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ELAINE B. BEFLER, Clerk & Master

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

\_\_\_\_\_, )  
 )  
Plaintiff/Wife, )  
 )  
vs. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Husband. )

Docket No. \_\_\_\_\_

MEMORANDUM AND ORDER

PROCEDURAL HISTORY

Ms. \_\_\_\_\_ filed her Complaint for divorce on July 15, 2014, in the Chancery Court of Williamson County, Tennessee. Four days earlier, she had filed a Petition for an Order of Protection in the General Sessions Court of Williamson County. Ms. \_\_\_\_\_ attached a copy of her Petition for Order of Protection to her Complaint for divorce.

In her attached Petition for Order of Protection, Ms. \_\_\_\_\_ alleged that Mr. \_\_\_\_\_ stated on a number of occasions that he would kill her, that he had punched holes in the wall, and that he had threatened to kill her and her dog. Further, she alleged that on July 10, 2014, he threatened her banker, verbally abused her by cursing at her and by yelling at her "in front of all our staff at work," as well as in front of the parties' children, had thrown objects at her, and stated that he wished she were dead. Ms. \_\_\_\_\_ also alleged in her Petition that on July 8, 2014, at the VA Federal Building, Mr. \_\_\_\_\_ cursed her and threatened her during a business meeting. She also

referenced an incident on July 6, 2014, at the marital residence in Williamson County where Mr. [REDACTED] allegedly punched several holes in the wall, threw objects at her, stole the keys to her condo, mailbox and garage. Ms. [REDACTED] stated in her Petition for Order of Protection that she moved out in fear for her life, suffered constant threats and had objects thrown at her, and feared bodily harm. Finally, Ms. [REDACTED] alleged that Mr. [REDACTED] had stalked her and tapped her phone, her car and her office.

Ms. [REDACTED] made the following allegations in Counts I-IV and VI of her Complaint for divorce. Ms. [REDACTED] alleged there were irreconcilable differences between the parties and that Mr. [REDACTED] had been guilty of inappropriate marital conduct. Further, Ms. [REDACTED] alleged that Mr. [REDACTED] had been guilty of adultery and was currently involved in an affair with another woman which had been ongoing for many months. Ms. [REDACTED] alleged that Mr. [REDACTED] saw his girlfriend virtually every day and that his girlfriend had spent the night in the marital home. Ms. [REDACTED] also alleged that she discovered earrings costing \$2,600 which Mr. [REDACTED] purchased and gave to his girlfriend on her birthday.

In Count V of her complaint, Ms. [REDACTED] restated many of the allegations contained in her Petition for Order of Protection.

In Count VII of her Complaint, Ms. [REDACTED] alleged that the parties jointly owned a medical equipment company in which she was the majority shareholder and principal operating officer. Further, she alleged that the business was able to operate due to her status as an African-American female, and without her 8A status and her position as the primary owner and operator the company, many contracts with the federal government would be canceled. Ms. [REDACTED] alleged that Mr. [REDACTED] actually spent very little time

in the business and did very little work there, although he was able to write checks for the payroll. Ms. [REDACTED] alleged that Mr. [REDACTED] had established secret bank accounts for himself. Ms. [REDACTED] alleged she found large sums of cash that Mr. [REDACTED] had stashed away. She also alleged she was aware that Mr. [REDACTED] had been siphoning money out of the business over a period of time, and, in fact, learned from the parties' accountant that the amount of funds unaccounted for exceeded \$500,000. Additionally, Ms. [REDACTED] alleged she learned that Mr. [REDACTED] had taken a loan against the company of which she had no knowledge. When Ms. [REDACTED] moved \$60,000 from the business account into her personal account to keep Mr. [REDACTED] from taking the money, according to Ms. [REDACTED]'s allegations, Mr. [REDACTED] called the banker and threatened to sue Pinnacle Bank. Ms. [REDACTED] alleged that Mr. [REDACTED] had recently deleted the QuickBooks business files. She alleged Mr. [REDACTED] had come to the business and into her business meetings creating scenes by cursing and threatening her, which could be detrimental to the company. Further, Ms. [REDACTED] alleged that Mr. [REDACTED] had threatened and cursed her in front of their employees and that two employees recently resigned due to Mr. [REDACTED]'s harassment.

Ms. [REDACTED] sought a Restraining Order to keep Mr. [REDACTED] from coming about the business including its 11 offices in 7 states, coming about, calling or contacting any of the approximate 48 employees of the business, accessing the books, records, files, accounts or other assets of the business, or interfering with Ms. [REDACTED]'s operation of the business in any manner, whatsoever. On July 16, 2014, the Court issued the Temporary Restraining Order requested by Ms. [REDACTED].

On July 25, 2014, Mr. ██████ filed an Emergency Motion to Set the Ex Parte Restraining Order for hearing, attaching documents to reflect that ██████, LLC was owned equally by the parties and that he was, in fact, the President and Chief Manager and that Ms. ██████ was the Vice President and Chief Financial Officer. Ms. ██████ filed a response on August 1, 2014, attaching documents from the parties' tax returns for the previous five years. The tax documents reflected that she was the 51% owner of the business and Mr. ██████ owned a 49% interest in 2009, that in 2010 and 2011, Ms. ██████ owned 99% of the business and Mr. ██████ owned 1% of the business, and in 2012 and 2013, Ms. ██████ owned 51% of the business and Mr. ██████ owned 49% of the business.

On July 29, 2014, the Court entered an order setting the matter for hearing on August 12, 2014 at 9 a.m. In that Order, the Court required Ms. ██████ to pay the household bills and to provide Mr. ██████ with money for personal expenditures.

The Court conducted hearings on the issue of the Restraining Order on August 12, 2014 and September 30, 2014. As a result of the hearing on August 12, 2014, the Court entered an Order on August 28, 2014, which modified the Ex Parte Restraining Order to allow Mr. ██████ to return to the marital residence, granted exclusive possession of the marital residence to him, and directed that the marital residence be prepared for sale.

The Order also set forth the following requirements. It required Ms. ██████, by August 15 2014, to restore the balance of the funds removed by her from the business checking account and the line of credit at Pinnacle Bank, \$60,000 and \$72,913, respectively, and to provide a detailed accounting for said funds. It required both parties

to provide a detailed accounting of all monies in their possession and control since June 1, 2014. It required Ms. [REDACTED] to pay the household bills for both parties including the mortgage, rent, utilities and other expenses historically paid from the parties' joint checking account at Pinnacle Bank by automatic withdrawal and to fund the account with funds from [REDACTED] LLC. It prohibited both parties from withdrawing any money from the joint Pinnacle account except as authorized by the Court's Order; required each party to maintain a separate personal checking account for their expenditures; and authorized a disbursement to each party beginning August 15, 2014, in the amount of \$5,000 a month for their personal expenditures. It granted Mr. [REDACTED] remote access to the business QuickBooks files, to be established by August 15, 2014, and required Ms. [REDACTED] to provide Mr. [REDACTED] with the laptop computer she took from the marital residence, but enjoined Mr. [REDACTED] from making entries or deleting or altering the data. It ordered that both parties have login and password information to all business accounts and credit cards but enjoined Mr. [REDACTED] from accessing funds in the business account. It required the parties to exchange all text messages and emails from business employees, vendors, and third parties regarding the business which either of them had received since July 1, 2014. The hearing was continued to September 9, 2014, and then rescheduled for September 30, 2014. The August 28, 2014 Order contained other provisions which are not material to the Court's decision as set forth in this Memorandum and Order.

Mr. [REDACTED] filed an Answer and Counterclaim on September 26, 2014. He denied that he was guilty of inappropriate marital conduct and adultery, but admitted that after the parties' separation he had committed adultery. He alleged that he had

purchased the earrings for his wife for their anniversary and had returned the earrings for a full refund. Mr. ██████ stated in his Answer that he learned in April 2014, that Ms. ██████ was continuing an adulterous relationship with a man in Texas and that Mr. ██████ had left the marital residence but later returned at the request of Ms. ██████. He further alleged that Ms. ██████ had moved from the marital residence in May 2014, with his help and that she had offered keys to her residence to him. Mr. ██████ alleged that the parties had gone on a trip to Cancun, Mexico from June 27 to July 1, 2014, with another couple and had an enjoyable time. He further alleged that on July 3, 2014, Ms. ██████ and one of the parties' sons went to Texas to attend a wedding and that on July 6 and 7, Ms. ██████ and one of the parties' sons went on another trip. Mr. ██████ alleged that on July 8, 2014, he went to a meeting at the Veterans Administration and then on July 10, 2014, he went to Texas to be with his family while his father underwent lung surgery. Mr. ██████ alleged that Ms. ██████ had withdrawn money from their personal and business accounts and changed the locks on the business while Mr. ██████ was in Texas. He denied that he posed any threat, whatsoever, to Ms. ██████. He alleged that Ms. ██████ returned to the marital residence on July 11, 2014, and ransacked the residence and his truck, and took personal property. Finally, he alleged that on July 15, 2014, Ms. ██████ had removed all the funds from the business line of credit. Mr. ██████ alleged that the parties jointly owned ██████, LLC and that he could obtain 8A Certification and run the business. Further, he alleged that prior to the issuance of the restraining order he ran the business daily, denied that he had any secret bank accounts and denied that he taken any money from the business. Further, Mr. ██████ denied that he had deleted the business QuickBooks data and stated that

he had sent the data to Mr. [REDACTED] (a business consultant) so that work could be done in his absence while Mr. [REDACTED] was in Texas.

In his Counterclaim, Mr. [REDACTED] alleged that there were irreconcilable differences between the parties and that Ms. [REDACTED] had been guilty of inappropriate marital conduct and adultery.

Mr. [REDACTED] supported his Answer and Counterclaim with Affidavits of two former employees of [REDACTED], LLC, [REDACTED] and [REDACTED].

On October 16, 2014, an Order was entered reflecting the Court's ruling resulting from the hearing on September 30, 2014. In its Order, the Court found that Ms. [REDACTED] had been the primary contact between [REDACTED] LLC and contracting parties, that Mr. [REDACTED] had been responsible for back office operations of the business, and ordered that Ms. [REDACTED] be the sole person responsible for dealing with business clients, that any new bids and contracts be mutually agreed upon, and that Mr. [REDACTED] be responsible for the back office operations of the business. Further, the Court ordered that the parties alternate days when each of them would be physically present on the business premises, but each party would be responsible for fulfilling their respective business obligations every day, working remotely, if necessary.

On October 28, 2014, Mr. [REDACTED] filed a Motion to remove Ms. [REDACTED] from the business alleging she admitted that she was not fulfilling her responsibilities as outlined by the Court's Order, that she had paid numerous third-parties substantial sums of money just before he returned to the business on October 2, 2014, and that Ms. [REDACTED] had withdrawn all funds from the business line of credit. The Court heard Mr. [REDACTED]'s Motion on November 4, 2014, and, by Order entered November 13, 2014,

denied the motion to remove Ms. [REDACTED] from the business. The Court ordered that the parties attend mediation by November 11, 2014, and that Ms. [REDACTED] provide an accounting, by November 7, 2014, of all business expenses paid by her with the funds withdrawn from the business checking account and the business line of credit, both of which were at Pinnacle Bank.

On December 16, 2014, Ms. [REDACTED] filed her Answer to Mr. [REDACTED]'s Counterclaim denying that she committed adultery or engaged in inappropriate marital conduct, but admitted that there were irreconcilable differences between the parties.

On December 16, 2014, Ms. [REDACTED] filed an Emergency Application for Restraining Order and Appointment of Receiver alleging that Mr. [REDACTED] had locked her out of her office at the business, that she had worked from home, that Mr. [REDACTED] had abandoned the business, and that the parties had spent nine hours at mediation, which was not successful. Ms. [REDACTED] supported her Motion with the Affidavit of Mr. [REDACTED] who stated that he had not had much contact with either Mr. or Ms. [REDACTED] within the past several months and that he would be willing to serve as a receiver if appointed by the Court.

Mr. [REDACTED] filed a Motion for Contempt on December 16, 2014, alleging numerous violations of Court Orders by Ms. [REDACTED]. Both parties filed Affidavits on December 16, 2014. By Order entered December 17, 2014, the Court set the matter for hearing on December 19, 2014.

Ms. [REDACTED] appeared through her attorney at the hearing on December 19, 2014. At that hearing, the Court denied Ms. [REDACTED]'s request to appoint a receiver. The Court entered a restraining order enjoining Ms. [REDACTED] from accessing business funds,



from entering the business premises or contacting business employees, placed Mr. [REDACTED] entirely in charge of the business, required Ms. [REDACTED] to provide an accounting of all money taken by her from the business in November and December 2014, and provided that Ms. [REDACTED] was to receive no further funds until the accounting had been provided. Further, the Court ordered both parties to account for all monies received by them from the business since the inception of the divorce. The Court allowed Mr. [REDACTED] to withdraw \$5,000 a month from the business and to pay household expenses consistent with prior orders of the Court. Further, the Court required that Ms. [REDACTED] be provided access to all financial information of [REDACTED], LLC, including monthly profit and loss statements as reflected by QuickBooks, monthly bank statements, weekly transaction reports, payroll registers, and information concerning business debt. The information was to be provided to her attorney. In addition, Mr. [REDACTED] was to provide Ms. [REDACTED] with financial and operating information, through counsel, within a reasonable time but, in any event, within five days of the end of each month, with weekly reports to be provided on Friday afternoons. Specifically, the Court directed that Mr. [REDACTED] be transparent as to the operation of the business, and its finances and provide Ms. [REDACTED] with all new contracts by January 5, 2015, and thereafter within 10 days of their execution.

By Order of December 19, 2014, the case was set for trial for two days beginning July 13, 2015.

Many other interlocutory hearings were conducted in this case resulting in various orders. The pretrial proceedings were extensive.

The marital residence was sold during the pendency of the case and by Order entered July 15, 2015, the proceeds were escrowed with the Clerk and Master.

The trial of the case was conducted on July 13, 2015, July 14, 2015, July 21, 2015, and July 22, 2015. The Court took the matter under advisement at the conclusion of the proceedings.

On August 26, 2015, Ms. [REDACTED] filed a request that she be restored to her maiden name, [REDACTED]. While the case was under advisement, the Court conducted a conference call with counsel for the parties in September 2015, concerning each party's request for attorney's fees and whether either party desired to cross-examine counsel for the other party regarding their respective requests for attorney's fees.

On September 21, 2015, counsel for Mr. [REDACTED] filed his Affidavit of Fees reflecting that he had been paid \$12,400 toward his attorney's fees and as of September 17, 2015, was owed an outstanding balance of \$6,389.93. Further, Mr. [REDACTED]'s counsel stated there was no objection to the fees presented by counsel for Ms. [REDACTED].

On September 18, 2015, counsel for Ms. [REDACTED] filed his Affidavit reflecting that he had been paid \$18,000 toward his attorney's fees and that there was an outstanding balance of \$23,900.44 as of September 18, 2015. Further, Ms. [REDACTED]'s counsel advised that she had no objection to Mr. [REDACTED]'s counsel's fees.

The Court construes these filings to reflect that neither party desired to cross-examine the other party's attorney on the issue of fees which each party is requesting.

### FINDINGS OF FACT

The parties met when they were both students at Texas Southern University in Houston, Texas. Mr. [REDACTED] was 22 and Ms. [REDACTED] was 17 at the time. The first child, [REDACTED], was born in 1992. The parties married on June 26, 1993. Their second child, [REDACTED], was born in 1994. Ms. [REDACTED] is 44 years old and in good physical and mental health. Mr. [REDACTED] is 49 years old and in good physical and mental health.

Ms. [REDACTED] graduated from Texas Southern University in 1992. She obtained her Master's Degree in 1995 from Prairie View A&M University in Guidance and Counseling and a second Master's degree in 2000 in Psychology which enabled her to become a licensed professional counselor. After graduating from college in 1992, Ms. [REDACTED] taught third grade from 1992 to 1997. From 1997 to April 2006, prior to the parties moving to Tennessee, Ms. [REDACTED] worked as a guidance counselor at an elementary school and later at a high school. Ms. [REDACTED] paid the cost of her graduate education from income earned by her as a teacher and counselor.

Mr. [REDACTED] graduated from Texas Southern University in 1999. Previously he had attended North Texas State University from 1984 to 1988. He then transferred to Texas Southern University and attended for a period of time. From 1990 through 1991, Mr. [REDACTED] worked for Compaq computers, first on the assembly line and later fixing computer boards and doing other work. Mr. [REDACTED] continued his employment with Compaq computers for 10 years and completed his undergraduate education either while he was still employed by Compaq or after he was laid off.

In 2000, Mr. [REDACTED] accepted employment with Central Locating Service, a utility company. Mr. [REDACTED] worked for Central Locating Service for approximately one

and one half years locating gas lines and phone lines. In 2000 and 2001, while employed by Central Locating Service, Mr. [REDACTED] also operated a card room earning between \$10,000 and \$20,000 a month. Mr. [REDACTED] then attended real estate school, obtained his realtor's license, and began selling homes in the Houston area. In approximately 2001 or 2002, Mr. [REDACTED] opened a car wash and lubrication center. The business was not successful and was ultimately closed. Mr. [REDACTED] continued with his real estate sales. He estimates that he earned approximately \$20,000 a year from his real estate sales. Mr. [REDACTED] was engaged in the sale of real estate until 2010 when the parties moved to Tennessee. Thereafter, Mr. [REDACTED] obtained a Tennessee realtor license and continued to some extent, to sell real estate in Tennessee. In early 2003, Mr. and Ms. [REDACTED] opened a group home in a five bedroom house that they owned, which accommodated ten children under their supervision for foster care. This endeavor lasted approximately two years and ended when the children were removed from the home of Mr. and Ms. [REDACTED]

In 2005, Mr. [REDACTED] took a job, earning \$37,500 a year, with the city of Houston which involved approval of homes for section 8 qualification. Other than operating the card room, this was the most income Mr. [REDACTED] earned in any year prior to the formation of [REDACTED], LLC.

The parties moved to Tennessee in April 2010. At that time, it was planned that Mr. [REDACTED] would work in the medical office of his brother-in-law and that Ms. [REDACTED] would continue her career as a teacher and counselor. Mr. [REDACTED]'s brother-in-law is a [REDACTED]. After arriving in Tennessee, it was determined that both Mr. and Ms. [REDACTED] would go into business with Mr. [REDACTED]'s sister and brother-in-law. They owned and

operated [REDACTED]. During the time the parties were managing [REDACTED], they became acquainted with the sale of [REDACTED] durable medical equipment.

The parties had difficulty working together in the management of the [REDACTED]. A decision was made to pursue the sale of durable medical equipment [REDACTED]. In October 2006, the parties formed [REDACTED] LLC with each of them owning a one-half interest. The parties began selling [REDACTED] and other types of durable medical equipment, through contacts with medical offices and other referral sources.

In 2008, Ms. [REDACTED] met another parent at a high school athletic event. That parent who worked for the Veteran's Administration, and suggested that Ms. [REDACTED] explore the possibility of pursuing contracts involving durable medical equipment with federal agencies.

Ms. [REDACTED] contacted the United States Small Business Administration for guidance. She was referred to Mr. [REDACTED], a person experienced with assisting new businesses obtain special certifications that allow them to pursue government contracts. Mr. [REDACTED] is with the University of Tennessee Procurement Technical Assistance Center in Chattanooga, Tennessee, but works statewide. He has been with the Center for 30 years. Federal agencies are encouraged, if not required, to set aside approximately 23% of their contract work for small businesses. There are various categories of small businesses which are given preference. Included in those categories are historically underutilized businesses ("HUB zoned"), veteran-owned small businesses, women-owned small business,

economically disadvantaged women-owned small business, and 8A certified businesses.

Mr. [REDACTED] assisted the parties, primarily Ms. [REDACTED] in developing the operational processes required of [REDACTED] LLC necessary to perform government contracts, to apply for 8A certification, and to prepare proposals to bid on government contracts. [REDACTED] LLC received its 8A certification on [REDACTED] 2009. Because having a woman as the majority owner of [REDACTED] LLC during the certification process was a benefit, the ownership of [REDACTED] LLC was changed to reflect that Ms. [REDACTED] owned 51% of the business and Mr. [REDACTED] owned 49% of the business.

[REDACTED] LLC was successful in obtaining its first contract in April 2010, for work with the Memphis, Tennessee Veteran's Hospital. In approximately July 2010, it received a contract to work with the Nashville, Tennessee and the Murfreesboro, Tennessee Veteran's Administration Hospitals. In August 2012, it received a contract to work with the West Palm Beach Veteran's Administration Hospital. The Nashville, Memphis, and Murfreesboro, Tennessee Hospitals are within the Veteran's Administration region known as VIZN 6. [REDACTED] also successfully bid for contract work in VIZN 9 which includes six hospitals in West Virginia, Virginia and North Carolina. The most recent Veteran's Administration contract is for services at the Veteran's Administration Hospital in West Palm Beach, Florida.

All of the [REDACTED] contracts essentially require [REDACTED] to maintain warehouse facilities, stock durable medical equipment needed by veterans, which is supplied to [REDACTED] by the Veteran's Administration, employ drivers to deliver the equipment, purchase vehicles to be used in delivery, and develop appropriate tracking systems to ensure that the

equipment is delivered in a timely manner and that the Veteran's Administration is appropriately billed. The most recent contract obtained by [REDACTED] is with Ft. Campbell military base. The Ft. Campbell contract calls for the disposal of mattresses.

The parties divided responsibility in operating [REDACTED] along very clear lines of demarcation. Mr. [REDACTED] was responsible for the back office operations which involved processing purchase orders, billing, collection, hiring and management of employees, and financial arrangements that would be typical and appropriate for any business similar to [REDACTED]. Ms. [REDACTED] was responsible for dealing with representatives from the various Veterans' Administration hospitals, leasing warehouse space for storing durable medical equipment, hiring drivers for delivery, and pursuing business opportunities.

Mr. [REDACTED] kept a watchful eye on the business operation of [REDACTED]. When the bid for the VIZN 6 work was submitted, it was done so by Ms. [REDACTED] without consulting Mr. [REDACTED] in advance. When Mr. [REDACTED] reviewed the bid and the resulting contract, he became concerned that the parties simply could not fulfill the contract under its terms and conditions. As result, Mr. [REDACTED] went to the VIZN 6 locations, looked at the figures generated by the VA hospitals, and was able to renegotiate the contract from \$4.3 million to its current \$6.7 million level.

The success of [REDACTED] LLC, through the hard work of both parties, enabled them to purchase a nice home in Williamson County, Tennessee and enabled the parties to enjoy a nice lifestyle. It is undisputed that prior to the filing of the divorce proceedings by Ms. [REDACTED] in July 2014, the parties were drawing approximately \$20,000 a month from the business and they expended approximately \$20,000 a month funding their lifestyle.

The reason for the parties' move to Tennessee is disputed. Ms. [REDACTED] contends that the parties moved to Tennessee because Mr. [REDACTED] had had numerous jobs in Texas and in Tennessee was given the opportunity to be the office manager for his brother-in-law and sister's medical office with the understanding that Ms. [REDACTED] would pursue her career in education. Once the parties moved Tennessee, it was agreed that the parties and Mr. [REDACTED]'s sister and brother-in-law would establish the [REDACTED]. Mr. [REDACTED] contends that the parties moved Tennessee because of marital difficulties and they hoped to gain a fresh start by relocating.

Ms. [REDACTED] characterizes [REDACTED], LLC as her "baby" and in the sense that she initiated the business, pursued business opportunities through the contact with Mr. [REDACTED], and pursued the 8A application. The Court concurs. However, the evidence clearly establishes that Ms. [REDACTED] has absolutely no understanding of the financial aspects of the business and is bewildered by finances in general. Mr. [REDACTED]'s contribution to the success of [REDACTED], LLC is as significant as the contribution of Ms. [REDACTED].

The parties physically separated on May 28, 2014, when Ms. [REDACTED] moved from the marital residence to an apartment. The reason for the move and the circumstances leading up to move are disputed. Ms. [REDACTED] contends that for a period of time Mr. [REDACTED] had been irritable, had been staying out all night, and returned home one morning advising Ms. [REDACTED] that one of the parties needed to vacate the marital residence, at which time Ms. [REDACTED] agreed that she would do so. Mr. [REDACTED] contends that he learned through employees that Ms. [REDACTED] was planning to move from the marital residence and that she had made arrangements to rent her apartment



and told him that she intended to move when he confronted her. Whatever occurred that lead to the parties' separation on May 28, 2014, it is clear to the Court that the parties had been experiencing marital difficulties for some period of time.

For example, Mr. [REDACTED]'s parents celebrated their 50th wedding anniversary on [REDACTED], 2014. Ms. [REDACTED] refused to attend the celebration in Houston with Mr. [REDACTED]. In that same month, March 2014, Ms. [REDACTED] took a "girls' trip" to Jamaica where she became acquainted with Mr. [REDACTED]. The nature and extent of that relationship is unclear. Ms. [REDACTED] acknowledges that she and Mr. [REDACTED] continued to communicate with one another by phone, but denies that she has seen him since March 2014.

The evidence establishes that the separation was amicable. Mr. [REDACTED] helped Ms. [REDACTED] move certain items of household furnishings and personal property to her apartment. Ms. [REDACTED] gave Mr. [REDACTED] a key to her apartment and retained a key to the marital residence. After the move, Ms. [REDACTED] spent many nights at the marital residence with Mr. [REDACTED] and the parties continued to engage in marital relations. On June 27, 2014, the parties went with another couple on a cruise to Cancun, Mexico, returning on July 1, 2014. The trip was to celebrate the parties' anniversary, and by all accounts both parties had a wonderful time.

Ms. [REDACTED]'s mother planned to remarry and the wedding was scheduled for July 4, 2014. Mr. [REDACTED] was supposed to sing at the wedding. When Ms. [REDACTED] and one of the parties' [REDACTED] were ready to leave for the wedding, Mr. [REDACTED] advised Ms. [REDACTED] that he was not going to go with her because he did not feel well. Mr. [REDACTED] contends that he did not make the trip because Ms. [REDACTED] had not attended his

parents' 50th wedding anniversary celebration in the spring of 2014 and he was still angry that she had refused to do so.

Ms. [REDACTED] and one of the parties' [REDACTED] drove to Houston, a twelve hour trip. Mr. [REDACTED] did not contact Ms. [REDACTED] at any time during the trip which Ms. [REDACTED] found to be unusual. For this reason she contacted a private investigator to follow Mr. [REDACTED] while she was away. On July 3, 2014, Ms. [REDACTED] and Mr. [REDACTED] talked and Ms. [REDACTED] understood that Mr. [REDACTED] was going to fly to Houston. Ms. [REDACTED] then contacted the private investigator to cancel his services. Ms. [REDACTED] was informed that the private investigator had seen Mr. [REDACTED] with another woman whom the investigator assumed was Mr. [REDACTED]'s sister. Ms. [REDACTED] knew that such was not the case and continued the services of the private investigator who took photographs of Mr. [REDACTED] with the other woman, [REDACTED], at a park in Spring Hill, Tennessee on July 7, 2014. Mr. [REDACTED] had apparently connected with Ms. [REDACTED] through an online dating site while the parties were in Cancun, Mexico. Mr. [REDACTED] rendezvoused with Ms. [REDACTED] for dinner on July 3, 2014 and met her at a park in Spring Hill, Tennessee near the parties' home on July 7, 2014, all occurring while Ms. [REDACTED] was in Texas.

Shortly after Ms. [REDACTED] returned from Texas, Mr. [REDACTED] went to Texas on July 10, 2014, to be with his father who was having [REDACTED]. While Mr. [REDACTED] was in Texas to be with his father, Ms. [REDACTED] filed her Complaint for divorce.

In her Complaint, as noted above, Ms. [REDACTED] made certain factual allegations that resulted in the issuance of a restraining order that effectively would remove Mr. [REDACTED] from the business and from the marital residence. Upon his return to

Tennessee, Mr. [REDACTED] lived with his sister until the Court entered the Order allowing Mr. [REDACTED] to return to the marital residence.

Mr. [REDACTED] admits that he and Ms. [REDACTED] the woman with whom he rendezvoused in Spring Hill had sexual relations in August 2014. He contends that this is the only time during the marriage that he has been unfaithful to Ms. [REDACTED], and there is no proof to the contrary. Ms. [REDACTED] admits that she had an encounter with another man in August 2014, which she characterizes as a "one night stand" and that this was the only time during the marriage that she was unfaithful to Mr. [REDACTED]. Mr. [REDACTED] testified that Ms. [REDACTED] had been involved in multiple affairs during the time the parties lived in Houston and that was one of the reasons why the parties moved Tennessee. The Court makes no finding as to the truth of Mr. [REDACTED]'s allegations but, if true, Mr. [REDACTED] clearly condoned Ms. [REDACTED]'s behavior, and therefore such behavior does not support any grounds for divorce alleged by Mr. [REDACTED].

When questioned by the Court as to the problems of the marriage, Ms. [REDACTED] was much more reserved than Mr. [REDACTED]. She stated that the marriage had ups and downs, that she still loved her husband, and that she would not be pursuing a divorce were it not for his relationship with the woman she discovered through the services of a private investigator.

On the other hand, Mr. [REDACTED] was very quick to condemn Ms. [REDACTED] and testified that the parties have had a poor relationship for the entire 26 years that they have known one another. Mr. [REDACTED] offered proof that Ms. [REDACTED] had continued to communicate with, Mr. [REDACTED], whom she had met on a trip to Jamaica in 2014. Ms. [REDACTED] initially denied knowing Mr. [REDACTED]. After admitting that she was

acquainted with Mr. [REDACTED], she acknowledged that she and Mr. [REDACTED] had extensive telephone communications in May 2015. Further, Ms. [REDACTED] acknowledges that she still talks to Mr. [REDACTED] on occasion.

The Court finds that both parties have been guilty of inappropriate marital conduct and declares them divorced pursuant to T.C.A. § 36-4-129.

Ms. [REDACTED]'s conduct during the course of this litigation has severely damaged [REDACTED] LLC. Further, as a result of her conduct, the Court has very little confidence in Ms. [REDACTED]'s credibility. In her sworn Complaint, Ms. [REDACTED] alleged that Mr. [REDACTED] was currently involved in an affair with another woman which had been going on for many months. There was proof to support the allegation that Mr. [REDACTED] was engaged in a relationship with Ms. [REDACTED] at the time Ms. [REDACTED] filed her Complaint. However, the relationship began shortly before Ms. [REDACTED] filed her Complaint for divorce. Ms. [REDACTED]'s allegation to the contrary was false. Ms. [REDACTED] alleged that Mr. [REDACTED] saw his girlfriend virtually every day. This allegation was not supported by any evidence. Ms. [REDACTED] alleged that Ms. [REDACTED] spent the night in the marital residence. This allegation is not supported by the evidence. Ms. [REDACTED] alleged that Mr. [REDACTED] purchased a pair of diamond earrings and gave them to Ms. [REDACTED] on her birthday at a cost of \$2,600. This allegation was false. Mr. [REDACTED] admitted buying diamond earrings, but established that he did so as a present for his wife and that he returned the earrings after the divorce proceedings for a full refund. His testimony was not disputed.

In Count V of her Complaint, Ms. [REDACTED] alleged that Mr. [REDACTED] has an explosive disposition and had been verbally abusive and threatening to her during the

marriage. No evidence supported this allegation. Further she alleged that Mr. [REDACTED] often threw major fits, yelling and cursing at her, and had thrown objects at her and punched holes in the wall. No evidence supported this allegation. Further, she alleged that Mr. [REDACTED] on numerous occasions had threatened to kill her and her dog. No evidence supported this allegation.

Ms. [REDACTED] alleged that Mr. [REDACTED] was extremely jealous and falsely accused her of having affairs. Mr. [REDACTED] did testify that Ms. [REDACTED] had engaged in extramarital affairs during the time the parties lived in Houston, Texas and Ms. [REDACTED] did not refute that allegation. Otherwise, there was no evidence to support Ms. [REDACTED]'s allegation of Mr. [REDACTED]'s jealousy.

Ms. [REDACTED] alleged that she was very fearful of Mr. [REDACTED] and had moved out of the marital residence to a condominium. It is true that she moved from the marital residence to a condominium, but there was no evidence to support any basis of fear of Mr. [REDACTED] by Ms. [REDACTED]. In fact, to the contrary, Ms. [REDACTED] testified she spent most of her nights at the marital residence with her husband after she moved to the condominium, and she testified the parties had a wonderful time in Cancun, Mexico. From June 27, 2014 to July 1, 2014, Ms. [REDACTED] alleged that Mr. [REDACTED] stole the keys to her condominium, mailbox and garage. There was no evidence to support this allegation. Ms. [REDACTED] alleged that Mr. [REDACTED] stalked her and told her that he had bugged her car, condominium and her office. There was no evidence to support this allegation. Ms. [REDACTED] attached the Application for the Ex Parte Order of Protection which she filed in the General Sessions Court of Williamson County, Tennessee, which contained many of the same allegations. The Court, in reliance on Ms. [REDACTED]'s false

allegations, issued the restraining order that effectively removed Mr. [REDACTED] from his home until August 12, 2014.

Further, in Count VII of her complaint, Ms. [REDACTED] alleged that Mr. [REDACTED] spent very little time at the parties' business and did very little work at the business although he was able to write checks for payroll. The evidence establishes that this allegation was false. Mr. [REDACTED] was actively involved in the day-to-day business of [REDACTED] prior to Ms. [REDACTED]'s filing a Complaint for divorce and managed all of the financial affairs of the business. Ms. [REDACTED] alleged that Mr. [REDACTED] had established secret bank accounts for himself which Mr. [REDACTED] denied. No evidence was offered by Ms. [REDACTED] to support this allegation. Ms. [REDACTED] alleged that she found large sums of cash that Mr. [REDACTED] had stashed away which Mr. [REDACTED] denied. No evidence was offered by Ms. [REDACTED] to support this allegation. Ms. [REDACTED] alleged that she became aware that Mr. [REDACTED] had been siphoning money out of the business account over a period of time, and in fact, that the parties' accountant advised her that the amount of funds unaccounted for exceeded \$500,000. There no evidence to support the allegation that Mr. [REDACTED] had siphoned money out of the business account. The evidence establishes that the parties' accountant, Mr. [REDACTED] never told Ms. [REDACTED] that Mr. [REDACTED] had taken any money from the business, much less \$500,000, or that there were unaccounted for funds.

Suspecting that Mr. [REDACTED] might have made inappropriate withdrawals from the business, Ms. [REDACTED] talked with a then acquaintance, Ms. [REDACTED], in 2013 about having an audit conducted. Ms. [REDACTED] recommended a company to do the audit. Mr. [REDACTED] agreed to the audit. In addition, Ms. [REDACTED] talked with Mr.

██████████ about doing an audit of the business, which Mr. ██████████ found to be appropriate. Mr. ██████████ advised Mr. ██████████ that he had no objection, whatsoever, to an audit.

Further, suspecting that Mr. ██████████ had taken monies from the business inappropriately, Ms. ██████████ hired Ms. ██████████ in May and June 2014 to review the QuickBooks records of the business. Ms. ██████████ spent fifteen hours in May and June 2014 reviewing the QuickBooks records of the business at times when Mr. ██████████ was not in the office and without the knowledge of Mr. ██████████. Ms. ██████████ used a desktop computer in Mr. ██████████'s office on which the QuickBooks records were stored. Ms. ██████████ represented, on at least three different occasions, under oath, that Ms. ██████████ is a Certified Public Accountant. Ms. ██████████ is not a Certified Public Accountant. However, Ms. ██████████ does have an Associate's Degree in Accounting, and has done and continues to do, extensive accounting work. Ms. ██████████ could find no evidence, whatsoever, of any "shenanigans." As a consequence, when Ms. ██████████ filed her Complaint on July 15, 2014, containing the allegations in Count VII, Ms. ██████████ knew those allegations were completely false, because she had been assured by Ms. ██████████ that she could find nothing inappropriate with the bookkeeping of the business and she had never been told by Mr. ██████████ that there were any unaccounted for funds, much less funds exceeding \$500,000.

Further, Ms. ██████████ alleged in her Complaint that Mr. ██████████ had taken a loan against the company of which she had no knowledge. The proof establishes that the company has two loans. One loan is a line of credit at Pinnacle Bank which is currently completely exhausted in the approximate amount of \$150,000, and the other is an

installment loan at Pinnacle Bank in the amount of \$100,000 which was used to purchase vehicles. Both Mr. and Ms. ██████ cosigned each of those loans for which they are jointly and severally liable. Consequently, Ms. ██████'s allegation that Mr. ██████ had taken a loan against the company of which she had no knowledge was completely false.

Ms. ██████ alleged in her Complaint that she moved \$60,000 from the business account to her personal account to protect it from Mr. ██████. The proof establishes that Ms. ██████ did, in fact, draw \$60,000 on the business line of credit the day before she signed her Complaint for divorce. In addition, she drew \$72,913 on the business line of credit on July 15, 2014, the day her divorce Complaint was filed. However, there is no evidence, whatsoever, that Ms. ██████'s conduct was based on any belief that withdrawing those funds was necessary to protect them from Mr. ██████.

Ms. ██████ alleged in her Complaint that Mr. ██████ had recently deleted the QuickBooks files. Not only is this allegation false, Ms. ██████, in fact, had a copy of the QuickBooks files on her computer with entries through April 1, 2014 and into May or June 2014 which had been transferred to her at her request by Mr. ██████ a consultant the parties used to assist them with their business operations. Ms. ██████ told Mr. ██████ that she wanted to learn how to use QuickBooks, and requested that he transfer the QuickBooks files to her computer. This occurred sometime in May or June 2014. Mr. ██████ just prior to his leaving for Texas on July 10, 2014, to be present at the time of his father's surgery, had sent the QuickBooks files to Mr. ██████ to allow Mr. ██████ to clean up the files in Mr. ██████'s absence. Mr. ██████ had made the decision to handle the payroll in-house as opposed to continuing to use a payroll



processing company and was in the process of establishing the payroll files when he left for Texas. Mr. [REDACTED] never deleted the QuickBooks files. Even worse, Ms. [REDACTED] later hired Ms. [REDACTED] to reestablish the QuickBooks files from January 1, 2014 through July 31, 2014, without ever telling Ms. [REDACTED] that Ms. [REDACTED] had access to the QuickBooks files for at least the first four months of 2014 on her computer. While the QuickBooks files on Ms. [REDACTED]'s computer were not in a format that allowed her to make changes, she at least had the data which would have made it unnecessary for Ms. [REDACTED] to reconstruct four months of the files after she was requested to do so by Ms. [REDACTED].

Further, Ms. [REDACTED] alleged that Mr. [REDACTED] had gone to the premises of [REDACTED] and to meetings that she was conducting and created scenes by cursing and threatening her. There was no evidence introduced at trial to support this allegation. Further, Ms. [REDACTED] alleged that Mr. [REDACTED] yelled at her, threatened her, and cursed at her in front of [REDACTED] employees, and in fact, due to Mr. [REDACTED]'s harassment, two employees had resigned from the business. There was no evidence introduced at trial to support this allegation.

Based upon the false allegations contained in Ms. [REDACTED]'s Complaint, the Court issued the Restraining Order which effectively removed Mr. [REDACTED] from the business until October 2, 2014.

While Mr. [REDACTED] was enjoined from any involvement with [REDACTED] Ms. [REDACTED] who knew very little, if anything, about the finances of the business, brought in a number of persons to allegedly help her run the financial aspects of the business. One of these individuals, [REDACTED], a Tennessee Department of Transportation

employee, allegedly helped restore the QuickBooks records. On July 28, 2014, Ms. [REDACTED] paid Ms. [REDACTED] \$2,850 for her services. Ms. [REDACTED] had met Ms. [REDACTED] at a business conference in Detroit the year before. Further, Ms. [REDACTED] allegedly helped restore the QuickBooks records and performed services requested by Mr. [REDACTED]. Mr. [REDACTED] never requested that Ms. [REDACTED] perform any services, whatsoever. He had no communications of any kind with Ms. [REDACTED]. Ms. [REDACTED] testified that she spent 284.85 hours working at night and weekends for which she received compensation of \$20,750.

On October 1, 2014, the day after the Court restored Mr. [REDACTED] to the business and ordered that each party perform the functions in the business that they had previously performed, Ms. [REDACTED] wrote checks totaling \$14,000 to her mother, two aunts, her brother-in-law and sister. Those five checks were in individual amounts of \$2,800 each. Ms. [REDACTED] offered no credible evidence to support these payments to family members.

Further, the evidence establishes that Ms. [REDACTED] wrote a personal check to Ms. [REDACTED] on July 11, 2014, the day she signed the Complaint for divorce, for \$4,509.38 to reimburse Ms. [REDACTED] for monies advanced by Ms. [REDACTED] to Ms. [REDACTED] to pay for private investigative services in the amount of \$4,200 and for miscellaneous purchases made by Ms. [REDACTED] on behalf of Ms. [REDACTED] in the amount of \$309.38. Ms. [REDACTED] initially denied that Ms. [REDACTED] was a friend of hers. However, on July 25, 2014, after Mr. [REDACTED] had been put out of the business, Ms. [REDACTED] and Ms. [REDACTED] went to New Orleans to attend a conference. Further, on August 25, 2014, Ms. [REDACTED] and Ms. [REDACTED] took a trip together to the Bahamas.

Ms. [REDACTED] and Ms. [REDACTED] spent Thanksgiving 2014 together. In response to requests for admissions answered in November 2014, Ms. [REDACTED] stated that Ms. [REDACTED] was not a friend of hers. She acknowledged in her deposition in May 2015 and at trial in July 2015 that Ms. [REDACTED] is, and was, a friend of hers. Ms. [REDACTED] and Ms. [REDACTED] traveled together to Jamaica in May 2015.

Further, Ms. [REDACTED] withdrew \$44,234.45 from [REDACTED] LLC in excess of the amounts authorized by the Court prior to the time the Court excluded her from the business on December 19, 2014.

The cumulative effect of Ms. [REDACTED]'s fiscal mismanagement of [REDACTED] was damaging to the business. Ms. [REDACTED]'s misrepresentations were designed to give her an inappropriate advantage in these divorce proceedings but have had the effect of destroying Ms. [REDACTED]'s credibility with the Court. It took Mr. [REDACTED] six months of virtually constant litigation and thousands of dollars in attorney's fees and expenses for him to regain his rightful position with A-Z. The Court can only conclude that Ms. [REDACTED] acted out of anger toward Mr. [REDACTED] as a result of his lies to her about his relationship with Ms. [REDACTED] and that she acted out of knowledge that she did not have the financial skills to operate the company and wanted to exclude Mr. [REDACTED] while she attempted to gain those skills. Ms. [REDACTED] acknowledges that by the time the Court restored Mr. [REDACTED] to the business, she felt that she had been taken advantage of by all of the persons that she had hired to run the financial aspects of the business. In addition, she acknowledges that if the Court awards [REDACTED] LLC to her, she will have to hire persons to manage the financial aspects of the business. However, she never acknowledged that she had spent tens of thousands of dollars needlessly, and she

never restored to the company the \$14,000 that she paid members of her family on October 1, 2014, without any apparent justification.

Mr. [REDACTED] has now operated [REDACTED] without interference from Ms. [REDACTED] since mid-December 2014. There have certainly been bumps in the road as evidenced by the numerous complaints from the Veterans' Administration confronting Mr. [REDACTED] upon his return to the business on October 2, 2014. In addition, [REDACTED] has received complaints from time to time from various VA Administration officials since October 2, 2014. However, Mr. [REDACTED] has satisfied the Court that he has appropriately addressed each and every one of those complaints. All of the VA contracts have been renewed. The bank balance in the company account has increased each month. Mr. [REDACTED] is actively looking for a lender to replace Pinnacle Bank which has now called the loans owed Pinnacle by [REDACTED] and cosigned by the parties.

Both parties have put forth their position that they want to be awarded full ownership of the company. Each party has affirmed to the Court that they believe that they can pay the other party between \$3,000 and \$5,000 a month in support if awarded the company. Because of her misconduct in making gross misrepresentations to the Court when she filed her Complaint for divorce, because of her mismanagement of the business during the time Mr. [REDACTED] was locked out of the company prior to October 2, 2014, and because of Ms. [REDACTED]'s failure to account for funds that she withdrew from the business in compliance with the orders of the Court and other conduct that resulted in the Court's barring her from the business in December 2014, the Court finds that the best prospect for successful operation of [REDACTED] LLC lies in the hands of Mr. [REDACTED]. For all of these reasons, the Court awards the business to him.

CONCLUSIONS OF LAW

Division of the Marital Estate

Tennessee Code Annotated § 36-4-121 requires the trial court to equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just. In order to fulfill this obligation, the Court's first responsibility is to classify the assets. The evidence establishes that the parties have no separate property. When they married, neither of them had any assets. All assets to be distributed in this case are marital property. The Court finds the following assets to be marital property and assigns values to those assets as follows:

1. Proceeds from the sale of [REDACTED], Brentwood, TN  
held by the Clerk and Master: \$203,783
2. Household furnishings and personal property in the possession  
of each party (divided by agreement of the parties with the  
understanding that, based upon the parties' agreement, each  
party will be receiving items of equivalent value): value unknown
3. Proceeds received by each party from liquidation of the State  
Farm insurance policy on each of their lives (\$23,728.80  
per person): \$47,456.00
4. Bank and Institutional Accounts:
  - a. Bank of America Account No. 2780 (Mr. [REDACTED]) (balance  
in excess of life insurance proceeds received by Mr. [REDACTED]): \$2238.20
  - b. Pinnacle Account No. 0382 (Ms. [REDACTED]): \$116.00
  - c. Bank of America Account No. 0842 (Mr. [REDACTED]): \$800.00

d. Pinnacle Bank Account No. 8318 (Ms. [REDACTED]):	\$1203.00
e. Pinnacle Bank Account No. 3426 (Joint):	\$16,764.12
5. Retirement Assets	
a. Pinnacle SEP Account No. 8882 (Mr. [REDACTED]) (liquidated by Mr. [REDACTED] on July 28, 2014 in violation of statutory Restraining Order):	\$17,500.00
b. Pinnacle SEP Account No. 8938 (Ms. [REDACTED]):	\$29,561.00
c. Invesco 401(K) Account No. 1602 (Ms. [REDACTED]):	\$14,942.00
d. Invesco 401(K) Account No. 4426 (Mr. [REDACTED]) (liquidated by Mr. [REDACTED] on October 22, 2014 in violation of statutory Restraining Order):	\$12,720.00
6. [REDACTED], LLC (stipulated value):	\$470,000.00
7. Motor Vehicles:	
a. 2010 Ford F-150 (titled to Mr. [REDACTED]):	\$19,353.00
b. 2012 Mercedes E-350 (titled to Ms. [REDACTED]):	\$26,174.00
c. State Farm life insurance policy on the lives of Mr. and Ms. [REDACTED] with a death benefit of \$750,000 and cash surrender value:	\$9,938.00
8. Monies paid by Ms. [REDACTED] to family members on October 1, 2014 from [REDACTED], LLC account without any apparent justification and which dissipated the parties' assets:	\$14,000.00
9. Monies paid by Ms. [REDACTED] from [REDACTED], LLC to [REDACTED]	

██████ and ██████ which were of no value to the Company and which dissipated the parties' assets:	\$23,600.00
10. Attorney's fees and expenses:	
a. Attorney's fees paid by Ms. ██████ from marital funds:	\$29,000.00
b. Private investigator fees paid by Ms. ██████	\$4,200.00
c. Attorney fees paid by Mr. ██████ from marital funds:	\$37,000.00
11. Monies withdrawn by Ms. ██████ from ██████, LLC in excess of amounts authorized by the Court:	\$44,234.45
The Court finds the following to be marital debts:	
1. Balance owed on 2010 Ford F-150:	-\$30,000.00
2. Balance owed on 2012 Mercedes E-350:	-\$38,000.00
3. Student loans incurred for the benefit of the parties' adult children and cosigned by Ms. ██████:	-\$31,726.69
4. Federal Income taxes owed by Ms. ██████ for 2014:	-\$23,128.00
5. Federal income taxes owed by Mr. ██████ for 2014:	-\$32,963.00

To equitably divide and distribute the marital estate, the Court is required to consider a number of factors set forth in T.C.A. § 36-4-121(c). The Court will address each of those factors as follows:

This is a marriage of 22 years' duration. The parties have been together for 26 years.

Based on the evidence, the Court finds that Ms. ██████'s vocational skills and employability, possibly with the requirement that she obtain additional education and training, exceed that of Mr. ██████. Ms. ██████ has extensive experience as an

elementary school teacher and elementary and high school guidance counselor. She was licensed in Texas as a counselor. In order to become certified to teach in Tennessee, additional education will be required. In addition, to become licensed to practice as a counselor in Tennessee, Ms. [REDACTED] will be required to pursue additional education as well as two years of supervision. Ms. [REDACTED] has acquired experience in pursuing government contracts which may be of some use to her in the future. However, Mr. [REDACTED], because he will be awarded the business, [REDACTED] LLC, will have a greater earning capacity than Ms. [REDACTED]. Before the divorce proceedings began, it's undisputed that the parties were drawing approximately \$20,000 a month from [REDACTED] LLC, and that, notwithstanding the turmoil associated with the divorce proceedings, [REDACTED] LLC earned net income of \$231,119 in 2014.

Each party will have certain financial liabilities resulting from these proceedings and each party will have the same financial need.

There is no evidence to show that either party has made any tangible or intangible contributions to education, training or increased earning power of the other except to the extent that the business, [REDACTED] LLC was the result of the mutual efforts of the parties and represents, to the owner, a substantial ability to earn income.

Because Mr. [REDACTED] will be awarded the business, he will have a greater ability to acquire capital assets in the future and a greater ability to earn income.

Neither party has been prudent with the management of assets during the pendency of these divorce proceedings. There is no evidence that either party dissipated any assets, as that term is defined in T.C.A. § 36-4-121(c)(5)(B) prior to the filing of the divorce Complaint by Ms. [REDACTED] on July 15, 2014. However, the evidence



does establish that Ms. [REDACTED] has dissipated marital property through payments made by her to family members on October 1, 2014, in the amount of \$14,000 and by the payments made by her to Ms. [REDACTED] and [REDACTED] in the amount of \$23,600.00. Both parties contributed to the acquisition of the marital estate through hard work in the formation and operation of [REDACTED] LLC. Additionally, both parties were good parents to their now adult children. The Court has little evidence concerning the contribution that each party made as a homemaker.

As earlier noted, neither party has any separate property, and neither party had any assets at the time of the marriage.

The economic circumstances of the parties at the time the division of property ordered by the Court becomes effective will favor Mr. [REDACTED], because he is awarded the business. There is no evidence of any tax consequences associated with the reasonably foreseeable sale of assets or reasonably foreseeable expenses associated with any particular asset. There are no Social Security benefits available to either party at this time given their age.

The Court finds there are no other factors necessary to consider the equities between the parties.

In applying the foregoing factors, the Court finds that Ms. [REDACTED] should be awarded the following assets with the values as indicated:

1. Proceeds from the sale of [REDACTED], Brentwood, TN: \$203,783.00
2. All articles of household furnishings and personal property  
in her possession with the exception of the following: value unknown
  - a. All bedroom suits

b. Dinette table	
c. Dinner table white room	
d. Master bedroom furniture and accessories	
e. Living room furniture and accessories	
3. Proceeds received by her from the liquidation of the State Farm insurance policy on her life (The Court authorized the liquidation of the policies to ease the parties' cash flow requirements but did not authorize the expenditure of the proceeds):	\$23,728.80
4. Funds on deposit in her Pinnacle Account No. 0382	\$116.00
5. Funds on deposit in her Pinnacle Account No. 8313:	\$1,203.00
6. Assets in her SEP retirement account at Pinnacle Account No. 882:	\$29,561.00
7. Assets in her Invesco 401(K) Account No. 1602:	\$14,942.00
8. 2012 Mercedes E-350:	\$26,174.00
9. Funds dissipated by Ms. [REDACTED] through payments to her family on October 1, 2014:	\$14,000.00
10. Funds dissipated by Ms. [REDACTED] through payments to [REDACTED] and [REDACTED]:	\$23,600.00
11. Funds paid by Ms. [REDACTED] toward the attorney's fees and Private investigator fees incurred by her in connection with these proceedings:	\$33,200.00
12. Funds withdrawn by Ms. [REDACTED] from [REDACTED] LLC in excess	

of the amounts authorized by the Court: \$44,234.45

The Court finds that Mr. [REDACTED] should be awarded the following assets:

1. Household furnishings and personal property in his possession plus the following items in the possession of Ms. [REDACTED]: value unknown
  - a. All items from the game room
  - b. Pool table
  - c. Pac man game
  - d. Theater seats and TV
  - e. Washer and dryer
  - f. Master bedroom TV
2. Proceeds received by him from liquidation of the State Farm policy on his life: \$23,728.80
3. Funds on deposit in his Bank of America Account No. 2780 in excess of life insurance proceeds received by him: \$2,238.20
4. Funds on deposit in the Bank of America Account No. 0842: \$800.00
5. Funds on deposit in the joint Pinnacle Account No. 3426: \$16,764.12
6. Funds liquidated by Mr. [REDACTED] from his Pinnacle SEP Account No. 8882 in violation of statutory Restraining Order: \$17,500.00
7. Funds liquidated by Mr. [REDACTED] from his Invesco 401(K) Account No. 3426 in violation of statutory Restraining Order: \$12,720.00
8. [REDACTED], LLC: \$470,000.00

- |  |             |
|--|-------------|
| 9. 2010 Ford F-150:  | \$19,353.00 |
| 10. State Farm policy on the joint lives of the parties<br>in the amount of \$750,000 with cash surrender value:     | \$9,938.00  |
| 11. Funds paid by Mr. [REDACTED] toward the attorney's fees<br>incurred by him in connection with these proceedings: | \$37,000.00 |

To equalize the division of the marital property, Mr. [REDACTED] shall pay alimony in solido to Ms. [REDACTED] in the amount of \$115,120.38 . Payment shall be made by Mr. [REDACTED] to Ms. [REDACTED] immediately upon entry of this order. At Mr. [REDACTED]'s election, he may pay said sum over a period of 48 months with interest of 5.25%, in monthly installments of \$2,664.19 with the first installment due November 1, 2015. In the event, Mr. [REDACTED] elects to make monthly payments, execution on this judgment is stayed; however, should Mr. [REDACTED] become delinquent in making any monthly payments by more than 10 days, the entire balance will be due immediately and execution may issue.

To allocate the marital debt, the Court is required to apply the principles of *Alford v. Alford*, 120 S.W.3d 810 (Tenn. 2003). In doing so, the Court finds that Ms. [REDACTED] shall be responsible for paying the debt associated with the purchase her vehicle, \$38,000, and the balance of the attorney's fees owed by her in connection with the divorce proceedings. The automobile debt was incurred by Ms. [REDACTED] during the pendency of these proceedings. It was to enable her to purchase the vehicle which she operates. She has been the sole party to benefit from that debt, and she will be in the best position to repay the debt.

Mr. [REDACTED] has urged the Court to award him an additional \$20,000 because he was unable to draw \$5,000 a month from [REDACTED] for the months of October, November and

December 2014 and January 2015. The Court respectfully declines to award said sum to Mr. [REDACTED] noting that he was in charge of the finances of the business during those months he contends that the business could not afford to make the distributions to him. There is no basis for the Court to now award those distributions. Further, Mr. [REDACTED] has urged that the Court award him said sum by reducing the value of [REDACTED] by \$20,000. The Court would note that the valuation of the business was based on analysis of the Veteran's Administration and other contracts using an income approach and not based upon the value of the hard assets of the business. Accordingly, the value of the business is unaffected by the cash balance available to the business and for that reason the Court respectfully declines to reduce the value of [REDACTED] LLC by \$20,000 as suggested by Mr. [REDACTED].

Pinnacle Bank claims it is owed fees incurred in connection with this litigation in the amount of \$11,750. The evidence establishes that Mr. [REDACTED] as a result of his belief that the bank was siding with Ms. [REDACTED], threatened suit against the bank. That resulted in the bank's use of legal counsel. To the extent the parties and/or [REDACTED] LLC owes any funds to Pinnacle Bank, Mr. [REDACTED] shall be responsible for paying said sums and shall hold Ms. [REDACTED] harmless and indemnify her from any liability therefore.

Further, Ms. [REDACTED] has made decisions regarding the selection of five different attorneys to represent her throughout the litigation and incurred substantial attorney's fees. The Court finds that Ms. [REDACTED] benefited from incurring the debts to her attorneys, and she should be responsible for paying the debts incurred by her for her attorney fees and expenses.

Mr. ██████ shall be responsible for paying the student loans owed to Great Lakes Higher Education Corporation and any other lender incurred on behalf of the parties' ████████████████████ for their education in the amount of \$31,726.63. Ms. ██████ cosigned those loans. However, the loans have historically been paid by distributions from ██████, LLC. Mr. ██████ acknowledged during the trial that if he was awarded the business he should be responsible for paying the student loan debt incurred on behalf of the parties' sons. The Court concurs, and orders that Mr. ██████ do so, and that he hold Ms. ██████ harmless from any liability for those debt(s). In applying the *Alford* factors, it is undisputed that the debt was incurred for the benefit of the parties' children, that each child incurred the debt but Ms. ██████ cosigned or guaranteed the debt. Both parties equally benefited from the debt which assisted their children to obtain education. Mr. ██████ is best able to repay the debt.

Further, the Court finds Mr. ██████ shall be responsible for paying the debt associated with the vehicle operated by him in the amount of \$30,000. Mr. ██████ incurred the debt. The purpose of the debt was to purchase the vehicle Mr. ██████ operates. Mr. ██████ has primarily benefited from the debt, and he is the party best able to repay that debt.

Further, the Court finds that Mr. ██████ shall hold Ms. ██████ harmless and indemnify her from any liability to Pinnacle Bank and all other creditors for debts owed by, or relating to, ██████, LLC.

Finally, the Court finds Mr. ██████ should be responsible for paying the balance of the attorney's fees owed by him in connection with these divorce proceedings. Mr. ██████ has selected the various attorneys to represent him and has incurred the fees

associated with the litigation. He has benefited from the services received by him from his attorneys and he is the party best able to repay the debt owed to his attorneys.

### Spousal Support

The Legislature has established four separate and distinct types of alimony: alimony in futuro; rehabilitative alimony; transitional alimony; and alimony in solido. The statutory preference is for the award of transitional alimony, where appropriate. To be rehabilitated, Tennessee Code Annotated section 36-5-121(c)(2) contemplates that the economically disadvantaged spouse will achieve with reasonable effort an earning capacity that will permit that spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage or to the post divorce standard of living expected to be available to the other spouse considering the relevant statutory factors and the equities between the parties. *Id.*

Only where rehabilitation is not feasible, in consideration of all relevant factors, may the court order long-term spousal support or support until death or remarriage. T.C.A. § 36-5-121(c)(3). The Court may combine an award of alimony in futuro with an award of rehabilitative alimony where a spouse may only partially be rehabilitated. T.C.A. § 36-5-121(c)(4). Transitional alimony is awarded when the rehabilitation is not necessary but when the economically disadvantaged spouse needs assistance to adjust to the economic consequences of the divorce. Alimony in solido may be awarded in lieu of or in addition to other alimony awards or in order to provide support, including attorney's fees where appropriate. T.C.A. § 36-5-121(c)(5).

It is undisputed that through distributions received from ██████████ LLC prior to these divorce proceedings, the parties were expending approximately \$20,000 a month.

██████████, LLC has suffered significantly as a result of these divorce proceedings and it is not contemplated that the business will generate \$20,000 a month in spendable income to its owner in the near future. However, each party estimated that should he or she be awarded the business, he or she would be able to pay the other party monthly support of \$3,000 - \$5,000. Both parties were confident that they, if awarded the business, could return it to its pre-divorce success. Because the Court has awarded ██████████, LLC to Mr. ██████████, Ms. ██████████ is now dependent upon Mr. ██████████, in some measure, for her future support and maintenance.

In addressing the factors appropriate under T.C.A. § 36-5-121(i), the Court finds that Mr. ██████████'s earning capacity will far exceed that of Ms. ██████████. Both parties will have substantial and similar financial obligations and needs. Mr. ██████████ will have greater financial resources through ownership of the business.

Both parties are well educated. Ms. ██████████ holds two Master's degrees and Mr. ██████████ holds a Bachelor's degree. Ms. ██████████ will require additional education and training to pursue a licensed professional counselor practice in Tennessee, because Tennessee and Texas do not enjoy reciprocity. She will have to complete twelve additional hours of graduate education and provide proof of two years of post-Master's supervision experience. If Ms. ██████████ wants to pursue her former career as a teacher, she will be required to obtain certification by the State of Tennessee. The Court has no evidence of what that will entail. However, even with a license to practice as a counselor or with certifications to pursue a teaching career, Ms. ██████████ will not achieve an earning capacity of \$240,000 a year.

This is a marriage of long duration, 22 plus years.



Ms. [REDACTED] is 44 and Mr. [REDACTED] is 49 years of age. Both parties are in good mental condition.

Both parties are in good physical condition and suffer from no disabilities or incapacities.

Both of the parties' children are adults.

Neither party has any separate assets.

The Court has made an equal division of the marital property but awarded the income producing asset, [REDACTED], LLC, to Mr. [REDACTED].

The parties established a very nice standard of living during the marriage. They owned an expensive home in [REDACTED], Tennessee. They expended approximately \$20,000 a month on their lifestyle. They took a very nice trip to celebrate their anniversary in 2014. Mr. [REDACTED] enjoys gambling.

Both parties were good parents to their children. There is no evidence concerning the contribution of the parties as homemakers. However, Ms. [REDACTED] has contributed substantially to Mr. [REDACTED]'s increased earning capacity. Before the successes enjoyed by the parties through [REDACTED], LLC, the most Mr. [REDACTED] had earned in any calendar year was \$37,500.00 other than the income he received from his card room operation.

The Court has found that both parties were at fault in the demise of the marriage and gives no weight to the relative fault of the parties in its decision regarding spousal support.

The Court finds no other factors, including tax consequences, to each party, to be necessary to consider the equities between the parties.

Based on the foregoing factors and all of the evidence established at the trial of this case, the Court finds that Ms. [REDACTED] cannot be completely rehabilitated to the point where she will be able to enjoy a standard of living after the divorce comparable to the standard of living expected to be available to Mr. [REDACTED]. The evidence establishes that neither party will be able to enjoy the standard of living after the divorce which they enjoyed previously.

Accordingly, the Court finds that Mr. [REDACTED] shall pay Ms. [REDACTED] alimony in futuro in the amount of \$3,000 per month.

Further, the Court finds that Ms. [REDACTED] is capable of some rehabilitation through education and training and orders that Mr. [REDACTED] pay Ms. [REDACTED] rehabilitative alimony of \$2,000 per month for 48 months. The first payment of alimony in futuro and the first payment of rehabilitative alimony shall be made on, or as of, October 1, 2015. Subsequent payments shall be made on the first day of each and every month thereafter.

Finally, the Court finds that the obligation of Mr. [REDACTED] to pay the debts of [REDACTED] LLC for which the parties are joint and/or severally liable, to pay the education loans guaranteed by Ms. [REDACTED] for the benefit of the parties' children, to pay alimony in solido, alimony in futuro, and rehabilitative alimony to Ms. [REDACTED] are hereby deemed domestic support obligations which are necessary for Ms. [REDACTED]'s continued support and maintenance.

Further, the Court finds that any unpaid court costs associated with these proceedings should be taxed one-half to each party.

Finally, the Court finds that Ms. [REDACTED] should be restored to her former name,

[REDACTED]. Accordingly,

**IT IS SO ORDERED, ADJUDGED and DECREED.**

ENTERED this 5<sup>th</sup> day of October, 2015.


  
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James G. Martin III  
Circuit Court Judge, Sitting as Chancellor

**CLERK & MASTER'S CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Order was mailed, postage prepaid, emailed and faxed to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

this 8 day of Oct, 2015.

  
\_\_\_\_\_  
Clerk & Master