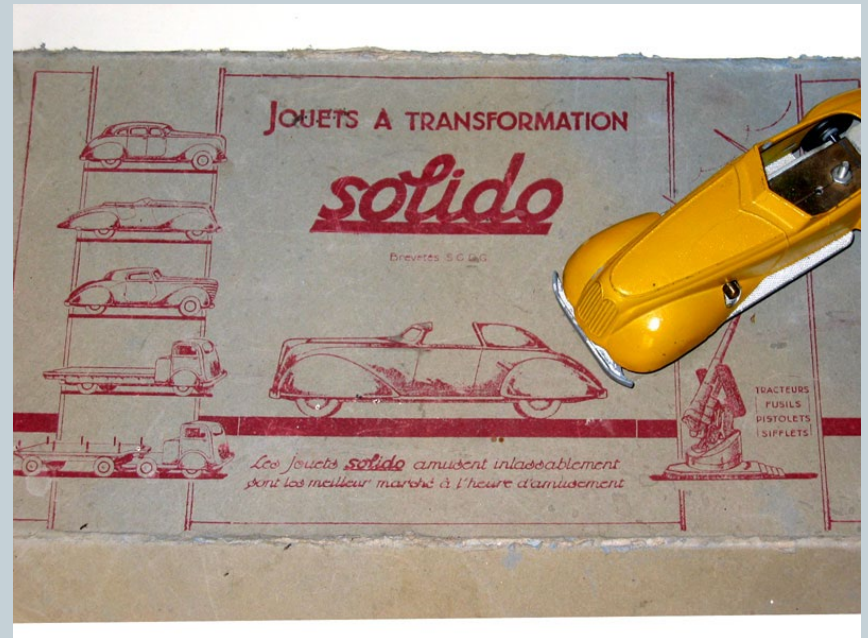
# *Himes (2021): Alimony Modification (p. 3)*

- 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.



# *Smith (2021): In Solido Attorneys' Fees (p. 3)*

- 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 (2021): Joint Decision-Making, Anybody? (p. 5)*



RESPONSIBILITY

- 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 (2021): Another Goodbye to Private School Limits (p. 6)*



- 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 (2021): Insurance to Secure Child Support (p. 6)*

- 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;



## *Hester, 2*



- 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 (2021): Voluntary Underemployment (p. 7)*



- 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 (2021): Military Pension and Child Support (p. 9)*



- 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.”)
- 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 (2021): Modification of Deviation (p. 10)*

- 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.



## *Standley (2022) Attorneys' Fees and Winning (p.12)*

- Father files action to modify custody;
- Mother files counter-petition to modify child support;
- Trial court awards father a judgment for fees incurred in the custody dispute, and awards mother fees for the child support action;
- Mother appeals, Court of Appeals affirms



# III. Civil Procedure/Evidence



## *Arty (2022): Failure to Resolve Issues of Fact (p. 14)*

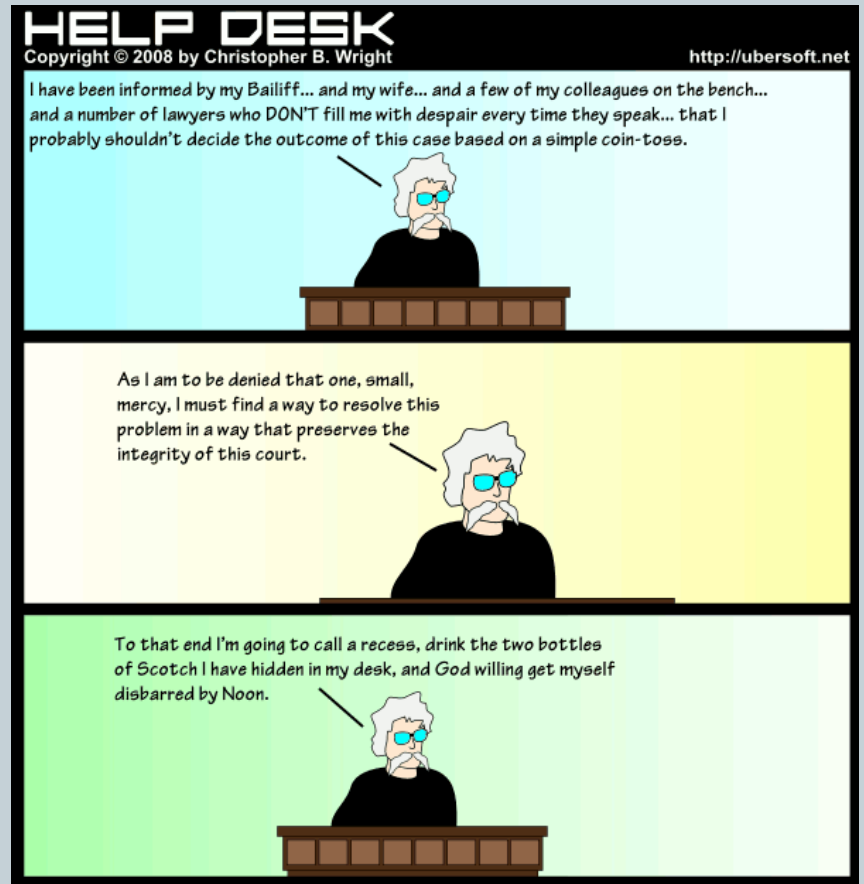
- Instead of melding the evidence into a single cohesive statement, the trial court simply redacted each party's statement entered both as a statement of evidence.
- Remanded to the trial court for several reasons, including the request to save the court of appeals from piecemealing the evidence and providing a "true summation of the trial court's proceedings."





# Adkins (2021): 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.



# *Pagliara (2022): Rule 12.02(6) Fees (p. 17)*



- Rule 12.02(6) (motion to dismiss for failure to state a claim) is favored by some litigants because TCA 20-12-119(c) allows for fees to the prevailing movant even if fees would not otherwise be permitted. But Pagliara tells us that, if you want fees, don't wait until the final order has been entered, appealed and remanded to ask for them. And, the statute caps fees at \$10,000 per case.

# *Shannon (2021): Rule 59 and Contracts (p. 18)*



- 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 (2021):* Rule 60 (p. 19)



- 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.

# *In Re Rhyder C. (2022) Summary Judgment in Termination Proceedings (P. 20)*

- Rhyder is a fascinating case. Here, the petitioner attempting to terminate the parents' rights were successful in doing so through a summary judgment action.
- The trial court granted summary judgment on both grounds and best interest, and the biological parents appealed.
- “We are unaware of any authority that precludes the use of summary judgment in termination of parental rights.”

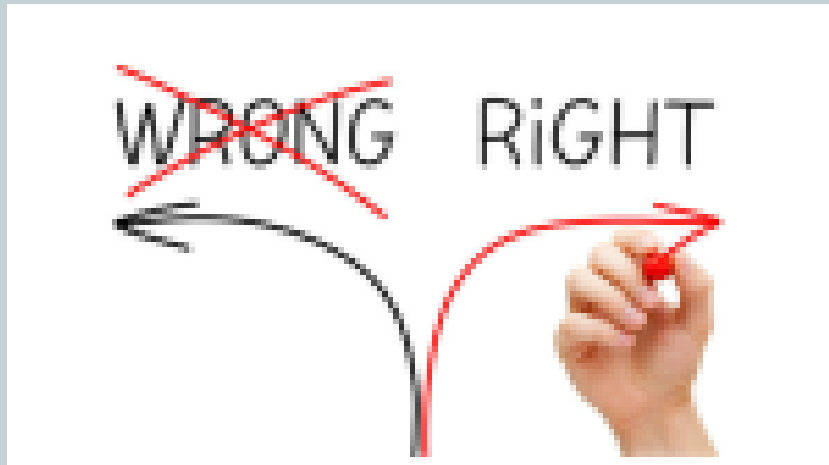


# *Brunkhorst* (2021): Attorney's Fee Lien (p. 21)

- *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 (2021): Remember Eberbach (p. 22)*



- 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.

# *Stine (2022): What, No Hearing? (P. 23)*

- Juvenile court judge sent case directly to the court of appeals after a trial before the juvenile court magistrate. Court held that it could not make factual findings without conducting a de novo trial, and that a direct appeal to the Court of Appeals was a remedy.
- Court of Appeals held that the hearing requested by the mother is not an “appeal” but rather requires a de novo hearing, as if no other trial had occurred.
- Case remanded for a full evidentiary trial.





# *Van Winkle (2022): Defamation? Not (P. 26)*



- Parties obtained a final decree of divorce, to which husband filed a Rule 59 motion. Wife remarried. Husband filed action calling wife a bigamist. Wife sued for defamation.
- Without deciding any other issue, the trial court and the court of appeals dismissed the defamation action, since wife's entire claim rested on husband's pleadings in the husband's action against wife.
- But remember, statements in pleadings must bear some relevance to the purpose of the action.



## *Coffey (2022):* Statutory Interest, Explained (P. 28)

- The Tennessee statute on judgment interest is clear and unambiguous, but that doesn't stop litigants from litigating over it.
- The lesson of Coffey is also clear: the interest rate is set based on the state interest rate on the date of the final judgment, and that rate does not change as the state rate later goes up or down.



# *Polster (2021): 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 (2021):* Recipient of the last year's 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.

***Patience is not the ability to wait, but the ability to keep a good attitude while waiting.***

"thoughts" by [www.dumelang.co.za/thoughts](http://www.dumelang.co.za/thoughts)

## *McCartney, 2*



- **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 (2021): 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



STATUTE OF  
LIMITATIONS

# *Nelson (2022): Fees on Appeal, and Costs (P. 31)*

- Trial court grants appellee \$123,295 in fees on appeal;
- 50 volumes of technical record, 78 volumes of transcripts, 311 exhibits, and offers of proof; 130 issues originally raised by father on appeal;
- Court of appeals reverses on \$458.00 in costs awarded to mother, as the earlier court of appeals decision remanded the case back to the trial court for an award of attorneys' fees, but no mention was made of costs...



## *Murdoch (2022): Expert Testimony and More (P. 32)*

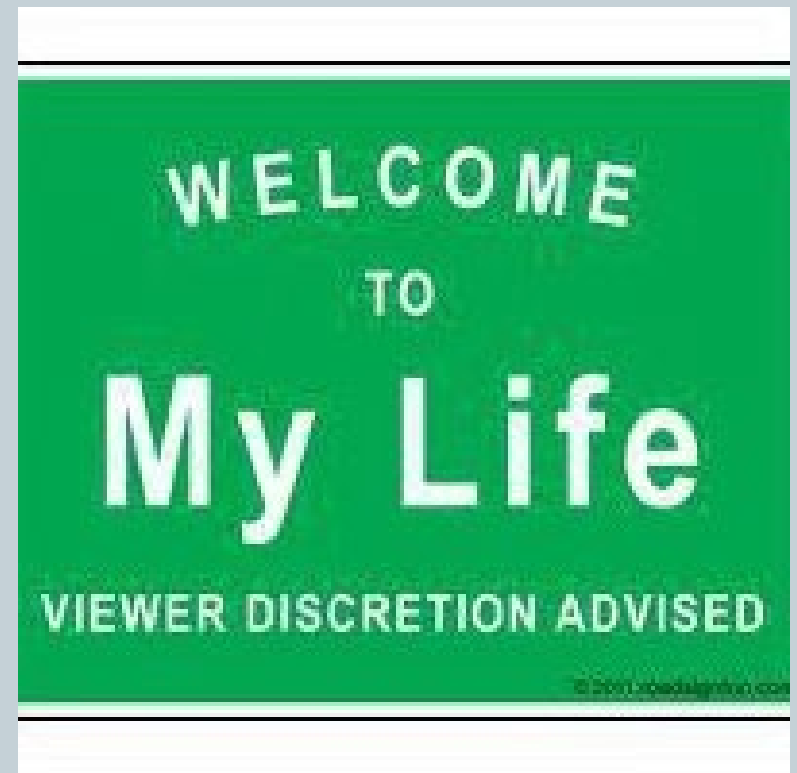
- Mother brought expert to trial to testify that she was not able to work; expert reviewed medical records from other physicians and rendered opinion;
- Husband appealed, claiming expert could not simply parrot the views of other experts;
- Court of appeals affirmed trial court based on (1) the rule allowing experts to rely on other experts, and (2) the finding that wife's expert did not simply parrot the views of others, but in fact disagreed with some of the opinions of other experts and spoke with them when he found it necessary to do so.



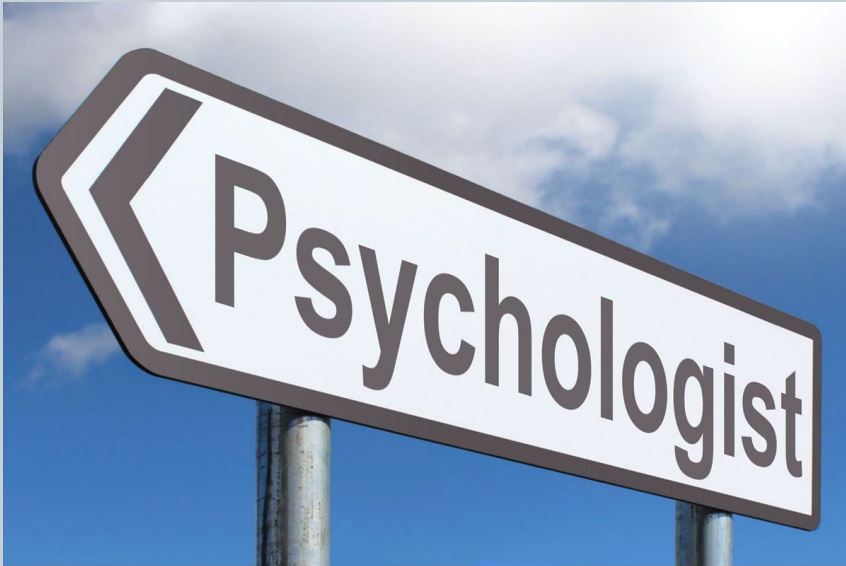


# *Cole (2021): Sexually Transmitted Disease (p. 34)*

- 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. (2021): Culbertson, redux (p. 34)*



- 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.

## *In re Sitton (2021): Facebook and the BPR (p. 36)*



- According to the Supreme Court, in response to a posting by a Facebook “friend,” an attorney posted comments on the potential for escalating the use of force: luring the ex to her home, claiming he broke in, and claiming she feared for her life. The court also found that he suggested that the “friend” keep mum about these Facebook conversations, and delete the entire thread because premeditation could be used against her at trial.



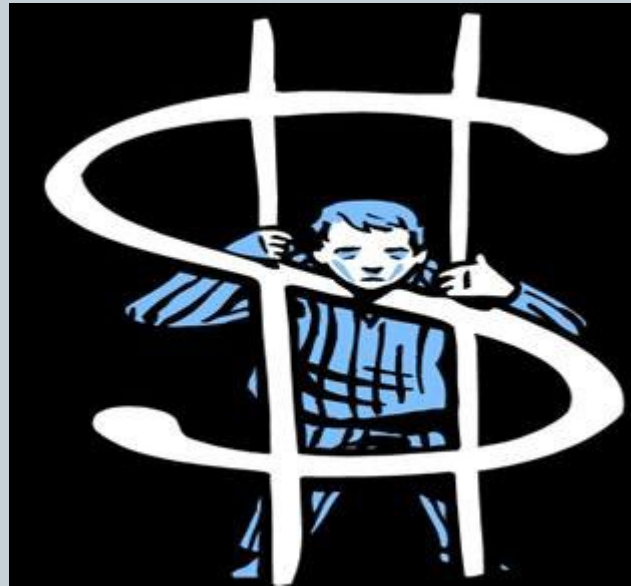
## *Sitton, 2*



- 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



# *Saleh (2022): 510 Days for Contempt (P. 38)*

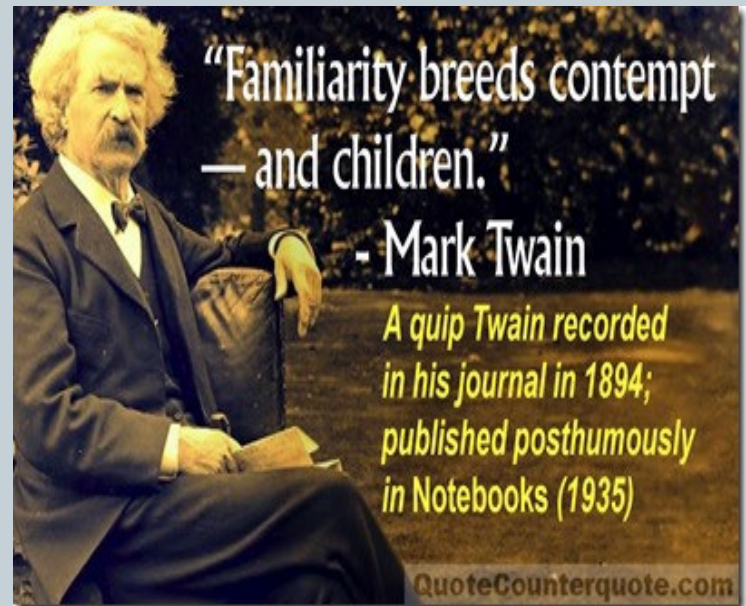
- “Criminal contempt should be imposed in appropriate cases when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. Thus sanctions for criminal contempt generally are both punitive and unconditional.”



# Billingsley (2021): Stalking Victims (p. 39)



- 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...”



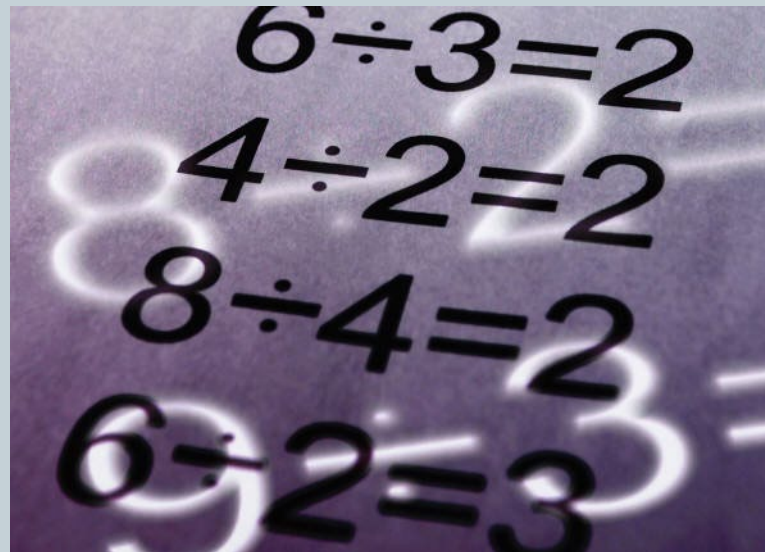
## *Murray (2021): Not Willful=Not Contempt (p. 40)*

- 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.





# V. DIVISION OF THE MARITAL ESTATE



## *Haltom (2021):* Transmutation, Explained Again (p. 41)

- 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.



## *Ellis (2022): Pain and Suffering (P. 41)*

- Case filed in 2011; litigated prenuptial agreement– wife’s fees in that litigation, which she won, were \$368,259;
- Divorce tried in February 2019; Appellate decision issued in August 2022;
- Remanded for reconsideration of assets and alimony



## *Ellis, 2*



- Division of \$3 million marital estate included \$921,000 in “unaccounted for or dissipated” assets;
- Court of Appeals found that trial court was correct that a certain business was husband’s separate property, but wrong in including an asset owned by that business as marital;
- Dissipation finding upheld on appeal, as there was no explanation by husband of the disposition of these funds. Credibility counts!



# *Runion (2022): Implied Partnership? (P.43)*

- Very interesting case. Husband and husband's father farmed land and managed property owned by husband's father;
- Wife urged courts to find that farm and other businesses were actually partnerships between husband and his father, and husband's interest in that partnership should be valued and divided.
- Trial court found husband had rebutted presumption of an implied partnership, and court of appeals affirmed, distinguishing between *Runion* and *Bass and Swecker*.



# *Green (2021): 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



**MarketWatch**  
THE WALL STREET JOURNAL.

# Wiggins (2021): 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 (2021): Kitchen Sink case (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 (2021): Independent Thinking (p. 48)*

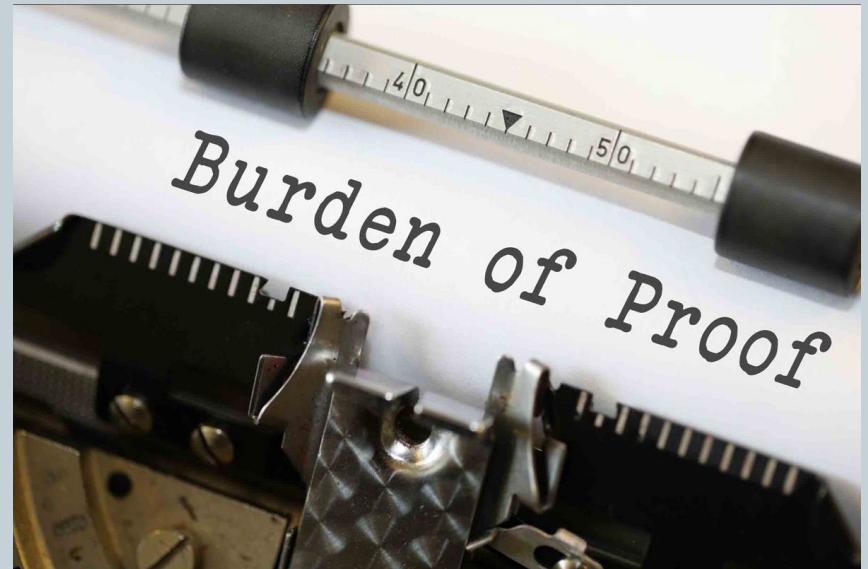


- Interesting case, especially on the independent thinking requirement for court orders;
- After pretrial briefs and trial, each party submitted proposed orders;
- Trial court adopted husband's proposed order wholesale, with no modifications;
- Husband appealed; court of appeals affirmed.
- “We agree 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.



## *Mitchell (2022): Burden of Proof/Separate Property (P. 49)*

- Husband in divorce claimed IRA as separate property; Burden is on husband to prove that is true; failure to meet burden of proof = IRA is a marital asset.
- Court of appeals affirmed imposition of parenting plan giving husband time with the children on Tuesday, Wednesday and Thursday afternoon, and overnight on Tuesdays and Wednesdays during the summer. Basis: husband's work schedule is best accommodated by this schedule in terms of time with the children.



# *Mitchell (2021): Kitchen Sink (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.”



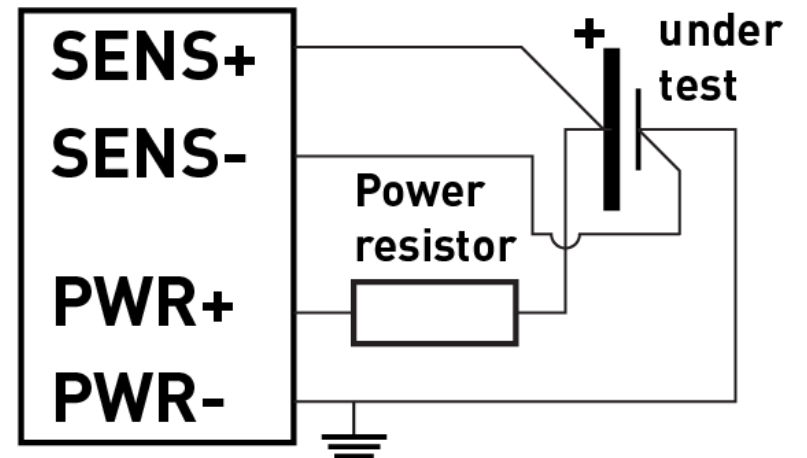
# Mitchell: Kitchen Sink – Page 2



- 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;

## Increasing maximum power dissipation

### MightyWatt

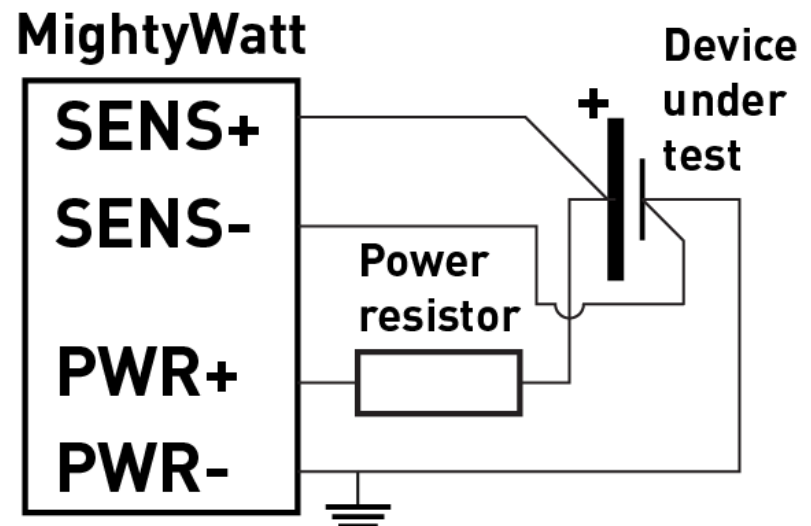


# Mitchell: Kitchen Sink – Page 2



- 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, and remanded for an equal division; the Supreme Court reversed the court of appeals on Rule 11 application.
- Case ultimately remanded for a revised division of assets, though not necessarily an equal division.

## Increasing maximum power dissipation



# *Hollis (2022): Fuller Revisited (P. 53)*



- Great work by both trial court and court of appeals;
- Both courts agreed that husband’s “book of business” was not an asset to be divided in divorce, unlike the trail income in Fuller;
- (My apologies for the lengthy excerpt, but I found this an interesting case.)



## *Robinson (2022): Dissipation/Burden of Proof (P. 56)*



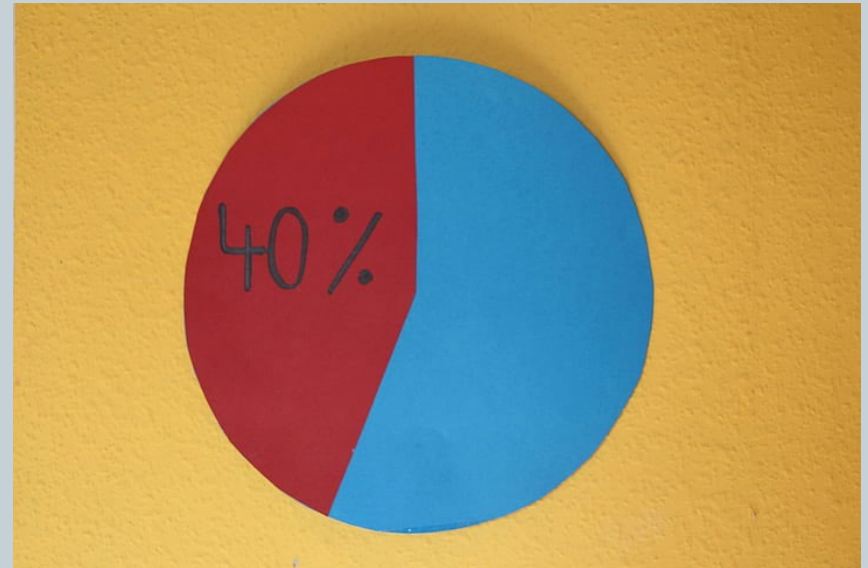
- Wife alleged dissipation by husband; Husband agrees to \$39,000 dissipation; Court finds \$68,000 of dissipation;
- Reversed: Concept of dissipation based on waste; involves intentional or purposeful conduct that has the effect of reducing funds available for equitable distribution;
- Spouse alleging dissipation has burden of persuasion, which includes distinguishing between dissipation and discretionary spending;
- Facts, set out on pages 57-58, show this is not easy to prove.



## *Myers (2022): Batson-Like (P. 58)*



- Marriage lasted three years before the divorce filing; two more years after that;
- Husband received separate property of \$11 million;
- Marital property of \$255,000 divided 60/40 in favor of wife;
- Affirmed, citing *Batson*.





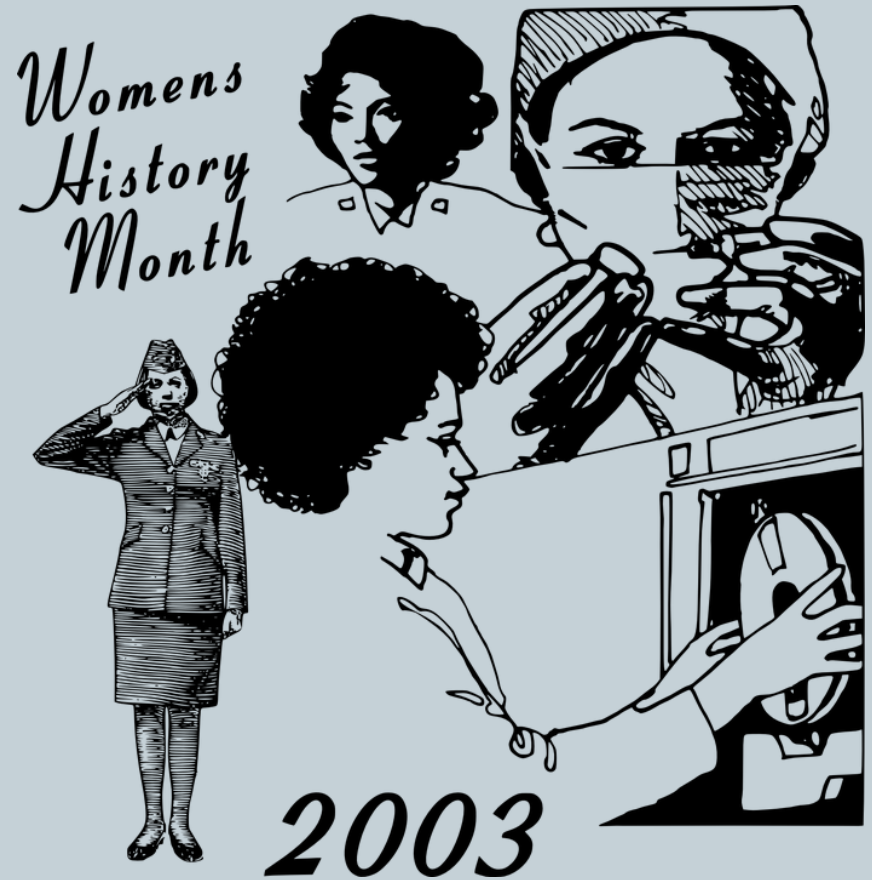
## *Griffin-Ball (2022): VA Benefits/Disability (P. 59)*

- Husband's military disability benefits were his separate property, not subject to being divided;
- But assets purchased during the marriage with those benefits were marital when commingled with marital assets.
- Husband did not meet his burden of showing that the benefits continued to be segregated or could be traced into their product.
- Another lengthy excerpt to show that disability benefits are treated the same as any other separate property, without favor based on their nature.



# *Harper (2022): Military Retirement, Again (P. 61)*

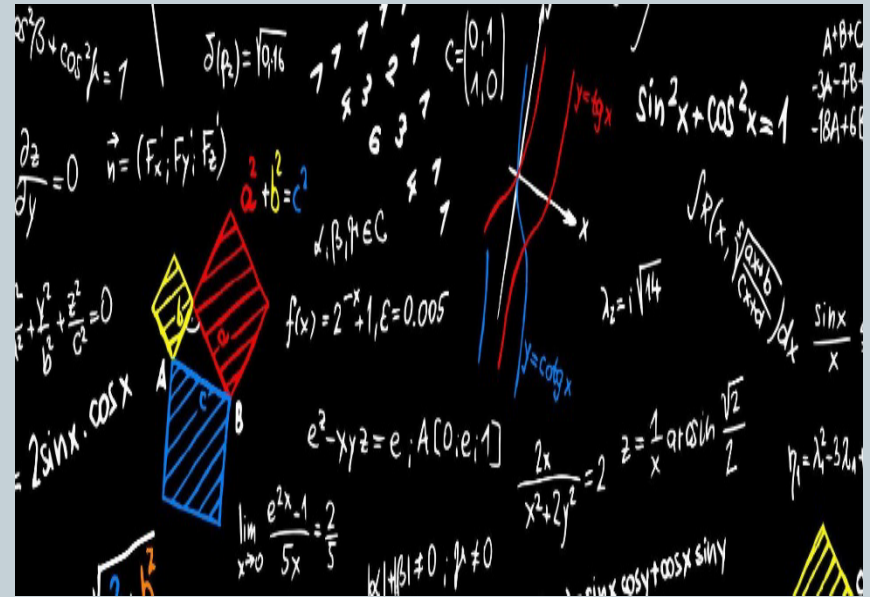
- Difficult lesson to learn:
- Military retirement benefits can be divided, of course, but military disability benefits cannot be divided;
- A veteran may waive his or her retirement benefits in exchange for disability benefits, which are less susceptible to taxes;
- And, as it turns out, less available to former spouses;
- Waiver may occur before or after divorce, and before or after a portion of retirement has been awarded to spouse.



# Thompson (2022): A Coverture Fraction Refresher (P. 62)



- Excellent discussion of coverture fraction division versus present value division;
- 11 page treatise by Judge Clement;
- Recommended reading
- “Wife will pay 27% of marital portion of retirement to Husband upon her retirement”=deferred jurisdiction coverture fraction division.



# *George (2022): Tax Free? Not Really (P. 62)*

- Divorce agreement required husband to transfer by Qualified Domestic Relations Order a certain amount of his retirement as alimony in solido “tax free”
- Wife received the transfer, cashed in the asset, and sued husband for the \$30,000+ in taxes resulting from the cash out;
- Trial court and court of appeals rejected wife’s claim: account went to wife “tax free.” Husband not responsible for wife’s future actions with the funds.



# VI. Jurisdiction



# *Baker v. Grace (2022) (Discussed Below) (P. 64)*

- Lengthy opinion with substantial issues;
- One issue: did Tennessee court have jurisdiction to hear custody issues? Yes, both parties and the child had resided in Tennessee for more than six months;
- Second issue: did Tennessee law apply to child support modification? Yes, but Tennessee did not have jurisdiction to modify child support prior to the date of a support modification proceeding filed by mother—three years after father’s custody action.
- Worth the read, for other issues, too.



# VII. Marriage



*Not much new in 2021*



# VIII. Mediation





# Lee (2021): Partial Agreement? (p. 67)



- 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



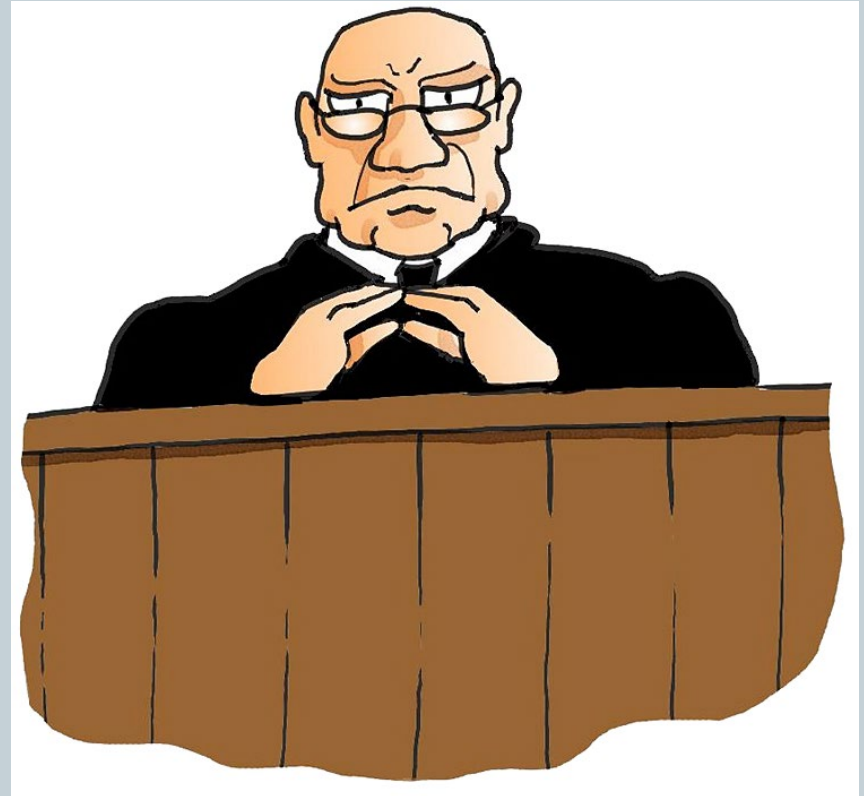
# *Hoppe (2021): Sex Abuse Allegations (p. 69)*

- 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 (2021): In Chambers Interview (p. 69)*

- 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 (2021): In Vitro Fertilization (p. 70)*

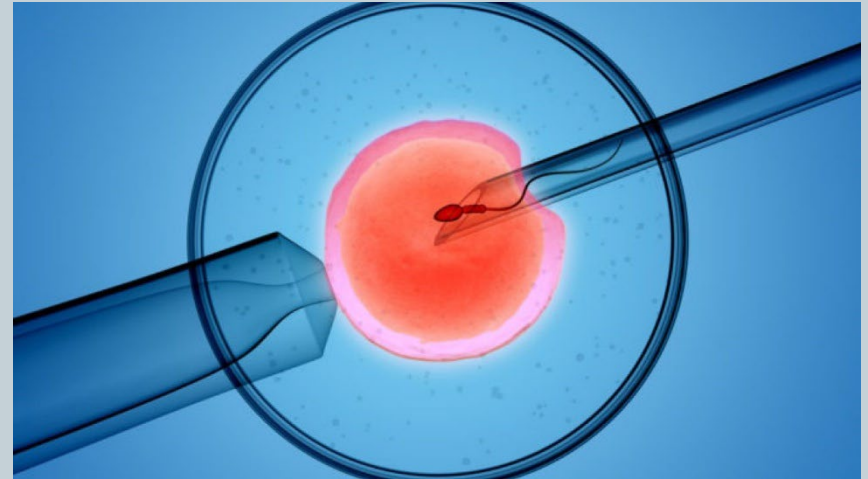
- Thoughtful opinion and thoughtful affirmation in a difficult case;
- Parties became pregnant with twins through in vitro fertilization; parties later divorced and entered into a parenting plan; two months later, the plaintiff filed a Rule 60.02 action alleging that the court did not have jurisdiction 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.



## *Potts, 2*



- 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.”



## *Compher (2022): Another View of In Vitro (P. 71)*

- Like the Pippin case from 2020, Compher is an example of how a difference in a statute can make for a hard result;
- Children in Tennessee, by statute, are treated differently when conceived by embryo transfer versus artificial insemination;
- Rights are determined by contract principles, not biology.
- “Artificial insemination statute grounded upon marriage, while in vitro fertilization is grounded on contract...”
- Parties in Compher never married; parties in Potts did so.
- Refer to pages 71-72



# *Pippin*: No Standing (Not in Materials-prior to 2021)

- 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.





# *Baker v. Grace (2022) (Discussed Below) (P. 64)*

- Mother sought to terminate father's parental rights based on father's admitted mental health issues;
- Trial court instead modified plan to give father additional time with the child;
- “Record is replete with evidence that father made great strides in his mental health since the divorce. This alone constitutes a “material change in circumstances that affects the child’s well-being in a meaningful way.”



## *Smallbone (2022): Conditional Parenting Plan (P. 76)*

- Trial court awarded parties equal time and equal decision-making “conditioned on the parties remaining within the children’s current school district after the divorce.” Father appealed;
- Court of appeals affirmed: “the court’s plan merely incorporated the parties’ agreement... special residency provision in the plan was not an abuse of discretion.”



# *Williams (2022): Use of Alcohol Barred (P. 77)*

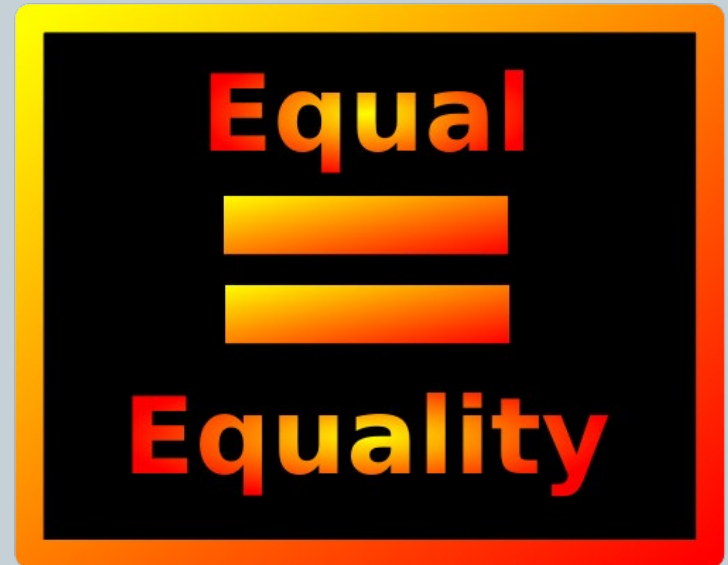
- Trial court entered plan which prohibited father from drinking alcohol to excess while caring for the child;
- “Excess” based on state law for DUI;
- Court of appeals affirmed but modified the alcohol restriction to “no alcohol while caring for the children,” relying on *Smithson and Rogers*.



## *Woody (2022): “More Equal” Parenting Time (P. 77)*

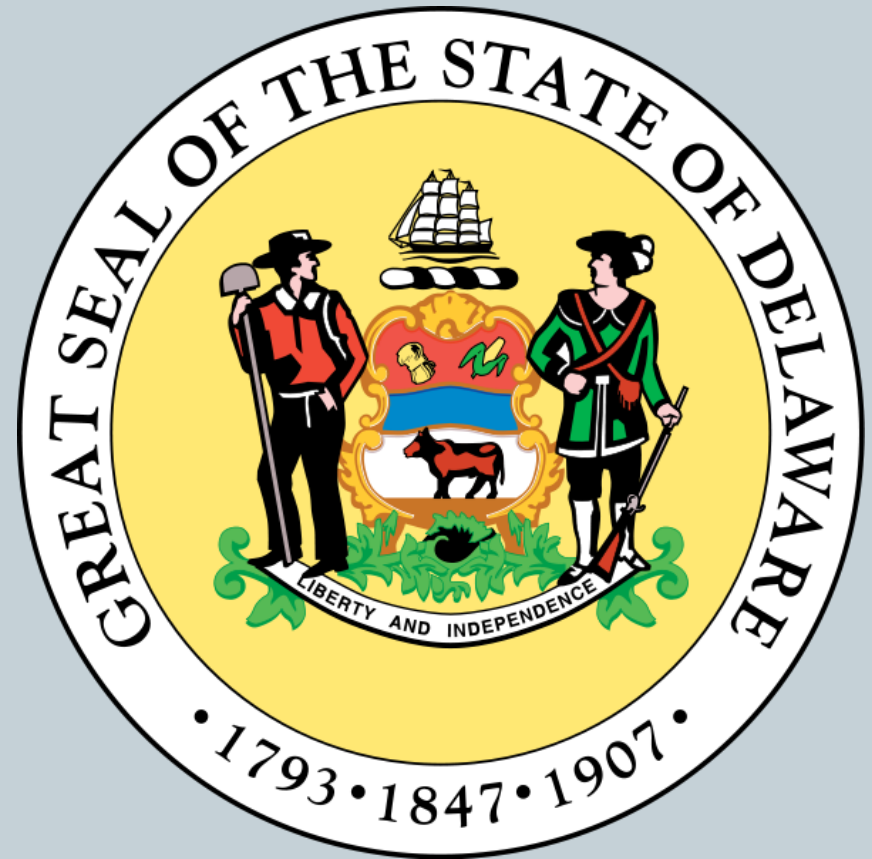


- Trial court awarded father 120 days of parenting time in permanent plan after the parties had shared equal time during lengthy divorce proceedings;
- Court of appeals remanded case to trial court for a “plan that better maximizes each parent’s time with the child.”
- Good law, but could affect advice of lawyers to clients.



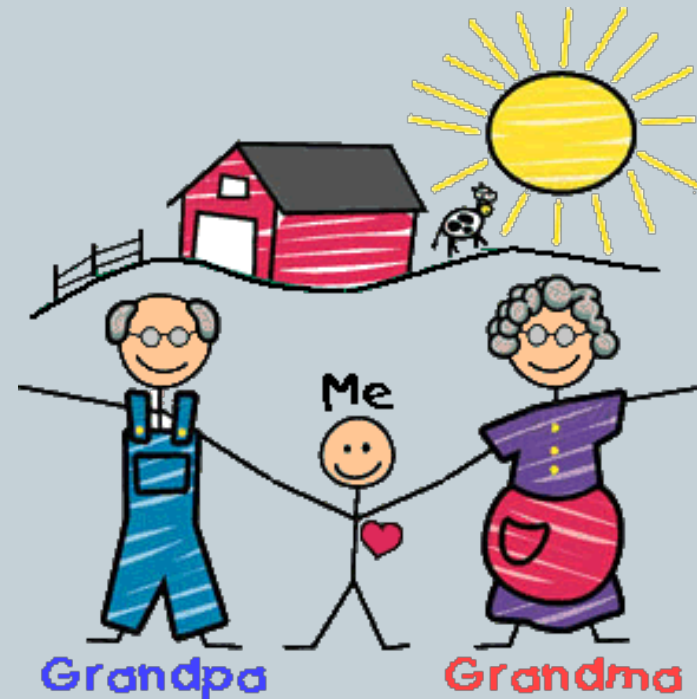
# *Gravatt (2021): Year on/Year off (p. 77)*

- 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?



# *Morisch (2021):* Grandparents and “Severe Reduction of Time” (P. 78)

- Like another case decided in 2020 (Horton), grandfather’s failure to show that his time with his grandchild had been severely reduced.
- Trial court reversed, and grandparent visitation petition dismissed.



# *Honea (2021): Allegations of Abuse (p. 79)*



- 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 (2021): “Maximum Time” is not “Equal Time” (p. 81)*



- “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 (2021): Support for Disable Child (p. 82)*

- 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.”



# *Emch (2022): Move to New County (P. 83)*



- Parties divorced in Wilson County; court awarded mother primary parenting status;
- Mother sought to move to Williamson County to be closer to her fiancé;
- Trial court agreed, but also modified plan to be a 50/50 plan. Court relied on the material change analysis under TCA 36-6-101(a)(2)(C) standard. Travel difficulties did not bar 50/50 plan.
- Affirmed



## *Audirsch (2021): No Parenting Rights for a Non-Parent (p. 86)*



- 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 (2021): No Material Change of Circumstances* (p. 87)



- 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 (2020): Equal time and custody reversed (p. 88)*

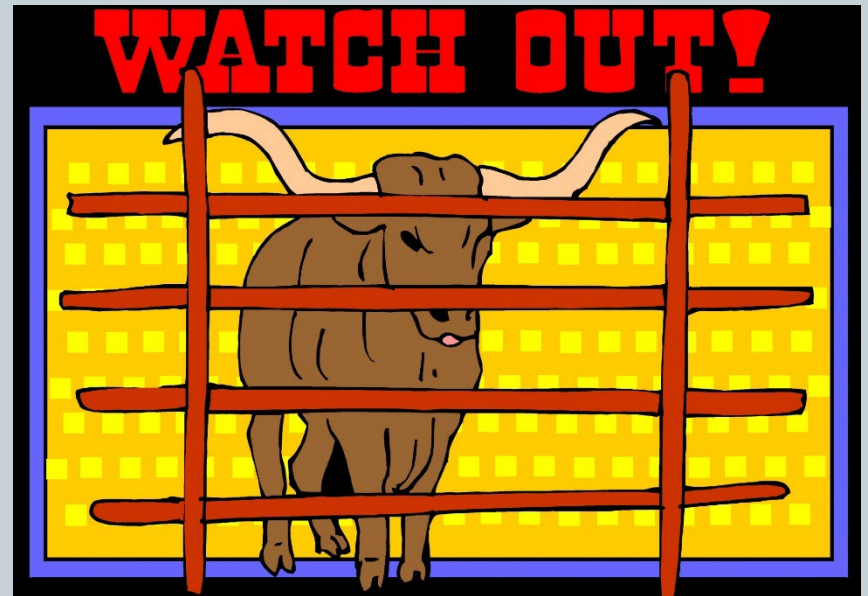


- Trial court found the parties were unable to cooperate with each other in parenting issues, but still awarded equal time and joint decision-making;
- Court of appeals reversed: “Divided or split custody should only be ordered when there is specific, direct proof that the child’s interest will be served 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.”



# *Kristle (2022): Findings of Fact (P. 90)*

- Case remanded for findings of fact on custody issues and domestic violence concerns;
- But, said the court of appeals:
- “If upon remand the trial court once again chooses to impose an equal parenting schedule, additional findings...may facilitate future appellate relief, given the trial court’s findings that not a single factor favors father alone...”



## *Jones (2022): Grandparents and Superior Rights (P. 91)*

- Chancery court awarded father 54 days of parenting time while awarding grandparents primary custody after a temporary custody order placed the two children in the grandparents' care in 2018;
- Reversed and remanded for a new hearing based on the superior parental rights doctrine favoring biological parents;
- Remember: a temporary plan does not remove the superior rights of biological parents, and the grandparents bear the burden of showing by clear and convincing evidence that the children would be exposed to substantial harm if placed in father's custody.



# *Houston (2022): Grandparent Visitation Order Reversed* (P.93)



- Juvenile court properly assumed jurisdiction over the case where the statute provided jurisdiction when the child is “born out of wedlock” (parents subsequent marriage did not affect this finding);
- Court of appeals affirmed finding that grandparents had been denied time after spending several years with considerable involvement with their grandchildren;
- BUT court of appeals reversed and dismissed in light of the lack of evidence that the child had been harmed by not spending time with the grandparents.

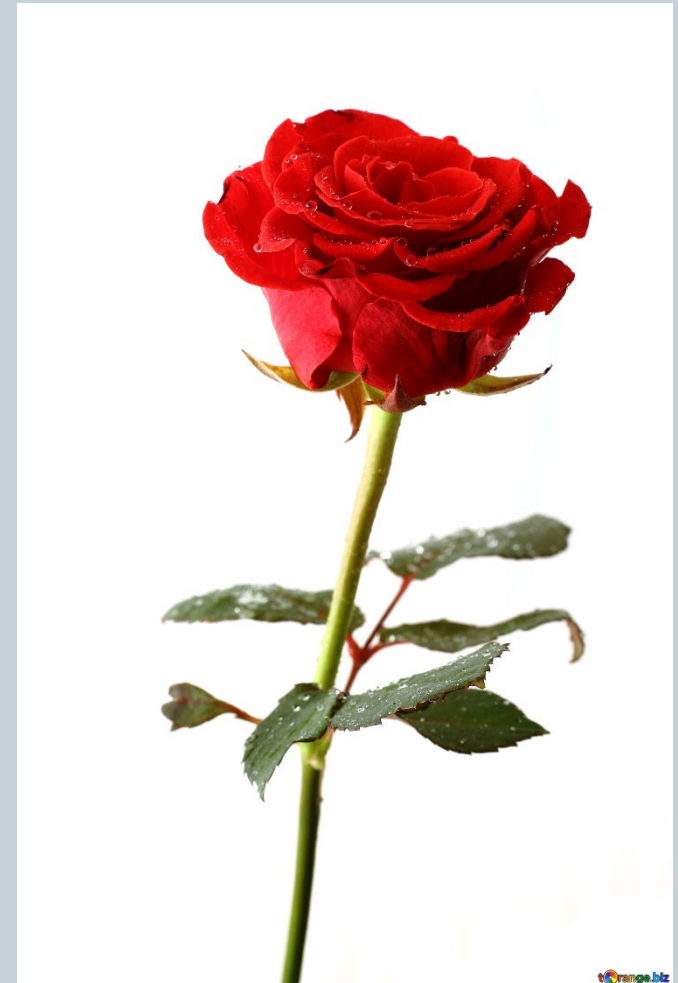




## *Rose (2022): Grandparent Visitation Affirmed (P. 93)*



- After mother was killed in an accident, and grandparents were denied meaningful time with their grandchild, trial court awarded grandparents about 20 days of parenting time/year, plus a facetime call every week, and the ability to attend the child’s extracurricular activities;
- Affirmed by the Court of Appeals, as plan “minimized potential interference with parent-child relationship.”



# Prenuptial Agreements

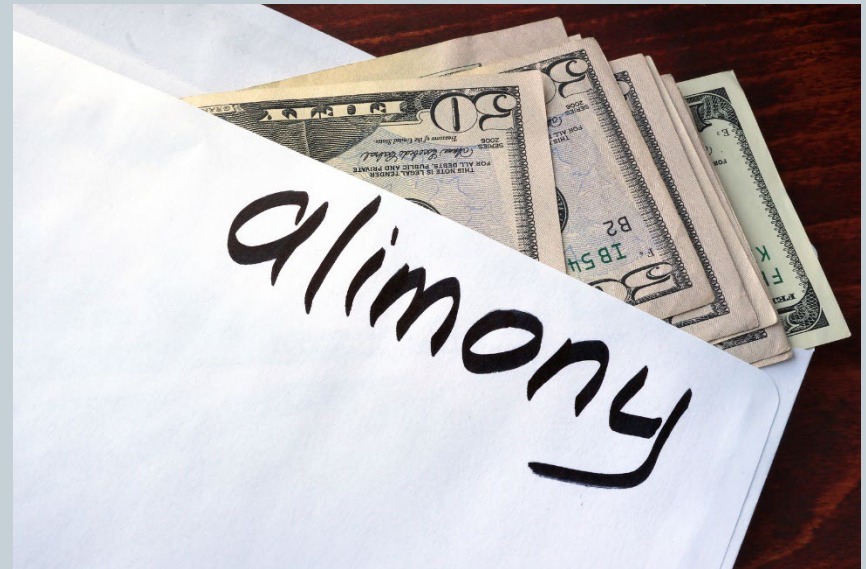


**“YOU WANT TO GET OUT OF YOUR  
WEDDING? I HAVE TWO WORDS OF ADVICE:  
“PRE NUP”**

**KRAMER TO GEORGE COSTANZA, ON HIS  
IMPENDING MARRIAGE TO SUSAN**

## *Howell (2021): Duress and Prenuptial Agreements (p. 96)*

- 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.



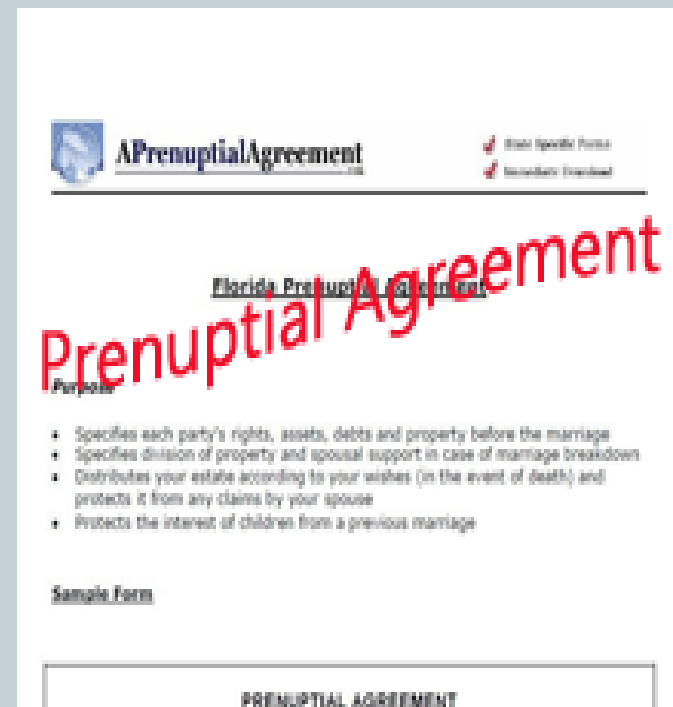
# Law (2022): Duress/Good Faith (P. 97)

- Excellent opinion by appellate Judge Kristi Davis on issues ranging from alleged duress and asset disclosures (no problems there) and wife's argument that assets otherwise protected by a prenuptial agreement can be transmuted by actions of a party.
- On the transmutation issue, the court of appeals held that transmutation is possible, but only after you look at the terms of the agreement first.
- And, by the way, you can't transmute a marital home simply by living in it...



# Stokes (2022): Lack of Disclosures (P. 99)

- Where a prenuptial agreement disclosed only the estimated value of each party's principal residences and the debt owed on the residences— and not bank accounts, retirement accounts, etc.— the agreement is invalid.
- Stokes also disagreed with husband's executor that there was evidence wife was aware of husband's assets, ala Randolph.



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



# *Nance (2022): Relocation Denied (P. 100)*

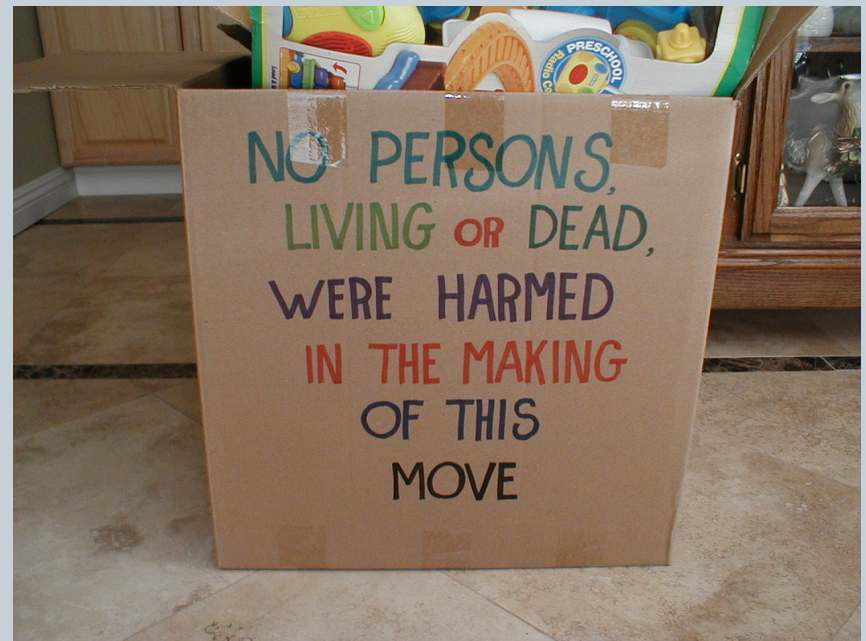
- Trial court denied mother's effort under the amended Tennessee parental relocation statute to relocate the child to Alabama (this was even before the 2022 Tennessee-Alabama football game, after which the state of Alabama may have refused to permit it);
- Main reasons: mother and stepfather's disdain for the father, equal time enjoyed by the parents, and relocation would inhibit the child's relationship with his father;
- Affirmed by Court of appeals



# Payne (2021): Too Easy, Sometimes (p. 101)



- 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 (2021): Radial Radius (p. 102)*



- 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.



# *Hall (2022):* Relocation Allowed (P. 103)

- If not the first, then one of the few decisions to permit relocation under the amended Tennessee parental relocation statute;
- Key factor: father had spent 49 days in 2019 and 66 days in 2020 with the child– the new plan allowing the child to relocate to Ohio provided him with 97 days.
- Very little conflict between the parents, except on this one issue.



# *Autumn H (2022): Relocation Allowed (P. 104)*



- This is a case decided under the old relocation statute, but it was a best interest case since the parties spent substantially equal time with each other. The result: mother was permitted to relocate to Canada, where she had come from and where she wished to return.
- Good case if you represent the movant, even under the new statute.



# Finally, Mercifully...

