

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: John Morris Miles

Office Address: 511 South Third Street
(including county) P.O. Box 8
Union City, Obion County, TN 38281

Office Phone: 731-885-1234 Facsimile: 731-885-6251

Email
Address:

Home Address: Rives, TN 38253
(including county) Obion County

Home Phone: Cellular Phone:

INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to rachel.harmon@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am an attorney in private practice as a sole practitioner in Union City, Tennessee.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1988; 013345

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee; Oct. 26th, 1988; 013345; active
Texas; November 1st, 1991; 14046250; inactive. Shortly after my family returned to Tennessee, I took inactive status in Texas.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No. I voluntarily took inactive status in Texas when I resumed my practice in Tennessee in 1997.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Upon completion of my law degree from Southern Methodist School of Law in 1988, I returned to Obion County, Tennessee where I practiced law with my father C. W. Miles, III from 1988 until 1992. In 1992 my wife and I moved to Houston Texas, where I served as an assistant district attorney for the Harris County District Attorney's Office for four and one-half years. I returned to Tennessee, after my father's death in 1996 and have been in continuous practice there ever since. The breadth of my experience is set out in item number 8 below.

In terms of my other experience, upon graduation from Vanderbilt School of Engineering in 1982, I worked as a design engineer for Chevron Oil Company in their Offshore New Design Group in New Orleans, LA before returning to Vanderbilt to earn my Masters in Business Administration with a double concentration in finance and accounting.

In May of 2000, I was elected to serve as a director with First State Bank in Union City, Tennessee, where I continued to serve until the bank was purchased by Simmons Bank which is now headquartered in Little Rock, AK. As a Director, I served as Chairman of the Subsidiary Committee and served on the Compliance Committee, overseeing the bank's compliance with various State and Federal banking regulations.

I am a general partner of the M.W. Miles limited partnership, and as such, make management decisions regarding its farming operations.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

N/A

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

Domestic Relations — 40%
Personal Injury — 15%
Probate, Wills, Estates — 5%
Criminal — 15%
Mediation — 5%
General Civil Litigation --- 19%
Business Transactions --- 1%

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

Administrative Law:

Administrative Law actions with the EPA, The Tennessee Wildlife Resources Commission, Department of Children's Services Administrative Procedures, Civil Forfeiture Warrants.

Civil Actions:

Actions to set aside Fraudulent Conveyances, Collections, Condemnation Actions, Conservatorships, Constructive Trusts, Consumer Protection Actions, Contract Disputes, Declaration of Rights Actions, Insurance Coverage Disputes, Negligence Actions, Partition Suites, Personal Injury, Probate, Property Rights, Quantum Meruit, Slip and Fall, Social Security Disability, Subrogation, Timber Cutting, Will Contests, Workers Compensation, and Wrongful Death Actions.

Criminal:

Aggravated Robbery, Conspiracy to Commit Murder, Conspiracy, Cruelty to Animals, Dog Fighting, Drug paraphernalia, DUI, Murder (Prosecution and Defense), Possession of Drugs, Possession of Drugs with intent to sell, Post-Conviction Relief Petitions, Sale of Scheduled Drugs, Sexual Assault, Theft and Weapons Charges.

Document Preparation and Transactional Work:

Articles of Incorporation and Organization, Articles of Dissolution, Bills of Sale, Business Contracts, Deeds, Deeds of Trust, Easements, Farm Leases, Lease Agreements, Liens, Marital Dissolution Agreements, Medicare Set-aside Agreements, Parenting Plans, Releases, Settlement Agreements, Timber Contracts, Trusts, UCC-I Filings, Wills

Family Law:

Adoptions, Child Custody and Visitation, Dependency and Neglect, Divorce, Grandparent Visitation Rights, Orders of Protection and Termination of Parental Rights.

As a practitioner, I have almost exclusively done my own research, and I draft my own pleadings. I have handled both civil and criminal matters in the United States District Court Western Division. I have appeared before our Court of Appeals and Court of Criminal Appeals in the Western Section, and I have practiced in the circuit courts of the 6th, 16th, 24th, 25th, 26th, 27th, 28th, and 29th judicial districts as well as the chancery courts of the 24th, 27th, 28th, and 29th judicial districts. I arrive at work early, usually around 7:00 a.m., and work typically until 5:00 each evening, and often work from home in the office I have equipped there. In my criminal practice I have served as both a prosecutor (four- and one-half years with the Harris County District Attorney's Office in Houston, Texas) and defense counsel, and, in each capacity, my jury trials include murder cases (2 as a prosecutor and 3 for the defense), drug charges, driving under the influence, and sexual assault. In my civil practice, I have had jury trials for personal injury cases, both for the plaintiff and the defendant, and a vast number of divorce cases as well as child custody cases along with countless hearings on preliminary matters in both civil and criminal cases.

9. Also separately describe any matters of special note in trial courts, appellate courts, and

administrative bodies.

I have tried approximately 40 jury trials both civil and criminal. I have tried countless non-jury divorces and child custody matters. I have done appellate work in both our Criminal and Civil Courts of Appeal. All my jury trials were interesting, but none of the appeals resulted in any reported precedent that I am aware of. One of the more interesting cases factually was the defense of the Pastor of the largest church in our county who was charged with attempted murder of his wife. The case got a fair amount of media attention, but was resolved prior to trial by a plea to a lesser included offense, wherein he received a four-year probated sentence on reckless endangerment.

I represented a local hog farmer when the EPA sued him and was able to get them to dismiss their case. The fines they were seeking would have bankrupted the farmer. I was able to successfully petition the TWRA to regain a duck blind on Reelfoot Lake for the owner after it had been taken administratively by the TWRA. Both cases were brought initially before an administrative body.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have been a Rule 31 Listed Civil and Family Mediator since 2006. During that time, I have helped a very large number of litigants, especially in the family law area, reach lasting mediated settlements without the necessity and financial burden of trial. The matters dealt with in mediations are confidential.

I have never presided over any case as a judge, other than a Juvenile Court case in Obion County many years ago.

I was appointed by the Tennessee Supreme Court as a Hearing Committee Member for Disciplinary District VII, where I served from 2006 to 2012.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

I have had numerous appointments in the Circuit and Chancery Courts in the 27th Judicial District, as well as the Obion County Juvenile Court. Some of these are in the capacity of a Guardian ad Litem for incompetent persons or minors, as well as for investigation to approve proposed minor's settlements or attorney ad litem appointments to protect the rights of the elderly. I have received numerous appointments to protect the interests of children in dependency and neglect actions in Juvenile Court.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

I was a prosecutor with the Harris County District Attorney's office in Houston, Texas where for a period of 4.5 years I went to court daily and tried over 30 jury trials, including DUI, aggravated robbery, murder, sexual assault of a child, and sale of controlled substances. I was assigned to the child abuse prosecution unit during part of my tenure there.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

In 2019, I applied to fill the vacancy on the Court of Appeals for the Western Section of Tennessee. My name was not submitted to the Governor as a nominee.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

I received a Bachelor of Engineering from Vanderbilt University graduating magna cum laude in 1982. As an undergraduate I was a member of Chi Epsilon and Tau Beta Pi engineering honor societies.

I returned to Vanderbilt earning a Master's Degree in Business Administration, with a double concentration in finance and accounting in 1985.

I received my Juris Doctorate from Southern Methodist University in 1988, where I completed the Oxford summer program in 1986, and was the 2nd year representative for the Student Bar Association from 1986 to 1987.

PERSONAL INFORMATION

15. State your age and date of birth.

I am 62 years old and was born [REDACTED] 1960.

16. How long have you lived continuously in the State of Tennessee?

I was born and raised in Obion County, Tennessee. Other than my time as an engineer with Chevron Oil Company in New Orleans, LA, my time in Law School at Southern Methodist in Dallas, Tx. and my years as a prosecutor in Houston, TX., I have always lived in Tennessee.

17. How long have you lived continuously in the county where you are now living?

I was born and raised in Obion County, Tennessee. I have lived there continuously since 1997.

18. State the county in which you are registered to vote.

Obion County

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

N/A

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

The only formal complaint lodged against me was brought by Bruce Tuck, also known as the

“Fat Bellied Rapist.” After pleading guilty on Dec. 10, 2009 to multiple counts of aggravated rape and aggravated burglary, Mr. Tuck filed a post-conviction writ. I was appointed by Judge Acree to represent Mr. Tuck on his post-conviction writ. Mr. Tuck then filed a complaint against me with the Board of Professional Responsibility on 2/11/2011. The complaint was dismissed by the Board and closed on 05/25/2011.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

I have been a Trust Committee member of the Bill and Carol Charitable Foundation in Union City, TN since 2020. The Mission of the Foundation is to help spread the Gospel of Jesus Christ in all that it does in serving the needs of others.

I have served as a director with Carol Swain’s “Be the People Project” since 2020.

I am presently the Chairman of the Board of Life Beat Pregnancy Center, in Tiptonville, Tennessee.

First United Methodist Church of Union City, Positions Held: Pastor Parish Staff Committee, Finance Committee, Sunday School Teacher, and Past President of the Character Builders Class.

Union City Rotary Club, where I have assisted in the scholarship funding and the distinguished

speaker's committee.

Obion County Chamber of Commerce Board of Directors 2011-2014, Positions Held: Board Member and Government and Legislation Vice President.

Obion County Tea Party, Position Held: Chairman 2011- Current.

Member of *Colegium Tempieto*, a fraternal organization at SMU Law School.

Main Street Union City, current member.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Tennessee Bar Association

Obion County Bar Association, Past President 1990, 1991, 2005, 2006, 2007, and 2008, responsible for organizing our annual class for CLE credit.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

In 2012, I received a Certificate of Appreciation form the Board of Professional Responsibility of the Supreme Court of Tennessee for my service as a hearing committee member from 2006 to 2012.

30. List the citations of any legal articles or books you have published.

N/A

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

I taught class at the University of Tennessee at Martin on Mediation for others to obtain their rule 31 listing, but that was more than five years ago.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Union City Planning Commission, Past Chairman, appointive.
Obion County Audit Committee, Current Chairman, appointive.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Please see the attached. All work is my own.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I believe that thirty-four (34) years of experience has laid the foundation for the temperament and insight needed in a good appellate justice. Experience is important when reviewing a record and interacting with those appearing before the court. I believe judges must practice restraint when interpreting and ruling on questions of law to ensure they are not revising, rewriting, expanding, or amending the existing law. In my experience judges have always endeavored to do just that. Tennessee has a history of excellence in the Bar and Bench. I have always been treated fairly by trial judges and most graciously by appellate court justices. I want to elevate my involvement in our system of justice, and believe that I have the ability and temperament to do so in a manner that will be a continuation of my own experience in such courts. Though domestic relations, civil litigation, and criminal defense dominate my practice, I have not been pigeonholed into any one area, and I have a wide spectrum of personal and professional

experience that I hope to bring to the court.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

As a sole practitioner in a small town, there is hardly a week that passes wherein I do not waive fees or provide advice at no charge based upon my own sense of what is just and fair. There is no shortage of the poor and underprivileged in my part of the state. Perhaps even a majority in my area, through no fault of their own, have no resources for an attorney, but they nonetheless present with circumstances meritorious of sound legal advice or services. There are many occasions when I will establish a conservatorship for a disabled child at no fee or a greatly reduced fee. Although I have never itemized my pro bono hours, except where I am required to, living, as I do, in a small community necessarily entails helping others on a weekly basis who lack the resources to hire an attorney, to whom I provide my services at no fee or for only a nominal one. I consider my time and advice, if sufficient for them to also be sufficient for me, given the blessings I have received in my life.

On the other hand, there are occasions when there is plenty of money to pay my fee, but charging one is not the right thing to do. For example, when a close friend of mine committed suicide after going through a divorce, he left two daughters. One was in medical school and the other a freshman in college. I handled his estate, but did not ask for or receive any fee for my services.

My father practiced law in this way for over 50 years as did his father before him.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I am making this application seeking the appointment replacing Judge John Everett Williams for the Western Section Court of Criminal Appeals. As you know, there are twelve judges of the Court of Appeals, and no more than four may reside in the same grand division. Judge Williams resided in the Western Division of the state, as do I.

My background in engineering has always been helpful in constructing my arguments as a trial lawyer, and I believe it would enhance my ability to draft well-reasoned opinions as a judge. I view my impact as one of a continuance of competent service from an experienced practitioner who would be respectful of those that come before the court and provide the careful diligence, they deserve and have come to expect from appellate review of the issues raised.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I presently serve as a Trust Committee member on the Bill and Carol Latimer Charitable trust, which distributes millions of dollars annually, mostly to Christian mission work locally and all

over the world including Africa and India.

I serve as a board member to the "Be the People Project" which strives to increase awareness of the importance of understanding and taking stock in traditional American institutions and our founding documents. I helped draft the articles of organization for this entity.

I have served on the Board of Life Beat Pregnancy Center in Tiptonville, TN since Jan. of 2020, and I am the current Chairman of the Board. Life Beat is a Christian ministry with a mission of empowering women and men to choose life and make life-affirming healthy decisions.

I am active in the First Methodist Church in my community where I taught The Senior High class for several years. I am an active member and teacher of my own Sunday school class which provides tens of thousands of dollars annually to local charities and people in need. I am actively involved in the Union City Rotary Club, which has provided millions of dollars in scholarships to area students, brings distinguished speakers to the area to address high school students and conducts the area's best annual track and field event, the "Rotary Relays". I served a term of three years as a Director of the Obion County Chamber of Commerce. I presently serve on the Union City Planning Commission, where I was a past chairman, and am a member of the Audit Committee for the Obion County Commission. For several years I coached AYSO soccer for the area youth.

In 2017, I was a speaker at a hearing conducted by the Tennessee Advisory Committee to the U. S. Commission on Civil Rights.

In 2011, I helped organize the Obion County Tea Party with a goal of providing a resource for area residents interested in restoring the functioning of government as originally intended. We have organized public events that were widely attended. In one case we had a capacity crowd at our civic auditorium which holds over 900 people. A few years ago, I lead an introductory class on the U. S. Constitution at our monthly meetings.

If appointed, I hope to continue my involvement in the promotion of a knowledge and an understanding of our State and Federal Constitutions and making presentations illuminating the proper function of the law as described by Frederic Bastiat in his essay on "The Law." An important corollary of understanding the proper function of the law is that you will, by contrast, also understand what is not a proper function of the law.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

In over thirty-four years of practice, I have tried everything from a traffic ticket to "DUI" s to murder cases. I have tried personal injury lawsuits, will contests, property disputes, partition suits and countless divorces and child custody cases.

As a sole practitioner, I am the rainmaker, the compliance officer, the business manager, and producer all in one. I am the risk taker, the researcher, the draftsman, and the counselor. In his relations with his client and the public at large, the sole practitioner is the defender and the protector of rights, the advocate, the strategist, the educator, the rationalist, the communicator, the peacemaker, the prayer-leader, the oddsmaker, the diplomat and sometimes the umpire. In

his role with the court, he is the historian, the wordsmith, the promise keeper, the comedian, and the straight man. In the process of litigation, he can be a trailblazer and an architect, but in the observance of his duty of candor to the court, he is sometimes also called upon to discredit the very authority that he had hoped to rely on.

I have learned firsthand that while you seldom represent the perfect lamb, rarely is your client entirely a goat, and all litigants should be treated justly. There are times in the litigation process, when attorneys are called upon to be the quarterback, but others when the better role is that of a "pulling guard." I would like to bring this background from the bar to the bench.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes.

Licensed attorneys are charged to zealously represent their clients within the bounds of the law. In so doing they must make arguments under the existing law, but can make good faith arguments for the logical extensions thereof. The role of a judge is to see that the law has been correctly interpreted, impartially applied to the facts, and to ensure that each side was provided with due process to appear and present the relevant facts of their case. This is the most perfect of all imperfect means to see that justice is done. Judges are not law makers, rather they are those entrusted to follow the law as written and as intended by the drafters.

From my own ideological perspective, I have not favored the areas of administrative law because I have questioned their constitutionality and challenged them on separation of powers and due process grounds. I have made these challenges in my pleadings when the opportunity arises. I have made presentations to interested groups about ways to improve the approach to the problem, but in the meantime, we must all operate within the rules whether they be administrative or otherwise.

Our Supreme Court will, on occasion, issue rulings modifying common law as it did in *Davis v. Davis*, (1983) overruling the longstanding doctrine of interspousal immunity or in *Planned Parenthood v. Sundquist*, (2000) which elevated abortion rights to a fundamental right (though it has since been superseded by Constitutional Amendment). Our Supreme Court is entrusted with this authority whereas the inferior courts are not. Appellate courts are constrained to follow the law, not create new law.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A.

W. Michael Maloan

Chancellor for the 27th Judicial District

[REDACTED] Dresden, TN 38225

Office: [REDACTED]

Cell: [REDACTED]

B.

Bill Latimer

Bill Latimer Investments, Inc.

[REDACTED]
Union City, TN 38261

Work: [REDACTED]

Cell: [REDACTED]

C.

William B. Acree

Former Senior Judge and former Circuit Court Judge of the 27th Judicial District

[REDACTED]
Hornbeak TN 38232

Cell: [REDACTED]

D.

David Hayes

Attorney, and former Justice of the Court of Criminal Appeals

[REDACTED]
Union City, Tn 38261

Home: [REDACTED]

Cell: [REDACTED]

E.

Rusty Grills

Tennessee State Representative District 77

[REDACTED]

Newbern, TN 38059

Office: [REDACTED]

Cell: [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals for the Western Section of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: October 19th, 2022.



Signature

When completed, return this application to Rachel Harmon at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

John Morris Miles

Type or Print Name



Signature

Date

10-19-22

BPR #

013345

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Texas Bar Association

State of Texas

14046250

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

IN RE.: BRAYLEIGH C.

NO.: W2021-00910-COA-R3-JV

Oral Argument Requested

**Lake County Juvenile Court
17-000045-01**

CEKITA L. SWIFT, APPELLEE / PETITIONER,

VS.

BRADLEY S. CANADA, APPELLANT / RESPONDENT.

BRIEF OF THE APPELLANT, BRADLEY S. CANADA

Appeal from the child custody ruling of the Lake County Juvenile Court.

John M. Miles
Attorney for Appellant
511 South Third Street
Post Office Box 8
Union City, Tennessee 38281
(731) 885-1234
mileslaw@johnmmiles.com

Cekita Swift
Pro se Appellee
206 Doyle Street
Dyersburg, Tennessee 38024

IN THE COURT OF APPEALS OF TENNESSEE AT JACKSON

IN RE.: BRAYLEIGH C.

NO.: W2021-00910-COA-R3-JV

Lake County Juvenile Court
17-000045-01

BRIEF OF THE APPELLANT

COMES NOW the Appellant in this matter and submits this brief pursuant to Tenn. R. App. P 27 asking this Honorable Court to reverse the decision of the trial court in denying the Appellant's petition to approve his proposed parenting plan and establish him as primary residential parent.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the trial Court erred in considering allegations of social network photographs of the Respondent's girlfriend that he found could be "slightly provocative in nature" when no such photographs were offered into evidence, and therefore outside the record (*T.R., vol 1, page 34*). This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley, 418 S.W.3d 1,16 (Tenn. 2013); Kendrick v. Shoemake, 90 S.W. 3d 566, 569 (Tenn. 2002)*.

II. Whether the trial Court erred in considering a video, which was never offered into evidence, and concluding from this video that there appeared to be drinking, smoking of cigarettes (the court apparently assumed the drinking was alcohol, but assumed the substances being smoked were cigarettes, see *T.R., vol. 1, p. 35*). This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley, 418 S.W.3d 1,16 (Tenn. 2013); Kendrick v. Shoemake, 90 S.W. 3d 566, 569 (Tenn. 2002)*.

III. Whether it was error for the court to weigh as evidence the circumstances

surrounding the entry by the parties into their initial parenting plan or to consider why it was needed (*see T.R., vol 3, pp 1-10*) where that plan was sworn to and subscribed by both parties on March 20, 2017, under penalty of perjury, and where both parties appeared in court and submitted the plan to a different judge for approval and where the plan was then approved by that Judge on March 23, 2017, and no appeal taken therefrom. The initial parenting plan was res judicata as to such issues prior to its entry. No objection was made at the time the testimony was made, but the court's use of the evidence effected the Appellant's substantial right for the court not to consider such evidence in arriving at this ruling and more probably than not affected its judgment or resulted in prejudice to the judicial process. *Tenn. R. App. Pro. 36(b)*. This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley, 418 S.W.3d 1,16 (Tenn. 2013); Kendrick v. Shoemake, 90 S.W. 3d 566, 569 (Tenn. 2002)*.

IV. Whether the trial Court erred in failing to find that the preponderance of the evidence established that a modification of custody to establish the Appellant as the primary residential parent was in the child's best interests. (*Tenn. R. App. P.13(d)*). The trial court's finding that it was not in the child's best interest to modify custody to the Father was an abuse of discretion because the court reached an illogical result, resolved the issue of the child's best interest based on a clearly erroneous assessment of the evidence, and/or relied on reasoning that caused an injustice. *Gronsewski v. Gronsewski, 350 S.W.3d 99, 105 (Tenn.2011)*. In a non-jury case such as this, appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *Kelly v. Kelly, 445 S.W.3d 685, 691-92 (Tenn. 2014); Tenn. R. App. P. 13(d)*.

STATEMENT OF THE CASE

This case is a proceeding over custody and parenting time between unwed parents of a four-year-old child, Brayleigh Canada.

On March 20, 2017, Bradley Canada, sometimes hereinafter referred to as the Father, filed a motion with the Lake County Juvenile Court asking the Court to establish his parental rights as Father of the minor child Brayleigh Claire Canada and to establish a parenting plan. On March 23, 2017, the Honorable Danny Goodman, Judge of the Lake County Juvenile Court at the time, entered an order stating the parties have been before the Court and from an examination of the record it appeared that the Father, Bradley S. Canada, had voluntarily acknowledged paternity of the child, that the Father and Cekita Swift (sometimes hereinafter referred to as the Mother) had reached an agreement regarding joint custody of the parties' child and incorporated a parenting plan. The order approved the plan, which had been signed by the parties. (*T.R., vol 1, pp. 1-10*).

Page nine of the parties parenting plan provided in bold print above the Mother's notarized signature the following: **"Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct."** (*T. R., vol 1, p, 9*).

On July 30, 2020, the Mother, filed a petition with the Court to modify the existing parenting plan to establish a new parenting plan with "reasonable parenting time." (*T. R., vol 1, p. 11*). She submitted a proposed order and proposed parenting plan with that motion. The Mother's proposed plan provided the child would reside with the Mother while the child was in school Monday through Friday, and the Father would have been allowed visitation every other

weekend. The Mother's proposed parenting plan had a provision stating that "**any paramours to either parent to whom a parent is not legally married is not to spend the night in the presence of, or in the same residence with any minor child of the parties.**" (Emphasis added) (*T. R., vol 1, pp. 11-14*).

On August 17, 2020, the Father, Bradley S. Canada, filed an answer to the petition to modify, along with a counter petition asking the Court to establish him as the child's primary residential parent with a provision for the Mother to have alternating weekend visitation. (*T. R., vol 1, page 15*).

On October 21, 2020, the Father filed a sworn petition for emergency custody alleging, among other things, that their child had seen a naked man in her mother's home. The court granted an ex parte order awarding temporary custody to the Father, but set it aside after a timely full hearing was held pursuant to the rules. **(Note: This part of the Technical Record was not sent to the Court of Appeals by the trial court clerk. The Appellant has moved that the record be supplemented with the pleadings and the orders thereon. This motion was denied, but has been renewed. We have attached in Appendix A, copies of those pleadings and orders which we say should have been included in the record.)**

The parties presented their competing motions for custody and parenting provisions before the Honorable Andrew Cook on June 9, 2021. (*T.E., vol 2, p. 1*).

The Petitioner, Cekita Swift, testified on her own behalf, but she presented no other witnesses. The Respondent and Counter-Petitioner, Bradley Canada, presented several witnesses on his behalf including Jennifer Mays, Madison Uzzle, Elizabeth Cook, Gary Mason, and Serenity Canada. None of the testimony from these witnesses was challenged by opposing

counsel. That is, there was no cross-examination of any of these witnesses and no proof was offered in rebuttal to their testimony. Finally, the Respondent and Counter-Petitioner, Bradley Canada, testified on his own behalf and was cross examined by opposing counsel. After hearing the proof, the Court advised it would take the matter under advisement and would render an opinion within a week. (*T.E.*, p. 196).

On July 7, 2021, the Court rendered its decision. The Court's findings of fact are found on pages 31-54 of the Technical Record, volume 1.

Following *Blair vs. Badenhope*, 77 SW 3d, 137, 150 (*Tenn.* 2000), the court addressed the threshold issue of whether there had been a material change of circumstances since the initial custody determination. The court held in the affirmative on the threshold issue based on the preponderance of the evidence and then proceeded to make a determination of whether or not a change in custody or a modification of parenting time was in the child's best interest. *TCA* §36-6-106(a). *Cranston vs. Combs*, 106 SW 3d, 644 and *Kendrick vs. Shoemake*, 90 SW 3d, 570, and *TCA* § 36-6-101(a)(2)(B) and (2)(c). (*T.R.*, vol 1, p. 42) (*T.R.*, vol 1, pp. 43-44)

After an examination of the factors of *TCA* § 36-6-106(a), the court concluded that neither party had demonstrated the current parenting plan was causing any hardship on the child, and that neither party had shown a modification of the plan was in the child's best interest. The court therefore dismissed both the Petitioner's petition for modification of the parenting plan, as well as the Respondent's counter-petition for change of custody. (*T.R.*, vol 1, pp. 53-54).

In summary, the Court determined that the preponderance of the evidence established a material change in circumstance which justified an analysis of the statutory best interest factors (*T.R.*, vol 1, p. 44), but, after a consideration of those factors, the Court found that neither a

modification of the parenting plan nor a change in custody was in the child's best interest, and left the current plan intact. (*T.R.*, vol 1, p. 54). The Father appeals the trial court's denial of his counter petition to change custody, and raises other issues with regard to errors made by the trial court.

STATEMENT OF FACTS

The Defendant submits the following from the record in this matter, any headings are our attempt to categorize the nature of the proof, although we do not argue that the headings limit the proof to any one category.

The Court initially determined that Cekita Swift should proceed first as she was the original petitioner for modification of parenting plan and her testimony (including cross examination) is included in the (*T.E.*, pp. 24-123). Though there was proof that her mother provided substantial assistance in Miss Swift's ability to care for her children while she worked (*T.E.*, pp. 63-66) and though there was evidence that Miss Swift had a father (*T.E.*, pp. 40-42, and pp.140-141), Miss Swift presented no testimony from either of her parents, presented no other witnesses, submitted no exhibits or proof on her behalf, and submitted no evidence or testimony in rebuttal.

Note: In an effort not to be repetitive and to expedite our argument, we have categorized the proof under certain headings in this Statement of Facts. In the argument portion of this brief, we will at times refer to the facts under a particular heading, rather than repeat those facts word for word.

Initial Parenting Plan

Miss Swift testified that she began her relationship with Bradley Canada in April of 2014 and gave birth to their child, Brayleigh, in 2016, and they lived together from 2014 until June of 2020. (*T.E.*, pages 27 and 32). Miss Swift testified that in March of 2017, the parties

submitted a parenting plan stating that Mr. Canada wanted a plan in case they ever broke up. (*T.E.*, pp. 34-35). She testified that they “got into it” over the parenting plan, but she ultimately signed it some days later stating that they both went to the court clerk Mr. Roger Shirley’s office and set a court date whereupon they both came before Judge Goodman for approval. (*T.E.*, pp. 36-37). When asked by her attorney what was Mr. Canada’s “direction” to her about signing the papers, her answer was, “I mean, there wasn’t really like a direct,” but she again referenced they had some confrontation about it. (*T.E.*, pp. 37-38).

Relational Difficulties and Disputes

In its ruling, the trial court described the parties as having a “harmonious” relationship and a “happy family” (*see T.R.*, vol 1, p 38), but Miss Swift testified that in their years together there were “good days and bad days” in terms of Mr. Canada’s temperament, and she claimed there were occasions when Mr. Canada got physical with her, claiming bruised arms and a black eye; however, no photographs or independent evidence was provided to substantiate any injuries. Miss Swift acknowledged that she, at times, struck Mr. Canada, hitting him in the face and putting a mark on his eye, and that the police were sometimes called to the home. (*T.E.*, p. 38, line 4 through p. 39, line 17). In addressing these accusations by Miss Swift, Mr. Canada testified that he had restrained her, but had never hit her. He denied that he ever struck her, busted her lip, blacked her eye or bruised her arms, testifying that most of the violence was initiated by her, and he would try to get her to stop. Though he did not say how, he said that his tires had been slashed, doors knocked in and holes knocked in the wall. (*T.E.* p. 139, line 5 through p. 140 line 1).

Miss Swift testified that she and Mr. Canada had a joint checking account, claiming the money was “mostly mine.” She said that they “got into it one time” over this account (*T.E.*, p.

61 line 18 through p.62, line 8), but Mr. Canada testified that the money he took out represented a refund he had sought and any money he spent from the account was his own money. He said that Miss Swift's withdrawals resulted in hundreds of dollars in overdraft fees which he got stuck with, so he closed the account. (*T.E., p 140 lines 2-22*)

Miss Swift testified they lost the house they were living together in around June of 2020, and there was some disagreement wherein she testified Mr. Canada pushed her down, and she called her father to the home, whereupon Mr. Canada went to his vehicle to recover a gun which he then put in his pocket. (*T.E., pp. 40-42*). In his testimony, Mr. Canada responded that it was midnight when her father arrived, stating that her father was yelling, screaming and cussing, and the children were asleep. He admitted recovering his gun from his car and putting it in his pocket. He confirmed that he did not flash it, point it or threaten anybody with it. He testified that he told her father "You can get out of my house. You don't come over here, talking at my house like that. I wouldn't disrespect yours. My kids are asleep, and the best thing you can do is get out." (*T.E., p. 140 line 23 through p. 141 line 24*).

When asked by her attorney if there had been any other problems since then (i.e., since the separation), Miss Swift testified that the only time "he's kind of like put me off a little bit" was when he came to her house one night when she was "having company over there" in April of 2021. She clarified that the company was her boyfriend, and, when asked if there was any confrontation between him and Mr. Canada, she testified "no." On this occasion she confronted Mr. Canada stating, "Why did you come over here? You can see that I have someone with me," and testified "so that was it after that," (*T.E., p. 43 line 8 through p. 44, line 24*), but she also testified that Mr. Canada came back later around 4:00 a.m. banging on her window asking, "Where is Brayleigh? I want to make sure she is ok." She testified she let him in to check on

Brayleigh and she (Miss Swift) called the “cops,” but Mr. Canada left. She stated the police arrived, but did not come into her home. (*T.E.*, p. 45, line 4 through p. 48, line 11). She testified that her boyfriend’s name was Solomon Akins, and that he was a regular visitor in her home stating, “It’s a weekly, daily basis.” She testified that he (Mr. Akins) spends the night on weekends when her children, Brayleigh and her other daughter, Caegan, are there. (*T.E.*, p. 48, line 24 through p. 53, line 11). This conduct is completely contrary to the “no paramour” provision that Miss Swift had proposed to the court in her parenting plan. (*T.R.*, vol. 1, p. 14).

Mr. Canada was asked to address this situation (from April of 2021) in his testimony. He testified that when he first arrived, he wanted to “do a welfare check on Brayleigh and make sure she was ok.” He said he was thinking of her emotion, and wanted to talk to her and hear her voice. He admitted to coming back later at 2 or 3 in the morning, but testified that he knocked on the door (rather than the window), and that Mr. Akins was still there, which he did not think was “right,” but still wanted to talk to his daughter to make sure she was ok. Mr. Canada said he then left, but when he was made aware she had called the police, he returned so the Police would have his side of the story. Had Mr. Akins still been there, Mr. Canada wanted them to make a record of that, but Mr. Akins had already left. (*T.E.* p. 141 line 25 through p. 144 line 8).

(Note: Mr. Canada had in October of 2020 filed for emergency custody, based in part on alleged reports from his daughter of seeing a naked man in her mother’s home. This filing was not included in the technical record submitted. A request to supplement the record has been made, and denied, but the request has been renewed. We have included in Appendix A our copies of those pleadings and orders we have asked be supplemented.)

Miss Swift testified at a prior hearing that a naked man had indeed been in her home (convicted felon James Sherrill), but she stated that her daughter was not present at the time.

(*T.E.*, p. 77, line 7 through p. 78 line; *T.E.*, p. 77, line 25 through p.79 line 25 and *T.R.*, vol 3 pp. 2-4, *Trial Exhibit 2*).

Miss Swift complained that when they broke up, she had to wait “some days” to get her stuff and that Mr. Canada took most of Braylcigh’s toys (*T.E.* p. 55), but Mr. Canada testified that he told her that she could have whatever she wanted, and it was her choice as to what she got. He said there was no disagreement. She came and got what she wanted, and she said she did not want any of the rest of it. (*T.E.* p. 153 line 21 through p. 154 line 7)

Miss Swift admitted that for a time while they were living together, Mr. Canada provided her a car to drive, and that the debt was in his name. She testified that when they split up, he took the car back, but gave her \$5,000.00 (*T.E.*, pp. 94-95). Mr. Canada testified that they had taken a trip to Miami in January of 2020, and he bought the car, but two months later he found out that she was having an affair with James Sherill, a convicted felon, (see *T.R.* vol 3, pp.2-4, *trial exhibit #2*), and he took the car away from her because it was in his name. He testified that she had not cosigned for the car, but that he tried to be reasonable, and he gave her \$5,000 (*T.E.* p 154 line 8 through p. 155 line14).

Parenting Abilities and Parenting Responsibility

Miss Swift testified that Mr. Canada’s son, Carter, came to live with them when he was about three, on an alternating basis with his (Carter’s) mother, and she described she would help get him up and dressed and to doctor’s appointments. (*T.E.*, page 40). She described Mr. Canada as the “breadwinner” or “provider,” but that she did her “motherly duties” of feeding, bathing and nurturing her when she was sick (*T.E.* p. 31, and p. 61 lines 9-15). Mr. Canada testified that when he lived with Miss Swift, he also cleaned and cooked and took Brayleigh to the doctor, such that Miss Swift did not do those things exclusively. (*T.E.*, p. 152 line 22

through p. 153 line 6)

Mr. Canada testified that Brayleigh and her brother Carter get along well, that they attend church together every Wednesday, Sunday and for other periodic activities. (*T.E. pp 152-153*). There is no evidence in the record about the quality or nature of Brayleigh's relationship with Miss Swift's other daughter (Ceagan) or between Brayleigh and any of Miss Swift's family members.

The Father testified to taking Brayleigh to Sea World in California, going hiking on Hollywood Boulevard, and going with her to City Museum and Magic House in St. Louis. He testified that he takes his children to the Obion County Public Library where they read books, they play and take books home to read. He creates a schedule to keep them busy each day, and he considers himself lucky on the weekends that he has both of his children and makes sure he has some type of activity or someplace planned to go. (*T.E. pp. 155 line 15 through p. 156 line 16*). There is no evidence in the record of Miss Swift doing anything with Brayleigh of this nature.

Mr. Canada testified about the impact of his work at correctional facilities and dealing with sex offenders on his level of caution with Brayleigh and with whom and to what she gets exposed. He stated "I'm very cautious with my children and who I allow my children to interact with, and that is simply because, I mean, while I may not be able to achieve it, I try to put nothing but good in and in result that at the end of parenting, they will be productive, contributing members of society and will be able to maintain a healthy lifestyle." He testified to investing in a cash value life policy to pay for her college education. He provides health insurance for his children and expressed that he loves Brayleigh more than he loved himself. Mr. Canada testified that he was raised by his grandmother without a lot of support from his

mother or father, and that he wanted to “be that supportive parent so that my child can reach whatever potential she chooses to have” ... “I feel like it is my job as a parent to protect them.” Mr. Canada’s income is approximately \$3,600 per month. He is saving money for Brayleigh’s education and is remodeling a home in Obion, TN for them to live in. (*T.E. p. 147 line 23 through p. 151 line 12*). Brayleigh has her own room in his present home and will have her own room in their new home in Obion. (*T.E., p. 156 lines 17-21*).

Mr. Canada takes Brayleigh to the church he attends every Wednesday and Sundays. (*T.E., p. 153, lines 13-20*). Miss Swift stated that while they were together, they would attend her mother’s church “every now and then” (*T.E. p. 57 lines 8-23*), but there was no testimony that she had continued this practice after their separation.

Mr. Canada has a girlfriend, but she is not a live-in girlfriend. They go to church together. They go to dinner together, and to the park. She has a two-year-old boy, but at night she leaves and goes to her house in Martin. (*T.E., p. 151 lines 13 through p. 152 line 2*). Miss Swift works Monday night, Tuesday night, Wednesday night and Thursday night. She is off Friday night, Saturday night and Sunday night. Mr. Akins is a regular visitor to her home. He spends the night when her children are there. Out of seven nights per week, Mr. Akins spends the night one or two nights. (*T.E., p. 49, line 12 through p. 53, line 11*)

Miss Swift recalled her testimony from a prior hearing concerning a “naked man,” James Sherrill, in her home. She admitted that there was a naked man named James Sherrill in her home, but denied that her children were there. This is the man Mr. Canada learned she was having “an affair with” in March of 2020. (*T.E., p. 154, lines 8 through page 155 line 14*). Mr. Sherrill has multiple felony convictions, including two counts of burglary of a motor vehicle and one count of aggravated burglary from August of 2014 in the Lake County Circuit Court.

(T.E., p. 77 line 7 through p.79 line 25 and T.R., vol 3 pp. 2-4, Trial Exhibit 2).

Trial exhibit # 3 contains a photograph of Miss Swift's current boyfriend, Solomon Akins, depicting him on his Facebook Profile Picture with a liquor bottle of some kind and then a second picture of him with some other men with stacks of \$20 bills on their arms, smoking some kind of substance, "flipping the bird," and making other gestures (*TE, pages 80-82, T.R. vol 3, pp. 5-6, trial exhibit #3*). With no other information about any of the men in the photograph, Judge Cook, in his ruling, referred to them as "gentlemen," and Judge Cook referred to James Sherrill, the convicted felon, as a "gentleman from Lake County" (*T.R. vol 1, p.34*). In his ruling, Judge Cook also found that Mr. Akins has two children (*T.R., p. 52*) even though Miss Swift testified that he had six children (*T.E., p. 111 lines 4 through 11*). Miss Swift testified that she did not know if Mr. Akins had a criminal history, but based on what she had seen and heard at trial, she agreed that she should check into that. (*T.E., p. 122, line 12 through 20*).

Miss Swift enjoys going to Beale Street, and, on one occasion, she went there for a weekend, but left the parties' daughter with her mother. She testified that every now and then she enjoys the "night life" (*T.E., pages 85-88, and T.R., vol 3, p 7, exhibit #4*).

Mr. Canada called his mother, Jennifer Mays, to testify. She described Bradley as a great Father who loves his kids, spends time with his children, and is very involved in everything they do. She described Brayleigh as a child who "loves her daddy" and testified they attend the Pentecostal Church in Union City. She described Bradley as a very clean, structured person who works with his children, reading, writing, playing board games, who is cautious about who he allows around the children, and who also cooks and cleans. (*T.E., pp. 125-127*).

The next witness was Mr. Madison Uzzle who runs a barber shop where Bradley and his

son Carter are customers. He testified that they attend church together at First Pentecostal Church in Union City where Mr. Uzzle's brother is the pastor. He also testified regarding a trip he had taken with Bradley to a "horse camp" with trail riding that included Brayleigh. He described Bradley as very organized, someone who puts his children first before everything else.

Mr. Canada called Elizabeth Cook, the mother of his eight-year-old son Carter, to testify on his behalf. They have never been married, but she described Bradley as an "outstanding father" who "goes above and beyond for the kids." Though she and Bradley have never lived together, she gave him an "A" for his co-parenting skills. (*T.E.*, pp. 130-132). There is no testimony from any witness about Miss Swifts ability to cooperate in a co-parenting arrangement.

Mr. Gary Mason, who is employed at the Department of Corrections as a parole officer, testified. Mr. Mason, who was married with children, his wife being a registered nurse. He testified that due to the nature of his wife's employment, he and Mr. Canada were together with their children "a lot on weekends." He described Brayleigh as a "daddy's girl" and testified that Bradley is a good father who is involved. He described Bradley as a responsible young man who cares for his children mostly without reliance on others and testified that Brayleigh loves her daddy. (*T.E.*, pp. 133-135)

Mr. Canada's cousin, Serenity Canada, who has two children, ages one and three, testified that she and Mr. Canada do things together with their children like taking them to Sky Zone, to the park, and going out to eat. She described Bradley as a "great father" who does everything himself. Like the other witnesses she testified that Bradley's children are his "main priority." (*T.E.*, pp. 136-137)

Nowhere in the record does Miss Swift express her feelings about Brayleigh nor is there any evidence in the record about any plans she has for the child's future or for her child's moral development. There is no testimony from anyone describing her as a "great mother." There is no evidence in the record about Miss Swift's involvement in activities with Brayleigh, nor is there any evidence about her level of organization in raising her children. There is no evidence of how she prioritizes her children's needs or that she has done anything to plan for Brayleigh's future or her education. The "Tic-Tok" video made by Miss Swift's older daughter, Caeden, however, demonstrates that Miss Swift's substantial shortcomings, as a parent, are, unfortunately, showing negative consequences there. (*T.E.*, p. 69 line 1 through p. 70 line 16 and *T.R.*, vol 3, p. 1, trial exhibit #1, video #1)

Employment History and Work Schedules

In describing her employment, Miss Swift stated she worked a twelve-hour shift from 6:00 at night until 6:00 in the morning, explaining that her days off are normally Friday and Saturday nights, but she worked the twelve-hour overnight shifts on Monday, Tuesday, Wednesday, and Thursday. (*T.E.* pages 51-52).

When asked about how she managed the logistics of living in Dyersburg and working in Tiptonville, she stated while working 6:00 at night until 6:00 the next morning, she leaves the children at her mother's house in Tiptonville and, when she gets off work, she takes them to school in Tiptonville, explaining that for four nights a week, the children are staying overnight with her mother. (*T.E.*, pages 63-66). Miss Swift testified sometimes she comes to her mother's home to take a nap after work. Sometimes she gets up and takes Brayleigh back to Dyersburg with her and then brings her back to her mother's (in Tiptonville) before she starts work, which was a high level of dependency on her mother under the circumstances (*T.E.*, p. 120 line 17

through p. 121 line 18).

In terms of her work history, Miss Swift stated that right after the birth of Brayleigh she worked part time at the post office from some time in 2017 or 2018 making \$17.50 per hour and then worked a second job until the spring of 2020 when COVID hit, which, coincidentally was when she started seeing Mr. James Sherrill the convicted felon who was later naked in her home (see *T.E.*, p. 77 25 through p.79 line 25 and *T.R.*, vol 3 pp. 2-4, *Trial Exhibit 2*). Miss Swift admitted that her seeing Mr. Sherrill in the spring of 2020, when she was still living with Mr. Canada, was one of the reasons Mr. Canada got upset with her (*T.E.*, p. 95, line 17 through p.98, line 21).

Miss Swift worked for a few months for a company called Senior Solutions before becoming employed at Maple Ridge where, apparently, she began working some time in November of 2020, but was unemployed part of that time. (*T.E.*, pp. 99-100). Though Miss Swift had testified that she quit or resigned from Maple Ridge (*T.E.*, p. 25 line 20 through p. 27 line 6), the circumstances on the separation notice state in her employment records state, “no call no show on March 26, 2021.” Her employment records also included a text from Miss Swift on March 26th, at approximately 6:04 p.m., wherein she stated:

**“I am not coming in. I can’t deal with that place anymore (sad face emoji).
Fuck it. Hell, I make more asking for money and it’s less stressful.”**

(T.E., p. 100 line 14 though p. 103 line 9, and T.R., vol 3, p. 8-13, trial exhibit #5).

Miss Swift also explained that since she and Bradley split up, sometime in late 2020, she had worked at five different locations including Senior Solutions, NSK, Wal-Mart, Maple Ridge, and, now, Alloy factory. (*T.E.*, p. 107).

Mr. Canada has been employed at the Tennessee Department of Corrections since 2013. He serves there now as a Regional Coordinator overseeing clients in West Tennessee. His

hours are flexible, but generally from 8:00 A.M. to 4:30 P.M. and he works a lot from home. (T.E. p 144, line 9-20).

Pornographic Video and Other Videos

Miss Swift testified that while working as a stripper in Atlanta, GA, she made a pornographic video and was paid \$3,000 to do so. (T.E., p. 69 line 2 through p. 71 line 7; T.R. vol. 3 p. 1, trial exhibit #1, video #2 of 2). Miss Swift claimed that Mr. Canada knew about the pornographic video before Brayleigh was born and would use it against her. (T.E., pp. 59-60). Mr. Canada was asked if he knew about the pornographic video when they were together, but he testified that he did not, and that when they lived together, he was not aware of the “risky behavior” or “messing” with guys with a criminal history. (T.E., pp.182-183).

On cross examination, Miss Swift was questioned about the pornographic video she had made and about a “Tic-Tok” video her other daughter Caegan had posted which had been introduced at a prior hearing. Both videos were offered by way of a jump drive as trial exhibit #1 (T.E., p. 69 line 9-21 through p. 77 line 6; T.E., Vol 3, p. 1, exhibit #1, videos #1 and #2). When asked about the video that her other daughter Caegan posted (see T.R., Vol 3, p. 1, exhibit #1, video #1), she testified that she did not approve of the dancing her daughter did in the video (T.E., p 69, lines 2-21 and p. 71 lines 9-13). She said she would hold herself to the same standard as her daughter (T.E., p. 71 lines 14-24), yet when a recent video of her in Florida at the Boardwalk resort with her boyfriend Mr. Akins and Bailey Swift was played (see T.E. p 73 and p. 117 line 13 through p. 120 line 6; T.E. p. 123 line13 through 124 line 2; T.R. vol. 3, p. 14, trial exhibit #6), she said she was “just having fun” and being playful. She denied her dancing was the same as her daughter Ceagan, saying she (Caegan) “never, like, bent over.” (T.E., p. 73 line 5 through p. 77 line 6). The behavior in each video speaks for itself, and

demonstrates to the contrary.

Character, Behavior, and Stability

Upon her break up with Mr. Canada, Miss Swift resided at another address in Tiptonville for approximately three and a half months before moving in November of 2020 to Dyersburg, at the Doyle Street address where she presently lives paying rent of \$650 per month. She testified that she gets no child support on her other daughter. (*T.E.*, pages 91 line 17 through p.93, line 21). As we recounted above, she was employed with 5 different employers in slightly less than a year, and was fired from Maple Ridge for “no call, no show.” (*T.E.*, p. 107; and *T.R.*, vol 3, p. 8-13, trial exhibit #5).

Miss Swift also admitted dating a man named Chris Bonds who had a criminal record and was asked if she had a conversation with him about doing harm to Bradley Canada. She stated she did not know about the “harm”, but admitted giving the man Bradley’s address (*T.E.*, pages 89, line 13 through p. 91, line 16), but, when confronted with her own text message, Miss Swift did admit telling a family member named James Matthews this: “I wish you would beat that bitch boy ass. Man, I never knew how much of a bitch he is. I been trying to make shit work out with him so for so long, and I’m tired of MF trying to make me feel like I ain’t nobody because his entire life he has already been around nobody.” (*T.E.*, p. 107 line 17 through p. 108 line 15).

She further admitted going to a birthday party for a family member of hers, Stetson Swift, at Club 100 in Union City at 106 North Cheatham Street on August 29th. She stated she did not remember when she got to the party, but she acknowledged her photograph on an image promoting the party, and admitted there was a shooting at the party where someone was killed. She did not know if the location was burned after the killing, but she testified that she was

interviewed by the police. (*T.E.*, 108 line 16 through p. -110 line 16).

Co-Parenting

In light of the provisions requiring joint educational decision making in their current parenting plan, Miss Swift was questioned about registering the parties' child in the Lake County School System. Although the current parenting plan provided for joint decision making including educational decisions (*T.R.*, vol 1, p. 6), Miss Swift nonetheless unilaterally enrolled the child in the Lake County School System, listing her mother's address as the child's address, even though the child did not live there. She admitted doing all of this over the Father's objection. (*T.E.*, pp. 114, line 24 through p.116, line 18).

This issue is developed much more thoroughly in the Father's testimony on pages 156 to 161 of the Transcript of the Evidence. Mr. Canada testified that he and Miss Swift had discussions about school registration beginning in the Fall of 2020, and it appeared they agreed on Dyersburg, but as they got closer to the time to register, he testified that "she just went and registered her in Tiptonville," and she just said that "this works better for her." (*T.E.*, p. 15 line 22 through 158 line 8). More to the point, Mr Canada testified that he had discussed with Miss Swift that he could drop his son Carter off at Hillcrest in the morning after waking up at their normal time of 5:45. They would leave the house around 7:00 and then drive to Dyersburg and drop Brayleigh off before 8:00 A.M. Mr. Canada and Miss Swift also discussed putting Brayleigh at Hillcrest with Carter. There were also discussions about him enrolling her at Christ Classical Academy, and that depending on scholarship availability, Mr. Canada would pay the tuition, not only for Brayleigh, but for her other daughter Caegan. (*T.E.*, p. 145 line 13 through p. 146). Miss Swift never contested or rebutted this testimony. In fact, her testimony is entirely consistent with Mr. Canada's on this issue (*T.E.*, pp. 114, line 24 through p.116, line

18).

Mr. Canada testified that he loved Brayleigh (*T.E. p. 161 line 9-12*). He asked the court to approve his parenting plan, and testified that he was open to providing Miss Swift with extra time, not already scheduled in his plan, but that he thought the plan that he submitted was in Brayleigh's best interest. (*T.E., p.152 lines 3-21*).

Bradley Canada testified and submitted evidence of his completion of the parenting class. (*T.E., p. 138, Trial Exhibit 7*)

STATEMENTS OF LAW AND ARGUMENT

This case involves a dispute over the designation of the primary residential parent and subsequent allocation of parenting time for the child, Brayleigh Canada, born to the unmarried parties.

A trial court may modify an award of custody from one parent to the other when both a material change of circumstances has occurred and a change of custody is in the child's best interests. *Blair v. Badenhope*, 77 S.W.3d 137, 148 (Tenn.2002). The threshold issue is whether a material change of circumstances has occurred. *Id.* at 150 and *TCA § 36-6-101(a)(2)(B)*. Unless otherwise prohibited by *TCA § 36-6-406*, in setting the residential schedule, the trial court is directed to conduct a best interest analysis based upon the factors of *TCA § 36-6-106(a)(1)-(15)*.

Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise (*Tenn. App. P. 13(d)*). The issues of law are reviewed de novo without any presumption of correctness. *Lovlace v. Copley*, 418 S.W.3d 1,16 (Tenn. 2013); *Kendrick v. Shoemake*, 90 S.W. 3d 566, 569 (Tenn. 2002).

In this case the trial Judge held that the preponderance of the evidence established that a material change of circumstances had occurred and then proceeded to examine the “best interest factors” of *TCA § 36-6-106(a)* in order to decide if a change in custody or a modification of parenting time was in the child’s best interest. (*T.R., vol 1, p. 44*). We agree with the court’s finding of material change in circumstances, but the trial court’s finding that it was not in the child’s best interest to modify custody to the Father is not supported by a preponderance of the evidence and was therefore an abuse of discretion because it reached an illogical result, resolved the issue of the child’s best interest based on a clearly erroneous assessment of the evidence, and/or relied on reasoning that caused an injustice. *Gronsewski v. Gronsewski, 350 S.W.3d 99, 105 (Tenn.2011)*.

Issue I. Whether the trial Court erred in considering allegations of social network photographs of the Respondent’s girlfriend that he found could be “slightly provocative in nature” when no such photographs were offered into evidence, and, therefore, outside the record (*T.R., vol 1, page 34*). This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley, 418 S.W.3d 1,16 (Tenn. 2013)*; *Kendrick v. Shoemake, 90 S.W. 3d 566, 569 (Tenn. 2002)*.

On cross examination, Mr. Canada was questioned about a posting that his current girlfriend, Breanna, had allegedly made that exposed the top of her breasts. When Mr. Hamblen asked what she allegedly exposed, Mr. Canada said “I haven’t seen the photo you are referring to, but it’s possible.” (*T.E., p. 173 line 2 through p. 174 line 11*).

If there ever were any such photograph, it was never offered into evidence. It does not appear from the record that it was ever shown to the witness, but it is clear that it was never made an exhibit, thus no objection was made, nor should one be required.

In making its preliminary findings, the court erred in considering what it referred to as alleged Instagram photos of the Mr. Canada's girlfriend (*T.R.*, vol 1 p. 34). Since the photograph or photographs were never offered into evidence, they were outside of the record and should not have been considered by the court.

Issue II. Whether the trial court erred in considering a video, which was never offered into evidence, and concluding from this video that there appeared to be drinking and smoking of certain substances. (The court apparently assumed the drinking was alcohol, but assumed the substances being smoked were cigarettes, see *T.R.*, vol 1, p. 35). This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley*, 418 S.W.3d 1,16 (*Tenn.* 2013); *Kendrick v. Shoemake*, 90 S.W. 3d 566, 569 (*Tenn.* 2002).

On cross examination, Mr. Canada was questioned about a party he attended in Illinois. Miss Swift's attorney, Mr. Hamblen, said "I have a video I'm going to show you in a moment." Mr. Canada denied that there were any gang signs flashed (at the party) or any marijuana, and denied that he did any drinking at this party. He described it as a housewarming party, stating that he did bring Brayleigh to the party, but that she was in a different part of the house upstairs and explained that they were staying in a hotel and did not stay for the whole party. (*T.E.*, p. 165 line 11 through p. 171 line 16). At one point, counsel for Mr. Canada inquired of the court: "Has it been admitted yet?" (*T.E.*, p. 169, line 16). Counsel for Miss Swift finally just said: "Okay. The Judge can do whatever he wants with it" (*T.E.* p. 171 Lines 15-16), but the video was never entered into evidence or made a part of the record. No objection was ever made, but none should be required for a piece of evidence that was never offered.

Notwithstanding the above, in its ruling the court referred to a video of the Father at a

housewarming party (*T.R., vol 1, p.35*), but, as we have explained, this video was never offered into evidence or made a part of the record, and, therefore, should not have been considered by the court in its ruling.

Issue III. Whether it was error for the court to weigh as evidence the circumstances surrounding the entry by the parties into their initial parenting plan or to consider why it was needed (see *T.R., vol 3, pp 1-10*) where that plan was sworn to and subscribed by both parties on March 20, 2017, under penalty of perjury, and where both parties appeared in court and submitted the plan to a different judge for approval and where the plan was then approved by that Judge on March 23, 2017, and no appeal taken therefrom. The initial parenting plan was res judicata as to such issues prior to its entry. No objection was made at the time the testimony was made, but the court's use of the evidence effected the Appellant's substantial right for the court not to consider such evidence in arriving at this ruling and more probably than not affected its judgment or resulted in prejudice to the judicial process. *Tenn. R. App. Pro. 36(b)*. This is an issue of law and review is de novo without any presumption of correctness. *Lovlace v. Copley, 418 S.W.3d 1,16 (Tenn. 2013)*; *Kendrick v. Shoemake, 90 S.W. 3d 566, 569 (Tenn. 2002)*.

The court pointed to "two separate incidents" it used in assessing the credibility of the Father. The first was his presentation to the mother of a proposed permanent parenting plan (*see T.R., vol 1, pp. 1-10*) while they were still residing together (*T.R. vol 1, p. 35*), and the second was his (the Father's) statement that he went to the Mother's home and wanted the police report to include that the Mother's boyfriend was present. The court referred to this as a "pattern of manipulation" or "pattern of behavior that caused a disruption to the parenting time of the petitioner." (*T.R., vol 1, pp.38-39*).

As relates to this **Issue III**, it is the court's consideration of the circumstances prior to and leading up to the parties' entry into their initial permanent parenting plan that we say was error because it would necessarily involve consideration of facts that should be considered res judicata for purposes of fact finding in this trial. We address this now and will address the second incident of what the court described as part of this "pattern of manipulation" later in our brief.

On March 20, 2017, the parties signed a proposed parenting plan before Roger Shirley, the Lake County Juvenile Court Clerk. On March 23, 2017, the Honorable Danny Goodman, Judge of the Lake County Juvenile Court at the time, entered an order stating the parties have been before the Court and from an examination of the record it appeared that the Father, Bradley S. Canada, had voluntarily acknowledged paternity of the child, that the Father and Cekita Swift had reached an agreement regarding joint custody of the parties' child, and the court incorporated a parenting plan. The plan provided for equal time with the child. (*T.R., vol 1, pp. 1-10*).

Page nine of this parenting plan provided in **bold** print above the Mother's notarized signature the following: "**Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct.**" (*T.R., vol 1, p. 9*).

Obviously, the initial parenting plan had the cautionary language in bold print about the plan being submitted in good faith and that they declared under penalty of perjury that it was in the child's best interests. (*T.R., vol 1 p. 9*). A judge speaks through his orders (*Alexander v. JB Partners 380 S.W.3d 772, 777*), and this order said that they both appeared before Judge

Goodman (the juvenile court judge at the time) to request approval of the plan, and Judge Goodman approved the plan. (*T.E.*, pp. 36-37). The voluntariness of the plan at its time of entry should be res judicata. The plan is res judicata to anything that happened prior to its entry. (See the discussion in *Armbrister v. Armbrister* 414 S.W.3d 685,699 (Tenn. 2013).

“They (decrees) are final for the purpose of execution and appeal; and we think they are final as res adjudicata upon the facts then existing. If such decree should be regarded merely as an interlocutory order, without any force or effect as an adjudication, and if either party, as often as he chose, could relitigate the question of custody or support upon the same evidence and the same facts, great would be the inconvenience to the litigants, the courts, and the public; and any trial of these issues would be idle ceremony, since it would settle nothing,” *Hicks v. Hicks*, 26 Tenn. App. 641, 641, 651-652 (Tenn. App.), 176 S.W.2d 371, 375 (1943).

Hicks was obviously decided long before the enactment of T.C.A. §36-6-106, and in this case the prior order was a consent order, but the principle of res judicata is still crucial in weighing the propriety of the court considering allegations about the voluntariness or propriety of the decree when on its face it was entered into voluntarily, under oath, was signed and notarized by both of the parties days before it was then presented by the parties to Judge Goodman for his approval. The plan is res judicata to anything that happened prior to its entry and approval by Judge Goodman. Judge Cook is in no position to second guess Judge Goodman. Mr. Canada should not have allegations about the circumstances surrounding its entry or the need for it at that time held against him. If there was an issue about the necessity or voluntariness, Miss Swift should have raised those issues with the court prior to its approval of the plan.

Additionally, there is no substance or logic in the court’s disparagement of Mr. Canada regarding the entry of the initial parenting plan, which we discuss below under the heading “Pattern of Manipulation.”

Issue IV. Whether the trial court erred in failing to find that the preponderance of the

evidence established that a modification of custody to establish the Appellant as the primary residential parent was in the child's best interests. (*Tenn. R. App. P.13(d)*). The trial court's finding that it was not in the child's best interest to modify custody to the Father was an abuse of discretion, because the court reached an illogical result, resolved the issue of the child's best interest based on a clearly erroneous assessment of the evidence, and/or relied on reasoning that caused an injustice. *Gronsewski v. Gronsewski*, 350 S.W.3d 99, 105 (*Tenn.2011*). In a non-jury case such as this, appellate courts review the trial court's factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. *Kelly v. Kelly*, 445 S.W.3d 685, 691-92 (*Tenn. 2014*); *Tenn. R. App. P. 13(d)*.

We discussed above, under **Issue III**, the error of law aspect of the Judge's finding of a "Pattern of Manipulation," but there remains an independent aspect of this error based on the court's reasoning and its findings of fact. The court used this finding of a "pattern of manipulation" in its assessments of the factors (2), (8), (11), and (15) from T.C.A. § 36-6-106(a). Rather than repeat it word for word under every factor to which the Judge applied this finding of a "pattern of manipulation," we address the factual nature of the error in Judge Cook's reasoning and his findings of fact below under the heading "Pattern of Manipulation," and we will reference the discussion below as we examine each factor.

"Pattern of Manipulation"

In its ruling, the Court stated that, in assessing the credibility of the Respondent/Appellant, the Court was "alarmed" by two separate incidents. The first being a presentation of a permanent parenting plan to the Petitioner while the parties were living together with the minor child stating, "The Court cannot reach an understanding of why the Respondent presented the Petitioner with

a parenting plan to sign with allocated times of every other week visitation and custody where the Petitioner was listed as primary custodian.” The Court “commended” the Father for acknowledging paternity of the child and the court recognized that the plan granted primary residential parent status to the Mother, but, otherwise, put no significance in either of these provisions in the initial plan in its analysis. (T.R., vol 1, p.37). Notwithstanding the fact that the parties were unmarried and experienced considerable difficulties - as was discussed above in our Statement of Facts under the heading “Relational Difficulties and Disputes” - each having had children from past relationships and prior children, in its ruling, the Court inquired as to “why would there be a need to establish a parenting schedule?” (T.R., vol 1, pp. 35-37). The Court then somehow leveraged this question of the need for a parenting plan into part of a pattern of manipulation by the Father. The plan established Mother as the primary residential parent and provided for equal parenting time, and the plan was approved by a different judge, Judge Danny Goodman; nevertheless, the court concluded that the initial plan agreed to by the parties established a favorable result for the Appellant/Father. (*T. R., vol 1, p. 38*).

Unwed parents should be encouraged to enter into parenting agreements. These parties were unmarried, which in itself represents a lack of stability. The plan gave Miss Swift primary residential status. Had Miss Swift left Mr. Canada, under Tennessee Law, all rights would have been with her, until a court somewhere made a determination of Mr. Canada’s rights (*TCA § 36-2-303*). Each of the parties had experience with prior children from other relationships. Miss Swift got no support from her other daughter’s (Caedan’s) father, and there was no evidence that Caeden’s father had any involvement with her at all. (*T.E. p 93 line 17 -21*).

The proof did not support the court’s finding that the parties were living harmoniously or that they were a “happy family” as he held in its ruling. (*T.R., vol 1, p 38*; -- Please see our

summary of facts above under our heading “Relational Difficulties and Disputes.”) There was testimony about numerous arguments, overdrafts, disputes over bank accounts, physical violence, the police were called at times, and that there were good days and bad. (*T.E.*, pp. 38-39; *T.E.* pp. 138-139; *T.E.*, p. 61 line 18 through p.62, line 8; *T.E.*, p 140 line 2-22). The fact that the parties were living together for a time, is something certainly a court could consider in setting the terms of a parenting plan, or a modification of a plan, and an equal division of time was rational given that in fact they were residing together when it was entered.

The Tennessee Legislature found that “a different approach to dispute resolution in child custody and visitation matters is useful,” when it adopted the use of parenting plans in Tennessee, finding also a “need for stability and consistency in children’s lives.” (*T.C.A.* § 36-6-401.) The entry by the parties into their initial plan added that stability and consistency, that would have been totally absent unless and until some court in some way intervened. It is ironic that, on the one hand, the trial court did not see a need for the plan at the time it was agreed to, but, on the other hand, ultimately upheld the plan that it earlier found distasteful.

The other incident that, according to the judge, gave the Court “further cause to establish a pattern of manipulation on the part of the Respondent” was an occasion in April of 2021 when the Respondent came to the home of the Petitioner and then returned banging on the window and asking to see their minor child. According to the court’s ruling, what disturbed the court was a statement by the Respondent that he wanted any police report taken to include the fact that the Petitioner’s boyfriend, Akins, was present at the residence. Somehow the court found this is a “pattern of behavior” that caused a disruption to the Petitioner’s parenting time. (*T.R.*, vol 1, p. 38-39). There was no testimony from any police officers concerning the incident.

As to this second part of what the court described as a “pattern of manipulation,” Mr.

Canada's motives in checking on the welfare of his daughter that night in April of 2012 were well supported by the facts. In its evaluation of the incident of April of 2021, where Miss Swift was keeping early morning company with her boyfriend Mr. Akins, the court failed to consider that, in fact, a convicted felon, James Sherrill, had been naked in her home. (*T.E.*, p 77 line 7 through p. 78 line 25; *T.R.* vol 3, pp. 2-4, trial exhibit #2). Moreover, photographs had been introduced concerning Mr. Sol Akins which should give any father alarm about his presence with his daughter late at night. (*T.R.*, vol 3, pp 6-6, trial exhibit #3).

Given that Mr. Canada had prior knowledge of Miss Swift cheating on him with a convicted felon, James Sherrill, and the other "risky behavior," a finding that his behavior on that night in April of 2021 was manipulative or disruptive rather than a bona fide concern for his daughter's welfare is against the preponderance of the evidence. Just as an aside, the fact that he voluntarily gave her \$5,000 to get herself into a new car, even though he had no legal obligation to do so, is a striking indication that he is not a manipulative individual.

This finding of a "pattern of manipulation" by the court is illogical, is not supported by the record, and results in an injustice to Mr. Canada. In assessing the incident in April of 2021, the court completely failed to consider the discrepancy between Mother's actual conduct and the language in her own proposed parenting plan which prohibited paramours during overnight visitation. (*T.R.* vol 1, p14.) The court's findings do not take into account Mr. Canada's sincere statements about his caution and desires in raising his children in a healthy environment (*T.E.*, p. 147 line 23 through p. 151 line 12) or that Miss Swift had admitted to having multiple boyfriends who were convicted felons including one boyfriend who was a naked in her home and who had multiple felony convictions. (*T.E.*, p. 89 line 13-18; *T.E.*, p. 77 line 21 through p. 79 line 13; *T.R.*, vol 3, p2-4, trial exhibit #2). The record establishes that Mr. Canada only

returned to Miss Swift's home at the later hour because he was advised that Miss Swift had "called the cops." Rather than flee, which might be taken as an indication of guilt, he returned so that the officers would know why he was there and hopefully make a record of Mr. Akin's presence (*T.E.*, pp. 141-144).

Nor did the court consider that Mr. Canada had brought to the court's attention in October of 2020 that his daughter reported seeing a naked man in her mother's home. (**Note: This information, regarding the report by the daughter to the Father concerning a naked man in her mother's home, is contained in a sworn petition for emergency custody which was filed with the court on 10-20-21, but was not included in the record. This sworn petition was referenced in the trial court's judgment, but no copy was included in the technical record. (*T.R.*, vol. 1, p. 49). A motion to supplement the record with this information has been filed, was denied, but has been reasserted.**)

The court spent no time in making any assessment of Miss Swift's credibility though she misled or manipulated Mr. Canada on where she would register their daughter for school, and put down a false address on the application, all against the terms of the existing parenting plan. (*T.E.*, p. 114 line 11 through p. 115 line 25). She tried to mislead the court into thinking that the \$5,000 Mr. Canada gave her was to reimburse her for payment she had made on a car that she only had possession of for approximately two months. Compare her testimony on this point (*T.E.*, p. 94 line 8 through p. 95 line 16) with the unrefuted testimony of Mr. Canada on the same issue where he explains that they had only had the car from January of 2020 to March of 2020 when he took it from her and gave her \$5,000 for her to get her own car. (*T.E.*, p. 154 line 8 through page 155 line 12)

It was Miss Swift who, from the evidence, lacked credibility. She made claims of

physical violence that were rebutted by Mr. Canada, and it was, in fact, Miss Swift who gave Mr. Canada's address to one of her old boyfriends, convicted felon Chris Bonds, (*T.E.*, p. 89, line 13 through p. 91, line 16), and who sought out the help of family member James Mathews to do harm to Mr. Canada, texting James Matthews this:

"I wish you would beat that bitch boy ass. Man, I never knew how much of a bitch he is. I been trying to make shit work out with him so for so long, and I'm tired of MF trying to make me feel like I ain't nobody because his entire life he has already been around nobody." (*T.E.*, p. 107 line 17 through p. 108 line 15).

We now will examine the "best interest factors," from the evidence as it relates to **Issue IV**.

Best Interest Factors OF T.C.A § 36-6-106(a)

The preponderance of the evidence does not support the court's finding under it best interest analysis, and we will now examine each factor under the evidence. Because the court used erroneous findings in reaching what it called a "pattern of manipulation" by the father to support its findings under factors 2, 8, 11 and 15, we will simply make reference to our analysis above under the heading "Pattern of Manipulation," rather than repeat it word for word in response. Additionally, rather than repeat the facts which support our position, we may simply make reference to those headings under our above STATEMENT OF FACTS which are pertinent.

1. **The strength nature and stability of the child's relationship with each parent, including whether one parent has performed the majority of the parenting responsibilities relating to the daily needs of the child:**

Factors #1 and #2 of *T.C.A. § 36-6-106(a)* make reference to the term "parenting responsibilities." *TCA § 36-6-402* defines "parenting responsibilities" to mean those aspects of the parent-child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. Parenting responsibilities, the establishment of which is the objective of a permanent parenting plan, include:

1. Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development;

2. Providing for the child's physical care, including attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

3. Providing encouragement and protection of the child's intellectual and moral development, including attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

4. Assisting the child in developing and maintaining appropriate interpersonal relationships;

5. Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

6. Providing any financial security and support of the child in addition to child support obligations. (*TCA § 36-6-402*).

The only testimony in favor of Miss Swift that in any way relates to her parenting ability was her statement: "I just – I just did my motherly duties. I mean, I –I---I fed her; bathed her – when – when she was sick, I would nurture her; I would attend the – the – the –I –I –I was at the doctor's visits." (*T.E., p. 31 lines 8-12*). When Mr. Canada was cross examined, he testified that when they were together, she was involved in taking care of Brayleigh, and he did not have any complaints about the way she took care of Brayleigh. (*T.E., p 178, lines 11-24*). If you examine the entire record in this case, that is all you will find regarding Miss Swift on this topic.

Miss Swift never expressed her love or affection for the child, she did not discuss any activities she did with the child or her plans for the child's future. It was apparent from the evidence that she is completely reliant on her mother to watch her children on Monday night, Tuesday night, Wednesday night and Thursday night while she is at work. (*T.E.*, pages 63-66)

Mr Canada testified that when he and Miss Swift lived together, he also cooked and cleaned and took Brayleigh to the doctor such that Miss Swift did not do these things exclusively. (*T.E.*, p. 152 line 22 through p. 153, line 6). He testified to taking Brayleigh on trips, going hiking, going to the public library, and playing games. He described the times when he had both of his children as very special and that he always tried to plan something special during those times. (*T.E.*, p. 155 line 19 through *T.E.* p. 156, line 16).

Rather than spend special time with her children, Miss Swift's excursions included trips to a resort in Florida, to Nashville and to Beale Street were with her boyfriends and people other than her children. (*T.E.*, pp. 117-119; p. 85 -p. 88 line 24) There was no proof that Miss Swift took the child to church after the parties' separation, yet Mr. Canada testified he takes Brayleigh to his church every Wednesday night, Sunday and on other occasions. (*T.E.*, pp. 152-153).

Mr. Canada's mother, Jennifer Mays testified that Bradley is a "great father" who "loves his kids" and is "very involved in everything his kids do. She testified that he spends his time with his children, that he is cautious with them, that he is very structured and a very clean person, who cooks and cleans and helps with reading and writing and plays board games. (*T.E.*, p. 125 line 6 through p. 127. Line 10).

Madison Uzzle confirmed that Bradley takes Brayleigh to church, and described a "horse camp" that Bradley took her on. He described Bradley as a very organized person who puts his children first. (*T.E.*, p. 128 - 129).

Gary Mason testified that Bradley is a responsible parent who tends to do things himself. He testified that Brayleigh loves her dad and described her as a “daddy’s girl.”

Serenity Canada, Bradley’s cousin, testified that Bradley is a great father who does for his children himself, rather than relying on others, sating “his kids are his main priority.” They had taken their children together to Sky Zone in Jackson. (*T.E.*, p136, line 12 through p. 137, line 21).

The mother of Bradley’s son Carter, Elizabeth Cook, testified that Bradley was an “outstanding father” who “goes above and beyond for his kids.” She gave him a grade of “A” for co-parenting. (*T.E.*, p. 130 line 24 through p. 132 line 9).

- 2. Each parent’s past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent/child relationship between the child and both of the child’s parents, consistent with the best interest of the child. In determining the willingness of each of the parents to encourage and facilitate a close parent-child relationship between the child and both of the child’s parents, the court shall consider the likellhood of each parent to honor and facilitate court ordered parenting arrangements and rights and the court shall consider the history of either parent denying parenting time to the other parent in violation of a court order:**

In terms of past performance of parenting responsibilities, we reiterate here our points from factor # 1 and our summary from our Statement of Facts under the heading “Parenting Ability and Responsibilities.”

In this case, the only parent who had blatantly disregarded the terms and conditions of the unambiguous parenting plan was Miss Swift. As we developed in detail above, though she and Bradley had detailed discussion on enrolling Brayleigh in Dyersburg schools and the advantages of that, she unilaterally enrolled Brayleigh in the Tiptonville school, even lying on the application about her address. The trial court recognized this fact, but dismissed it because

he said “her responsibilities as a parent during her parenting time have not caused distress to the court.” (*T.R., vol 1, p 46*).

Rather than encouraging a close and continuing relationship, Miss Swift encouraged one of her relatives to “beat that bitch boy ass,” and gave out Mr. Canada’s address to a known convicted felon, Chris Bonds. The trial court correctly found that on one occasion Miss Swift left for a weekend to Beale Street and left the child with her mother. (*T.R., vol 1, p. 34*). She could have offered this time to Mr. Canada, but she did not. On the other hand, Mr. Canada testified that he was open to offering Miss Swift extra time that was not scheduled in his plan. (*T.E., p. 152, lines 14 – 21*).

We have discussed above what the court illogically referred to as a “pattern of manipulation,” and the court’s error in somehow finding that Mr. Canada had a lack of credibility, but, in the court’s analysis here, it somehow leverages that into a finding that the court did not have assurance of his willingness and potential for future performances of parenting responsibilities and also to facilitate and encourage a close parent and child relationship between the parties and the minor child.” We refer your Honors to our discussion above under the heading “Pattern of Manipulation” on this point.

3. Refusal to attend a court ordered parentage seminar may be considered by the court as a lack of good faith effort in these proceedings;

The court correctly found that Mr. Canada was the only parent to take and complete the parenting class.

4. The disposition of each parent to provide the child with food, clothing, medical care, education, and other necessary care;

In this case the mother has been in and out of work and has changed jobs a number of times. When she worked at Maple Ridge, she was fired for a “no show, no call.” She was supposed to report to work at 6:00 A.M, but shortly thereafter text a co-worker saying: “I am not coming in. I can’t deal with that place anymore (sad face emoji). Fuck it. Hell, I make more asking for money and it’s less stressful.” (*T.E., p. 100 line 14 though p. 103 line 9, and T.R., vol 3, p. 8-13, trial exhibit #5*) This type of attitude about work does not support the court’s finding. In fact, it shows just the opposite. It is far more honorable to work hard to support your children than to ask for handouts.

Between the time she and Bradley split up in late June of 2020 and the time of trial on June 9th, 2021, Miss Swift had worked at 5 different businesses, Senior Solutions, NSK, Wal-Mart, Maple Ridge, and, now, Alloy factory. (*T.E., p. 107, lines 2-16*).

Her preference of night life, going to questionable clubs where killings take place and trips with her boyfriend also mitigates against this finding. Miss Swift has demonstrated a yearning for things of a carnal nature. This mentality has already surfaced in the behavior of her seven-year-old daughter Caegan. (*T.R., vol 3, p. 1, exhibit one, video #1*).

From the evidence, Mr. Canada has demonstrated a more fatherly orientation with his children. To emphasize that, we reiterate some of the facts above under the heading “Parenting ability and Parenting Responsibility” and our analysis under factor #1 which favor Mr. Canada:

Mr. Canada testified about the impact of his work at correctional facilities and dealing with sex offenders on his level of caution with Brayleigh and who and what she gets exposed to. He stated “I’m very cautious with my children and who I allow my children to interact with, and that is simply because, I mean, while I may not be able to achieve it, I try to put nothing but good in and in result that at the end of parenting, they will be productive, contributing members

of society and will be able to maintain a healthy lifestyle.” He testified to investing in a cash value life policy to pay for her college education. He provides health insurance for his children and expressed that he loves “Brayleigh more than he loved himself.” Mr. Canada testified that he was raised by his grandmother without a lot of support from his mother or father, and that he wanted to “be that supportive parent so that my child can reach whatever potential she chooses to have. ... “I feel like it is my job as a parent to protect them.” Mr. Canada’s income is approximately \$3,600 per month. He is saving money for Brayleigh’s education and is remodeling a home in Obion, TN for them to live in. (*T.E.*, p. 147 line 23 through p. 151 line 12). Brayleigh has her own room in his present home and will have her own room in their new home in Obion. (*T.E.*, p. 156 lines 17-21).

5. The degree to which the parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing the parenting responsibility;

We reiterate and reassert here our argument from factor number “1” above as well as our summary of the facts under the heading “Parenting Ability and Parenting Responsibilities.” The Mother in this case likes to party. The record shows that she has taken some time away from parenting in order to satiate her own desires.

On the other hand, the evidence is clear from Mr. Canada and his witnesses that he puts his children first. There was no such similar testimony from any witness, including Miss Swift, about any priority given to her children.

6. The love, affection, and emotional ties existing between each parent and the child;

Again, Mr. Canada is the only parent who described his love and affection for his

daughter. Numerous of his witnesses confirmed that and some referred to Brayleigh as a “Daddy’s girl.” There was no testimony from Miss Swift or any witness of the love, affection or emotional ties between Miss swift and Brayleigh. We also refer your honors to our summary under factor number “1” above.

7. The emotional needs and developmental level of the child;

Here the trial court found that “the child’s familiarity in having a continuous and frequent relationship with both parents is in her best interest.” There is no evidence in the record from anyone establishing or supporting this conclusion. Does moving a child from “pillar to post” being at grandmother’s house overnight during the week nights and Mom’s on Friday through Sunday, build “familiarity”? Does Boyfriend with six kids of his own, leaving them and staying with Miss Swift on weekends with her children build the kind of familiarity that the court desires for this child? Is this the type of behavior that a court should encourage as being in a child’s best interest?

Of course, Tennessee Law has long recognized that it is beneficial for children spend time with both parents, but in this case the evidence mitigates against that as a baseline, and there is scant evidence to support the court’s conclusion that this factor favors both parties equally.

The trial court was not constrained to only adopt one proposed plan or the other. After a consideration of the best interest factors, the court could have fashioned his own parenting plan rather than follow either of those submitted by the parties. Miss Swift having boyfriends stay overnight is not looking after the emotional needs of her child. It is placing her needs and those of her boyfriend over that of the child.

The Father, on the other hand, testified in great detail to his desires and plans for her

education and for a healthy childhood. We refer your Honors to our summary of the facts under the heading “Parenting Ability and Parenting Responsibilities.”

8. Moral, physical, mental, and emotional fitness of each parent as it relates to their ability to parent the child;

The trial court here again wrongfully argued that what he called the treatment of the Petitioner (Mother) in implementing the original parenting plan and the Father’s behavior at Petitioner’s home in April of 2021, saying “it is not moral to manipulate outcomes.” We refer your Honors to our discussion of the facts under the heading “Pattern of Manipulation” above.

Additionally, this finding by the court, violates the principle of res judicata, is not supported by the record, and is based on fallacious logic and reasoning as we discussed above.

Even if the court believed that the pornographic video was known to the Father at the time of the entry of the initial parenting plan, the Mother’s continued lewd behavior should have been considerable weight here, given her history. We ask this court to compare the video in trial exhibit #6 with video #1 of trial exhibit #1, and to weigh Miss Swift’s attempt to whitewash not only her behavior, but downplaying the behavior of her older daughter in the video. (*T.R., vol 3, p. 1, trial exhibit #1, video 1 of 2, and T. R., vol. 3, p. 14, trial exhibit #6*). Any finder of fact must weigh these in light of the Mother’s outrageous past behavior in prostituting herself to make a pornographic video. (*T.R., vol 1, p.1, trial exhibit #1, video #2*). We argue that, while you cannot “un-ring a bell,” her history cavorting with convicted felons (Chris Bonds and James Sherrill), going to nightclubs where a man was killed, having her boyfriend stay the night when her children are present, her enjoyment of the “night life” and Beale Street, and her public behavior in “twerking” for her boyfriend at a Florida resort are

indications that she has not changed to any important degree.

9. The child's interaction and relationships with siblings, other relatives, and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

Here the trial court gives great credit to Miss Swift's mother for helping through the week allowing Miss Swift's children to stay overnight with her, but there was no testimony from her mother about her continued willingness to do this or how smoothly it was presently working. In fact, there is no testimony from Miss Swift's mother at all. Though Miss Swift has an older daughter, Caegan, there was no testimony about Caegan's relationship with Brayleigh. On the other hand, numerous witnesses testified that Brayleigh and Mr. Canada's son got along well, and the proof established that Mr. Canada had taken numerous family trips with his daughter, and that they were very active in their church activities.

10. The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

The child in this case was 4 years old at the time of trial. The trial court used the same reasoning as it had in factor number 7 to find that this factor favored both parties equally. We reiterate here the points made in our arguments regarding factors 1 and 7 above in response.

11. Evidence of physical or emotional abuse to the child, to the other parent, or to any other person;

The court found that this factor did not favor either party. However, in arriving at this result, the court somehow considered what it called the "manipulative and manufactured

acts” by the Father regarding the pornographic video, and his denial of the video’s existence in reaching this conclusion. This is so illogical as it turns the tables on all rational thought, and we again refer your Honors to our discussion above under the heading “Pattern of Manipulation.”

Although the pornographic video may have been made a time ago, it may have been more recently made, as there is no objective evidence of when or where it was made. It is logical that Miss Swift would not want Mr. Canada to know of the video. Nevertheless, the behavior depicted is debased and disgusting. How is it that those who might care for Miss Swift and who do care for her child are somehow behaving immorally by bringing it to the court’s attention in a child custody battle where the overarching focus is the best interests of the child (rather than Miss Swift’s image or feelings)?

12. The character and behavior of any person who resides in or frequents the home of a parent and such persons’ interactions with the child;

Because of Miss Swift’s relationship with James Sherrill, the court held that this factor “slightly favored the Respondent.” Here we offer the photographs of Miss Swift’s current boyfriend, who is as “live in” as he can be given that she works nights 4 nights a week, and he stays there overnight on weekends. (*T.E.*, p. 48, line 24 through p. 53, line 11). Mr. Akins did not testify at trial. Little is known about him, yet the trial court somehow elevated Mr. Akins and his associates to the status of “gentlemen.” (*T.R.*, vol 1, pp. 33-34). Does a gentleman publish such a photo for his Facebook profile or consort with individuals such as those demonstrated in trial exhibit #3? (*T.R.*, vol 3, pp. 5-6, trial exhibit #3). Does a gentleman, with 6 children of his own, shack up with his girlfriend on weekends?

13. The reasonable preference of the child, if the child is 12 years of age or older;

Obviously, given the child's age, the court correctly found that this factor does not apply.

14. Each parent's employment schedule, and the Court may make accommodations consistent with those schedules;

This may be the most obvious erroneous finding by the court. We refer your Honors to our summary under "Employment History and Work Schedules" above. Mr. Canada works from 8:00 A.M. to 4:30 P.M. His hours are flexible, and he works a lot from home. (*T.E. p 144, line 9-20*) Miss Swift, on the other hand, works nights 4 nights per week, but has Friday night through Sunday night off. (*T.E. pages 51-52*). A parent needs to be home with their children at night, to put them to bed at night, help them with their homework and feed them dinner. They need to be able to wake with them in the morning, get them breakfast and ready for school. We recognize that this is not always possible, but an examination of the parties' work schedules clearly demonstrates that Mr. Canada's schedule puts him in a far better position to care for Brayleigh.

15. Any other factors deemed relevant by the court.

Here the court again relied on its theme of "manipulation" which is not supported by the evidence or the law, as we have argued in detail above, and we refer your Honors to our discussion under the heading "Pattern of Manipulation."

We wish to point out that the court blatantly failed to consider the significance of Mr. Canada's track record of parenting apart with his son's mother, Elizabeth Cook. She and Bradley have a son together, Carter. They were never married, but she testified that Bradley was an "outstanding father" who "goes above and beyond for his kids." She gave him a grade of "A"

for co-parenting. (*T.E.*, p. 130 line 24 through p. 132 line 9).

This is empirical “real-life” evidence of an “A” grade in co-parenting. What kind of co-parenting record does Miss Swift have with her older daughter Caegan’s father? There is nothing in the record, one way or the other, about that, but Caegan’s behavior in the video (*T.R vol 3, p. 1, exhibit one, video one*) at only seven years of age is a striking example of where a lack of supervision and parental guidance can lead.

Our code tells us more specifically what parenting means. We have set forth in our analysis of factor #1 the meaning of parenting responsibilities as defined by *T.C.A § 36-6-401*, and those are useful here in weighing the importance of Elizabeth Cook’s testimony.

What better evidence could there be of an individual’s capacity to parent apart than empirical evidence such as that from Miss Cook? This testimony completely exposes the fallaciousness of the trial court’s reasoning that Mr. Canada is somehow manipulative or untruthful. If any of that were true, Miss Cook’s testimony, which went unchallenged, would have shown it. This should have been the “other factor” considered by the court.

CONCLUSION

In this case the court erred in considering the nature of alleged social network photographs when no such photographs were offered into evidence and were, therefore, outside the record. The court also erred in considering a video from a party attended by the Appellant and drawing conclusions or inferences from this video when the same was never offered into evidence.

Where the parties initial parenting plan was sworn to and subscribed by both parties under penalty of perjury, and where three days later both parties appeared in court for that plan’s approval, and where the plan was then approved by the judge, the trial court erred in

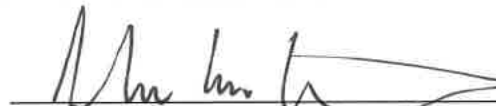
considering allegations of “manipulation” in the circumstances prior to the entry of that plan, and it was error to construe them to be part of a “pattern of manipulation.”

The court’s decision was not supported by a preponderance of the evidence, was illogical, given the proof presented by the Father, and, frankly, the lack of proof presented by the Mother, and was based on a clearly erroneous assessment of the evidence. The court’s illogical reasoning and erroneous assessment of the evidence resulted in an injustice under the facts and the law in this case.

WHEREFORE, the Appellant prays that this Honorable Court reverse the decision of the trial court, establish the Father as the primary residential parent and approve his parenting plan as proposed.

Finally, if it is within this Honorable Court’s discretion to award attorney fees on this appeal, we respectfully request he be awarded those, and that the costs of this appeal be assessed to the Appellee.

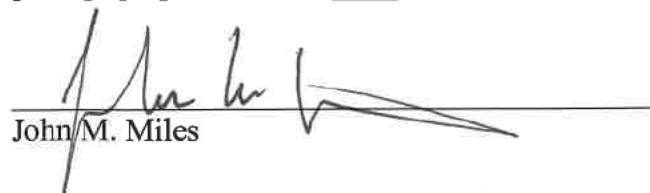
Respectfully submitted,



John M. Miles, BPR #013345
Attorney for Defendant
511 S. Third Street
P.O. Box 8
Union City, TN 38281
(731) 885-1234
mileslaw@johnmmiles.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Cekita Swift, 206 Doyle Street, Dyersburg, TN 38024, via U.S. Mail, postage prepaid, this the 9 day of February, 2022.



John M. Miles

Appendix A

COPY

IN THE JUVENILE COURT OF LAKE COUNTY TENNESSEE

IN RE.:

BRAYLEIGH CLAIRE CANADA

A MINOR CHILD

CEKITA L. SWIFT,
PETITIONER,

VS.

BRADLEY S. CANADA,
RESPONDENT.

LAKE COUNTY JUVENILE COURT
FILED

DATE 10/21/20 TIME 10:45 AM _____ PM
DEBORAH BEASLEY JUVENILE CLERK

BY  D.C.

DOCKET NO.: 17-000045

SWORN PETITION FOR EMERGENCY CUSTODY

COMES NOW, Bradley S. Canada, the Father of the child in this matter and in support of this petition states:

1. The Mother, Cekita L. Swift, is the mother of another child, a female named Caegan Swift, whose date of birth is January 26, 2013, and whose age is 7. Recently, apparently with the assistance of the child's mother, she posted a revolting video on TikTok of this little 7 year old child "twerking" and behaving in a manner that would only be appealing to a pedophile.

2. Even more disturbing is the fact that the Mother in this case recently published on the internet a video of herself engaging in the most disgusting and debasive behavior in what can only be described as a pornographic video where she engages in illicit and perverted sex acts with a male individual whose identity is unknown to the Father.

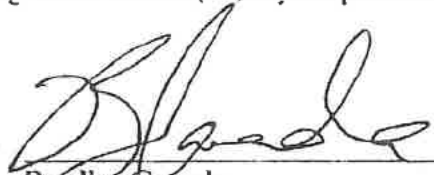
3. Finally, the child has reported to the Father that she has seen a naked man while she was in the care, custody, and control of the Mother.

4. A copy of the two disgusting, revolting, and debasive videos is included in the jump drive attached to this petition as **Exhibit A**.

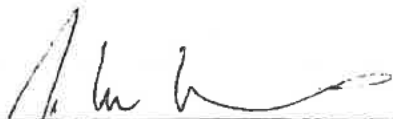
5. The Father makes this sworn petition all of which is based on his best knowledge, information, and belief.

WHEREFORE, PREMISES CONSIDERED, Mr. Canada prays:

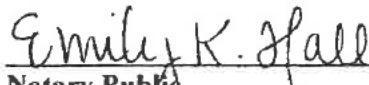
1. The Court award him immediate, emergency, temporary custody of the parties' minor child, and afford the Mother a hearing within fifteen (15) days as provided by law.


Bradley Canada

Respectfully submitted,


John Miles, BPR# 013345
Attorney for Father
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Sworn to and subscribed before me this the 21st day of October, 2020.


Notary Public

My commission expires: 10/22/2022



Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Honorable David Hamblen, 303 W. Church St., Union City, TN 38261, via hand delivery, this the 21 day of October, 2020.



John Miles

IN THE JUVENILE COURT OF LAKE COUNTY TENNESSEE

IN RE.:
BRAYLEIGH CLAIRE CANADA
A MINOR CHILD

LAKE COUNTY JUVENILE COURT
FILED
DATE 10/21/20 TIME 11:00 AM PM
DEBORAH BEASLEY JUVENILE CLERK
BY [Signature] D.C.

CEKITA L. SWIFT,
PETITIONER,
VS.
BRADLEY S. CANADA,
RESPONDENT.

DOCKET NO.: 17-000045

ORDER FOR EMERGENCY CUSTODY

CAME TO BE HEARD ex parte on the 21st day of October, 2020, on the sworn Petition for Emergency Custody filed by the Respondent, Bradley S. Canada, and the same being well taken the Court finds that custody shall be and is now placed with the child's Father, the Respondent, Bradley S. Canada, pending further orders of this Court.


The Mother, pursuant to the statute, shall have the right to a full hearing within fifteen (15) days of this order.

ENTERED this the 21st day of October, 2020.

[Signature]
Judge

STATE OF TENNESSEE, LAKE COUNTY
I, the undersigned Youth Services Director, do hereby certify that this is a true and correct copy of the original of this file as it appears in the Juvenile Court Records Office in Lake County, Tennessee in Book _____ Page _____
this 21 day of October 2020
[Signature]
LAKE COUNTY JUVENILE COURT

Approved for entry:



John Miles, BPR# 013345
Attorney for Father
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Honorable David Hamblen, 303 W. Church St., Union City, TN 38261, via hand delivery, this the 21 day of October, 2020.



John Miles

IN THE JUVENILE COURT OF LAKE COUNTY, TENNESSEE

IN RE: BRAYLEIGH CLAIRE CANADA
A child under eighteen years of age

CEKITA L. SWIFT,
PETITIONER,

-VS.

NO.: 17-000045

BRADLEY S. CANADA,
RESPONDENT.

ANSWER

Comes now the mother and for answer to the Sworn Petitioner for Emergency Custody states as follows:

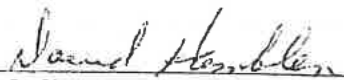
1. The mother admits that she has a child, Caegan Swift, who is seven (7) years old. The mother adamantly denies that she assisted the child in assisting a dance video on TicTok. The mother admits that the dance video posted by this child, without the help of the mother, was inappropriate and in fact she and the Respondent, Bradley Canada, disciplined the minor child for doing so. The mother affirmatively states that the video was taken at the maternal grandmother's home without the knowledge or assistance of the mother or the Respondent, Bradley Canada, and the child has been disciplined for that behavior.
2. The mother adamantly denies that she recently published on the internet a video of herself engaging in pornographic sexual acts. The mother admits that ten years ago, when she was twenty-two (22) years ago, and before the birth of either of her

children, engaged in a pornographic video for which she was paid for her services. The mother affirmatively avers that Bradley Canada has knowledge of this video, and has had knowledge of it for seven or eight (7-8) years and only used this video to falsely and fraudulently obtain emergency custody of their minor child.

3. The mother adamantly denies that the minor child has seen her with a naked man and states that it was only after the father of their child was rebuked and denied the ability to spend the weekend with the mother on October 16, 2020, that he brought these charges against her.


WHEREFORE the mother moves that the Court rescind it's order of emergency custody and to reinstate custody to the mother and allow the Court to adjudicate the petition filed by the mother to modify the parenting plan.

Respectfully submitted,


David L. Hamblen BPR: 010234
Attorney for Respondent
303 W. Church Street
Union City, Tennessee 38261
731-885-5555

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to John Miles at P.O. Box 8, Union City, TN 38281 on this the 3rd day of November, 2020.


David L. Hamblen, Attorney

IN THE JUVENILE COURT OF LAKE COUNTY TENNESSEE

IN RE.:

BRAYLEIGH CLAIRE CANADA

A MINOR CHILD

LAKE COUNTY JUVENILE COURT
FILED

DATE 2/7/22 TIME AM 2:00 PM
DEBORAH BEASLEY JUVENILE CLERK

BY [Signature] D.C.

CEKITA L. SWIFT,
PETITIONER,

VS.

DOCKET NO.: 17-000045

BRADLEY S. CANADA,
RESPONDENT.

ORDER RESCINDING ORDER FOR EMERGENCY CUSTODY

CAME TO BE HEARD on the 4th day of November, 2020, on the sworn Petition for Emergency Custody filed by the Respondent, Bradley S. Canada, and the Answer of the Petitioner, Cekita L. Swift, statements of counsel, testimony of both parties, from all of which it appeared to the Court and the Court found:

1. The conditions under which the Court granted the Father's order for emergency custody do not persist and there is no continuing risk of immediate harm to the child.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Order for Emergency Custody is rescinded and the parties shall revert to their weekly visitation schedule until a full and final hearing in this matter.


STATE OF TENNESSEE, LAKE COUNTY
The undersigned Youth Services Officer, do
hereby certify that this is a true and correct copy
of the original of this instrument filed a record in
the Records Office in Tiptonville, Lake County,
Tennessee in Book _____ Page _____
Date 7 day of February, 2022
[Signature]
LAKE COUNTY JUVENILE COURT

ENTERED nunc pro tunc to the 4th day of November, 2020.




Judge

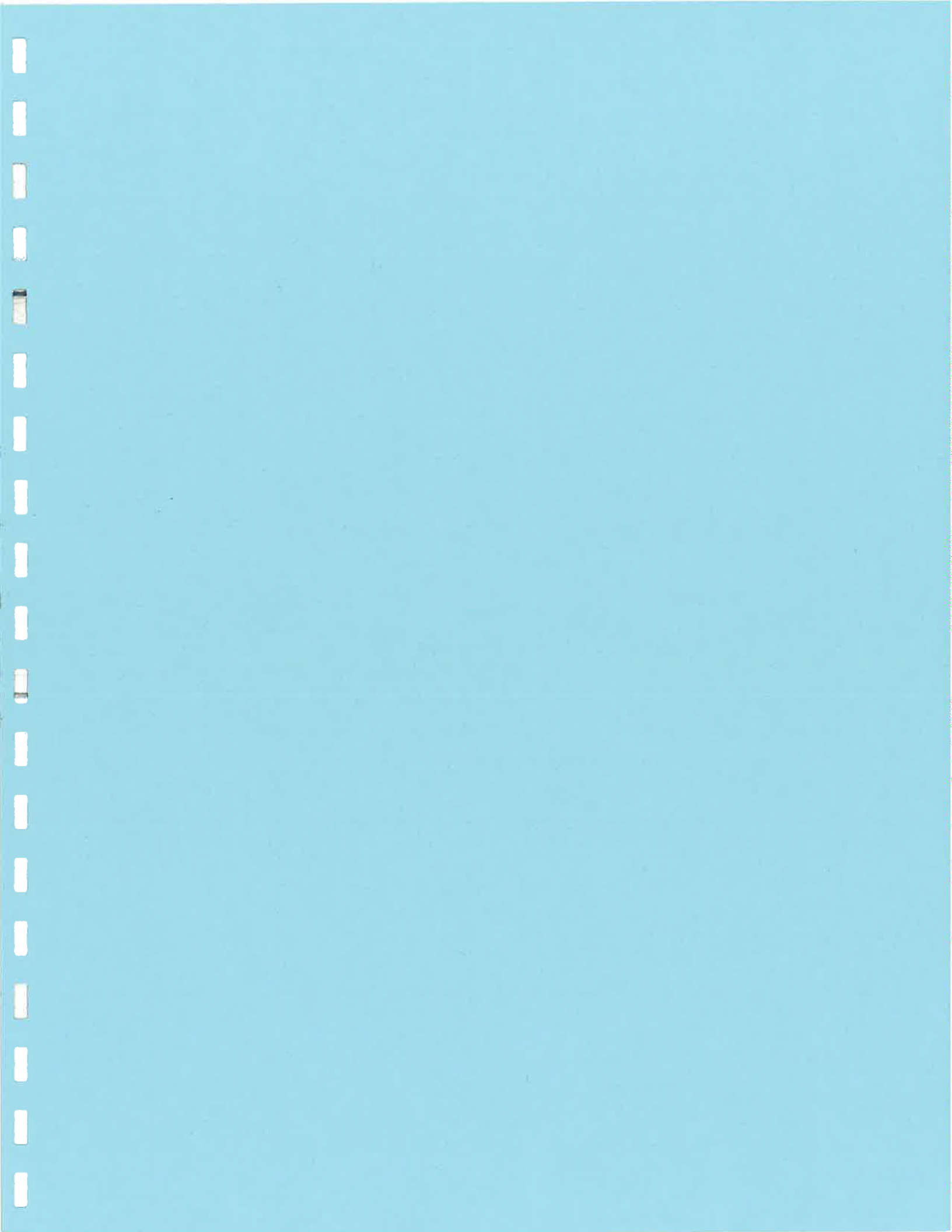
Approved for entry:



John Miles, BPR# 013345
Attorney for Father
P.O./Box 8
Union City, TN 38281
(731) 885-1234
mileslaw@johnmmiles.com



David Hamblen, BPR# 010234
Attorney for Mother
303 W. Church St.
Union City, TN 38261
(731) 885-5555
hamblenlaw@charter.net



COPY

IN THE 27th JUDICIAL DISTRICT OF THE STATE OF TENNESSEE
WEAKLEY COUNTY CHANCERY COURT

BETH OLIVER and)
JOE DOSS,)
)
 Plaintiffs,)
)
 VS.)
)
 KEITH A. KEMP and)
 PAM D. KEMP,)
)
 Defendants.)

Civil Action No.: 24414

WEAKLEY COUNTY
FILED
APR 22 2020
TIME 8:30am
Gregory A. Lowe
CLERK & MASTER

MOTION FOR PARTIAL SUMMARY JUDGMENT OF
PLAINTIFFS BETH OLIVER AND JOE DOSS

COME NOW the plaintiffs, Beth Oliver and Joe Doss, pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, and move the Court to enter summary judgment in their favor declaring that eight (8) of the eleven (11) parcels of real estate identified in paragraph 9 of the Complaint for Partition and Sale of Real and Personal Property filed in this case were owned solely by Mary Elizabeth Kemp ("Mary Kemp") at her death on January 1, 2018, and that she owned an undivided one-half interest in the other three (3) of the remaining eleven (11) parcels, as referenced therein, at the date of her death, and that her interest in all eleven of which properties were bequeathed equally to her three children, Beth Oliver, Keith Kemp and Lisa Doss, and are subject to partition or sale in this case to be divided between two of the original beneficiaries, Beth Oliver and Keith Kemp, and the husband and sole heir of the third beneficiary Lisa Doss, who has died since her mother Mary Kemp's death. The plaintiffs are entitled to a judgment as a matter of law on the issue

of the ownership of these parcels in three shares by the surviving beneficiaries of Mary Kemp's will, Beth Oliver and Keith Kemp, and by Joe Doss, the sole heir of the third will beneficiary Lisa Doss, because there are no material facts genuinely in dispute on the following issues:

1. The defendants Keith A. Kemp and Pam D. Kemp cannot prove as a matter of law the contention in their answer to the Complaint for Partition and Sale that Keith Kemp purchased all of Mary Kemp's interest in the subject parcels from her or her late husband Duane Kemp, who died on January 10, 1997. This is because (as they have admitted) they have no deed(s) nor any other writing(s) signed by Duane or Mary Kemp evidencing any sale of these subject properties to Keith A. Kemp or, for that matter, to either or both of the defendants, and evidence of the sale of any interest in real property is required by the applicable Statute of Frauds, Tenn. Code Ann. §29-2-101(a)(4) to be in writing and signed by the seller of the property.

2. The defendants have not pled as an affirmative defense that any exception to Statute of Frauds concerning the transfer of real estate applies in this case, but should they seek to amend their answer to make such a contention, no grounds exist that could possibly avoid the application of the Statute of Frauds signed writing requirement under the circumstances of this case.

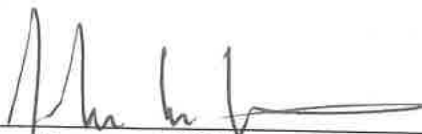
3. The defendants' claim that they purchased all the subject properties from Duane and Mary Kemp is also barred by the applicable 10-year Statute of Limitations, Tenn. Code Ann. §28-3-110(a)(3), because the defendants either had actual knowledge or inquiry notice that no contract nor deed had been prepared or recorded evidencing the claimed sale of property by the time of Duane Kemp's death in 1997, and they had actual knowledge or inquiry notice of that same information by 2006, when Keith Kemp attempted without success to have his mother Mark sign a trust agreement which would have conveyed to him two of the subject tracts of land when she died

and put all her other real estate in a trust controlled by him throughout the lifetimes of her three children.

This motion does not seek a ruling on other issues, which will remain, those being primarily the rights of the cotenants to any adjustments to their shares resulting from any cotenant(s) bearing a disproportionate share of the burdens or benefits (including profits earned) of owning the properties **since Mary Kemp's death**. This motion also does not seek the resolution at this time of plaintiffs' request that this Court partition certain personal property owned by Mary Kemp at her death.

Submitted in support of this motion are a supporting memorandum, a statement of undisputed material facts, and the affidavits of Jentri A. Nelson, Mary Beth Kemp Oliver and Langdon S. Unger, Jr., and Defendants Keith Kemp's and Pam Kemp's Responses to Plaintiffs' Interrogatories and Requests for Production of Documents.

Respectfully submitted,



John M. Miles, BPR# 013345
Attorney for Plaintiffs Beth Oliver and Joe Doss
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon Steve Conley, Esq., attorney for defendants Keith A. Kemp and Pam D. Kemp, P.O. Box 427, Union City, TN 38281, via U.S. Mail, postage prepaid, this the 22 day of April, 2020.



John M. Miles

IN THE 27th JUDICIAL DISTRICT OF THE STATE OF TENNESSEE
WEAKLEY COUNTY CHANCERY COURT

BETH OLIVER and)
JOE DOSS,)
)
 Plaintiffs,)
)
 VS.)
)
 KEITH A. KEMP and)
 PAM D. KEMP,)
)
 Defendants.)

Civil Action No.: 24414

WEAKLEY COUNTY
FILED
APR 22 2020
TIME 8:30am
Cregan C. Cline
CLERK & MASTER

STATEMENT OF UNDISPUTED MATERIAL FACTS OF
PLAINTIFFS BETH OLIVER AND JOE DOSS

COMES NOW the plaintiffs, Beth Oliver and Joe Doss, in accordance with Rule 56.03 of the Tennessee Rules of Civil Procedure, and hereby provides their concise statements of undisputed material facts in this case:

1. When Mary Elizabeth Kemp (“Mary Kemp”) died on January 1, 2018, she was the sole owner of eight parcels of real estate in Weakley County, Tennessee and owned an undivided one-half interest in the other three other parcels located there. (Affidavit of Jentri A. Nelson, ¶¶ 4, 6-10).

RESPONSE:

2. Seven of the eight properties solely owned by Mary Kemp at her death had been originally purchased by both her and her husband Duane Kemp between 1961 and 1984 and the other solely owned property was originally purchased by Duane in 1996 and left to Mary in Duane's will when he died on January 10, 1997. His will bequeathed all of his property to her. (Nelson affidavit ¶¶ 6-7; affidavit of Beth Oliver ¶ 4; Complaint for Partition, ¶ 5, exhibit A, and answer thereto, ¶ 5).

RESPONSE:

3. Two of the three properties in which Mary Kemp owned an undivided one-half interest at her death were purchased in 1990 by her and her husband, Duane Kemp, and her son Keith Kemp and his wife Pam Kemp, while the third one was purchased in 1994 by Duane and Keith as tenants in common. Duane's interest in those three properties passed to Mary on his death. (Nelson affidavit ¶¶ 8-9; Beth Oliver affidavit ¶¶ 4,5).

RESPONSE:

4. The information in statements 1-3 above is all of record at the Weakley County Register of Deeds office. (Nelson affidavit ¶¶ 6-10).

RESPONSE:

5. In Mary Kemp's will (executed on September 10, 1981), if she survived Duane she bequeathed "all my property equally to my children" who were named in the will: Mary Beth Kemp Oliver ("Beth Oliver" or "Beth"), Keith Allen Kemp ("Keith Kemp" or "Keith"), and Lisa Carol Kemp ("Lisa"). (Affidavit of Langdon S. Unger, Jr., ¶ 4, ex. A).

RESPONSE:

6. Named as Co-Executors in Mary Kemp's will were Beth Oliver and Keith Kemp. (Unger affidavit at ¶¶ 2, 4, and affidavit of Beth Oliver ¶¶ 2, 5).

RESPONSE:

7. Lisa Carol Kemp became Lisa Doss when she married Joe Doss before the death of her mother Mary Kemp, but Lisa herself died about one month after her mother, leaving all her property to her husband Joe. (Complaint for Partition, ¶¶ 2, 6, exhibit B, and answer thereto, ¶ 2, 6; Affidavit of Beth Oliver ¶ 5).

RESPONSE:

8. Prior to Mary Kemp's death, she was suffering from dementia and had lived in a nursing home for almost 3 years. (Oliver affidavit, ¶ 7).

RESPONSE:

9. Sometime around 2016, Keith Kemp mentioned to Beth Oliver that he had a trust agreement of some kind prepared for their mother Mary Kemp. Keith did not disclose to her its terms, but said that when he presented it to their mother, she refused to sign it. Keith also mentioned to Beth that if Mary Kemp was having a good day mentally, he might re-approach her about signing it. (Oliver affidavit ¶7).

RESPONSE:

10. Later in 2016, after the discussion referred to the previous statement, when Beth Oliver was working for Keith Kemp, she found and made a copy of an unsigned and undated Revocable Trust Agreement of Mary E. Kemp. It reflected that it was prepared by attorney Max Speight on June 4, 2006, which was about one month after Beth's husband had died. This unsigned trust document was to have Keith serve as Trustee upon Mary becoming incapacitated or dying. Under the terms of this unsigned agreement, there were very favorable provisions for Keith. Keith was to receive some grain bins, all of the farm equipment and machinery, the real estate at 150 West Main in Dresden and the Austin Springs Road Farm with a recitation that he had paid for half the Austin Springs Road farm. (Affidavit of Beth Oliver ¶¶ 7,8 & 9 and exhibit A thereto).

RESPONSE:

11. Under the terms of the unsigned trust agreement described in the previous two statements of fact, the remainder of Mary Kemp's assets were to be divided into three equal trusts for Mary's children, who would collect their share of income. It provided that Beth and Lisa had no individual rights to manage their share of the trust property, and that no trust real estate could be sold without the unanimous consent of all three beneficiaries. (Affidavit of Beth Oliver ¶¶ 7,8 & 9 and exhibit A thereto).

RESPONSE:

12. A petition to probate Mary Kemp's will was filed in the Weakley County Chancery Court on February 1, 2018, after which an Estate was opened, and Beth Oliver and Keith Kemp were named Co-Executors. (Unger affidavit ¶ 2; Complaint ¶7 and Answer ¶7).

RESPONSE:

13. The attorney for Mary Kemp's Estate, Langdon S. Unger, Jr., subsequently met with Beth Oliver and Keith Kemp about various Estate issues, including the need to prepare an inventory of the Estate's assets. (Unger affidavit ¶ 5; Beth Oliver affidavit ¶¶ 10, 11).

RESPONSE:

14. As time went by, Beth Oliver became concerned about the lack of clarity between her and her Co-Executor brother Keith Kemp about what arrangements were to be made going forward about the farming operations, such as the collection of rent, sharing of expenses and division of profits. (Unger affidavit ¶ 6 and exhibit B thereto; Beth Oliver affidavit ¶¶ 13,14,15,16).

RESPONSE:

15. On or about October 23, 2018, Beth Oliver consulted with John Miles to help her with the issues referenced in the prior statement. Mr. Miles sent Mr. Unger a letter that same day advising of his involvement, and stating that, “given the amount of real estate and other holdings” that Beth needed to get some clarity going forward on issues including division of crop revenues and splitting of expenses. (Unger affidavit ¶ 6 and exhibit B thereto).

RESPONSE:

16. Sometime after Beth Oliver had hired Mr. Miles, the Co-Executors Beth Oliver and Keith Kemp finally did develop an Inventory of Mary Kemp’s Estate assets, which was filed on November 15, 2018. (Unger affidavit ¶ 7, and exhibit C thereto).

RESPONSE:

17. The Inventory of Mary Kemp's assets which was filed included brokerage accounts, stock, bank accounts and household contents, but specifically provided that it did "not include any real estate owned" by Mary Kemp. (Unger affidavit ¶ 7, and exhibit C thereto).

RESPONSE:

18. Omitting the real estate from the Inventory of Mary Kemp's assets was Mr. Unger's standard practice in cases such as her Estate because including it is not required. Under Tennessee law, because Mary's will had not specified that her real estate was to be administered as part of her Estate, any real estate Mary owned had vested in the three beneficiaries of Mary's will immediately upon her death. (Unger affidavit ¶ 7, and exhibit C thereto).

RESPONSE:

19. In January 2019, Keith Kemp told Beth that he had bought "the property" from their mother and father. (Oliver affidavit ¶15).

RESPONSE:

20. To address Beth Oliver's concerns about Keith Kemp's claims that he bought the property, Mr. Miles then hired another lawyer, Jentri A. Nelson, to check the Weakley County

Register of Deeds office concerning the title to various parcels real estate that were believed to be owned by Mary Kemp when she died. (Oliver affidavit ¶ 16; Nelson affidavit ¶ 4).

RESPONSE:

21. When Ms. Nelson checked the Weakley County Register of Deeds office concerning the title to various parcels real estate in question, she discovered that documents recorded there confirmed that Mary Kemp did in fact have record ownership of all the property she was believed to own when she died, and that there was no record that any of it had been transferred to Keith Kemp from either Duane Kemp or Mary Kemp. (Nelson affidavit ¶¶ 4-10).

RESPONSE:

22. On March 14, 2019, Beth Oliver spoke to Mr. Unger about possibly having the real estate appraised, and he wrote to Mr. Miles the same day advising him of this conversation and inquiring if Mr. Miles was in the process of filing a petition for accounting and partition of the parcels of real estate. (Unger affidavit ¶ 8, and exhibit thereto D).

RESPONSE:

23. The Complaint for Partition and Sale of Real and Personal Property in this case was filed on behalf of Beth Oliver and Joe Doss on May 2, 2019. This complaint seeks to have the 11

parcels of real estate owned either solely or in part by Mary Kemp at the time of her death either partitioned equitably between the three beneficiaries or sold and the proceeds divided between them (if partition is not feasible). (Complaint for Partition, ¶¶ 9, 12, 14).

RESPONSE:

24. On June 7, 2019, before Keith Kemp's answer to this complaint was filed, his attorney Steve Conley sent Mr. Miles a letter stating that Keith and his wife "believe" that Beth Oliver removed documents concerning trust agreements, partnership agreements, and real estate contracts from Mary Kemp's home after she passed away. When Mr. Miles discussed these allegations with Beth, she vehemently denied taking any such documents from Mary Kemp's home. She confirmed that she never saw any partnership agreements or contractual agreements there, and, though she found another copy of the unsigned draft of the trust agreement prepared by Max Speight, she did not remove it. (Oliver affidavit ¶17) Mr. Miles reported this back to Mr. Conley in a June 19, 2019 letter and also provided a copy of the unsigned trust agreement (the one prepared by Keith Kemp's attorney in 2006) that Beth Oliver had found and copied in about 2016 at Keith's office at a time when she was working for him. (Oliver affidavit ¶ 17 and exhibit C thereto).

RESPONSE:

25. In Keith and Pam Kemp's answer to the Complaint for Partition and Sale submitted on July 11, 2019, they contended that there was no need for a partition or sale, contending that "all

real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp was sold to Keith A. Kemp during their lifetimes.” (Answer ¶¶ 8, 9, 10 and 15).

RESPONSE:

26. Keith and his attorney knew when their answer was filed that Beth had seen a copy of the unsigned trust, a copy of which Mr. Miles had provided to Mr. Conley shortly beforehand. (Oliver affidavit ¶¶ 7, 17)

27. If the contention in defendants’ answer that “all real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp was sold to Keith A. Kemp during their lifetimes,” there would have been no need for Keith to unsuccessfully seek to have his mother sign the trust agreement. (Oliver affidavit ¶¶ 7, 17)

RESPONSE:

28. No deeds or any other documents have been filed with the Weakley County Register of Deeds concerning a transfer to Keith Kemp of any of the parcels of property that had previously been purchased solely by Duane Kemp or by Duane and Mary Kemp that were inherited by Mary, or of any parcels of property that Duane or Duane and Mary Kemp had purchased undivided one-half interests in along with Keith or Keith and his wife Pam Kemp. (Nelson affidavit ¶ 10).

RESPONSE:

29. Keith and Pam Kemp have admitted in their answer under oath to plaintiffs' interrogatory no. 6 that Keith Kemp is not aware of the existence of any document transferring to him any of the parcels of real estate he claims to have purchased from Duane Kemp and/or Mary Kemp and thus that no such document(s) have been recorded. (Defendants' responses to plaintiffs' interrogatories and requests for production of documents).

RESPONSE:

30. The complete text of interrogatory no. 6 to Keith and Pam Kemp and their answer thereto are as follows:

INTERROGATORY NO. 6: It would appear that an alternative "theory" of yours is that you paid for real estate that had been owned by Mary Elizabet Kemp or Mary Elizabeth Kemp and/or Duane Kemp. As to each parcel of real estate, describe in detail what agreement was made, if any, between you and Mary Elizabeth Kemp and/or Duane Kemp. Provide a copy of said agreement in response to Requests for Production of Documents Number 5, and state whether or not the agreement was recorded. If it was not recorded, why not?

ANSWER: Prior to Duane Kemp's death, and after discussion with all children, an agreement was reached in which Keith Kemp would purchase all real estate owned by Duane Kemp and Mary Kemp. While Duane Kemp and Mary Kemp talked with their attorney Max Speight on multiple occasions concerning the agreement, Keith Kemp is not aware whether a final "agreement" was ever prepared and signed. If so, that would have been one of the documents Beth Oliver wrongfully removed from her parents' residence after her mother's death.

(Defendants' Answer to interrogatory no. 6 in their responses to plaintiffs' interrogatories and requests for production of documents).

RESPONSE:

31. On July 15, 2019, a motion was filed by Keith Kemp's attorney in the Estate case asking that all beneficiaries be required to return to the Estate all assets previously distributed to them. This motion was not joined in by the other Co-Executor, Beth Oliver, who was not consulted about it before it was filed. (Oliver affidavit ¶ 19 and exhibit H thereto, ¶ 4).

RESPONSE:

32. Keith Kemp admits in this motion asking the Estate beneficiaries to return their distributions that Mary and Duane Kemp “did not transfer into his name [any of] the property” he claims to have purchased from them. (Beth Oliver affidavit ¶19 exhibit H ¶ 4).

RESPONSE:

33. In Keith and Pam Kemps’ answer to Plaintiffs’ interrogatory no. 7 (asking them to “describe when the payment(s) [for the subject real estate] was (were) made [and] how it was made”), they state under oath that the amount they paid for property purchased was \$539,513.56. The only information provided in their answer about when this money was paid was on unidentified dates “between 1993 and 2017.” (see Defendants’ response to Plaintiffs’ interrogatory #7; Beth Oliver affidavit ¶13).

RESPONSE:

34. Keith and Pam state in their answer to interrogatory no. 6 that before Duane Kemp’s death in 1997, a verbal agreement was made for Keith to buy all of Duane’s and Mary’s properties. If the claimed purchases were made then, Keith Kemp would have had no reason to have a trust agreement prepared 9 ½ years later, as there would have been no real estate to transfer into the trust.

(see Defendants' Answer to Complaint for Partition and Sale ¶ 8 and Defendant's answer to interrogatory no. 6).

RESPONSE:

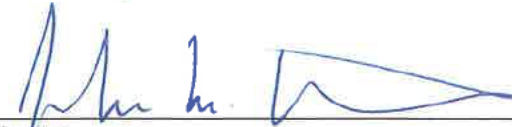
Respectfully submitted,



John M. Miles, BPR# 013345
Attorney for Plaintiffs Beth Oliver and Joe Doss
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon Steve Conley, Esq., attorney for defendants Keith A. Kemp and Pam D. Kemp, P.O. Box 427, Union City, TN 38281, via U.S. Mail, postage prepaid, this the 22 day of April, 2020.



John M. Miles

purchased in 1994 by Duane and Keith as tenants in common, and Duane's interest therein passed to Mary on his death. (Nelson affidavit ¶¶ 8-9; Beth Oliver affidavit ¶¶ 4,5). This information is all of record at the Weakley County Register of Deeds office. (Nelson affidavit ¶¶ 6-10).

In Mary's will (executed on September 10, 1981), if she survived Duane she bequeathed "all my property equally to my children" who were named in the will: Mary Beth Kemp Oliver ("Beth Oliver" or "Beth"), Keith Allen Kemp ("Keith Kemp" or "Keith"), and Lisa Carol Kemp ("Lisa"). (Affidavit of Langdon S. Unger, Jr., ¶ 4, ex. A). Named as Co-Executors were Beth Oliver and Keith Kemp. (Id. at 2, 4 and affidavit of Beth Oliver ¶¶ 2,5) Lisa Carol Kemp became Lisa Doss when she married Joe Doss before her mother's death, but Lisa herself died about one month after her mother, leaving all her property to her husband Joe. (Complaint for Partition, ¶¶ 2, 6, exhibit B, and answer thereto, ¶ 2, 6; Affidavit of Beth Oliver ¶ 5).

Prior to Mary Kemp's death, she was suffering from dementia and had lived in a nursing home for almost 3 years. (Oliver affidavit, ¶ 7). Sometime around 2016, Keith Kemp mentioned to Beth Oliver that he had a trust agreement of some kind prepared for their mother. Keith described the agreement as "really good." Keith did not disclose its terms, but said that when he presented it to Mary Kemp, she refused to sign it. Keith also mentioned that if Mary Kemp was having a good day mentally, he might re-approach her about signing it. (Oliver affidavit ¶7) Later in 2016, when Beth Oliver was working for Keith Kemp, she found and made a copy of an unsigned and undated draft of a Revocable Trust Agreement of Mary E. Kemp. It reflected that it was prepared by attorney Max Speight on June 4, 2006, which was about one month after Beth's husband had died. This unsigned trust document was to have Keith serve as Trustee upon Mary becoming incapacitated or dying. Under the terms of this unsigned agreement, there were very favorable provisions for Keith.

Keith was to receive some grain bins, all of the farm equipment and machinery, the real estate at 150 West Main in Dresden and the Austin Springs Road Farm with a recitation that he had paid for half the Austin Springs Road farm. (Affidavit of Beth Oliver ¶¶ 7,8 & 9 and exhibit A thereto) The remainder of the assets were to be divided into three equal trusts for Mary's children, who would collect their share of income. It provided that Beth and Lisa had no individual rights to manage their share of the trust property, and that no trust real estate could be sold without the unanimous consent of all three beneficiaries. (Id)

A petition to probate Mary Kemp's will was filed in the Weakley County Chancery Court on February 1, 2018, after which an Estate was opened, and Beth Oliver and Keith Kemp were named Co-Executors. (Unger affidavit ¶ 2; Complaint ¶7 and Answer ¶7). The Estate's attorney, Langdon S. Unger, Jr., subsequently met with them about various Estate issues, including the need to prepare an inventory of the Estate's assets. (Unger affidavit ¶ 5; Beth Oliver affidavit ¶¶ 10, 11).

As time went by, Beth became concerned about the lack of clarity between her and her Co-Executor brother about what arrangements were to be made going forward about the farming operations, such as the collection of rent, sharing of expenses and division of profits. (Unger affidavit ¶ 6 and exhibit B thereto; Beth Oliver affidavit ¶¶ 13,14,15,16). On or about October 23, 2018, Beth Oliver consulted with the undersigned John Miles to help her with these issues. Mr. Miles sent Mr. Unger a letter that same day advising of his involvement, and stating that, "given the amount of real estate and other holdings" that Beth needed to get some clarity going forward on issues including division of crop revenues and splitting of expenses. (Unger affidavit ¶ 6 and exhibit B thereto).

Sometime after Beth Oliver hired Mr. Miles, she and Keith Kemp finally did develop an Inventory of Mary Kemp's Estate assets, which was filed on November 15, 2018. (Unger affidavit ¶ 7, and exhibit C thereto). This Inventory included brokerage accounts, stock, bank accounts and household contents, but specifically provided that it did "not include any real estate owned" by Mary Kemp. (Id.). Omitting the real estate from the Inventory was Mr. Unger's standard practice in cases such as this because including it is not required. (Id.). Under Tennessee law, because Mary's will had not specified that her real estate was to be administered as part of her Estate, any real estate Mary owned had vested in the three beneficiaries of Mary's will immediately upon her death. (Id.)

Despite what Mr. Unger had told her about real estate not needing to appear on the list of Mary Kemp's assets, Beth Oliver became concerned about her mother's numerous parcels of real estate not appearing on the inventory filed in her mother's estate. In January of 2019, Keith Kemp told Beth that he had bought "the property" from their mother and father. (Oliver affidavit ¶15) Beth relayed this information to Mr. Miles, who hired another lawyer, Jentri A. Nelson, to check the Weakley County Register of Deeds office concerning the title to various parcels real estate that were believed to be owned by Mary Kemp when she died. (Oliver affidavit ¶ 16; Nelson affidavit ¶ 4). Ms. Nelson discovered that documents recorded at the Register's office confirmed that Mary did in fact have record ownership of all the property when she died, and that there was no record that any of it had been transferred to Keith from either Duane or Mary Kemp. (Nelson affidavit ¶¶ 4-10).

On March 14, 2019, Beth spoke to Mr. Unger about possibly having the real estate appraised, and he wrote to Mr. Miles the same day advising him of this conversation and inquiring

if Mr. Miles was in the process of filing a petition for accounting and partition of the parcels of real estate. (Unger affidavit ¶ 8, and exhibit thereto D).

The Complaint for Partition and Sale of Real and Personal Property in this case was filed on behalf of Beth Oliver and Joe Doss on May 2, 2019. This complaint seeks to have the 11 parcels of real estate owned either solely or in part by Mary Kemp at the time of her death either partitioned equitably between the three beneficiaries or sold and the proceeds divided between them (if partition is not feasible). (Complaint for Partition, ¶¶ 9, 12, 14). On June 7, 2019, before Keith Kemp's answer to this complaint was filed, his attorney Steve Conley sent Mr. Miles a letter stating that Keith and his wife "believe" that Beth Oliver removed documents concerning trust agreements, partnership agreements, and real estate contracts from Mary Kemp's home after she passed away. When Mr. Miles discussed these allegations with Beth, she vehemently denied taking any such documents from Mary Kemp's home. She confirmed that she never saw any partnership agreements or contractual agreements there, and, though she found another copy of the unsigned draft of the trust agreement prepared by Max Speight, she did not remove it. (Oliver affidavit ¶17) Mr. Miles reported this back to Mr. Conley in a June 19, 2019 letter and also provided a copy of the unsigned trust agreement (the one prepared by Keith Kemp's attorney in 2006) that Beth Oliver had found and copied in about 2016 at Keith's office, when she was working for him. (Oliver affidavit ¶ 17 and exhibit C thereto)

In Keith and Pam Kemp's answer to the Complaint for Partition and Sale submitted on July 11, 2019, they contended that there was no need for a partition or sale, specifying that "all real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp was sold to Keith A. Kemp during their lifetimes." (Answer ¶¶ 8, 9, 10 and 15). If this had been so, there would have been no

need for Keith to unsuccessfully seek to have his mother sign the trust agreement. Keith and his attorney knew when answer was filed that Beth had seen a copy of the unsigned trust, a copy of which Mr. Miles had provided to Mr. Conley shortly beforehand. (Oliver affidavit ¶¶ 7, 17)

No deeds or any other documents have been filed with the Weakley County Register of Deeds concerning a transfer to Keith Kemp of any of the parcels of property that had previously been purchased solely by Duane Kemp or by Duane and Mary Kemp that were inherited by Mary, or of any parcels of property that Duane or Duane and Mary Kemp had purchased undivided one-half interests in along with Keith or Keith and his wife Pam Kemp. (Nelson affidavit ¶ 10). The Kemps have admitted in their answer under oath to plaintiffs' interrogatory no. 6 that Keith Kemp is not aware of the existence of any document transferring to him any of the parcels of real estate he claims to have purchased from Duane Kemp and/or Mary Kemp and thus that no such document(s) have been recorded. (Defendants' responses to plaintiffs' interrogatories and requests for production of documents filed contemporaneously with this motion). The full question no. 6 and answer thereto are as follows:

INTERROGATORY NO. 6: It would appear that an alternative "theory" of yours is that you paid for real estate that had been owned by Mary Elizabeth Kemp or Mary Elizabeth Kemp and/or Duane Kemp. As to each parcel of real estate, describe in detail what agreement was made, if any, between you and Mary Elizabeth Kemp and/or Duane Kemp. Provide a copy of said agreement in response to Requests for Production of Documents Number 5, and state whether or not the agreement was recorded. If it was not recorded, why not?

ANSWER: Prior to Duane Kemp's death, and after discussion with all children, an agreement was reached in which Keith Kemp would purchase all real estate owned by Duane Kemp and Mary Kemp. While Duane Kemp and Mary Kemp talked with their attorney Max Speight on multiple occasions concerning the agreement, Keith Kemp is not aware whether a final

“agreement” was ever prepared and signed. If so, that would have been one of the documents Beth Oliver wrongfully removed from her parents’ residence after her mother’s death.

If Keith Kemp does not know if the so called “agreement” for him to purchase all his parents’ properties was ever prepared and signed, it is difficult to fathom how he can accuse Beth Oliver of removing from her mother’s residence a likely non-existent document, with no evidentiary value even if it had been prepared but not signed nor recorded.

On July 15, 2019, a motion was filed by Keith Kemp’s attorney in the Estate case asking that all beneficiaries be required to return to the Estate all assets previously distributed to them, including the \$2,327,882.11 from his mother’s Edward Jones brokerage account. This motion was not joined in by the other Co-Executor, Beth Oliver, who was not consulted about it before it was filed. (Oliver affidavit ¶ 19 and exhibit H thereto) There is no known, recognized legal ground for requiring the beneficiaries to return these assets, and no legal authority supporting this demand is supplied in the motion by Keith Kemp’s attorney. The Estate is still holding additional assets owned by Mary Kemp other than real estate, including over \$200,000 worth of bank stock. (Note: This valuation was prior to the recent market down turn.) (Beth Oliver affidavit ¶ 19) The purported reason for the unprecedented demand that distributions be returned is that Keith Kemp claims that the majority of the Edward Jones account “represented monies” he paid to Mary and Duane Kemp “for the multiple tracts of real estate.” (Beth Oliver affidavit ¶19 exhibit H ¶ 2) (emphasis added). Keith admits in this motion that Mary and Duane Kemp “did not transfer into his name [any of] the property” he claims to have purchased from them. (Beth Oliver affidavit ¶19 exhibit H ¶ 4.) It

appears that the only purpose for filing this motion was to harass or intimidate Co-Executor Beth Oliver.

As a point of argument, the “majority” of the value of the Edward Jones brokerage account Keith Kemp claims he paid his parents would be over \$1,163,941.06, which is 50% of the value of the Edward Jones Account listed in the inventory filed with the court. Keith Kemp asked that this be returned even though any increases in the money allegedly paid to purchase the real estate would not be part of the purchase price. The amount Keith and Pam Kemp state under oath that they paid for property purchased, in their answer to Plaintiffs’ interrogatory no. 7 (asking them to “describe when the payment(s) [for the subject real estate] was (were) made [and] how it was made”) was only \$539,513.56. The only information provided about when this money was paid was on unidentified dates “between 1993 and 2017.” The defendants state in that answer that they also paid unidentified amounts of maintenance, upkeep and property improvement expenses for their farming operation, which would normally be categorized as expenses incurred to earn income, not for purchase of all the properties, some of which do not even contain farmland. (see Defendants’ responses to Plaintiffs’ interrogatory #7)

As noted above, Keith and Pam Kemp contend in their answer to the Complaint for Partition and Sale (see Defendants’ Answer ¶ 8) that Keith had purchased all real estate that Duane and Mary Kemp owned prior to their death, but they have nothing in writing to that effect, and they claim in their answer to interrogatory no. 6 that a verbal agreement (not known to have ever been committed to writing) was made before Duane’s death for Keith to buy all of Duane’s and Mary’s properties. One would think Keith Kemp would have raised this issue on the death of his father, Duane Kemp. In addition, when Keith and Pam were asked in interrogatory no. 8 if they had ever rented property

from Duane and/or Mary Kemp, and if so to describe the rental agreement terms, including rent amount, required payment frequency and dates covered by the lease, they responded that all the disputed real estate they purchased was “through a rent-to-purchase agreement”, without supplying any of the requested particulars. Keith and Pam have never provided a copy of this alleged agreement in response to the request that they do so, in that interrogatory and corresponding Request for Production no. 8 (Defendants’ responses to plaintiffs’ interrogatories and request for production of documents). If in fact a “rent-to-purchase” agreement covering all property owned by Duane and Mary Kemp had been made as claimed before Duane Kemp’s death, there would have been no reason for Keith Kemp to have a trust agreement prepared 9 ½ years later which would have directed the conveyance of two of the properties owned by Mary Kemp to Keith after her death. Likewise, if Keith Kemp or Keith and Pam Kemp owned all of Mary Kemp’s real-estate, then when Max Speight, prepared his memorandum for the trust agreement, there would have been no real estate to transfer into the trust.

Plaintiffs seek through this motion a judgment from this court that the defendants Keith and/or Pam Kemp did not purchase as they contend any of Mary Kemp’s interest in the subject parcels from her or her late husband Duane Kemp, as a matter of law, because (as they have admitted) they have no deed(s) nor any other writing(s) signed by Duane or Mary Kemp evidencing any sale of these subject properties to Keith and Pam or to either of them. That makes their claim to the properties unenforceable under the applicable Statute of Frauds, which requires that a conveyance of real estate be in writing.

Plaintiffs also seek through this motion a judgment that the claims of defendants Keith Kemp and Pam Kemp that Keith alone or Keith and Pam together own any of Mary Kemp’s interest

in the subject parcels because of a claimed previous purchase of these parcels from Duane Kemp and/or Duane and Mary Kemp are barred by the ten-year Statute of Limitations.

This motion does not seek a ruling on other collateral issues. Those remaining issues will be primarily whether the property should be partitioned or sold, the rights of the cotenants to any adjustments to their shares resulting from any cotenant(s) bearing a disproportionate share of the burdens or benefits such as profits earned from the properties since Mary Kemp's death, or rent that is due from Keith Kemp for his occupancy or exclusive control of some of the properties. This motion also does not seek the resolution at this time of plaintiffs' request that this Court partition certain personal property owned by Mary Kemp at her death, that issue also being reserved.

II. LAW AND ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is an important and desirable means of accelerating litigation, removing insubstantial issues and resolving cases where no genuine issues of material fact exist. *Rye v. Women's Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 251 (Tenn. 2015); Tenn.R.Civ.P. 56 advisory commission cmt. The moving party has the burden of production to show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rye* at 261-62, citing Tenn.R.Civ.P. 56.04.

If the moving party has made a properly supported motion, the nonmoving party must respond and "set forth specific facts showing that there is a genuine issue for trial" to survive summary judgment. *Rye* at 265, citing Tenn.R.Civ.P. 56.06. There is a genuine issue for trial only

if the nonmoving party “demonstrate[s] the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *Id.*, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). *Anderson* is part of the *Celotex*¹ trilogy articulating the federal summary judgment standards which were specifically adopted in *Rye. Id.* at 264. These cases have been described as enabling the movant to challenge the opposing party to “put up or shut up” on critical issues. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478 (6th Cir. 1989). Summary judgment is “properly regarded not as a disfavored procedural shortcut,” but is designed to ‘secure the just, speedy and inexpensive determination of every action.’” *Rye* at 254, quoting *Celotex*, 477 U.S. at 327, quoting Fed.R.Civ.P. 1 (attached).

B. THE STATUTE OF FRAUDS BARS DEFENDANTS’ CLAIM THAT ONE OR BOTH OF THEM PURCHASED ALL OF THE SUBJECT PARCELS, BECAUSE THEY ADMIT THEY HAVE NO EVIDENCE IN WRITING SIGNED BY EITHER DUANE OR MARY KEMP.

All contracts within the purview of the Statute of Frauds must be memorialized in a writing that discloses, with reasonable certainty, the identity of the estate intended to be conveyed. *Baliles v. Cities Serv. Co.*, 578 S.W.2d 621, 623 (Tenn. 1979). The Statute of Frauds governing the sale of real property is codified at Tenn.Code Ann. §29-2-101(a)(4), which states:

(a) No action shall be brought:

* * *

(4) Upon any contract for the sale of lands

* * *

¹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d (1986).

Unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith . . . In a contract for the sale of lands, . . . the party to be charged is the party against whom enforcement of the contract is sought.

The “party to be charged” in this statute has been construed “to mean the owner of the realty” *Cellco Partnership v. Shelby County*, 172 S.W.3d 574, 593 (Tenn.App. 2005), quoting *Lusky v. Keiser*, 128 Tenn. 705, 164 S.W. 777, 778 (1913). This is because the statute “was adopted and enacted in Tennessee for the protection of the people who owned the title to the real estate.” *Cellco* at 594, quoting *Irwin v. Dawson*, 197 Tenn. 314, 273 S.W.2d 6, 7 (1955).

“The primary purpose of the Statute of Frauds is to reduce the risk of fraud and perjury associated with oral testimony.” *Smith v. Hi-Speed, Inc.*, 536 S.W.3d 458, 474 (Tenn.App. 2016) quoting *Waddle v. Elrod*, 367 S.W.3d 217, 223 (Tenn. 2012). By requiring certain transactions to be in writing, the Statute of Frauds also helps to “prevent the proof of verbal agreements after the memory of witnesses has been dimmed by lapse of time.” *Hi-Speed* at 474, quoting *Boutwell v. Lewis Bros. Lumber Co.*, 27 Tenn.App. 460, 182 S.W.2d 1, 3 (1944). Oral contracts are not void ab initio, but voidable at the election of either party to the contract. *Bailey v. Henry*, 125 Tenn. 390, 143 S.W. 1124, 1127 (1912). This means that “if either party disaffirms the oral contract, no action . . . can be maintained on the contract.” *Trew v. Ogle*, 767 S.W.2d 662, 664 (Tenn.App. 1988).

In this case, the defendants contend in their answer to the complaint to partition and sale of the real property given by Mary Kemp in her will to her three children equally, that “all real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp was sold to Keith A. Kemp during their lifetimes.” But the defendants have stated under oath in their answer to

interrogatory no. 6 that the purported agreement to sell this property to Keith Kemp was oral, and that Keith Kemp is not aware of the existence of any document transferring to him any of the parcels of real estate he claims to have purchased from Duane Kemp and/or Mary Kemp. In the motion Keith Kemp filed on July 15, 2019 in the Mary Kemp Estate case, he also admits in paragraph 4 that Mary and Duane Kemp “*did not transfer into his name [any of] the property*” he claims to have purchased from them. The absence of any writing also fails to meet the requirements of the Statute of Frauds because there is no showing of what lands were to be conveyed. “[T]o comply with the statute of frauds, a memorandum of an agreement must show, with reasonable certainty, the estate intended to be sold.” *Baliles* at 623; see also *Gorbics v. Close*, 722 S.W.2d 672, 673-75 (Tenn.App. 1986) (Notation in purported sellers wills that they agreed to sell plaintiffs “a one acre tract of land on the northwest corner of my land” for \$2,000, was inadequate under the Statute of Frauds to identify what part of defendants’ property was to be conveyed, because many different measurements from the northwest corner could be used to create different one acre tracts).

Since there is no written documentation of the claimed purchase, no such document has registered. The records of the Weakley County Register of Deeds reveal that no documents have been filed evidencing sale or transfer of any real estate owned by Duane Kemp and/or Mary Kemp to Keith Kemp. Mary Kemp’s will provides that if she survived her husband Duane Kemp, she bequeathed “all my property equally to my children.” This included all real estate she owned at her death, as “Tennessee common law . . . embodies an expansive view of property”, which “is said to include ‘all rights that have value.’” *Smalling v. Terrell*, 943 S.W.2d 397, 401 (Tenn.App. 1996), quoting *State ex rel. Elvis Presley v. Crowell*, 733 S.W.2d 89, 97 (Tenn.App. 1987).

Tenn.Code Ann. §31-2-103 provides that “[t]he real property of a testate decedent vests immediately upon death in the beneficiaries named in the will” Thus, on the day Mary Kemp died, January 1, 2018, all the real state she had purchased together with her husband Duane Kemp, or that she inherited from him on his death in 1997, became the property of her three children named as beneficiaries of equal shares in her will.

The absence of various parcels of land owned by Mary Kemp in the Inventory of her Estate’s assets (which specifically provided that it did “not include any real estate owned”) has no bearing on whether she owned the subject real estate in this case. It was not required to be listed, as is noted above, due to the properties’ immediate vesting under Tenn.Code Ann. § 31-2-103, “unless the will contains a specific provision directing the real property to be administered as part of the estate,” and there is no such provision in Mary Kemp’s will. Even if the real estate was supposed to be included in the Inventory list, by statute any person interested in the deceased person’s estate can establish by proof what items have been omitted. Tenn.Code Ann. § 30-2-608.

C. ANY ATTEMPT BY THE DEFENDANTS TO AMEND THEIR ANSWER AND ALLEGE THE APPLICATION OF AN EXCEPTION TO THE STATUTE OF FRAUDS WOULD BE FUTILE, AS NO EXCEPTIONS APPLY.

After Mary Kemp’s death, her son Keith Kemp contended for the first time in his answer to the complaint for partition and sale of real estate that “all real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp was sold to Keith A. Kemp during their lifetimes.” In plaintiffs’ answer to Keith Kemp’s subsequent motion seeking to have the three beneficiaries of Mary Kemp’s will repay to her Estate the portion of her assets already distributed to them, the plaintiffs raised the Statute of Frauds defense to Keith Kemp’s assertion that he had previously

purchased all his parents' real estate. In Keith Kemp's and Pam Kemp's answer to plaintiffs' interrogatory no. 4 in this case, they made the following assertion:

Keith Kemp, and his wife, Pam Kemp,² purchased all of the property in dispute from either Duane or Mary Kemp during their lifetimes. However, if for any reason, Beth Oliver and Joe Doss dispute this fact, Keith Kemp and Pam Kemp intend to rely upon the legal doctrines of partial performance, implied contract, promissory estoppel, constructive trust, unjust enrichment, quantum meruit (sp.) and title by prescription to establish their ownership of the property in dispute.

Based on this discovery response, plaintiffs anticipate that the defendants will file a motion seeking to amend their answer before responding to this motion. To show that any such motion would be futile, plaintiffs are providing authority establishing that none of these claimed exceptions to the Statute of Frauds signed writing requirement apply in this case.

1. Partial performance never prevents the application of the Statute of Frauds when the agreement involves real estate.

Although the Statute of Frauds is not always an absolute bar to agreements that do not comply with its signed writing requirement, case law has indicated "that partial performance will not create an exception to the Statute of Frauds if the subject matter of the alleged agreement involves interests in real estate." *Hi-Speed* at 477. "The appellate courts of this state consistently have refused to enforce an oral contract for the sale of land on the basis of part performance

² This claim that both Keith and Pam Kemp purchased all of Duane and Mary Kemp's property is inconsistent with their answer to the complaint for partition and sale, which states in three different places that that all this property was purchased by Keith Kemp only, with no mention of Pam Kemp. (Answer ¶¶ 8, 9, and 10).

alone.” *Balilies* at 624. Tennessee follows the “rule of property” that “part performance of a parol contract for the sale of land will not take the agreement out of the statute of frauds.” *Id.*

2. Keith and Pam Kemp cannot recover under implied or quasi-contract/unjust enrichment/quantum meruit theories (which are essentially the same) because the defendants did not provide goods or services to Beth Oliver and Lisa Doss before the death of Mary Kemp.

“Actions brought upon theories of unjust enrichment, quasi contract, contracts implied in law, and quantum meruit are essentially the same.” *Cyre-Leike, Inc. v. Carver*, 415 S.W.3d 808, 824 (Tenn.App. 2011); quoting *Paschall’s v. Dozier*, 219 Tenn. 45, 407 S.W.2d 150, 154 (1966). This terminology is employed interchangeably, as all are equitable doctrines “founded on the principle that a party receiving a benefit desired by him, under circumstances rendering it inequitable to retain it without making compensation, must do so.” *Id.* These doctrines permit “[a] party who has provided goods and services to another” to “recover the value of those goods and services. . . .” in the absence of a contract. *Forrest Const. Co. v. Laughlin*, 337 S.W.3d 211, 227 (Tenn.App. 2009); see also *Paschall’s*, 219 Tenn. at 57-58, 407 S.W.2d at 155-56 (Court permitting actions by materialmen and subcontractors on quantum meruit actions). Keith and Pam Kemp cannot recover under any of those theories because neither Beth Oliver nor Lisa Doss, nor Mary Kemp before her death, requested any goods or services from them and the Kemps never provided any to them with the expectation of being repaid.

It should be noted that for any goods or services provided by any of the co-tenants after Mary Kemp’s death, who must equally share both the benefits and burdens of the land ownership, different principles apply:

If one cotenant bears a disproportionate share of the burden, the other cotenants must provide compensation. Alternatively, if one cotenant enjoys a

disproportionate share of the benefits, the other cotenants must be compensated.

Parker v. Lambert, 206 S.W.3d 1, 5 (Tenn.App. 2006). The court in *Parker* discussed how two unmarried co-tenants of property on which they built a home before one moved away were entitled to equitable allowances for the larger share of money spent by the other, but only “during the parties’ relationship as cotenants.” *Id.* at 2-3, 5. The court also ruled that required contribution for expenses paid by one tenant does not including the value of personal services in managing and caring for the property, unless the parties had an agreement to that effect. *Id.* at 6-7.

It is apparent from the five requirements identified by Tennessee courts for recovery under theories of unjust enrichment, quasi contract, contracts implied in law, and quantum meruit, that those theories do not fit this case:

- (1) there must be no existing, enforceable contract between the parties covering the same subject matter,
- (2) the party seeking recovery must prove that it provided valuable goods and services,
- (3) the party charged must have received the goods and services,
- (4) the circumstances must indicate that the parties involved in the transaction should have reasonably understood that the person providing the goods or services expected to be compensated, and
- (5) the circumstances must also demonstrate that it would be unjust for the party benefitting from the goods or services to retain them without paying for them.

Forrest Const. at 227, quoting *Castelli v. Lien*, 910 S.W.2d 420-427 (Tenn.App. 1995);

Hi-Speed at 480; *Cyre-Leike* at 824-25. The defendants’ contention is that either Keith or both Keith and Pam purchased “all real estate previously owned by Duane Kemp and/or Mary Elizabeth Kemp”, despite them having no deed or other writing signed by Duane and Mary

transferring title to or agreeing to sell the land to them. This is not a case where Beth Oliver, Lisa Doss or Mary Kemp asked Keith and Pam to provide any goods or services, or where any goods and services were provided to them, let alone under circumstances where they all understood that Keith and Pam were expecting compensation therefor.

3. Keith and Pam Kemp cannot avoid the Statute of Frauds with a promissory estoppel theory, because the Statute of Frauds is not itself being used fraudulently, and because any promise Duane and Mary Kemp allegedly made to sell property to Keith Kemp was ambiguous and vague, and is thus unenforceable.

In Tennessee, “the application of promissory estoppel to overcome the Statute of Frauds is limited to ‘exceptional cases where to enforce the statute of frauds would make it an instrument of hardship and oppression, verging on actual fraud.’” *Hi-Speed* at 483, quoting *Shedd v. Gaylord Entertainment Co.*, 118 S.W.3d 695, 699-700 (Tenn.App. 2003), *perm app. denied*. Keith Kemp has not contended that his parents, who both signed wills providing that the last to die were leaving him and his two siblings 1/3 shares of their substantial property holdings, were trying to defraud him by not having signed and recorded deeds conveying him title to all their real estate.

Although “[a] claim of promissory estoppel is not dependent upon the existence of an express contract between the parties,” its establishment requires proof of certain elements not present in this case. To prove promissory estoppel, plaintiffs must show:

- (1) that a promise was made;
- (2) that the promise was unambiguous and not unenforceably vague; and
- (3) that they reasonably relied upon the promise to their detriment.

Hi-Speed at 483, quoting *Chavez v. Broadway Elec. Serv. Corp.*, 245 S.W.3d 398, 405 (Tenn.App. 2007). Even if a promise was made, the defendants have contradicted themselves

about what that promise was, the promise Keith contends one or both of his parents made was unquestionably ambiguous and unenforceably vague, and any reliance he and/or Pam may have placed on such verbal statements without seeking confirmation in writing was unreasonable.

The defendants have inconsistently described the promise at different times. There was either a promise by Duane and Mary Kemp to sell all of their property at once, or in pieces over time, to Keith but possibly to both him and Pam. Any such promise was too ambiguous and vague to be enforceable. In Hi-Speed, the court held a purported promise did not support a promissory estoppel claim:

[t]he alleged promise made by Defendants included the promise to pay Plaintiffs, for twenty years, “a[] monthly amount sufficient to cover all of the required loan payments, plus \$4,000 to \$5,500 per month. This purported promise is too indefinite to support a basis for relief; the promised payment terms are uncertain, and there is no reference to other facts from which a sense of certainty can be established.

Id. at 483-84. Likewise, the purported promise of Duane and Mary Kemp does not specify either the full price or amounts of each installment due, or if different amounts were payable for different tracts. It doesn’t specify on what date or dates the amount or amounts were payable, the rate of interest if charged, and the consequences of paying late or not at all. The claimed promise or promises are too indefinite to be enforced on a promissory estoppel claim.

Promissory estoppel is also not applicable because any claimed reliance on the promise (if there was one) was not reasonable. Keith Kemp has said he did not know whether a final written agreement to sell the property was ever prepared or signed, so he knew there was no signed or recorded deed to rely on. It was because he knew he could not rely on a vague oral agreement to sell property that he later attempted unsuccessfully to get his mother to sign a trust agreement involving the same real estate.

4. The property in question is not subject to a constructive trust to avoid the Statute of Frauds, because Duane and Mary Kemp did not obtain or hold title to that property through fraud, duress, abuse of confidence, or any type of unconscionable conduct.

There is no proof of any fraud or other improperly motivated conduct by Duane or Mary Kemp that would support a claim by the defendants that a constructive trust arose in their favor in property owned by Mary Kemp before she died, in order to avoid the Statute of Frauds. A constructive trust arises against one who:

by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal title to property which he ought not, in equity and good conscience, ought to enjoy.

Rowlett v. Guthrie, 867 S.W.2d 732, 734 (Tenn.App. 1993), quoting *Livesay v. Keaton*, 611 S.W.2d 581, 584 (Tenn.App. 1980). As noted above, there is no indication that Duane and Mary Kemp, who both signed wills providing that the last to die would leave equal 1/3 shares of their property to Keith and his two siblings, were trying to defraud him or take advantage of him. Two of the parcels were purchased in the names of Duane and Mary Kemp and Keith and Pam Kemp, and another purchased in the name of just Duane and Keith, so the defendants already own one-half undivided interests in those three properties which are not part of Mary Kemp's Estate. The remaining parcels were all purchased by Duane and Mary, and not obtained by unconscionable conduct or questionable means.

5. Keith and Pam Kemp cannot avoid the Statute of Frauds by claiming that they gained ownership of all of Duane and Mary Kemps' land under the doctrine of title by prescription, because they did not hold that property adversely to them for more than twenty years.

The holder of a property seeking to establish title by prescription must establish the

following elements:

1. That the holder has “been in exclusive and uninterrupted possession of the land in question for a period of more than twenty (20) years claiming the same as his own,” without a claim by co-tenants “being under no disability to assert their rights.”
2. That the holder’s “occupancy of the property in question” was not “by permission either actual or implied.”

Livesay at 583 (Finding that because the holder had not ousted his co-tenants, he did not hold a farm adversely to them); quoting *Morgan v. Dillard*, 61 Tenn.App. 519, 456 S.W.2d 359 (1970).

Keith and Pam Kemp did not hold all of the properties purchased by Duane and Mary ~~Dillard~~ *Kemp* adversely to them, as their occupancy was as co-tenants, with Keith and Pam not claiming exclusive ownership of all the properties for any period of time whatsoever until after Mary Kemp died. The lack of such a claim is illustrated by Keith Kemp’s unsuccessful attempt to have his mother sign a trust agreement which would have only conveyed two of the eleven properties to him after her death.

B. THE TEN-YEAR STATUTE OF LIMITATIONS BARS DEFENDANTS’ CLAIM BECAUSE THE CAUSE OF ACTION FOR THEIR CLAIM TO HAVE PURCHASED ALL OF THE SUBJECT LAND ACCRUED WHEN THEY HAD ACTUAL KNOWLEDGE OR INQUIRY NOTICE THAT NO CONTRACT NOR DEED HAD BEEN PREPARED OR RECORDED, WHICH WAS BY 1997 OR 2006 AT THE LATEST.

Tennessee has a “catch-all” ten-year statute of limitations in Tenn.Code Ann. §28-3-110(a)(3), which applies to all actions not otherwise addressed by Tennessee statutes. This statute of limitations was applied recently in *Coleman v. Wells Fargo Banks, N.A.*, 218 F.Supp.3d 597 (M.D. Tenn), in a case where a property owner who had mortgaged the property attempted to stop

foreclosure proceeding by claiming he had not signed the note with a burdensome balloon provision. *Id.* at 603-04. In an action filed by the property owner to quiet title, the court stated the rule for when the ten-year statute of limitations began to run:

[A] cause of action accrues and the statute begins to run not only when the plaintiff has actual knowledge of a claim, but also when the plaintiff has actual knowledge of “facts sufficient to put a reasonable person on notice that he [or she] has suffered an injury as a of wrongful conduct.”

Id. at 604; quoting *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 459 (Tenn. 2012). Coleman’s cause of action seeking to invalidating the foreclosure was held to have accrued the date his mortgage was refinanced more than ten years earlier, when he had all the materials necessary to discover whether or not he had signed the note, putting him on inquiry notice. *Id.* “Failure to undertake diligent investigation will not preclude imputing the knowledge that such an inquiry would have revealed to a party sufficiently aware of any facts or circumstances from which inquiry notice would arise.” *Id.*, quoting *Blevins v. Johnson City*, 746 S.W.2d 678, 684 (Tenn. 1988).

The catch-all ten-year Statute of Limitations (then codified at Shannon’s Code, § 4473) was also applied in case where one of the sons of W.J. Barnes was intending to convey property to him individually, but the deed prepared in 1902 mistakenly listed the grantees as W.J. Barnes and wife, S.A. Barnes. *Barnes v. Barnes*, 157 Tenn. 332, 8 S.W.2d 481 (1928). In that case, after W.J. Barnes death in 1923, his children by a prior marriage sought to have the deed reformed to keep the property from vesting in S.A. Barnes, the mother of other children with W.J. Barnes. *Id.* at 481-82. The court found that action of those claiming under W.J. Barnes to reform the deed was barred under the ten-year Statute of Limitations, saying:

It cannot be doubted but that . . . a cause of action accrued to W.J. Barnes upon delivery to him of the deed from A.G. Barnes in 1902, containing the name of his wife as joint vendee, inserted in the deed by mistake of the draftsman, and contrary to the intention to the parties to the deed. The accrual of the cause of action cannot be postponed to the discovery of the mistake by the injured party. . . . The effect of our statute is that a contracting party, injured by a mistake in the drafting of his contract, shall have ten years within which to ascertain the existence of the mistake, and to commence his suit for redress; but if the ten years lapse without discovery and suit, in absence of fraudulent concealment, the action is barred.

Id. at 482-83.

Keith and Pam Kemp contend that some time “prior to Duane Kemp’s death” on January 10, 1997, over 23 years ago, “an agreement was reached” for Keith Kemp to “purchase all real estate owned by Duane Kemp and Mary Kemp”, and although Duane and Mary “talked with their attorney Max Speight on multiple occasions concerning the agreement, Keith Kemp is not aware whether a final “agreement” was ever prepared and signed.” Defendants’ answer to plaintiffs’ interrogatory no. 6. That would have put the Keith Kemp on inquiry notice that he needed to follow up on the status of the needed documentation, to see if it had been signed and recorded. By 2006, at least 13 years ago, it appears from Keith’s unsuccessful attempt to have his mother Mary sign a trust agreement, which would have at her death conveyed to him two of the subject tracts of land and put all her other real estate in a trust controlled by him, that he had either knowledge or was on inquiry notice that no contract nor deed had been prepared or recorded evidencing the claimed sale of the subject property. The ten-year Statute of Limitations bars defendants’ claims to own the property in this case, because that cause of action clearly accrued over ten years before it was ever asserted.

III. CONCLUSION

For the above stated reasons, this Court should enter partial summary judgment in their favor declaring that at the death of Mary Elizabeth Kemp, eight of the subject eleven parcels of real estate were solely owned solely her, as were undivided one-half interests in the other three parcels, all of which properties were bequeathed equally to her three children, Beth Oliver, Keith Kemp and Lisa Doss, and are subject to partition or sale in this case, to be divided between Beth Oliver, Keith Kemp, and Joe Doss, the husband and sole heir of the late Lisa Doss, on grounds that the defendants Keith and Pam Kemp have no writing signed by Duane or Mary Kemp supporting their contention that Keith or Keith and Pam Kemp previously purchased all that land, as required by the Statute of Frauds, and because their claim for that property is barred by the ten-year Statute of Limitations.

Other issues not to be decided by this Court's ruling on the motion for partial summary judgment are the cotenants rights to any adjustments to their shares resulting from any cotenant(s) bearing a disproportionate share of the burdens or the benefits of owning the properties since Mary Kemp's death, and plaintiffs' request that this Court also partition certain personal property owned by Mary Kemp at her death.


Respectfully submitted,



John M. Miles, BPR# 013345
Attorney for Plaintiffs Beth Oliver and Joe Doss
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon Steve Conley, Esq., attorney for defendants Keith A. Kemp and Pam D. Kemp, P.O. Box 427, Union City, TN 38281, via U.S. Mail, postage prepaid, this the 22 day of April, 2020.



John M. Miles

4. In January 2019, attorney John Miles hired Maness & Jowers, PLC, on behalf of his client, Beth Oliver, to check the records on file with the Weakley County Register of Deeds to determine what is recorded there concerning the ownership of tracts of real estate which that had been acquired initially by Duane Kemp and/or Mary Kemp, who were husband and wife, either by themselves or with others. I was also asked to check and see if any documents had been registered reflecting any change of ownership from Duane and/or Mary Kemp to Keith Kemp and whether or not either Duane Kemp or Mary Kemp had conveyed property to Keith Kemp. In other words, they wanted to know what real estate Mary Kemp owned at her death, and, consequently, what real estate would have passed to her heirs under her will. I conducted this search for these records, which did not include a search for deeds of trust, if any.

5. I have viewed a copy of Duane Kemp's will, who died testate on January 10, 1997. His estate was opened in the Weakley County Chancery Court under docket number 15,081, and his will is recorded with the Weakley County Chancery Court in Will Book 7, Page 255. A copy of his will is attached hereto as **Exhibit A**. I understand that Mary Kemp died testate on January 1, 2018. A copy of her will is recorded in the Chancery Court of Weakley County in Will Book 16, Page 715, and with the Weakley County Register of Deeds in Book D449, Page 501. A copy of her will is attached hereto as **Exhibit B**. Her last will bequeathed all her property equally to her three children.

6. From an examination of the records on file at the Weakley County Register of Deeds on or about January 31, 2019, I found seven Weakley County properties listed as having been purchased by Duane Kemp and his wife, Mary Kemp. Those properties were:

- (a) **107 N. Poplar Street**, Dresden, Tennessee purchased by Duane Kemp and wife, Mary Kemp in 1964, recorded in Deed Book 123, page 572 (Map 101D-F-9.00);
- (b) **4539 Sharon Hwy.** Purchased by Duane Kemp and wife, Mary Kemp in 1974, recorded in Deed Book 165, page 469 (Map 101-113.01);
- (c) **150 West Main Street**, Dresden, Tennessee. Purchased by Duane Kemp and wife, Mary Kemp in 1969, recorded in Deed Book 139, page 297 (Map 101D-F-12.00),
- (d) **Austin Springs Road.** Purchased by Duane Kemp and Mary Kemp in 1984, recorded in Deed Book 254, page 80 (Map 012-41.00).
- (e) **Sharon Highway, (Map 101 Parcel 72)**, Purchased by Duane Kemp and wife, Mary Kemp in 1972/1977, recorded first in Deed Book 150, page 153, and later in Deed Book 190, page 396 (Map 101-72.00);
- (f) **Sharon Highway (Map 101-113.00)**. Purchased by Duane Kemp and Wife, Mary Kemp in 1972/1977, recorded first in Deed Book 150, page 153, and later in Deed Book 190, page 396 (Map 101-113.00);
- (g) **306 South Parkway**, Dresden, Tennessee. Purchased by Duane Kemp and wife, Mary Kemp in 1961, recorded in Deed Book 116, page 536 (Map 102G-D-102H-22.00);

Because deeds to all these seven properties reflect that they were purchased by a husband and wife, they are considered held as tenancies by the entirety in Tennessee. With this type of ownership, when one spouse dies the property immediately vests in the other. Under those circumstances, the Register of Deeds' records reflect these seven properties were owned solely by Mary Kemp

beginning on the date her husband died and owned by her on the date of her death. They are therefore now equally owned by her heirs.

7. When I examined the records on file at the Weakley County Register of Deeds on or about January 31, 2019, I also found one property noted as having been purchased solely by Duane Kemp in 1996, at **8708 Highway 22**, Dresden, Tennessee, recorded in Deed Book 347, page 322 (Map 101-105.03). Under the terms of Duane Kemp's will, a copy of which is attached hereto as **Exhibit A**, this property was bequeathed to Mary Kemp and passed to her when he died. Under those circumstances, the Register of Deeds records reflect that this property was owned solely by Mary Kemp beginning on the date her husband died and owned by her on the date of her death. Therefore, this property is also now held equally by her heirs.

8. When I examined the records on file at the Weakley County Register of Deeds on or about January 31, 2019, I also found two contiguous properties noted as having been purchased by Duane Kemp and wife, Mary Kemp, and Keith A. Kemp and wife, Pam D. Kemp, both in 1990:

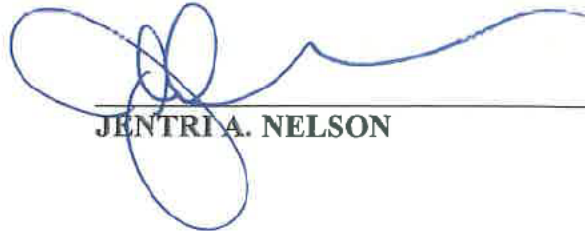
- (a) **Summers Road**, recorded in Deed Book 303, page 589 (Map 109-14.02);
- (b) **Evergreen Street, Dresden, Tennessee**, recorded in Deed Book 303, page 589 (Map 109-14.06). The deeds to these properties do not specify how the property would be held among the grantees, so it is presumed that the two married couples each held as tenants by the entireties with respect to their spouses and as tenants in common with respect the other couple. Thus, when Duane Kemp died, Mary Kemp was left with an undivided one-half interest in these two properties. Under those circumstances, the Register of Deeds' records reflect that Mary still owned her undivided one-half interest in these two properties on the date of her death, and, therefore, her one-half interest is now owned equally by her heirs.

9. When I examined the records on file at the Weakley County Register of Deeds on or about January 31, 2019, I also found one last property noted as having been purchased in 1994 by Duane Kemp and Keith Kemp as Tenants in Common, at **147 W. Main Street**, Dresden, Tennessee, recorded in Deed Book 337, page 415 (Map 101D-E-3.02). Thus, Duane Kemp owned an undivided one-half interest in this property, and, since under the terms of his will attached hereto as **Exhibit A**, all his property was bequeathed to Mary Kemp, this one-half interest passed to her when he died. Under those circumstances, the Register of Deeds records reflect that a one-half interest in this property was owned by Mary Kemp beginning on the date her husband died and owned by her on the date of her death. Mary Kemp's one-half interest is now owned in equal shares by her heirs.

10. My search of the records filed with the Weakley County Register of Deeds office revealed that no deeds or any other documents have been recorded which concern any transfer to Keith Kemp, Pam Kemp, or anyone else, of any or all properties described above in the paragraphs 6,7,8 & 9, in other words, no such documents have been recorded concerning the seven tracts of property that had previously been purchased by Duane Kemp and his wife Mary Kemp, which became owned solely by her at his death (§ 6 above), no such documents have been recorded concerning the one parcel purchased solely by Duane Kemp that Mary Kemp inherited (§ 7 above), and no such documents have been recorded concerning either of the two parcels of property that Duane Kemp and wife, Mary Kemp purchased undivided one-half interests in along with Keith Kemp his wife Pam Kemp (§ 8 above), and there were no such documents on the one parcel of property Duane Kemp purchased with Keith Kemp as tenants in common (§ 9 above), which

undivided one-half interest of Duane all passed to Mary Kemp when her husband Duane Kemp died.

FURTHER AFFIANT SAITH NOT.



JENTRI A. NELSON

OATH

Personally appeared before me, the undersigned Notary Public for the said county and state, Jentri A. Nelson, with whom I am personally acquainted (or whose identity was proved to me on the basis of satisfactory evidence), after being duly sworn, states that he is the Affiant in the above styled action, and the statements made above are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED BEFORE ME, this 20th day of April, 2020.



NOTARY PUBLIC

6/22/2022
My Commission Expires

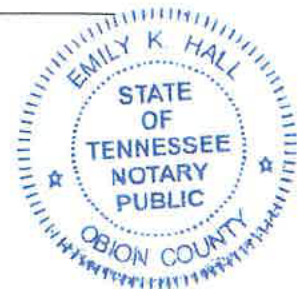


Exhibit A

LAST WILL AND TESTAMENT
OF
DUANE KEMP

WEAKLEY COUNTY
FILED
APR 22 1997
TINL 3:00pm
Angela Kelly
CLERK & MASTER

WB7
pg 255

I, DUANE KEMP, a resident of Weakley County, Tennessee, do make, publish and declare this to be my Last Will and Testament, and I hereby revoke all former Wills and Codicils made by me.

ITEM I: The primary beneficiary of my estate is my wife, Mary E. Kemp. We have three children who are as follows, beginning with the oldest and continuing through to the youngest: Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. I am making certain provisions for two of my children to serve in certain fiduciary capacities as set forth below.

ITEM II: I hereby nominate and appoint Mary Beth Kemp Oliver and Keith Allen Kemp as Co-Executors of my estate, and as Co-Trustees of any trusts or trust shares that may be established hereunder. Should either of my Co-Executors predecease me, fail to qualify, refuse or cease to serve, I then direct that my daughter Lisa Carol Kemp serve in his place instead. I authorize my Co-Executors and Co-Trustees to exercise any and all powers as set forth in Tennessee Code Annotated 35-618, to the extent applicable; all of which provisions and powers are incorporated herein by reference. I direct that my Co-Executors and Co-Trustees shall not be required to give bond for the faithful performance of their duties.



255

STATE OF TENNESSEE, WEAKLEY COUNTY
I, the undersigned Clerk & Master do hereby certify that this is a true and correct copy of the original of this instrument filed in this case, entered in record in well Book No. 7 Page 255 et seq the same remaining in my office.
This 3 day of April 2000
Regina VanCleave, Clerk & Master
By: Charlotte Layman D Clerk

ITEM III: I direct that all of my just debts, funeral expenses and the costs of administration of my estate be paid as soon after my death as practicable. I further direct that all estate, inheritance, or succession taxes : upon my estate, and/or taxes occasioned by my death, including interest and penalties thereon, be paid out of the residue of my estate.

I hereby waive on behalf of my estate the right to recover any part of such taxes, interest or penalties from any beneficiary of my estate including any beneficiary of any non-probate assets which are taxable as a part of my estate.

ITEM IV: I give and bequeath all of my property to my wife, Mary E. Kemp, if she survives me.

ITEM V: In the event my said wife predeceases me, I give and bequeath all of my property equally to my children per stirpes and not per capita. If any of our said children also predecease me, and leave surviving issue, and should any of said issue not have attained the age of 21 years, I direct that the portion of my estate otherwise distributable to such grandchildren shall be retained in trust with separate trusts or trust shares established for each such beneficiary, and all of such trust shares or trusts managed in accordance with the following provisions.

ITEM VI: I direct that my Co-Trustees may distribute such portions of income and principal, as my Co-Trustees deem advisable, in their sole discretion, for the maintenance, medical care, education, and general welfare of the beneficiary thereof. Upon said beneficiary attaining the age of 21 years, I direct that all remaining assets in such trust or trust share shall be distributed to the beneficiary thereof, and said trust or trust share terminated.

ITEM VII: No interest of any beneficiary in the corpus or income of any trust created herein shall be subject to assignment, alienation, anticipation, or liable for any debts or obligations of any beneficiary, or subject to attachment or any other order, decree, judgment, or process of Court on account of or for the collecting of any debt, obligation or judgment.

ITEM VIII: My trustees shall not be required to furnish bond, qualify in or make reports to any Court. However, my Trustee shall render annually to all beneficiaries a report showing all transactions pertaining to the administration of the trust.

ITEM IX: Each beneficiary shall give my Co-Executors a written receipt for each asset distributed. The receipt shall be prepared by my Co-Executors and shall set forth the adjusted income tax basis of each asset being distributed to the beneficiary. My Co-Executors may withhold distribution of each asset until the beneficiary has given the required written receipt: Notwithstanding the provisions of TCA Section 30-1313, my Co-Executors can give the beneficiary the adjusted income tax basis of such asset as required by Section 6039A of the Internal Revenue Code of 1954 as from time to time amended. If an action is brought against my Co-Executors under TCA Section 30-1313 and my Co-Executors have not distributed an asset which is the subject of the action due to my Co-Executors inability to provide the adjusted income tax basis of such asset, I direct that my estate shall fully indemnify my Co-Executors from any judgment, obligation, cost or other liability or expense in connection with the defense of such action.

ITEM X: During the administration of my estate if my Co-Executors must dispose of an asset to provide funds for the payment of a tax, an administration expense, or claim of a creditor, my Co-Executors may dispose of the asset without liability to my estate or to a beneficiary for disposing of an asset which is more marketable but which will produce a higher income tax liability to my estate more than another estate.

ITEM XI: My Co-Executors may distribute assets in kind and need consider only the fair market value of the assets in determining if the proper amount or portion is being distributed to each beneficiary. My Co-Executors are not required to equalize the potential income tax consequences among the beneficiaries and no beneficiary may question the determination of my Co-Executors. If a beneficiary refuses to accept an asset distributed in kind, I direct my Co-Executors to sell such asset and after withholding all required taxes and the costs of such sale to distribute the cash remaining to the beneficiary as such beneficiary's share.

IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and three (3) preceding typewritten pages, all in the presence of the persons witnessing my Will at my request on this 10th day of September, 1981.


DUANE KEMP

The foregoing instrument consisting of this and four (4) preceding typewritten pages, was signed, sealed, published and declared by DUANE KEMP, the Testator, to be his Last Will and Testament in our presence; and we at his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses on the day and date above written.

Sherry Hatchel

Mantim, In. 38237

Lynda C. Pettit

Abbeville, In. 38225

Exhibit B

BK/PG: D449/501-505
20001174

5 PGS:AL-LAST WILL & TESTAMENT	
TINA BATCH: 77391	03/25/2020 - 01:15 PM
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	25.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	27.00

STATE OF TENNESSEE, WEAKLEY COUNTY
APRIL JONES

23996
LAST WILL AND TESTAMENT
OF
MARY E. KEMP

WEAKLEY COUNTY
FILED
FEB 01 2018
TIME 19:05 am
Clerk & Master

WB 16
Page 715

I, MARY E. KEMP, a resident of Weakley County, Tennessee, do make, publish and declare this to be my Last Will and Testament, and I hereby revoke all former Wills and Cidicils made by me.

ITEM I: The primary beneficiary of my estate is my husband, Duane Kemp. We have three children who are as follows, beginning with the oldest and continuing through to the youngest: Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. In addition to my husband, I am making certain provisions for two of my children to serve in certain fiduciary capacities as set forth below.

ITEM II: I hereby nominate and appoint my husband, Duane Kemp, as Executor of my estate. Should my said husband predecease me, fail to qualify, refuse or cease to serve, I then appoint two of our children, Mary Beth Kemp Oliver and Keith Allen Kemp, as Co-Executors of my estate and also as Co-Trustees of any trusts or trust shares that may be established hereunder. Should either of my Co-Exeontors predecease me, fail to qualify, refuse or cease to serve, I then direct that my daughter Lisa Carol Kemp serve in his place instead. I authorize my Co-Executors and Co-Trustees to exercise any and all powers as set forth in Tennessee Code Annoteted 35-618, to the extent applicable; all of which

STATE OF TENNESSEE, WEAKLEY COUNTY
the undersigned Clerk & Master do hereby certify that this is a true and correct copy of the original of his instrument filed in this case, entered in record in Will Book Book No. 16 Page 715 & seq. the same remaining in my office.
this 25th day of March 2020
Regina VanCleave, Clerk & Master
By: [Signature] Deputy Clerk



SCANNED
2-1-18 SJA

provisions and powers are incorporated herein by reference. I direct that my Executor, Co-Executors and Co-Trustees shall not be required to give bond for the faithful performance of his or their duties

ITEM III: I direct that all of my just debts, funeral expenses, and the costs of administration of my estate be paid as soon after my death as practicable. I further direct that all estate, inheritance, or succession taxes upon my estate, and/or taxes occasioned by my death, including interest and penalties thereon, be paid out of the residue of my estate.

I hereby waive on behalf of my estate the right to recover any part of such taxes, interest or penalties from any beneficiary of my estate including any beneficiary of any non-probate assets which are taxable as a part of my estate.

ITEM IV: I give and bequeath all of my property to my husband, Duane Kemp, if he survives me.

ITEM V: In the event my said husband predeceases me, I give and bequeath all of my property equally to my children per stirpes and not per capita. If any of our said children also predecease me, and leave surviving issue, and should any of said issue not have attained the age of 21 years, I direct that the portion of my estate otherwise distributable to such grandchildren shall be retained in trust with separate trusts or trust shares established for each such beneficiary, and all of such trust shares or trusts managed in accordance with the following provisions.

ITEM VI: I direct that my Co-Trustees may distribute such portions of income and principal, as my Co-Trustees deem advisable, in their sole discretion, for the maintenance, medical care, education, and general welfare of the beneficiary thereof. Upon said beneficiary attaining the age of 21 years, I direct that all remaining assets in such trust or trust share shall be distributed to the beneficiary thereof, and said trust or trust share terminated.

ITEM VII: No interest of any beneficiary in the corpus or income of any trust created herein shall be subject to assignment, alienation, anticipation, or liable for any debts or obligations of any beneficiary, or subject to attachment or any other order, decree, judgment, or process of Court on account of or for the collecting of any debt, obligation or judgment.

ITEM VIII: My Co-Trustees shall not be required to furnish bond, qualify in or make reports to any Court. However, my Co-Trustees shall render annually to all beneficiaries a report showing all transactions pertaining to the administration of the trust.

ITEM IX: Each beneficiary shall give my Executor or Co-Executors a written receipt for each asset distributed. The receipt shall be prepared by my Executor or Co-Executors and shall set forth the adjusted income tax basis of each asset being distributed to the beneficiary. My Executor or Co-Executors may withhold distribution of each asset until the beneficiary has given the required written receipt. Notwithstanding the provisions of TCA Section 30-1313, my Executor or Co-Executors may withhold distribution of any asset until my Executor or Co-Executors can give the beneficiary the adjusted income tax basis of such asset as required by Section 6039A of the Internal Revenue Code of 1954 as from time to time amended. If an action is brought.

against my Executor or Co-Executors under TCA Section 30-1313 and my Executor or Co-Executors have not distributed an asset which is the subject of the action due to my Executor's or Co-Executors' inability to provide the adjusted income tax basis of such asset, I direct that my estate shall fully indemnify my Executor or Co-Executors from any judgment, obligation, cost or other liability or expense in connection with the defense of such action.

ITEM X: During the administration of my estate if my Executor or Co-Executors must dispose of an asset to provide funds for the payment of a tax, an administration expense, or claim of a creditor, my Executor or Co-Executors may dispose of the asset without liability to my estate or to a beneficiary for disposing of an asset which is more marketable but which will produce a higher income tax liability to my estate than another estate.

ITEM XI: My Executor or Co-Executors may distribute assets in kind and need consider only the fair market value of the assets in determining if the proper amount or portion is being distributed to each beneficiary. My Executor or Co-Executors are not required to equalize the potential income tax consequences among the beneficiaries and no beneficiary may question the determination of my Executor or Co-Executors. If a beneficiary refuses to accept an asset distributed in kind, I direct my Executor or Co-Executors to sell such asset and after withholding all required taxes and the costs of such sale to distribute the cash remaining to the beneficiary as such beneficiary's share.

IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and four (4) preceding typewritten pages, all in the presence of the persons witnessing my Will at my request on this 10th day of September, 1981.

Mary E. Kemp
MARY E. KEMP

The foregoing instrument consisting of this and four (4) preceding typewritten pages, was signed, sealed, published and declared by MARY E. KEMP, the Testatrix to be her Last Will and Testament in our presence; and we at her request and in her presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses of the day and date above written.

Sherry Hatched

Martins, In. 38237

Linda C. Pottit

Kresden, In. 38225

3. I have personal knowledge of the facts in this affidavit, except as where noted otherwise.

4. My father Duane Kemp died on January 10th, 1997, and he had a will. His estate was opened under cause number 15081 in Weakley County, Chancery Court where his will is recorded in Will Book 7 page 255. Under the terms of his Last Will and Testament, all of his property went to his wife Mary Kemp. A copy of his will is attached hereto as **Exhibit A** hereto.

5. My mother Mary Kemp died January 1st, 2018, and she had a will. Under the terms of her will, since she survived my father Duane Kemp, she gave all her property equally to her children, who were named in the will. Those heirs are me, my brother Keith Allen Kemp, and our sister Lisa Carol Kemp. Keith and I were named in the will as the Co-Executors if our mother outlived our father, who would have otherwise been the executor. A copy of the will of Mary Kemp is attached hereto as **Exhibit B**, and it is recorded in the Chancery court of Weakley county in Will Book 16 page 715 and with the Weakley County Register of Deeds in Deed Book 449 pages 501 - 505. Before our mother's death, our sister Lisa Carol Kemp married Joe Doss and became Lisa Doss. Lisa herself died about one month after our mother having suffered for many years from ALS. Her share of our mother's estate, pursuant to the terms of her own will, was left to her husband, Joe Doss, who is the other plaintiff in this case. A copy of Lisa Doss' will, which was probated in her home state of Alabama, was filed as exhibit B to our complaint in this matter.

6. I knew before my mother Mary Kemp died that she owned numerous parcels of real estate in Weakley County, Tennessee. I thought that my brother Keith Kemp might have a partial interest in a few of the parcels that mother owned, but at the time of mother's death I did not know the specifics of which properties he had an interest in or to what degree. I did know that most of

them had been purchased by my mother Mary and my father Duane and that there was commercial, residential and agricultural property. More recently, I have had the title ownership checked by Jentri Nelson, a local attorney, and consequently I know from her work that, of those parcels partially owned by Keith, his share in some of those parcels was held jointly with his wife Pam Kemp, but none of his interest or Pam's came from any transfer from our mother or father.

7. Before my mother's death on January 1st, 2018, she had suffered from dementia for many years and lived in a nursing home for almost three years. During the period when my mother was suffering from the effects of dementia, Keith told me that a trust agreement had been prepared at his request for our mother to sign. I believe he told me this sometime in 2016. Keith told me that it was a "really good" agreement, but that mother refused to sign it. At that time, I had not seen the trust agreement so I had no idea what it said. I remember Keith saying that maybe if mother was "having a good day" mentally, he could try to get her to sign the trust agreement he had prepared.

8. Sometime later, also in 2016, at a time when I was working for Keith in Keith's office, he had shown me a filing cabinet where he kept the power of attorney which mother had executed giving all three of her children power of attorney. At a later time when I was working at Keith's office, I got a call from either our mother's bank or from the office of her Edward Jones broker requesting a copy of her power of attorney. I went to the filing cabinet where Keith had shown me it was kept. I found the Power of Attorney, but laying right on top of it was an unsigned document stating that it had been prepared in July 2006 by attorney Max Speight. I knew then that Max had since lost his license to practice law and had been sentenced to a term of prison. I read the document, which said it was a Trust Agreement, and then made a copy of it, because I was

horrified and scared that Keith would try to get our mother to sign it while she was suffering from dementia and living in a nursing home. A copy of this Trust Agreement is attached as **Exhibit C**.

(Note: The check marks and “circles” and handwritten comments were made by me.)

9. The agreement was unsigned and undated, but the memorandum from Max Speight which indicated that it was just a preliminary draft, was dated June 4th, 2006, about a month after my husband Paul had died from a massive heart attack. (see exhibit C attached hereto) Before he died, my husband had done a fairly effective job of keeping Keith in check. This unsigned trust document was to have Keith serve as Trustee upon our mother becoming incapacitated or dying, but at the time of my discovery of the document mother was already mentally incapacitated and was living in a nursing home. It further provided that the title of two properties owned by Mary Kemp (the Austin Springs Road farm and the commercial property at 150, West Main Street in Dresden) be conveyed to Keith after her death, that Keith would receive outright some grain bins on another farm, and that Keith would receive all the farm equipment and machinery with the remainder of the assets be divided into three equal trusts for Mary Kemp’s children, me, Keith and Lisa, who would collect their share of income during their lifetimes. Under the terms of this unsigned and undated agreement neither Lisa nor I had any rights to manage our shares of the trust property, and no trust real estate could be sold without the unanimous consent of all three children.

10. The attorney hired to represent my mother’s Estate is Lang Unger. Her estate remains open, though most of the liquid assets have been distributed and there remain undistributed assets of personal property and shares in Bancorp South and Simmons Bank. I understand that under Tennessee Law mother’s interest in her real estate vested automatically in her heirs.

11. When Keith and I met with Mr. Unger prior to the opening of the estate, I remember Mr. Unger asking us if we had any other documents that needed to be included in the opening of the estate. Keith said no, and I said no. The estate was opened, and Keith and I were named Co-Executors (per our mother's provisions in the will). After the estate was opened, Mr. Unger met with us from time to time about various Estate issues, including the need to prepare an inventory of the Estate's assets. I stayed after Keith and stayed after him to prepare an inventory, after all he is an accountant. I had heard Keith's claim to have paid for half the farm at Austin Springs road even before Mother's death, but there was never anything shown to substantiate that, and mother never said anything about it.

12. After numerous requests from me, Keith finally produced a very sketchy handwritten document for the inventory. It listed accounts, but not account numbers, nor did it provide any account values. It listed some real estate, but not with the detail of all the parcel numbers, acreages, and values. On that document, Keith described himself as a ½ owner of what he described as the Old Hwy 22 Atkinson Farm (40-acre tract) and the Austin Springs Road Farm (a 219-acre tract). At that time, I had not asked for any title research and frankly did not know exactly which parcels Keith actually did have a fractional interest in or to what degree. Mother also owned a pickup truck and a 1990 Lincoln Continental, and I hand wrote those additions to the list he provided me. The truck and the Lincoln were not included in the inventory. Keith had said he wanted them both after mother died, and my sister and I agreed to just let him have them. I have attached a copy of this list hereto as **Exhibit D**. For clarity, I have highlighted in yellow what information I added, but all of the remaining information was as it was presented to me by Keith and is in Keith's handwriting.

13. I went to meet with attorney John M. Miles on or about October 23, 2018, and ended up hiring him later to help me with the issues that remained a concern. At that time my concerns were that the estate consisted of a financial account with Edward Jones, bank accounts, and real estate which included mother's house in Dresden, commercial property and farm land, but no accounting had been prepared. I was also concerned about the lack of an understanding about the sharing of costs and revenues going forward.

14. I continued working with my brother Keith about getting the inventory done. Keith provided me with the preliminary information in the Fall of 2018, and I did very little with that other than typing it up. I remember using the figures off the dividend information I had for the valuation of the Bancorp South and Simmons Bank shares, and that Keith found date of death values, but there was very little difference in those values. Attached hereto as **Exhibit E**, is the type written list for the inventory that I provided to Lang Unger. The handwritten notes are all mine. The parenthetical statements about Keith's ownership in the old Hwy 22 Farm and the Austin Springs Road Farm were straight from Keith's claims. At that time, I had no idea whether or not those claims were factual. I was getting anxious about finishing and getting the estate closed, and I was concerned about the problems I was having coming to an agreement with Keith about how farming operations would be handled in the future, including issues such as how crop revenues for 2018 would be divided, what rental amounts would be paid to me and Joe Doss and making arrangements for sharing expenses. In the time period after hiring Mr. Miles, my discussions with my brother Keith about income and expenses from the real estate were not particularly fruitful, though we finally did come up with an Inventory of assets for Mary Kemp's Estate, which was filed with the court in November 2018. A copy of that inventory is attached hereto as **Exhibit F**. This

Inventory included brokerage accounts, stock, bank accounts and household contents. Though the list (see **Exhibit D**) that Keith provided included the real estate, Mr. Unger left the real estate out as he said it was his standard practice, and the inventory, as filed, specifically references the fact that the property listed “not include any real estate owned” by Mary Kemp. Despite what Mr. Unger had said, I was nervous about not expressly listing the real estate in the inventory. I agreed to the filing of this Inventory because Mr. Unger assured me that the standard practice is to not include real estate in the inventory of an estate and that it was not required by law to be included.

15. Notwithstanding Mr. Unger’s assurance, I became more concerned about my mother’s numerous parcels of real estate not appearing on the Inventory filed in her Estate. My concern was because of what my brother Keith had said in Mr. Unger’s office one day in January of 2019. The day before that meeting I got a text from Keith that we were to meet with Lang Unger the very next day, and I presented at Mr. Unger’s office as requested by Keith. When I showed up at that meeting, Keith was very angry and presented some document that was all in his handwriting and claimed that he had paid over \$1,000,000 for “the property”, but was not specific about which property. A copy of the document Keith presented me with is attached hereto as **Exhibit G**, and, except for the notations which I have highlighted in yellow on pages 2 and 3, it is entirely in Keith’s handwriting. This was the first time after the opening of mother’s estate that Keith expressly claimed any ownership of mother’s real estate that might be different from what was of record, and I had not had the title ownership checked at that time.

16. I relayed to Mr. Miles that Keith was now saying that he had purchased mother’s land. On my behalf, Mr. Miles hired another lawyer, Jentri Nelson, to check the Weakley County Register of Deeds office and confirm that the records showed that my mother did own the real estate

in question at the time of her death. I refer the reader to her affidavit for the specifics of her findings.

17. During the summer of 2019, Mr. Miles told me that he received a letter from Keith's attorney saying that Keith and his wife Pam Kemp were alleging that I had removed documents concerning trust agreements, partnership agreements, and real estate contracts from our mother's home after she passed away. I told Mr. Miles that I was shocked that Keith would say such a thing and that I absolutely had not taken any such documents from my mother's home. I also made him aware of the fact that I didn't even have a key to her home for a long time before she died, and that, despite continually asking Keith for a key, he didn't give me a key until sometime in mid to late June 2018, almost six months after mother's death. Our mother also had a lock box, but I never had access to it, although Keith did. Mother had been in a nursing home for almost three years, and, as far as I knew, no one had been maintaining her home. Once I got the key to our mother's house, I found it in disarray and spent some time trying to clean it up. During that time, I did find in her home a copy of the unsigned Trust Agreement draft from Max Speight that, as I explained above, Keith had said he was unable to get her to sign. I did not remove it because I had already made a copy when I first came across it inadvertently while working at Keith's office in 2016. While in mother's home, I never saw any partnership agreements, trust agreements, or contractual agreements and I also reported that to Mr. Miles. I provided Mr. Miles with a copy of the unsigned trust agreement that I had copied from what I had seen in Keith's office in 2016, and he provided a copy to Keith's attorney, Mr. Conley, by way of letter dated June 19, 2019. Sometime in the late summer of 2018, I did shred some very old Edward Jones statements and very old cancelled checks,

but I did not remove or destroy any documents like a trust document, real estate contracts or anything of the nature Mr. Conley inquired about whatsoever.

18. I did remove from mother's home some of her personal property, specifically, the old family Bible, mother's china, two small diamond pendant necklaces, a couple of lamps, some quilts tops, photographs, her sterling silver, her tea set and miscellaneous items of a purely personal nature because they were important to me and because I did not want them stolen or destroyed by mold or mildew. There was no insurance on the contents of mother's house because it is unoccupied and insurance is unavailable. I still have those items and have not disposed of them. Once I had access to the house, I asked Keith numerous times if there was anything in mother's house that he wanted, but he never responded other than to assert his interest in some of the property upon ultimate distribution. For example, he stated that he wanted mother's china. To give the reader a feel for how bad conditions were in her home, there was even a dead rodent on the toilet that I did not have the stomach to remove. I asked Keith to get it out, but he never did. Mother's house has no air conditioning because unit in the attic froze, resulting in condensation going everywhere and causing the ceiling to sag in the Living/dining room area. Keith has had every opportunity to get anything he wants from mother's home, far greater opportunity than I.

19. On July 2019, a motion was filed by Keith Kemp's attorney in the Estate case asking that all beneficiaries be required to return to the Estate all assets previously distributed to them, which included assets valued at over \$2,000,000.00 from our mother's Edward Jones brokerage account. (a copy of this motion is attached hereto as **Exhibit H**) This motion says it was being filed by Co-Executor, Keith Kemp, but I, as the other Co-Executor, was not consulted before it was filed, and I do not believe it should have been filed. The Estate is still holding additional assets that had

been owned by our mother, other than real estate, including some stock in Bancorp South and Simmons Bank, which, prior to the recent market downfall, was approximately \$200,000 worth of bank stock.

FURTHER AFFIANT SAITH NOT.

Beth Kemp Oliver
BETH KEMP OLIVER

OATH

Personally appeared before me, the undersigned Notary Public for the said county and state, Beth Kemp Oliver, with whom I am personally acquainted (or whose identity was proved to me on the basis of satisfactory evidence), after being duly sworn, states that she is the Affiant in the above styled action, and the statements made above are true and correct to the best of her knowledge and belief.

SWORN TO AND SUBSCRIBED BEFORE ME, this 13th day of April, 2020.

Emily K. Hall
NOTARY PUBLIC

6/22/2022
My Commission Expires



Exhibit A

LAST WILL AND TESTAMENT
OF
DUANE KEMP

WEAKLEY COUNTY
FILED
APR 22 1997
FNL 3:00pm
Angie Kennedy
CLERK & MASTER

WB7
pg 255

I, DUANE KEMP, a resident of Weakley County, Tennessee, do make, publish and declare this to be my Last Will and Testament, and I hereby revoke all former Wills and Codicils made by me.

ITEM I: The primary beneficiary of my estate is my wife, Mary E. Kemp. We have three children who are as follows, beginning with the oldest and continuing through to the youngest: Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. I am making certain provisions for two of my children to serve in certain fiduciary capacities as set forth below.

ITEM II: I hereby nominate and appoint Mary Beth Kemp Oliver and Keith Allen Kemp as Co-Executors of my estate, and as Co-Trustees of any trusts or trust shares that may be established hereunder. Should either of my Co-Executors predecease me, fail to qualify, refuse or cease to serve, I then direct that my daughter Lisa Carol Kemp serve in his place instead. I authorize my Co-Executors and Co-Trustees to exercise any and all powers as set forth in Tennessee Code Annotated 35-618, to the extent applicable; all of which provisions and powers are incorporated herein by reference. I direct that my Co-Executors and Co-Trustees shall not be required to give bond for the faithful performance of their duties.

ITEM III: I direct that all of my just debts, funeral expenses and the costs of administration of my estate be paid as soon after my death as practicable. I further direct that all estate, inheritance, or succession taxes upon my estate, and/or taxes occasioned by my death, including interest and penalties thereon, be paid out of the residue of my estate.

I hereby waive on behalf of my estate the right to recover any part of such taxes, interest or penalties from any beneficiary of my estate including any beneficiary of any non-probate assets which are taxable as a part of my estate.

ITEM IV: I give and bequeath all of my property to my wife, Mary E. Kemp, if she survives me.

ITEM V: In the event my said wife predeceases me, I give and bequeath all of my property equally to my children per stirpes and not per capita. If any of our said children also predecease me, and leave surviving issue, and should any of said issue not have attained the age of 21 years, I direct that the portion of my estate otherwise distributable to such grandchildren shall be retained in trust with separate trusts or trust shares established for each such beneficiary, and all of such trust shares or trusts managed in accordance with the following provisions.

ITEM VI: I direct that my Co-Trustees may distribute such portions of income and principal, as my Co-Trustees deem advisable, in their sole discretion, for the maintenance, medical care, education, and general welfare of the beneficiary thereof. Upon said beneficiary attaining the age of 21 years, I direct that all remaining assets in such trust or trust share shall be distributed to the beneficiary thereof, and said trust or trust share terminated.

ITEM VII: No interest of any beneficiary in the corpus or income of any trust created herein shall be subject to assignment, alienation, anticipation, or liable for any debts or obligations of any beneficiary, or subject to attachment or any other order, decree, judgment, or process of Court on account of or for the collecting of any debt, obligation or judgment.

ITEM VIII: My trustees shall not be required to furnish bond, qualify in or make reports to any Court. However, my Trustee shall render annually to all beneficiaries a report showing all transactions pertaining to the administration of the trust.

ITEM IX: Each beneficiary shall give my Co-Executors a written receipt for each asset distributed. The receipt shall be prepared by my Co-Executors and shall set forth the adjusted income tax basis of each asset being distributed to the beneficiary. My Co-Executors may withhold distribution of each asset until the beneficiary has given the required written receipt: Notwithstanding the provisions of TCA Section 30-1313, my Co-Executors can give the beneficiary the adjusted income tax basis of such asset as required by Section 6039A of the Internal Revenue Code of 1954 as from time to time amended. If an action is brought against my Co-Executors under TCA Section 30-1313 and my Co-Executors have not distributed an asset which is the subject of the action due to my Co-Executors inability to provide the adjusted income tax basis of such asset, I direct that my estate shall fully indemnify my Co-Executors from any judgment, obligation, cost or other liability or expense in connection with the defense of such action.

ITEM X: During the administration of my estate if my Co-Executors must dispose of an asset to provide funds for the payment of a tax, an administration expense, or claim of a creditor, my Co-Executors may dispose of the asset without liability to my estate or to a beneficiary for disposing of an asset which is more marketable but which will produce a higher income tax liability to my estate more than another estate.

ITEM XI: My Co-Executors may distribute assets in kind and need consider only the fair market value of the assets in determining if the proper amount or portion is being distributed to each beneficiary. My Co-Executors are not required to equalize the potential income tax consequences among the beneficiaries and no beneficiary may question the determination of my Co-Executors. If a beneficiary refuses to accept an asset distributed in kind, I direct my Co-Executors to sell such asset and after withholding all required taxes and the costs of such sale to distribute the cash remaining to the beneficiary as such beneficiary's share.

IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last will and Testament, consisting of this and three (3) preceding typewritten pages, all in the presence of the persons witnessing my Will at my request on this 10th day of September, 1981.


DUANE KEMP

The foregoing instrument consisting of this and four (4) preceding typewritten pages, was signed, sealed, published and declared by LUANE KEMP, the Testator, to be his Last Will and Testament in our presence; and we at his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses on the day and date above written.

Sherry Hatchel

Mantion, In. 38237

Ardis C. Pettit

Alwooden, In. 38225

Exhibit B

22996
LAST WILL AND TESTAMENT
OF
MARY E. KEMP

WEAKLEY COUNTY
FILED
FEB 01 2018
TIME 9:05am
SXB
CLERK & MASTER

I, MARY E. KEMP, a resident of Weakley County, Tennessee, do make, publish and declare this to be my Last Will and Testament, and I hereby revoke all former Wills and Cidicils made by me.

ITEM I: The primary beneficiary of my estate is my husband, Duane Kemp. We have three children who are as follows, beginning with the oldest and continuing through to the youngest: Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. In addition to my husband, I am making certain provisions for two of my children to serve in certain fiduciary capacities as set forth below.

ITEM II: I hereby nominate and appoint my husband, Duane Kemp, as Executor of my estate. Should my said husband predecease me, fail to qualify, refuse or cease to serve, I then appoint two of our children, Mary Beth Kemp Oliver and Keith Allen Kemp, as Co-Executors of my estate and also as Co-Trustees of any trusts or trust shares that may be established hereunder. Should either of my Co-Executors predecease me, fail to qualify, refuse or cease to serve, I then direct that my daughter Lisa Carol Kemp serve in his place instead. I authorize my Co-Executors and Co-Trustees to exercise any and all powers as set forth in Tennessee Code Annoteted 35-618, to the extent applicable; all of which

provisions and powers are incorporated herein by reference. I direct that my Executor, Co-Executors and Co-Trustees shall not be required to give bond for the faithful performance of his or their duties

ITEM III: I direct that all of my just debts, funeral expenses, and the costs of administration of my estate be paid as soon after my death as practicable. I further direct that all estate, inheritance, or succession taxes upon my estate, and/or taxes occasioned by my death, including interest and penalties thereon, be paid out of the residue of my estate.

I hereby waive on behalf of my estate the right to recover any part of such taxes, interest or penalties from any beneficiary of my estate including any beneficiary of any non-probate assets which are taxable as a part of my estate.

ITEM IV: I give and bequeath all of my property to my husband, Duane Kemp, if he survives me.

ITEM V: In the event my said husband predeceases me, I give and bequeath all of my property equally to my children per stirpes and not per capita. If any of our said children also predecease me, and leave surviving issue, and should any of said issue not have attained the age of 21 years, I direct that the portion of my estate otherwise distributable to such grandchildren shall be retained in trust with separate trusts or trust shares established for each such beneficiary, and all of such trust shares or trusts managed in accordance with the following provisions.

ITEM VI: I direct that my Co-Trustees may distribute such portions of income and principal, as my Co-Trustees deem advisable, in their sole discretion, for the maintenance, medical care, education, and general welfare of the beneficiary thereof. Upon said beneficiary attaining the age of 21 years, I direct that all remaining assets in such trust or trust share shall be distributed to the beneficiary thereof, and said trust or trust share terminated.

ITEM VII: No interest of any beneficiary in the corpus or income of any trust created herein shall be subject to assignment, alienation, anticipation, or liable for any debts or obligations of any beneficiary, or subject to attachment or any other order, decree, judgment, or process of Court on account of or for the collecting of any debt, obligation or judgment.

ITEM VIII: My Co-Trustees shall not be required to furnish bond, qualify in or make reports to any Court. However, my Co-Trustees shall render annually to all beneficiaries a report showing all transactions pertaining to the administration of the trust.

ITEM IX: Each beneficiary shall give my Executor or Co-Executors a written receipt for each asset distributed. The receipt shall be prepared by my Executor or Co-Executors and shall set forth the adjusted income tax basis of each asset being distributed to the beneficiary. My Executor or Co-Executors may withhold distribution of each asset until the beneficiary has given the required written receipt. Notwithstanding the provisions of TCA Section 30-1313, my Executor or Co-Executors may withhold distribution of any asset until my Executor or Co-Executors can give the beneficiary the adjusted income tax basis of such asset as required by Section 6039A of the Internal Revenue Code of 1954 as from time to time amended. If an action is brought.

against my Executor or Co-Executors under TCA Section 30-1313 and my Executor or Co-Executors have not distributed an asset which is the subject of the action due to my Executor's or Co-Executors' inability to provide the adjusted income tax basis of such asset, I direct that my estate shall fully indemnify my Executor or Co-Executors from any judgment, obligation, cost or other liability or expense in connection with the defense of such action.

ITEM X: During the administration of my estate if my Executor or Co-Executors must dispose of an asset to provide funds for the payment of a tax, an administration expense, or claim of a creditor, my Executor or Co-Executors may dispose of the asset without liability to my estate or to a beneficiary for disposing of an asset which is more marketable but which will produce a higher income tax liability to my estate than another estate.

ITEM XI: My Executor or Co-Executors may distribute assets in kind and need consider only the fair market value of the assets in determining if the proper amount or portion is being distributed to each beneficiary. My Executor or Co-Executors are not required to equalize the potential income tax consequences among the beneficiaries and no beneficiary may question the determination of my Executor or Co-Executors. If a beneficiary refuses to accept an asset distributed in kind, I direct my Executor or Co-Executors to sell such asset and after withholding all required taxes and the costs of such sale to distribute the cash remaining to the beneficiary as such beneficiary's share.

IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and four (4) preceding typewritten pages, all in the presence of the persons witnessing my Will at my request on this 10th day of September, 1981.

Mary E. Kemp
MARY E. KEMP

The foregoing instrument consisting of this and four (4) preceding typewritten pages, was signed, sealed, published and declared by MARY E. KEMP, the Testatrix to be her Last Will and Testament in our presence; and we at her request and in her presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses of the day and date above written.

S. Benny Hatchel

Martins, In. 38237

Linda C. Pottit

Chesden, In. 38225

Exhibit C

June 4, 2006

MEMORANDUM

TO: Keith Kemp

FROM: Max Speight

RE: Revocable Trust For Mary Kemp

Attached is a draft of a Revocable Trust Agreement for your mother for review and consideration. I realize that more changes and additions will probably be needed, but I wanted to get this draft to you for review first.

REVOCABLE TRUST AGREEMENT

OF

MARY E. KEMP

THIS TRUST AGREEMENT is made this _____ day of _____, 2006, by and between MARY E. KEMP, hereinafter called "GRANTOR", and MARY E. KEMP, TRUSTEE, hereinafter called "TRUSTEE",

W I T N E S S E T H

Subject to the following terms and conditions, the parties agree as follows:

1. Grantor, for and in consideration of the transfer of certain assets to the Trustee and the benefits described herein, hereby creates a Revocable Trust for her use and benefit and for the ultimate use and benefit of her children, Beth Kemp Oliver, Keith Allen Kemp and Lisa Carol Doss, and their issue.

2. The Grantor shall have the right to revoke, modify or amend this Agreement and make any additions to the assets of the trust as she deems appropriate.

3. Mary E. Kemp shall serve as Trustee of this trust until her death or until she becomes physically and/or mentally incapacitated, whichever shall first occur.

✓ Should the Grantor become physically and/or mentally incapacitated and no longer be able to serve as Trustee, Keith Allen Kemp shall serve as Trustee.

In the event Keith Allen Kemp is unable to serve as Trustee under these circumstances while the Grantor is living, then the Successor Trustee shall be selected in the manner as provided below upon the death of the Grantor.

Written certifications of two (2) physicians licensed to practice medicine in the State of Tennessee that the Grantor is mentally unable to serve as Trustee shall be sufficient authority for the above named successor Trustee to then be authorized to serve.

The Grantor specifically authorizes the release of any and all medical information to the named Successor Trustees, notwithstanding State and/or Federal restrictions as to the release of such information, including but not limited to any Health Insurance Portability and Accountability Act of 1996 ("HIPAA") regulations.

✓ Upon the death of the Grantor, Keith Allen Kemp shall serve as Trustee.

Should Keith Allen Kemp be unable to serve as Trustee at any of the times described herein, or refuse or cease to serve, Mary Beth Oliver and Lisa Carol Doss shall serve as Co-Trustees. Should either of them be unable to serve for any reason at any time, or refuse or cease to serve, the other named daughter of the Grantor shall then serve. Should none of the children of the Grantor be able to serve for any reason at any time, or refuse or cease to serve, the adult issue of the children of the Grantor shall then serve as Co-Trustees.

4. The term "Trustee" shall include all persons who serve in such capacity, or any successors. No bond shall ever be required of any Trustee herein, and any such Trustee is specifically granted all rights, powers, duties and responsibilities as contained in Section 35-50-110, Tennessee Code Annotated, where applicable.

5. Investments are authorized that the Trustee deems appropriate. However, subsequent to the death of the Grantor, no real estate assets of this trust shall be sold except upon the unanimous consent of all three (3) children of the Grantor.

6. No person, firm or corporation dealing with the Trustee in any capacity is bound to inquire into the Trustee's capacity to act, or into the authority for or the propriety of any act of the Trustee, or as to whether any condition precedent has been complied with by the Trustee, or to see to the application or disposition of any money or other property paid or delivered to the Trustee.

7. No Trustee is responsible for the acts or omissions of any other Trustee or for allowing any other Trustee to have custody or control of the funds and property of the trust estate. Each Trustee is responsible only for his or her own acts or omissions in bad faith.

8. No Trustee is required to make reports to or settlements with any Court.

9. During the lifetime of Grantor, the Trustee may distribute such portions of income and/or principal to or for the benefit of the Grantor as the Trustee deems advisable and/or as directed by Grantor.

10. The decisions from time to time as to the amounts of distributions, the purposes of such distributions, the method of distributions, or whether or not to make such distributions shall all be within the sole discretion of the Trustee, (except those

directed by Grantor if Grantor is not then serving as Trustee), are not subject to question by any person presently entitled or that may be entitled in the future to receive income and/or principal from this trust.

11. After the death of the Grantor, if this trust continues as provided herein, then no interest of any person entitled to income and/or principal at any time under this Agreement shall be subject to assignment, alienation, anticipation or liable for any debts or obligations of such person or subject to attachment or any other Order, Decree, Judgment or process of Court on account of or for the collecting of any debt, obligation or Judgment.

12. This trust, unless sooner terminated by Grantor, shall continue for the lifetime of the Grantor. After the death of the Grantor, the Trustee shall pay the unpaid debts, if any, of the Grantor, including any medical expenses not paid by other sources, along with the funeral and burial expenses of the Grantor, if such are not paid from other assets of the Grantor.

✓ 13. After the death of the Grantor, the right, title and interest of the Grantor and this trust as to certain real estate now identified on Map 101C, Group A, Parcel 012.00, located at 150 West Main Street, Dresden, Tennessee, and also as to certain real estate now identified on Map 012, Parcel 041.00, located on

Austin Springs Road shall both be conveyed to Keith Allen Kemp, in fee simple, free of any liens and/or encumbrances. Said tracts of land are described as follows:

Map 101C, Group A, Parcel 012.00 - Land located in the 7th Civil District of Weakley County, Tennessee:

LOCATED in the Town of Dresden, Tennessee, west of the U-Tote-Em building and bounded as follows: Bounded on the east by Alley (U-Tote-Em Grocery Company Building); bounded on the south by Main Street, Highway 22; bounded on the west by Fuller Street; and bounded on the north by lot belonged to Raymond and Ellis Vaughan, said lot being twenty-one feet north and south and sixty-two feet, more or less, east and west.

There is included in the above description, but expressly excluded the following tract conveyed to the City of Dresden, Tennessee on April 22, 1947 and of record in Deed Book 91, Page 453 ROWCT:

BEGINNING at a stake at the northwest corner of the U-Tote-Em Grocery Store building; running west 10 feet and 7 inches to a stake on S.S. Freeman's east line; thence south with Freeman's east line 21 feet and 1 inch to a stake on the north line of Main Street in Dresden; thence east with said north line of said street 10 feet and 7 inches to a stake on said north line; thence north 21 feet and 1 inch to the beginning corner.

It being the same conveyed to Duane Kemp and wife, Mary Kemp by Deed of Catherine Freeman, a widow, dated August 9, 1969 and of record in Deed Book 138, Page 297 ROWCT.

Map 012, Parcel 041.00 - Land located in the 13th Civil District of Weakley County, Tennessee:

BEGINNING in the west margin of an asphalt road from Dukedom to Palmersville, same being Thomas Blassingame's southwest corner; runs thence South 2 degrees, 30 minutes East with Joseph C. Williamson's and Velva Hawks' west line 288 rods

to a stake; thence North 86 degrees, 15 minutes West with Hawks' north line 20-1/2 rods; thence due south with Hawks' west line 144-1/2 rods to the center of a creek; thence with said creek South 31 degrees West 39-1/8 rods; South 58 degrees, 30 minutes West 44-1/4 rods to Strawbridge, et al, east line; thence with the east lines of Strawbridge, et al, Bill Potts, Lintz Burnett, Rupert Webb, Velva L. Hawks, et al, as follows: North 2 degrees West 364 rods; thence North 1 degree West 30-1/2 rods; thence North 16 degrees West 7 rods; thence North 23 degrees West 17 rods; thence North 53 degrees West 7-5/8 rods; thence North 21 degrees East 3-5/8 rods; thence North 35 degrees, 30 minutes West 8 rods; thence North 11 degrees, 15 minutes east 7-3/4 rods; thence North 17 degrees, 30 minutes East 15 rods; thence North 4 degrees, 30 minutes West 6-1/2 rods; thence North 2 degrees East 10-5/8 rods; thence North 16 degrees 15 minutes East 5-3/4 rods to a point at Velva L. Hawks, et al, southeast inner corner; thence North 88 degrees East 91-7/8 rods with the south lines of Hawks, et al, Paul Isbell, et al, and Blassingame to the point of beginning, containing 219.4 acres, more or less.

It being the same conveyed to Mason Kemp and wife, Hope Kemp and Duane Kemp and wife, Mary Kemp by Deed of Roy Puckett and wife, Annalyn Puckett dated October 11, 1977 and of record in Deed Book 193, Page 292 ROWCT. Mason Kemp and wife, Hope Kemp subsequently conveyed their interest in said real estate to Duane Kemp and wife, Mary Kemp by Deed dated May 4, 1984 and of record in Deed Book 254, Page 80 ROWCT.

✓ Also after the death of the Grantor, the right, title and interest of the Grantor and this trust as to all grain bins located on a certain tract of land that runs along Highway 89 between Dresden and Sharon, Tennessee shall be conveyed to Keith Allen Kemp, free and clear of any liens and/or encumbrances.

✓ Also, after the death of the Grantor, all interest of the Grantor and this trust as to any farm equipment and machinery shall be conveyed to Keith Allen Kemp, free and clear of any liens and/or encumbrances.

✓ Keith Allen Kemp has previously paid for one-half (1/2) of the original purchase of the Austin Springs farmland; originally purchased the grain bins described above; and with the rent payments made to the Grantor and her husband, now deceased, has paid for the office building and contents used now in the accounting practice. *rent only has not paid for the building*

✓ All of the rest and remainder of the assets of this trust shall then be divided into three (3) equal trusts, and administered as provided below.

14. All provisions set forth herein shall be applicable to the administration of all trusts for the benefit of each child of the Grantor.

Commencing from the date of death of the Grantor, the Trustee shall pay to or for the benefit of the beneficiary of the trust the net income in quarterly or more frequent installments.

In addition, the Trustee may pay to or for the benefit of the beneficiary from his or her trust, at any time and from time to time, from the principal of the trust, such amount or

amounts as the Trustee determines to be advisable for the unpaid medical care and educational fees and expenses of any grandchild of the Grantor.

However, any encroachments against the principal of any such trust for education purposes for the benefit of a grandchild of the Grantor shall be made only after payments are made by the parent of such grandchild of the Grantor and/or by scholarships and financial aid duly applied for and attempted to be obtained by such beneficiary.

15. Upon the death of the beneficiary of the trust, the trust shall then be divided into as many equal shares as said beneficiary has surviving him or her, and administered as set forth below.

From each trust, the Trustee may distribute to or for the benefit of the beneficiary thereof amounts of income and/or principal of such trust share, as the Trustee determines, in the sole discretion of the Trustee, for the maintenance, medical care and general welfare of the beneficiary thereof.

Upon the beneficiary attaining the age of thirty-five (35) years, all assets of that trust for the benefit of that beneficiary shall be distributed to him or her, and that trust terminated.

If any grandchild dies prior to distribution to such beneficiary of the assets of the trust for his or her benefit, all remaining assets shall be distributed to the surviving issue of that beneficiary.

16. If any state inheritance, federal estate, or any succession taxes of any type become payable after the death of Grantor by virtue of the inclusion of this trust in such estate, the Trustee shall pay the pro-rata portions of such taxes from the assets of this trust.

17. The validity of this trust, and the construction of the provisions thereof, shall be governed by the laws of the State of Tennessee, regardless of the change of residence of Grantor or regardless of the location of any assets in any jurisdiction.

18. Any person who holds a Power of Attorney of the Grantor shall have the right to transfer any assets in the name of the Grantor to this trust, to be managed in accordance with the provisions herein.

19. Should it become necessary or advisable to enforce or apply any part of this trust in any other jurisdiction other than Tennessee, including without limitation the management of any assets wherever located, the Trustee, or any successor, if desirable, shall be empowered and authorized to select any other

person or entity to serve as Co-Trustee as to such other jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have executed this Trust Agreement in duplicate originals, either of which may be treated as an original for the purposes herein contained.

MARY E. KEMP,
GRANTOR

MARY E. KEMP,
TRUSTEE

STATE OF TENNESSEE
COUNTY OF WEAKLEY

On this _____ day of _____, 2006, before me personally appeared MARY E. KEMP, to me known or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and Seal of office in said County on the day above written.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF TENNESSEE
COUNTY OF WEAKLEY

On this _____ day of _____, 2006, before me personally appeared MARY E. KEMP, TRUSTEE, to me known or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and Seal of office in said County on the day above written.

NOTARY PUBLIC

My Commission expires: _____

estateb/trust/Kemp,MaryE-RevTrust(5-06)

Exhibit D

✓ Mary Kemp Estate Inventory
Household 10,000-

*Friday
11:00

Investments: E.D. Jones \$2,327.882.11

E.D. Jones

BXS stock 3,206 shares

split

IRA-

Simmons bank stk - C0000059391 (4,138 shares)

381-90569-1-6

\$34,926.18

Bank accounts: Simmons ^{adv} MM #3290158 \$4,577.80

Simmons ^{personal} Checking #6020615 \$12,380.16

BXS (?) #40700-010-2 \$1981.59

~~Household \$15,000~~

Property: ✓ 306 S. Parkway house & lot

✓ Old Hwy 22 (Atkison farm 1/2 Keith) 40ac±

✓ Poplar St. (Court Sq.) Muscadine Vine store bldg.

✓ 150 W Main (old office)

✓ Hwy 22 (Keith's office + old state bldg)

✓ Hwy 89 house & 38ac±

✓ Austin Springs Rd Farm 219ac± (1/2 Keith)

✓ 151 + 153 W. Main - Dr. Welles old office + Cash Advance (KK 1/2)

✓ 1990 Lincoln Continental \$2,000. w(?)

✓ truck

Exhibit E

Mary Kemp Estate

Submitted September 20, 2018

INVESTMENTS: Edward Jones \$2,327,882.11—This has been distributed.
Edward Jones IRA \$34,876.18—This has been distributed.
Bancorp South stock 3,206 shares (formerly People's Bank in Dresden) Keith was supposed to take this to the bank on 9/19/18, but I have no verification.
Simmons Bank stock—4,138 shares (\$122,071.00) Acct #C0000059391—This stock certificate has yet to be found.

BANK ACCOUNTS: Simmons Bank—Money Market account #3290158--\$4,577.80
Simmons Bank—Checking account #6020615--\$12,380.16
Bancorp South—Checking account #40700-010-2--\$1,981.59

PROPERTY: Farm—Austin Springs Road—219 acres (1/2 owned by Keith) —KK claims but no proof
Farm—Old Hwy 22—40 acres (1/2 owned by Keith)
Farm—Highway 89—38 acres plus house (only rented once since built)

Residence—306 South Parkway (house & lot)

Commercial—107 N Poplar (currently boutique—Muscadine Vine)

Commercial—150 West Main (old office building)

Commercial—151 & 153 West Main (currently Cash Express, and the other not occupied—1/2 owned by Keith) (147 w main) *

Commercial—8708 Highway 22 (Keith's current office)

Commercial—8714 Highway 22 (building not occupied for at least 7 years) >

VEHICLES: 1990 Lincoln Continental
Pickup truck—not sure of year or model >

did not include on final inventory

these are listed as one property @ 8708 Hwy 22

HOUSEHOLD BELONGINGS: \$10,000.00

Exhibit F

IN THE CHANCERY COURT OF WEAKLEY COUNTY, TENNESSEE
AT DRESDEN

IN RE: ESTATE OF MARY ELIZABETH KEMP, DECEASED
DATE OF DEATH: 01-01-2018

WEAKLEY COUNTY
FILED
NOV 15 2018
TIME 12:39 PM
[Signature]
CLERK & MASTER

MARY BETH KEMP OLIVER AND
KEITH A. KEMP,

NO. 23,996

PETITIONERS

INVENTORY

Come now Mary Beth Kemp Oliver and Keith A. Kemp, the duly appointed Co-Executors in this matter who do file the inventory in this cause and would show that the following assets owned by the Decedent at the time of her death have come into their hands:

<u>Asset</u>	<u>Account #</u>	<u>Value</u>
1. Edward Jones		\$2,327,882.11
2. Edward Jones – IRA		34,826.18
3. 3206 shares – Bancorp South stock	(\$32.05 per share)	102,752.30
4. 4138 shares – Simmons Bank stock	C0000059391	122,071.00
5. Simmons Bank – Money Market Acct.	3290158	4,577.80
6. Simmons Bank – Checking Acct.	6020615	12,380.16
7. Bancorp South – Checking Acct.	40700-010-2	1,981.59
8. Household Contents		<u>10,000.00</u>
	TOTAL –	\$2,616,471.14

The assets contained herein do not include any real estate owned by the Decedent at the time of her death.

RESPECTFULLY SUBMITTED, this the 14th day of November, 2018.

Mary Beth Kemp Oliver
MARY BETH KEMP OLIVER
Co-Executor

Keith A. Kemp
KEITH A. KEMP
Co-Executor

STATE OF TENNESSEE
COUNTY OF WEAKLEY

MARY BETH KEMP OLIVER makes oath that the statements and allegations in the foregoing document are made as of her own knowledge, are true and correct, and those made as on information and belief, she believes to be true.

Sworn to and subscribed before me, this 15th day of October, 2018.

Donna Sawyers
NOTARY PUBLIC



My Commission Expires:
01-25-22

STATE OF TENNESSEE
COUNTY OF WEAKLEY

KEITH A. KEMP makes oath that the statements and allegations in the foregoing document are made as of his own knowledge, are true and correct, and those made as on information and belief, he believes to be true.

Sworn to and subscribed before me, this 9 day of November, 2018.

Judy A. McAlpin
NOTARY PUBLIC

My Commission Expires:
2-6-2021





LANGDON S. UNGER, JR, BPR#10653

Attorney for Estate

P. O. Box 842

Martin, TN 38237

(731) 587-9671

CERTIFICATE OF SERVICE

I, Langdon S. Unger, Jr., Attorney at Law, do hereby certify that I have this the 14th day of November, 2018, mailed a true and correct copy of the foregoing document to: Mr. Joe Doss, 824 Lake Joyce Rd., Moody, AL 35004.


LANGDON S. UNGER, JR.

Exhibit G

Keith Kemp's Rent-to-Own Payment History

1

	Initials	Date
Prepared By		
Approved By		

© WILSON JONES G7504 ColumnWrite ©

	1	2	3	4
1	1993-2017 Rent Pmt Office		414,111.00	
2	1993-2000 Salary Pmt		151,900.56	
3	1997-2001 farm		503,150.00	539,513.52
4	Depn. dis-allowed to Mary		47,500.00	
5	1/2 life ins. pay for Farm	100,000	50,000.00	465,000.00
6	Total pd for Properties		1,125,661.56	1,004,513.52
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				

RENTS PAID BY KEITH KEMP

2

	Initials	Date
Prepared By		
Approved By		

© WILSON JONES

G7504 ColumnWrite

	1	2	3	4
	Office Rentals	Office Salaries	Farm Rentals	
1990				
1991				
1992				
1993 took over CPA P/A	34,100			
1994	150,000	225,628		
1995	180,000	187,128		
1996	180,000	156,000		
1997	120,000	65,000		
add'l - Crop #	165,560.00			Life/Ke *
Debt relief (CAGR)	58,500.00		6,025	10,000
1998		49,000	6,300.00	
1999		9,000.00	100 - disch'd	
2000		36,000.00	Grain	Grain
2001			6,000	to pay
2002			Grain	
2003			6,000	41,500.00
2004			6,000	
2005	120,000.00		Grain	
2006				
2007				
2008				
2009				
2010			197,500	ASCE #
11				1997-2013
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32		2,141,100.00	751,825.6	502,150.00
33				41,500.00
34				50,000.00
35				
36				
37				
38				
39				
40				

total \$ pd to DK
 since July 1-1993

20 yrs
 @ 6000/yr

new policies orig. to pay off Farm @ Rustin Springs - May 1997
 Bought Highland V.P. & listed in 1997 @ 217,000

(10.1)

Property Values

3

	Initials	Date
Prepared By		
Approved By		

© WILSON JONES G7504 ColumnWrite ©

						1993	1994
1	Old Store Bldg. Poptac					25200 -	25200 -
2	* Sharon Hwy Farm Hse					28400 -	28400 -
3	150 W. Main - Old Office					37700 -	37700 -
4	Parkway Street - Rex.					80800 -	80800 -
5	Comm. Prop. (New Office Loc.)					51000 -	88500 -
6	* Hwy 89 20.61 ac.					24200 -	24200 -
7	* Hwy 89 "Lots"						
8	↳ 5 on Hwy @ 5300					16500 -	16500 -
9	(44 other @ 500)					22000 -	22000 -
10							313300 -
11	Athison Farm (DK & KK)	31000		only 1/2			15500 -
12	Puckett Farm (DK & KK)	145000		" "			92500 -
13	east. county is 80% of A.C.P.						406300 -
14	equates to \$507,875 @ 100%						
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34	* All part of 40 ac. land						
35	on Hwy 89						
36	originally listed as						
37	lots						
38							
39							
40							

Exhibit H

IN THE CHANCERY COURT OF WEAKLEY COUNTY, TENNESSEE

IN RE:)
ESTATE OF MARY ELIZABETH KEMP,)
Deceased)
Date Of Death: January 1, 2018) No. 23,996
)
MARY ELIZABETH KEMP OLVER and)
KEITH KEMP,)
)
Petitioners)

MOTION

The Petitioner/Co-Executor, **Keith Kemp**, respectfully moves for relief as follows:

1. On November 15, 2018, Co-Executors Mary Beth Kemp Oliver and Keith Kemp filed an Inventory of the financial assets owned by Mary Kemp at the time of her death. A copy of the Inventory is attached to this Motion as **Exhibit A**.

2. The primary asset owned by Mary Kemp at the time of her death was an Edward Jones account with a value of \$2,327,882.11. The majority of this account represented monies paid by Keith Kemp to Mary Kemp and her husband, Duane Kemp, during their lifetimes for the purchase of multiple tracts of real estate located in Weakley County, Tennessee.

3. Beth Oliver and Joe Doss have now filed a partition lawsuit in the Weakley County Chancery Court (*Civil Action No. 24,414*) alleging that the real estate Keith Kemp purchased from Mary Kemp and Duane Kemp is jointly owned by Beth Oliver, Joe Doss, Keith Kemp and Pam Kemp and is subject to partition.


4. It is admitted and acknowledged that Mary Kemp and Duane Kemp never completed performance of their contract with Keith Kemp in that they did not by transfer into his name the real estate he purchased from his parents. Therefore, until the partition lawsuit is resolved, and now that Beth Oliver and Joe Doss are attempting to allege that Keith Kemp never purchased the real estate in dispute from his parents, all monies previously distributed by the Estate, including the Edward Jones account of \$2,327,882.11, should be returned by the parties and deposited with the Weakley County Clerk & Master until all issues involving this Estate, and the real estate allegedly owned by Mary Kemp at the time of her death, are resolved.

5. In the event Beth Oliver and Joe Doss continue with their position that Keith Kemp did not lawfully purchase the multiple tracts of real estate in Weakley County, Tennessee, from his parents prior to their deaths, then all monies paid to his parents, and subsequently deposited into the Edward Jones account, should be refunded to him, along with all accumulated growth on said funds.

WHEREFORE, for all of the abovementioned reasons, the Petitioner/Co-Executor, Keith Kemp, respectfully moves for the relief requested, along with any other general relief to which he may be entitled.

Respectfully submitted this the 15th day of July, 2019.

CONLEY & CONLEY

BY: 
Steve Conley, BPR#016439
Attorneys for Petitioner/Keith Kemp
317 South Third Street
Post Office Box 427
Union City, Tennessee 38281
Phone: 731-885-1482
Fax: 731-885-0017

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Motion* have been forwarded via United States Postal Service First-Class Mail, postage prepaid, to the following:

Lang Unger
Unger & Godwin
Post Office Box 842
Martin, Tennessee 38237

John Miles
Attorney at Law
Post Office Box 8
Union City, Tennessee 38281

On this the 15th day of July, 2019.



Steve Conley, BPR#016439

IN THE CHANCERY COURT OF WEAKLEY COUNTY, TENNESSEE
AT DRESDEN

IN RE: ESTATE OF MARY ELIZABETH KEMP, DECEASED
DATE OF DEATH: 01-01-2018

MARY BETH KEMP OLIVER AND
KEITH A. KEMP,

PETITIONERS

NO. 23,996

WEAKLEY COUNTY
FILED
NOV 15 2018
TIME 10:39 AM
[Signature]
CLERK & MASTER

INVENTORY

Come now Mary Beth Kemp Oliver and Keith A. Kemp, the duly appointed Co-Executors in this matter who do file the inventory in this cause and would show that the following assets owned by the Decedent at the time of her death have come into their hands:

<u>Asset</u>	<u>Account #</u>	<u>Value</u>
1. Edward Jones		\$2,327,882.11
2. Edward Jones – IRA		34,826.18
3. 3206 shares – Bancorp South stock	(\$32.05 per share)	102,752.30
4. 4138 shares – Simmons Bank stock	C0000059391	122,071.00
5. Simmons Bank – Money Market Acct.	3290158	4,577.80
6. Simmons Bank – Checking Acct.	6020615	12,380.16
7. Bancorp South – Checking Acct.	40700-010-2	1,981.59
8. Household Contents		<u>10,000.00</u>
TOTAL –		\$2,616,471.14

The assets contained herein do not include any real estate owned by the Decedent at the time of her death.

SCANNED

11-15-18 [Signature]

EXHIBIT A

RESPECTFULLY SUBMITTED, this the 14~~th~~ day of November, 2018.

Mary Beth Kemp Oliver
MARY BETH KEMP OLIVER
Co-Executor

Keith A. Kemp
KEITH A. KEMP
Co-Executor

STATE OF TENNESSEE
COUNTY OF WEAKLEY

MARY BETH KEMP OLIVER makes oath that the statements and allegations in the foregoing document are made as of her own knowledge, are true and correct, and those made as on information and belief, she believes to be true.

Sworn to and subscribed before me, this 15th day of October, 2018.

Donna Sawyers
NOTARY PUBLIC



My Commission Expires:
01-25-22

STATE OF TENNESSEE
COUNTY OF WEAKLEY

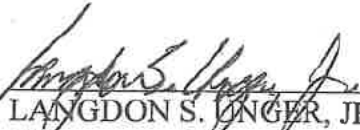
KEITH A. KEMP makes oath that the statements and allegations in the foregoing document are made as of his own knowledge, are true and correct, and those made as on information and belief, he believes to be true.

Sworn to and subscribed before me, this 9 day of November, 2018.

Judy A. McAlpin
NOTARY PUBLIC

My Commission Expires:
2-6-2021




LANGDON S. UNGER, JR, BPR#10653
Attorney for Estate
P. O. Box 842
Martin, TN 38237
(731) 587-9671

CERTIFICATE OF SERVICE

I, Langdon S. Unger, Jr., Attorney at Law, do hereby certify that I have this the 14th day of November, 2018, mailed a true and correct copy of the foregoing document to: Mr. Joe Doss, 824 Lake Joyce Rd., Moody, AL 35004.


LANGDON S. UNGER, JR.

3. I have personal knowledge of the facts in this affidavit, except as where noted otherwise.

4. Mary Elizabeth Kemp died, according to her death certificate, on January 1, 2018. She had signed a will, which reflects that it was executed on September 10, 1981. In her will, Mary Kemp left all of her property to her husband Duane Kemp if he survived her, but he died in 1997. In the event Duane did not survive Mary, she bequeathed "all my property equally to my children". These children were named in the will as Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. Mary Kemp's will nominated Beth Oliver and Keith Kemp to be Co-Executors. The will did not waive an accounting or inventory. A copy of Mary Kemp's will is attached to this my affidavit as **Exhibit A** hereto.

5. Before opening an estate, it is my practice to inquire if there are any other documents, like other wills or trusts that might change or negate the will I was provided, but I don't have any specific recollection in this case as to whether or not I made that inquiry. After the Estate was opened, I subsequently met with Beth Oliver and Keith Kemp about various Estate issues, including the need to prepare an inventory of the Estate's assets.

6. It is my best information and belief that on or about October 25, 2018, Beth Oliver hired John Miles, an attorney in Union City, to help her with these issues. Mr. Miles wrote me a letter that same day to advise me of his involvement and told me he thought it was only fair, "given the amount of real estate and other holdings" that Beth get some clarity going forward on issues including division of crop revenues and splitting of expenses. Ultimately, Mr. Miles stated that if the Co-executors were unable to come to an agreement, filing of a partition suit might become necessary. A copy of his letter is attached as **Exhibit B** hereto.

7. An Inventory of Mary Kemp's Estate assets was filed on November 15, 2018. This Inventory, a copy of which is attached as **Exhibit C**, included brokerage accounts, stocks, bank accounts and household contents, but specifically provided that it did "not include any real estate owned" by Mary Kemp. It was my standard practice to omit real estate from inventories filed in estates like this one because it was not required. Under Tenn. Code Ann. § 31-2-103, "the real property of a testate decedent vests immediately upon death in the beneficiaries named in the will, unless the will contains a specific provision directing the real property to be administered as part of the estate," and Mary Kemp's will contains no such language

8. On or about March 14, 2019, Beth Oliver spoke to me about possibly having some of the real estate appraised, and I wrote a letter to Mr. Miles the same day advising him of this conversation and inquiring if he was in the process of filing a petition for accounting and partition of the parcels of real estate. A copy of that letter is attached as **Exhibit D**. It was my understanding that records in the Register of Deeds office do not show that the ownership of Mary Kemp's real property had been transferred to Keith Kemp.

FURTHER AFFIANT SAITH NOT.


LANGDON S. UNGER, JR.

OATH

Personally appeared before me, the undersigned Notary Public for the said county and state, Langdon S. Unger, Jr., with whom I am personally acquainted (or whose identity was proved to me on the basis of satisfactory evidence), after being duly sworn, states that he is the Affiant in the above styled action, and the statements made above are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED BEFORE ME, this 21st day of April, 2020.

Donna Sawyers
NOTARY PUBLIC



01-25-22
My Commission Expires

Respectfully submitted,

[Signature]
John M. Miles, BPR# 013345
Attorney for Plaintiffs Beth Oliver and Joe Doss
P.O. Box 8
Union City, TN 38281
(731) 885-1234

Exhibit A

BK/PG: D449/501-505
20001174

5 PGS-AL-LAST WILL & TESTAMENT		
TINA BATCH 77391	03/25/2020	01:16 PM
VALUE		0.00
MORTGAGE TAX		0.00
TRANSFER TAX		0.00
RECORDING FEE		25.00
ARCHIVE FEE		0.00
DP FEE		2.00
REGISTER'S FEE		0.00
TOTAL AMOUNT		27.00

STATE OF TENNESSEE, WEAKLEY COUNTY
APRIL JONES

23996
LAST WILL AND TESTAMENT
OF
MARY E. KEMP

WEAKLEY COUNTY
FILED
FEB 01 2018
TIME 9:05 am
REGINA VAN CLEAVE
CLERK & MASTER

WB 16
715

I, MARY E. KEMP, a resident of Weakley County, Tennessee, do make, publish and declare this to be my Last Will and Testament, and I hereby revoke all former Wills and Cidicils made by me.

ITEM I: The primary beneficiary of my estate is my husband, Duane Kemp. We have three children who are as follows, beginning with the oldest and continuing through to the youngest: Mary Beth Kemp Oliver, Keith Allen Kemp, and Lisa Carol Kemp. In addition to my husband, I am making certain provisions for two of my children to serve in certain fiduciary capacities as set forth below.

ITEM II: I hereby nominate and appoint my husband, Duane Kemp, as Executor of my estate. Should my said husband predecease me, fail to qualify, refuse or cease to serve, I then appoint two of our children, Mary Beth Kemp Oliver and Keith Allen Kemp, as Co-Executors of my estate and also as Co-Trustees of any trusts or trust shares that may be established hereunder. Should either of my Co-Executors predecease me, fail to qualify, refuse or cease to serve, I then direct that my daughter Lisa Carol Kemp serve in his place instead. I authorize my Co-Executors and Co-Trustees to exercise any and all powers as set forth in Tennessee Code Annoteted 35-618, to the extent applicable; all of which

STATE OF TENNESSEE, WEAKLEY COUNTY
I, the undersigned Clerk & Master do hereby certify that this is a true and correct copy of the original of this instrument filed in this case, entered in record in Will Book Book No. 16 Page 715 at seq. the same remaining in my office.
This 25th day of March 2020
Regina VanCleave, Clerk & Master
By: [Signature] Deputy Clerk



SCANNED
2-1-18 [Signature]

provisions and powers are incorporated herein by reference. I direct that my Executor, Co-Executors and Co-Trustees shall not be required to give bond for the faithful performance of his or their duties

ITEM III: I direct that all of my just debts, funeral expenses, and the costs of administration of my estate be paid as soon after my death as practicable. I further direct that all estate, inheritance, or succession taxes upon my estate, and/or taxes occasioned by my death, including interest and penalties thereon, be paid out of the residue of my estate.

I hereby waive on behalf of my estate the right to recover any part of such taxes, interest or penalties from any beneficiary of my estate including any beneficiary of any non-probate assets which are taxable as a part of my estate.

ITEM IV: I give and bequeath all of my property to my husband, Duane Kemp, if he survives me.

ITEM V: In the event my said husband predeceases me, I give and bequeath all of my property equally to my children per stirpes and not per capita. If any of our said children also predecease me, and leave surviving issue, and should any of said issue not have attained the age of 21 years, I direct that the portion of my estate otherwise distributable to such grandchildren shall be retained in trust with separate trusts or trust shares established for each such beneficiary, and all of such trust shares or trusts managed in accordance with the following provisions.

ITEM VI: I direct that my Co-Trustees may distribute such portions of income and principal, as my Co-Trustees deem advisable, in their sole discretion, for the maintenance, medical care, education, and general welfare of the beneficiary thereof. Upon said beneficiary attaining the age of 21 years, I direct that all remaining assets in such trust or trust share shall be distributed to the beneficiary thereof, and said trust or trust share terminated.

ITEM VII: No interest of any beneficiary in the corpus or income of any trust created herein shall be subject to assignment, alienation, anticipation, or liable for any debts or obligations of any beneficiary, or subject to attachment or any other order, decree, judgment, or process of Court on account of or for the collecting of any debt, obligation or judgment.

ITEM VIII: My Co-Trustees shall not be required to furnish bond, qualify in or make reports to any Court. However, my Co-Trustees shall render annually to all beneficiaries a report showing all transactions pertaining to the administration of the trust.

ITEM IX: Each beneficiary shall give my Executor or Co-Executors a written receipt for each asset distributed. The receipt shall be prepared by my Executor or Co-Executors and shall set forth the adjusted income tax basis of each asset being distributed to the beneficiary. My Executor or Co-Executors may withhold distribution of each asset until the beneficiary has given the required written receipt. Notwithstanding the provisions of TCA Section 30-1313, my Executor or Co-Executors may withhold distribution of any asset until my Executor or Co-Executors can give the beneficiary the adjusted income tax basis of such asset as required by Section 6039A of the Internal Revenue Code of 1954 as from time to time amended. If an action is brought.

against my Executor or Co-Executors under TCA Section 30-1313 and my Executor or Co-Executors have not distributed an asset which is the subject of the action due to my Executor's or Co-Executors' inability to provide the adjusted income tax basis of such asset, I direct that my estate shall fully indemnify my Executor or Co-Executors from any judgment, obligation, cost or other liability or expense in connection with the defense of such action.

ITEM X: During the administration of my estate if my Executor or Co-Executors must dispose of an asset to provide funds for the payment of a tax, an administration expense, or claim of a creditor, my Executor or Co-Executors may dispose of the asset without liability to my estate or to a beneficiary for disposing of an asset which is more marketable but which will produce a higher income tax liability to my estate than another estate.

ITEM XI: My Executor or Co-Executors may distribute assets in kind and need consider only the fair market value of the assets in determining if the proper amount or portion is being distributed to each beneficiary. My Executor or Co-Executors are not required to equalize the potential income tax consequences among the beneficiaries and no beneficiary may question the determination of my Executor or Co-Executors. If a beneficiary refuses to accept an asset distributed in kind, I direct my Executor or Co-Executors to sell such asset and after withholding all required taxes and the costs of such sale to distribute the cash remaining to the beneficiary as such beneficiary's share.

IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and four (4) preceding typewritten pages, all in the presence of the persons witnessing my Will at my request on this 10th day of September, 1981.

Mary E. Kemp
MARY E. KEMP

The foregoing instrument consisting of this and four (4) preceding typewritten pages, was signed, sealed, published and declared by MARY E. KEMP, the Testatrix to be her Last Will and Testament in our presence; and we at her request and in her presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses of the day and date above written.

Sherry Hatchel

Martin, In. 38237

Linda C. Pottis

Chesden, In. 38225

Exhibit B

JOHN M. MILES * +

*also licensed to practice in Texas
+Rule 31 Listed General Civil/Family Mediator

LAW OFFICE & MEDIATION CENTER OF

JOHN M. MILES

511 SOUTH THIRD STREET

P.O. BOX 8

UNION CITY, TENNESSEE 38281

(731) 885-1234

FAX (731) 885-6251

W.M. MILES

(1877-1971)

C.W. MILES, III

(1911-1996)

October 25, 2018

Honorable Lang Unger
P.O. Box 842
Martin, TN 38237

Via Facsimile only to (731) 588-0271

Re: Mary Elizabeth Kemp

Dear Lang:

I met today with Beth Oliver who, as you know, is a co-executor in her mother's estate, along with her brother, Keith Kemp. I understand that Mr. Kemp is a CPA and a farmer, that he has some fractional interest in some of the land that was owned by the decedent, and I also understand that he and Beth are working on, and may be close to, submitting an inventory in this matter. Ms. Oliver is anxious to get that done and to close the estate thereby being relieved of any further responsibility.

At the same time, given the amount of real estate and other holdings, it seems to me, and I think it is only fair, that she would require some clarity going forward. I get the impression that there are either no claims, or at least no significant claims against the estate, and that there is no TennCare lien. That being the case, and the decedent having died in January 2018, any crop revenues that would have come to the decedent should now be divided by the heirs, which I understand consist of Ms. Oliver, Mr. Kemp, and the estate of their sister who died subsequent to their mother, sometime in February 2018.

Clarity in this matter I think will go a long way and Ms. ^{Oliver}Kemp needs an understanding of the farming arrangement going forward. In other words, would the ground be rented out on a per acre basis? Would there be a crop sharing arrangement? What is the plan or agreement on paying for the cost of inputs (i.e. lime, fertilizer, chemicals, seed, etc.)?

I know that when it comes to families often times people get ignored whereas, under the same circumstances, if they were non-family member third parties there would be much more detail provided. I do not think Ms. Oliver wants anything other than what is outlined and an understanding of the arrangements going forward so that she can satisfy herself that those are fair to all concerned. As you know, if these parties cannot reach an agreement, the end result might be the filing of a partition suit if circumstances are such that one is unavoidable.

Please discuss these matters with Mr. Kemp and let me have a timely response.

Yours truly,


John M. Miles

JMM/eh

Exhibit C

IN THE CHANCERY COURT OF WEAKLEY COUNTY, TENNESSEE
AT DRESDEN

IN RE: ESTATE OF MARY ELIZABETH KEMP, DECEASED
DATE OF DEATH: 01-01-2018

WEAKLEY COUNTY
FILED
NOV 15 2018
TIME 10:39 AM
[Signature]
CLERK & MASTER

MARY BETH KEMP OLIVER AND
KEITH A. KEMP,

NO. 23,996

PETITIONERS

INVENTORY

Come now Mary Beth Kemp Oliver and Keith A. Kemp, the duly appointed Co-Executors in this matter who do file the inventory in this cause and would show that the following assets owned by the Decedent at the time of her death have come into their hands:

<u>Asset</u>	<u>Account #</u>	<u>Value</u>
1. Edward Jones		\$2,327,882.11
2. Edward Jones – IRA		34,826.18
3. 3206 shares – Bancorp South stock	(\$32.05 per share)	102,752.30
4. 4138 shares – Simmons Bank stock	C0000059391	122,071.00
5. Simmons Bank – Money Market Acct.	3290158	4,577.80
6. Simmons Bank – Checking Acct.	6020615	12,380.16
7. Bancorp South – Checking Acct.	40700-010-2	1,981.59
8. Household Contents		<u>10,000.00</u>
TOTAL –		\$2,616,471.14

The assets contained herein do not include any real estate owned by the Decedent at the time of her death.

RESPECTFULLY SUBMITTED, this the 14th day of November, 2018.

Mary Beth Kemp Oliver
MARY BETH KEMP OLIVER
Co-Executor

Keith A. Kemp
KEITH A. KEMP
Co-Executor

STATE OF TENNESSEE
COUNTY OF WEAKLEY

MARY BETH KEMP OLIVER makes oath that the statements and allegations in the foregoing document are made as of her own knowledge, are true and correct, and those made as on information and belief, she believes to be true.

Sworn to and subscribed before me, this 15th day of October, 2018.

Donna Sawyers
NOTARY PUBLIC



My Commission Expires:
01-25-22

STATE OF TENNESSEE
COUNTY OF WEAKLEY

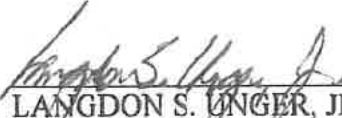
KEITH A. KEMP makes oath that the statements and allegations in the foregoing document are made as of his own knowledge, are true and correct, and those made as on information and belief, he believes to be true.

Sworn to and subscribed before me, this 9 day of November, 2018.

Judy A. McAlpin
NOTARY PUBLIC

My Commission Expires:
2-6-2021




LANGDON S. UNGER, JR, BPR#10653
Attorney for Estate
P. O. Box 842
Martin, TN 38237
(731) 587-9671

CERTIFICATE OF SERVICE

I, Langdon S. Unger, Jr., Attorney at Law, do hereby certify that I have this the 14th day of November, 2018, mailed a true and correct copy of the foregoing document to: Mr. Joe Doss, 824 Lake Joyce Rd., Moody, AL 35004.


LANGDON S. UNGER, JR.

Exhibit D

Unger & Godwin
ATTORNEYS AT LAW
409 S. Lindell St
P. O. Box 642
Martin, Tennessee 38237

Langdon S. Unger, Jr.
Carol S. Godwin
Cristy C. Cooper

(731) 587-9671
FAX (731) 588-0271

March 14, 2019

via fax transmission only: (731) 885-6251

Mr. John M. Miles
Attorney at Law
P.O. Box 8
Union City, TN 38281


RE: Estate of Mary Elizabeth Kemp
Weakley County Chancery Court No. 23,996

Dear John:

I was just touching base with you to see if you were in the process of filing a petition for accounting and partition in this matter. I talked to Beth about this today and she also mentioned the possibility of having some of the property appraised or having an "evaluation" conducted to give us some estimate as to the values of these properties.

My thought would be is that this would be something that would benefit the estate and perhaps it could be moved that the estate pay for this? Please let me know your thoughts about this matter.

Yours very truly,


Langdon S. Unger, Jr.
LSU/des

cc: Beth Oliver

IN THE 27TH JUDICIAL DISTRICT OF THE STATE OF TENNESSEE
WEAKLEY COUNTY CHANCERY DIVISION

BETH OLIVER and
JOE DOSS,

Plaintiffs,

VS.

Civil Action No.: 24,414

KEITH A. KEMP and
PAM D. KEMP,

Defendants

WEAKLEY COUNTY
FILED
APR 22 2020

DEFENDANTS KEITH KEMP'S AND PAM KEMP'S RESPONSES
TO PLAINTIFFS' INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

TIME 8:30am
Clerk & Master

The Defendants, Keith Kemp and Pam Kemp, would respectfully respond as follows:

INTERROGATORY NO. 1: Please provide the names and addresses of any and all persons that are either assisting you in the preparation of your answers to these interrogatories or through whom you have received documents to support your answers. In the case of such documents obtained from third parties, please identify which documents were obtained and from what source.

ANSWER: Keith Kemp, Pam Kemp, and attorney Steve Conley, worked together in the preparation of these answers.

INTERROGATORY NO. 2: Please identify each and every person by name, address, place of employment, and phone number, who you expect to call as a witness at trial, or who have specific knowledge of the issues framing this lawsuit. As to each such witness, state the subject matter on which you expect them to testify, state the sum and substance of what their testimony will be.

ANSWER: The following individuals have relevant information concerning the issues

in dispute in this litigation:

Bonnie Bullock worked for Duane Kemp and/or Keith Kemp for many years and has extensive knowledge concerning Keith Kemp's purchase of the real estate in dispute from Duane Kemp and Mary Kemp.

Lee Young worked for Duane Kemp and/or Keith Kemp for many years and has extensive knowledge concerning Keith Kemp's purchase of the real estate in dispute from Duane Kemp and Mary Kemp.

Andrea Hughes is a banker at Simmons Bank and has extensive knowledge concerning the financial dealings between Keith Kemp and his parents.

Terri Brundige is a banker at Simmons Bank and has extensive knowledge concerning the financial dealings between Keith Kemp and his parents.

Amy Lewellen is a banker at Simmons Bank and has extensive knowledge concerning the financial dealings between Keith Kemp and his parents.

Todd and Jennifer Hampton are owners of the Edward Jones' office in Martin, Tennessee, and they have knowledge of monies paid by Keith Kemp to his parents and the financial investments made therefrom.

Harold Melson is employed with the Edward Jones' office in Franklin, Tennessee, and he has knowledge of monies paid by Keith Kemp to his parents and the financial investments made therefrom.

Max Speight was Duane Kemp and Mary Kemp's attorney for many years and has extensive knowledge concerning their sale of the real estate in dispute to Keith Kemp.

Zachary Oliver is Beth Oliver's son and who has knowledge concerning her improper management of inheritance funds received on behalf of his younger sister.

John Oliver is Beth Oliver's son and who has knowledge concerning her improper management of inheritance funds received on behalf of his younger sister.

Graham Oliver is Beth Oliver's son and who has knowledge concerning her improper management of inheritance funds received on behalf of his younger sister.

Gail Jercinovich is a former agent at Dresden Insurance and who has extensive knowledge concerning the dealings between Keith Kemp and his parents.

Brenda Griffith is a former agent at Dresden Insurance and who has extensive knowledge concerning the dealings between Keith Kemp and his parents.

Kerry Cooper is the City Superintendent for the City of Dresden and who has extensive knowledge concerning Keith Kemp's acquisition ownership and responsibility for some of the properties in dispute.

Barbara Farmer is a banker at Simmons Bank and has extensive knowledge concerning the financial dealings between Keith Kemp and his parents.

Judy Hatler is an agent with Farm Services and has extensive knowledge concerning Keith Kemp's purchase of his parents' farm property.

LeeAnn Moore and Colin Johnson were Mary Kemp's neighbors. They have extensive knowledge concerning Keith's involvement with his parents.

INTERROGATORY NO. 3: Please identify each person by name, address, place of employment, and phone number, whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the sum and substance of the facts and opinion upon which the expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER: See response to Interrogatory No. 2.

INTERROGATORY NO. 4: We understand from correspondence from your attorney that you maintain you own all of the real estate that is the subject of this lawsuit. If you so claim, or to the extent you so claim, as to each and every parcel of real estate, please set forth any legal authority you have to claim ownership exclusive of the Plaintiffs in this matter.

ANSWER: As Beth Oliver and Joe Doss are already aware, Keith Kemp, and his wife, Pam Kemp, purchased all of the property in dispute from either Duane and Mary Kemp during their lifetimes. However, if for any reason, Beth Oliver and Joe Doss dispute this fact, Keith Kemp and Pam Kemp intend to rely upon the legal doctrines of partial performance, implied contract, promissory estoppel, constructive trust, unjust enrichment, quantum merit and title by prescription to establish their ownership in the property in dispute.

INTERROGATORY NO. 5: Attached to these Interrogatories and Requests for Production of Documents is a title opinion prepared by local attorney Jentri Nelson. In the event that you dispute any conclusion that she arrived at in her opinion in terms of the ownership of the various parcels of real estate, or the percentage of ownership, please set forth in detail your reasons for disputing her conclusions and please see Requests for Production of Documents Number 4. Please provide those documents in response to Requests for Production of Documents Number 4.

ANSWER: Objection. The referenced title opinion by Jentri Nelson was not attached.

INTERROGATORY NO. 6: It would appear that an alternative "theory" of yours is that you paid for real estate that had been owned by Mary Elizabeth Kemp or Mary Elizabeth Kemp and Duane Kemp. As to each parcel of real estate, describe in detail what agreement was made, if any, between you and Mary Elizabeth Kemp and/or Duane Kemp. Provide a copy of said agreement in response to Requests for Production of Documents Number 5, and state whether or not the agreement was ever recorded. If it was not recorded, why not?

ANSWER: Prior to Duane Kemp's death, and after discussion with all children, an agreement was reached in which Keith Kemp would purchase all real estate owned by Duane Kemp and Mary Kemp. While Duane Kemp and Mary Kemp talked with their attorney Max Speight on multiple occasions concerning the agreement, Keith Kemp is not aware whether a final "agreement" was ever prepared and signed. If so, that would have been one of the documents Beth Oliver wrongfully removed from her parents' residence after their mother's death.

INTERROGATORY NO. 7: Given that correspondence from your attorney alleges that you have paid over \$1,000,000.00 for this real estate, please describe when the payment(s) was (were) made, how it was made, if receipt was had, and what your proof of that is.

ANSWER: Between 1993 and 2017, Keith Kemp made payments to Duane Kemp and Mary Kemp totaling \$539,513.56. This do not include the other payments, costs or expenses Keith Kemp and Pam Kemp incurred for the operation of the farms or maintenance, upkeep and improvements to the properties.

INTERROGATORY NO. 8: If you rented any real estate or equipment owned by either Mary Elizabeth Kemp and/or Duane Kemp during their lifetimes, please describe the following:

1. The real estate or equipment and its location.
2. The terms of the agreement, including the rent paid, with what frequency it was to be paid, and to whom it was paid; as well as the period of time covered by the lease.
3. State whether or not there was a written agreement, and provide a copy of any such agreement.

ANSWER: All of the real estate in dispute was purchased in full from Duane Kemp and Mary Kemp by Keith Kemp and Pam Kemp through a rent-to-purchase agreement. This agreement can be confirmed by many of the individuals listed in response to Interrogatory No. 2.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please provide an accurate and legible copy of any and all documentation you will rely on at the trial in this matter from everyone you listed in interrogatory number 1.

RESPONSE: Keith Kemp and Pam Kemp are still in the process of making legible copies of all documents which will be relied upon at trial. If it is disputed that Keith Kemp paid his parents \$539,513.56 for the properties in question, please let Steve Conley know and copies of these checks can be made.

REQUEST NO. 2: Please provide an accurate and legible copy of any and all documentation you will rely on at the trial in this matter from any witness listed in interrogatory number 2.

RESPONSE: Not at this time. However, this Response will be supplemented if such documents become available at a later date.

REQUEST NO. 3: Please provide an accurate and legible copy of any and all documentation you will rely on at the trial in this matter from any expert witness disclosed in interrogatory number 3.

RESPONSE: Not at this time. However, this Response will be supplemented if such documents become available at a later date.

REQUEST NO. 4: Please reexamine interrogatory numbers 4 and 5, and to the extent that you have any documents or written instruments that you rely on in disputing, refuting, or challenging the legal opinion expressed by Jentri Nelson in her title opinion, supply an accurate and legible copy of those documents in response to this request.

RESPONSE: Objection. The title opinion of Jentri Nelson was not attached.

REQUEST NO. 5: Please reexamine interrogatory number 6, and to the extent that you have any documents or written instruments regarding an agreement between yourself and Mary Elizabeth Kemp and/or Duane Kemp, supply an accurate and legible copy of those documents in response to this request.

RESPONSE: All requested documents were removed from Duane and Mary Kemp's residence and/or Keith Kemp's office, by Beth Oliver following the death of Mary Kemp.

REQUEST NO. 6: Please provide an accurate and legible copy of each canceled check, receipt or proof of payment you say was made by you toward the purchase of any of the real estate from either Mary Elizabeth Kemp and/or Duane Kemp.

RESPONSE: Keith Kemp and Pam Kemp are still in the process of making legible copies of all documents which will be relied upon at trial. If it is disputed that Keith Kemp paid his parents \$539,513.56 for the properties in question, please let Steve Conley know and copies of these checks can be made.

REQUEST NO. 7: Please provide an accurate and legible copy of your income tax returns for the last 20 years, including all supporting schedules.

RESPONSE: Objection. Keith Kemp and Pam Kemp are not in possession of tax returns going back twenty (20) years.

REQUEST NO. 8: Please see interrogatory number 8 and provide an accurate and legible copy of any written lease agreement(s) between you and either Mary Elizabeth Kemp and/or Duane Kemp during their lifetimes.

RESPONSE: All relevant documentation and agreements, including documentation which reflects the agreements between Duane Kemp, Mary Kemp, Keith Kemp and Pam Kemp

were removed by Beth Oliver from Duane and Mary Kemp's home and /or Keith Kemp's office, following Mary Kemp's death.

REQUEST NO. 9: Please provide an accurate and legible copy of any and all tax returns you or an associate of yours prepared for Mary Elizabeth Kemp and/or Duane Kemp for the last 20 years.

RESPONSE: Keith Kemp and Pam Kemp will make and provide copies of Duane and Mary Kemp's tax returns for the past twenty (20) years, if such records can be located.

**STATE OF TENNESSEE
COUNTY OF OBION**

The undersigned, **Keith Kemp**, being duly sworn, makes oath that he has read the foregoing Answers to Interrogatories and Requests for Production of Documents and the information contained is true and correct to the best of his knowledge, information and belief.

Keith Kemp

Keith Kemp

Subscribed and sworn to before me this the 25th day of Nov., 2019.

Steve Conley

Notary Public

My commission expires:



Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Honorable Steve Conley, P.O. Box 427, Union City, TN 38281, via U.S. Mail, postage prepaid, this the 12 day of Aug., 2019.

John Miles

John Miles

STATE OF TENNESSEE
COUNTY OF OBION

The undersigned, **Pam Kemp**, being duly sworn, makes oath that he has read the foregoing Answers to Interrogatories and Requests for Production of Documents and the information contained is true and correct to the best of his knowledge, information and belief.

Pam Kemp
Pam Kemp

Subscribed and sworn to before me this the 25th day of Nov, 2019.

Stacy
Notary Public

My commission expires



Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Honorable Steve Conley, P.O. Box 427, Union City, TN 38281, via U.S. Mail, postage prepaid, this the 12 day of August, 2019.

John Miles
John Miles

**IN THE GENERAL SESSIONS COURT OF OBION COUNTY,
AT UNION CITY, TENNESSEE**

STATE OF TENNESSEE,

VS.

DOCKET NO.: CC-21-CR-318

KEVIN L. JACKSON

**SENTENCING MEMORANDUM
AND RECOMMENDATION**

COMES NOW defendant Kevin L. Jackson (“defendant”) and respectfully submits this *Sentencing Memorandum Recommendation*.

INTRODUCTION

By way of introduction, I want to spend some time discussing the vast difference between “trafficking a person for commercial sex acts,” punishable as a Class B felony, and patronizing prostitution, punishable as a Class A misdemeanor under TCA §39-13-514.

Because I believe most everyone knows what the crime of patronizing prostitution is, I want, more importantly, to draw the Court’s attention to the significance of the crime of trafficking a person for a commercial sex act. Attached as an appendix to this memorandum are two cases. The first case, State of Tennessee vs. Randall Ray Ward, is a “sex trafficking” case where two prostitutes testified to the Court with regard to their addiction to heroin and engaging in acts of prostitution in order, among other things, to maintain their access to drugs. One of these prostitutes was approached by the Defendant, and the other posted an advertisement of herself to a website containing advertisements for commercial sex services. Three days later, she received a contact from the Defendant promising “better working conditions.”

To procure future clients, the Defendant took almost nude photographs of these two women posing suggestively and used them in advertisements on the Backpage website. One of the young women testified that the Defendant gave her access to a better quality of drugs, provided her a room of her own to sleep in, and allowed her to recruit women to work in the Defendant's "stables." Both women testified that the Defendant was physically and mentally abusive. He kept all the money that they earned, and if he believed they were not seeing enough clients, he would withhold drugs until they earned more money. In addition, the Defendant controlled where both women slept, when they ate, and what they wore. The Defendant kept their identifications in his wallet, only relinquishing them when they were needed to rent a hotel room. If they refused to perform sex acts, the Defendant would threaten them, and one of the young women testified that although she wanted to leave, the drug addiction acted like "invisible handcuffs" preventing her from escaping the Defendant's grasp. On one occasion, one of the women attempted to escape, but as she was running from the hotel, the Defendant chased her, pulled her hair, and threw her around. There was testimony of physical injuries to the women, including bruises and big knots on their heads. When one of the women overdosed and was taken to a hospital, officers began their investigation, apparently ultimately leading to the arrest of the Defendant.

The other case is the State of Tennessee vs. Chi-Choi Wong. This case was a sting case; however, in contrast to the case before the Court, the Metro Police Department Vice Division was investigating prostitution and gambling. The officers saw an employment advertisement in *The Nashville Times* seeking girls to work for an escort service. The detective got a female confidential informant to call the number listed on the advertisement, and the informant spoke with someone who identified as "Edward," who gave her directions to his apartment. The

detective had a confidential informant rent a hotel room and call the phone number on the advertisement, and the undercover detective requested a blonde female approximately 25 years old with large breasts. In response, the confidential informant was told that the price for the escort was \$200.00/hour if he paid cash. Later the confidential informant received a call from a girl who identified herself as "Destiny." They made arrangements to meet at the hotel, and Destiny arrived around 8:30 and collected the \$200 in cash from the confidential informant. She then made phone calls to her driver and placed a condom on the bedside table and removed her clothing. Later, the detective entered the room and got the correct identity of Destiny, who then informed the detective that she worked for a man named Edward and that she understood the purpose of her going to the hotel room. She later told the detective more about the Defendant's business, including his telephone number and how she came about working for the Defendant. Further investigation, including execution of a search warrant led to his arrest. This last case is the complete opposite, in terms of a sting operation, of what is before the Court. In the case before the Court, it was the government that was running the sex trafficking business, and it was the Defendant who was the patron.

See **Appendix** attached hereto for copies of each of these cases.

PROCEDURAL HISTORY

On May 8th, 2021, Kevin Jackson was charged in the Court of General Sessions for Obion County with two counts for what was styled in the Affidavit of Complaint as "Trafficking for Commercial Sex Acts," but the statute referred to is actually TCA §39-13-309, and the proper nomenclature or heading chosen by the drafters of the legislation is "Trafficking **a person** for a

commercial sex act” (emphasis added). This important distinction goes to the heart of the matter in this case.

The affidavit alleged that:

“On March 6th, 2021 the defendant did make contact with 2 undercover agents who the defendant believed were sixteen-year-old females. The defendant did agree to pay 100 dollars for 30 minutes of sexual acts performed by both undercover agents who were posing as sixteen-year-old minors. This transaction did take place at a local hotel in Union City, Obion County, Tennessee. Subject is being charged with 2 counts of Trafficking for Commercial Sex Acts.”

Mr. Jackson was arrested at the scene for the Class B felony under TCA §39-13-309. Mr. Jackson had agreed to a plea arraignment, but it was withdrawn by the prosecution and the Court has stated that it would not accept any pleas on this defendant or any of the other defendants that were charged as a result of the sting operation.

Mr. Jackson lives in Paducah, Ky., and is not from the Obion County area. None of the other defendants caught in this sting operation are from the Obion County area.

On the 1st day of April, 2021, Mr. Jackson, through his attorney, filed a motion to dismiss the charge, because the affidavit of complaint simply did not support the charged offense. The motion was well taken and the State on its own motion on April 20th, 2021, reduced the charges to “Patronizing Prostitution” under TCA §39-13-514.

FACTS

We proffer the following information which we aver will be born out at the appropriate hearing.

Family Background and Education:

The defendant is 31 years old. He attended East Prairie MO High School, but left after completing 11th grade to begin work on the river. He earned his GED at age 22. Mr. Jackson owns a home at 1411 S. Friendship Road in Paducah KY. The house is subject to a mortgage payment of \$1,053 per month. The home is worth approximately \$183,000 and Mr. Jackson has paid the mortgage down such that there is now approximately \$50,000 equity in the home. Mr. Jackson is married to his wife Ashley Jackson Age 33. She is a homemaker and helps him in the raising of their 5 children, Kavion age 13, Khaniya age 10, Kaliyah age 9, Kambreigh age 5 and Kyrin age 3. All children are enrolled in the McCracken County KY schools and the oldest child is applying his talents in school sports.

Employment History:

Kevin through his employment with Marquette Transportation is the family's only source of income. Kevin has been employed with Marquette since May of 2008 and remains in good standing there. His normal work schedule is 28 days on the vessel followed by 14 days off. He is only paid for days worked on the vessel. He receives no pay on the 14 days off. **(see attached letter from Paul Dutton, Human Resources Manager for Marquette)**

Steve Bryan, who is employed in the operations department of Marquette Transportation, states that, though Kevin hired on as an inexperienced deck hand, he immediately showed dedication to learning his craft, was always polite and respectful, helped out

during meetings and training sessions, and was instrumental in keeping the meetings on track.

Mr. Bryan states that Kevin has shown dedication to becoming a professional mariner, and advanced from mate to steersman to pilot and is now that Captain of the M/V Charles Reid Perry which he describes as quite an accomplishment in the time frame it was accomplished. Mr. Bryan states that he has always found Kevin to be respectful, honest, polite and dedicated, serving also as a mentor to green deckhands and continually striving to be the best he can be. (see the attached communication from Steve Bryan, Vice President of Wheelhouse.)

Physical & Mental Health History:

Mr. Jackson enjoys good health and has no known mental health issues.

Criminal History:

As born out by the attached "Certificate of Eligibility for Diversion" from the TBI, Mr. Jackson has no criminal history and no prior arrests.

Substance Abuse History:

Mr. Jackson has no history of drug use.

Delinquency Adjudication(s):

There is likewise no history of juvenile adjudications.

CONVICTION OFFENSES AND SENTENCING RANGE

The Defendant is presently charged with patronizing prostitution, a Class A misdemeanor, which carries a punishment of up to 11 months and 29 days. (As recently as 2014, Patronizing Prostitution was only a Class B Misdemeanor) From the plain language of the statute a person "patronizes prostitution" where the subject of the offense is a law enforcement officer

or a law enforcement officer eighteen (18) years of age or older posing as a minor. This language from the statute is what fits the facts of this case, making what Mr. Jackson did a Class A Misdemeanor. In other words, the fact that the law enforcement officers were posing as a minor is not an enhancement factor, rather it simply is part of what makes this a Class A Misdemeanor crime. None of the enhancement factors under the patronizing prostitution statute TCA § 39-13-514(b)(2) or (b)(3) apply.

TCA § 40-39-202 contains provisions defining what constitutes a sexual offense. Patronizing prostitution is **not** a sexual offense unless the victim actually is a minor. Therefore, under any circumstances, this offense is not a sexual offense under Tennessee law. Moreover, the Defendant did not tender any money and, in fact, as it appeared from the video, attempted to leave, if not completely withdraw from the conduct. An argument could be made that Mr. Jackson committed the act of solicitation of patronizing prostitution, which according to TCA § 39-13-528(c) is one classification lower than the most serious crime solicited. That would make this a Class B misdemeanor rather than a Class A misdemeanor, but, as it stands, Mr. Jackson is charged with a Class A misdemeanor and the punishment range is from 0 days in jail and no fine, up to 11 month and 29 days in jail and up to a \$2,500 fine.

LEGAL STANDARDS AT SENTENCING

Pursuant to TCA § 40-35-313, and as demonstrated in the attached TBI background check, Mr. Jackson is a qualified defendant, meaning he qualifies for a judicial diversion, and under a judicial diversion, the maximum amount of jail time the Court can give as a condition of probation is thirty (30) days.

Under Tennessee law, the record must contain some proof of the need for deterrence before a defendant, who is otherwise eligible for probation or other alternative sentence, may be incarcerated. See *State v. Hooper*, 29 S.W.3rd 1, 9 (Tenn. 2000). The court's decision to incarcerate should be based on a finding that (1) there is a need to deter similar crimes in the community, jurisdiction or in the state as a whole, and (2) incarceration of the defendant may rationally serve as a deterrent to others similarly situated and likely to commit similar crimes. *Id* at p.10 and p.13

The trial court must consider the following factors in deciding whether a qualified defendant should be granted judicial diversion: (1) the defendant's amenability to correction; (2) the circumstances of the offense; (3) the defendant's criminal record; (4) the defendant's social history; (5) the defendant's physical and mental health; (6) the deterrence value to the defendant and others; and (7) whether judicial diversion will serve the interests of the public as well as the defendant. See *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229. Additionally, the trial court may consider the following additional factors: "the defendant's attitude, behavior since arrest, prior record, home environment, current drug usage, emotional stability, past employment, general reputation, marital stability, family responsibility and attitude of law enforcement." *State v. Washington*, 886 S.W.2d 950, 951 (Tenn. 1993). Finally, "a trial court should not deny judicial diversion without explaining both the specific reasons supporting the denial and why those factors applicable to the denial of diversion outweigh other factors for consideration." *State v. Cutshaw*, 967 S.W.2d 332, 344 (Tenn. Crim. App. 1997)

Although not controlling of the discretion of the sentencing court, the following factors should be considered in determining the appropriateness of probation:

- (1) The nature and characteristics of the crime, under Tenn. Code Ann. § 40-35-210(b) (4);
- (2) The defendant's potential for rehabilitation, under Tenn. Code Ann. §40-35-103(5);
- (3) Whether full probation would "unduly depreciate the seriousness of the offense," under Tenn. Code Ann. §40-35-103(1)(B); and
- (4) Whether a sentence of full probation would "provide an effective deterrent," under Tenn. Code Ann §140-35-103(1)(B)

According to TCA § 40-35-102, the foremost purpose of Tennessee' Criminal Sentencing Reform Act of 1989 is to promote justice, and, in so doing, the Tennessee legislature adopted the following principles:

- (1) Every defendant shall be punished by the imposition of a sentence justly deserved in relation to the seriousness of the offense;
- (2) This chapter is to assure fair and consistent treatment of all defendants by eliminating unjustified disparity in sentencing and providing a fair sense of predictability of the criminal law and its sanctions;
- (3) Punishment shall be imposed to prevent crime and promote respect for the law by:
 - (A) Providing an effective general deterrent to those likely to violate the criminal laws of this state;
 - (B) Restraining defendants with a lengthy history of criminal conduct;
 - (C) Encouraging effective rehabilitation of those defendants, where reasonably feasible, by promoting the use of alternative sentencing and correctional programs that elicit voluntary cooperation of defendants; and
 - (D) Encouraging restitution to victims where appropriate;

(4) Sentencing should exclude all considerations respecting race, gender, creed, religion, national origin and social status of the individual;

(5) In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration; and

(6) (A) A defendant who does not fall within the parameters of subdivision (5), and who is an especially mitigated or standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary; however, a defendant's prior convictions shall be considered evidence to the contrary and, therefore, a defendant who is being sentenced for a third or subsequent felony conviction involving separate periods of incarceration or supervision shall not be considered a favorable candidate for alternative sentencing.

(B) As used in subdivision (6)(A), "separate periods of incarceration or supervision" means that the defendant serves and is released or discharged from a period of incarceration or supervision for the commission of a felony prior to committing another felony.

(C) If a defendant with at least three (3) felony convictions is otherwise eligible, that defendant may still be considered a favorable candidate for any alternative sentencing that is within the jurisdiction of and deemed appropriate by a drug court.

(D) A court shall consider, but is not bound by, the advisory sentencing guideline in this subdivision (6).

At a sentencing hearing the Court "shall afford the parties the opportunity to be heard and present evidence relevant to the sentencing of the defendant and may afford the victim of the offense or the family of the victim the opportunity to testify relevant to the sentencing of the defendant." TENN. CODE ANN. § 40-35-209. The *Rules of Evidence* apply, "except that reliable hearsay..., may be admitted if the opposing party is accorded a fair opportunity to rebut hearsay evidence so admitted." *Id.* at (b). See, e.g., *State v. Cash*, ___ S.W.2d ___, 1992 WL 13905 at

*12,

[o]rdinarily, character letters written on behalf of the defendant should be given due consideration similar to that of other hearsay information submitted through a presentence report. The fact that, under T.C.A. § 40-35-209(b), the parties are accorded a fair opportunity to rebut any hearsay evidence lessens the potential for unreliability. Further, the trial court is entitled to weigh a letter's significance, if

any, to the case given its quality and source. For instance, a letter which is original in content and identifies the author by address, position and relationship to the parties carries indicia of reliability not present in a form letter which identifies the sender only by name. HTMLCONTROL Forms.HTML:Hidden.1 In any event, the trial court's summary refusal to review the letters was inappropriate given the admissibility of reliable hearsay pursuant to T.C.A. § 40-35-209(b) and the trial court's obligations in determining an appropriate sentence under T.C.A. § 40-35-210.

See also *State v. Haire*, S.W. 3d., 2002 WL 83604 at *22 (Tenn.Crim.App.) (“[u]nder Tennessee law, a trial court ‘shall’ afford the parties at a sentencing hearing the opportunity to be heard and to present evidence relevant to the particular sentencing task at hand. The sentencing statutes and principles permit hearsay to be admitted, with two exceptions. As with other information, any hearsay must be ‘relevant to the sentencing of the defendant,’ and it should be ‘reliable’”), *id.* (internal citations omitted). To determine the specific sentence and the appropriate combination of sentencing alternatives, the Court must consider the following:

the evidence, if any, received at the trial and the sentencing hearing;

the presentence report;

the principles of sentencing and arguments as to sentencing alternatives;

the nature and characteristics of the criminal conduct involved;

Evidence and information offered by the parties on the mitigating and enhancement factors as set out in §§ 40-35-113 and 40-35-114;

any statistical information provided by the administrative office of the courts as the sentencing practices for similar offenses in Tennessee; and,

any statement the defendant wishes to make in the defendant’s own behalf about sentencing.

TENN. CODE ANN. § 40-35-210.

Judicial diversion is not a ‘sentence’ per se under the *Rules of Criminal Procedure*, see *State v. Turco*, 108 S.W.3d 244, 248 (Tenn. 2003), but rather a “*decision* to defer or impose a

sentence.” *State v. King*, 432 S.W.3d 316, 326 (Tenn. 2014) (emphasis in original).

Notwithstanding, the Court must evaluate certain statutory qualifications and common law principles in considering diversion.

ARGUMENT

Mr. Jackson is a ‘Qualified Defendant’ pursuant to the Judicial Diversion Statute and Applicable Factors Suggest that Diversion is Appropriate.

Pursuant to TENN. CODE ANN. § 40-35-313, and as certified by the Tennessee Bureau of Investigation, see Exhibit A, attached, Kevin Jackson’s lack of criminal record and offense make him a statutorily ‘Qualified Defendant’ for judicial diversion. The grant or denial of judicial diversion is within the sound discretion and accorded a presumption of reasonableness provided the trial court has evaluated on the record the following common law factors,

- (a) accused’s amenability to correction;
- (b) circumstances of the offense;
- (c) accused’s criminal record;
- (d) accused’s social history;
- (e) accused’s physical and mental health; and,
- (f) deterrence value to the accused as well as others.

The trial court should also consider whether judicial diversion will serve the ends of justice—the interests of the public as well as the accused. *State v. King, supra* at 326, see also *State v. Electroplating, Inc.*, 990 S.W.2d 211 (Tenn. Crim. App. 1998), *State v. Parker*, 932 S.W.2d 945 (Tenn.Crim.App. 1996). Consideration of the seven *Parker* and *Electroplating* factors remains a “stringent procedural requirement” in the denial or grant of judicial diversion. See *King, supra* at 326-327.

A balancing of these factors as applied to Mr. Jackson suggests judicial diversion would be an appropriate alternative in this case. The Tennessee legislature has not seen fit to limit the availability of judicial diversion in the Class A misdemeanor Patronizing Prostitution.

Accordingly, the Court must first look to Mr. Jackson's amenability to correction.

(a) Amenability to Correction

(b) Circumstances of the Offense

There is no desire on our part to minimize the seriousness of what occurred, but only to urge that the 'circumstances' cannot be examined in a vacuum.

(c) Lack of Criminal Record

The Defendant has absolutely no criminal record inclusive of juvenile adjudications, felonies or misdemeanors. Other than the subject arrest before the Court, he has never been arrested or cited for any criminal offense and has never been subject to incarceration other than the 4 days he spent in jail prior to making bond on this case. The complete absence of any prior difficulties with the law is a factor that must weigh in favor of diversion.

(d) Social and Work History

See attached *Letters of Support*, **Exhibit B**.

Also see his Affidavit attached hereto as **Exhibit C**.

(e) Physical and Mental Health

There are no physical limitations which in any way militate against a diversionary sentence. There are no known mental health, personality structure, or substance abuse problems which would make diversion an unrealistic or unwelcome disposition in the case. In contrast, a

diversionary sentence and the benefits of its successful completion may provide further incentive to Mr. Jackson never to reoffend. His promise for a successful working life will largely hinge on the existence or nonexistence of a conviction and/or jail time which could result in the loss of his job and his career. As no apparent physical or mental condition would limit him in the future and where it is generally agreed that the ability to work and provide for others is positively correlated with reduced recidivism and criminality, defendant submits this factor weighs in favor of a diversionary disposition.

(f) Deterrence Value to Mr. Jackson As Well as Others

As to the need to specifically deter further criminality or similar conduct by Mr. Jackson, choosing between a final conviction and diversion suggests that leaving open the possibility of a criminal record offers strong impetus for Mr. Jackson to succeed and to continue to focus on and to provide for his family. Certainly, it is difficult to argue that a conviction would have any particular future deterrence value, even were that needed after the time he has already spent in jail awaiting bond.

As to general deterrence, i.e., the need to punish and thereby set an example deterring future conduct by others, there is none of the required evidence before the Court establishing such a need. See *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991),

This Court finds the evidence in the record insufficient to support deterrence as the sole reason for denying appellant alternative sentencing. Considering the evidence received at the trial and sentencing hearing, the degree of deterrence to be accomplished through this appellant's confinement for the entire term is minimal. Appellant does not have a history of criminal conduct that would show that the public needs protection from his further criminal activity. The trial judge noted that drugs are a problem in this country today, but there is no showing that

this elderly man has had any increasing effect on the problem. There is no evidence that those likely to violate the criminal laws will be deterred by the incarceration of appellant. The finding of deterrence cannot be conclusory only but must be supported by proof.

See also *State v. Nunley*, 22 S.W.3d 282, 286 (Tenn.Crim.App. 1999) (in denying alternatives to incarceration based on general deterrence, “[t]he evidence presented should “indicat[e] some special need or consideration relative to that jurisdiction which would not be addressed by the normal deterrence inherent in any criminal activity” HTMLCONTROL Forms.HTML:Hidden.1 citing HYPERLINK

"[https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991179310&pubNum=713&originatingDoc=I56330dafa7ba11d983e7e9deff98dc6f&refType=RP&fi=co_pp_sp_713_375&originationContext=document&transitionType=DocumentItem&contextData=\(sc.Search\)\l \"co_pp_sp_713_375\"](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991179310&pubNum=713&originatingDoc=I56330dafa7ba11d983e7e9deff98dc6f&refType=RP&fi=co_pp_sp_713_375&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)\l \) *State v. Hartley*, 818 S.W.2d 370, 375 (Tenn.Crim.App.1991).

The facts and circumstances of the defendant’s case are sufficiently unusual that it is highly questionable that his case will serve as an example or counterexample to anyone in the community, as there is no indication that prostitution offenses plague this jurisdiction. Mr. Jackson is not from Tennessee, and it is believed that none of the other defendants similarly charged are from Union City or Obion County or even the 27th Judicial District. Rather they were drawn into Obion County through the communication from undercover agents posing as prostitutes. Though there was media coverage of this case, it was misplaced based on an initial misunderstanding by either the District Attorney of Law Enforcement or both. Thus, the Court should not consider “media coverage” in this case, because to do so would only further propagate the same misunderstanding, and it would not be proper to punish Mr. Jackson for an initial

misapplication of the law to the facts. Any punishment designed with rhetorical elements to reach a broader audience would be frankly an injustice to Mr. Jackson, who is here to acknowledge his guilt for the conduct that he is guilty of, that being, Patronizing Prostitution.

Finally, although not an enumerated factor, the trial court should also consider whether judicial diversion will serve the ends of justice to include interests of the public as well as Mr. Jackson. *State v. King, supra* at 326. A factor so amorphous can only be left to the Court's sound discretion. No one is asking that Mr. Jackson suffer no consequences, but only proposing that those consequences that fit the crime, while still leaving open the opportunity for impermanence after a substantial diversionary period of proven, verifiable good conduct and, in turn, a more productive life for Kevin Jackson.

SENTENCING RECOMMENDATION

Based upon and considering the sentencing factors listed above, defendant respectfully requests that the Court impose the following:

JUDICIAL DIVERSION pursuant to TENN. CODE ANN. § 40-35-313 for a period of 11 Months and 29 Days, with credit for time served;

The diversionary period be served under the any recommended supervision as directed by the court, but, given that he lives in Paducah, KY, the supervision be transferred to KY if that is possible;

All standard conditions of probation;
Any special conditions ordered by the court


COMMUNITY SERVICE at a charitable organization as defined by § 501(c) of the Internal Revenue Code and as approved by Probation or this Court, and in an amount to be determined by the Court;

Payment of court costs and whatever fine the court deems appropriate up to the maximum fine of \$2,500.00

Completion of any treatment as deemed necessary after any court ordered evaluations and overseen by Probation;

Remain employed full-time.

Respectfully submitted,

By: 

John M. Miles, BPR# 013345
Attorney for Defendant
511 South Third Street
P.O. Box 8
Union City, TN 38281
(731) 885-1234

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the Honorable Heard Critchlow, 201 W. Main St., Ste. A, Union City, TN 38261, via hand delivery, on this the 25th day of May, 2021.

By: 