

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: Beth Boniface

Office Address: 1125 West First North Street, Suite A, Morristown Tennessee 37814  
(including county) Hamblen County

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 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 questionnaire. 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.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and six (6) copies of the form and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Law Office of Beth Boniface

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

I was licensed to practice law in Tennessee in 2004. My Board of Professional Responsibility number is 023226.

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.

Virginia admitted me into their bar on October 6, 1994. My bar number is 37883. I was licensed to practice law in Ohio on March 31, 1998. My registration number is 0068969. My current status for both states is in good standing, but inactive. Inactive merely denotes my absence of an active practice in the state.

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.

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).

Law Office of Beth Boniface

RXS, LLC- I manage a limited liability company that leases commercial real estate.

Shelton & Boniface, PLLC - Partner in the law firm with Randall Shelton, Esq.

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.

Upon receiving my law degree from the University of Richmond, Virginia in 1994, I married my husband and moved to Ohio for his general and vascular surgery training. We were blessed with three children during this time and I was graced with the opportunity to stay at home and care for them. It was important to me that upon entering the practice of law, I would be able to focus on my job and not be pulled away from that responsibility by the needs of my small children.

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.

Family law, including adoptions, special needs planning, juvenile law, conservatorships, divorce and custody, constitutes seventy percent of my practice. Estates, trusts, probate, wills, contracts and business law comprise the remaining thirty percent.

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.

My practice has been bifurcated between my role as Magistrate for Hamblen County Juvenile Court and my private practice. My private practice focuses on the general areas of family law, divorce, termination of parental rights and adoption, estates, wills, probate, special needs planning for the disabled, contract drafting and litigation, child support, paternity, orders of protection, and the creation of companies. I am primarily in court and when necessary have continued through the appellate process in the Court of Appeals for the Eastern District. I have tried collection suits, garnishments, detainer actions, breaches of contract actions, dissolution of companies, condemnation cases, declaratory judgment actions, assault and drunk driving cases. I am a general practitioner having handled cases from the First District of Tennessee down to the Ninth District.

I have been appointed by the court on numerous occasions to serve as Administratrix on volatile

or complex estates as I have an even temper, am organized and enjoy researching the law. I represent the indigent in termination of parental rights cases and serve as Guardian ad Litem for children in juvenile court who are the victims of neglect and dependency. I have represented parents who are alleged to be unfit. I have defended delinquent and unruly children. I have represented parents alleged to have committed all kinds of atrocities including committing sexual assaults against children.

I have handled hundreds of divorces, custody disputes and estates. I have handled numerous civil suits ranging from contract disputes to orders of protection. I have emancipated minors and protected disabled seniors. I have created numerous companies and advised them on contracts. I have been active in the Circuit, Chancery, Juvenile and Sessions courts throughout East Tennessee.

My work as a Magistrate is detailed in question 10.

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

Due to my practice in family law and adoptions, I am in trial court often. I also do appellate court work: 1) Cansler v. Cansler; No. E2008-01125-COA-R3-CV, this appeal focused on civil procedure questions involving Rule 59 and Rule 60 motions and the court's powers to punish contempt of court. 2) In Re Tylon D, No. E2010-01744-COA-R3-PT, concerned a termination of parental rights case wherein the Court of Appeals upheld the trial court's termination on all grounds. 3) In re Hope A, No. E2012-01209-COA-R3-PT another termination of parental rights case where the termination and adoption were affirmed and 4) Rustin v. Gribble, No. E2010-02342-COA-R3-CV. Rustin v. Gribble is the most notable case in that it has been cited in continuing legal education seminars. The Court of Appeals held that where an unmarried couple's relationship does not rise to the level of an implied partnership, then the property of the union goes as titled or to whomever purchased the property if no title was issued.

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 served as Magistrate of the Hamblen County Juvenile Court for four and a half years from April 2010 to 2014. My responsibilities in that position were to adjudicate cases involving unruly and delinquent behavior of children, as well as protect children from neglect and harm. Unfortunately, my docket was quite full mandating an entire day for each court session. In the cases involving children who were alleged to have committed offenses, I decided their innocence or guilt and the rehabilitation/education that was appropriate for each child and family. I have

rendered judgment on cases ranging from truancy to rape. I have heard hundreds of cases involving children alleged to have committed crimes and children alleged to have committed status offenses.

When my cases involved a neglected or abused child, I placed the child in a safe haven and educated the parent so that the child could be reunited with his or her parents as expeditiously as possible. I have heard cases involving drug abuse, sexual assault, physical abuse, psychological abuse and environmental neglect. I have heard termination of parental rights cases. I have decided whether a child should have a Do Not Resuscitate Order and termination of life support.

Due to the confidentiality of juvenile cases, I cannot state case names, dates, or numbers, nor can I give details as to the facts of individual cases since this application is public upon submission. But I will state that I have personally overseen cases involving termination of parental rights, rape, severe child abuse, assault, felony theft and the termination of life support. The protection of children and their redirection, when necessary, was the motivation for my decisions.

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

I have been appointed as temporary conservator for an elderly individual who was temporarily disabled due to stroke. I managed her finances and her person. I have been appointed numerous times as guardian ad litem to protect disabled adults and children, children in termination of parental rights cases and contested custody battles. My responsibilities were to investigate the property, the person and the other parties and then either make a report to the court or call witnesses and conduct a case for the court's opinion.

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

I have helped hundreds of families with disabled individuals properly prepare for the future. As a parent or a sibling who has a disabled family member ages, intense fear and uncertainty arise. The question is "how will I care for my child or sibling when I am physically unable or I die?" An overwhelming sense of dread ensues. Proper legal planning can alleviate some of the uncertainties. Once a family creates special needs trusts, powers of attorney, wills, conservatorships and designations of caregivers, the chaos subsides. The family feels more at peace knowing that their loved one will be provided for financially, emotionally and physically.

I also enjoy helping companies promote cooperation but also allow for individualized profit. For example, with medical practices my goal is to create a seamless business structure so that the

doctors can focus on patient care and minimize their time spent on the business of medicine. The more clearly defined the roles of each partner, the less room for disagreement and more time to become profitable.

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 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.

I applied for the 2013 Chancellor Vacancy for the Third Judicial District of Tennessee. My candidacy was submitted as one of the three nominees to Governor Haslam.

### **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.

1987-1991 Mary Washington University, Fredericksburg, Virginia with a Bachelor of Arts in Political Science.

1991-1994 University of Richmond, TC Williams School of Law, Richmond, Virginia.

### **PERSONAL INFORMATION**

15. State your age and date of birth.

I am Forty Five (45) years old having been born April 1, 1969.

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

I have lived continuously in the State of Tennessee for twelve years.

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

I have lived in Hamblen County for nine years.

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

Hamblen 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.

None

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

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 state and provide relevant details regarding any formal complaints 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.

None

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.

None

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.

I had an easement dispute with my neighbor, Ann Clark, regarding the rights and responsibilities of her use of my driveway. The case ultimately was resolved amicably. Knox County Chancery Court, No. 170192-1, Clark v. Assadnia & Boniface.

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.

Kidz Succeed Board, 2010-present, an organization which celebrates children who are on probation in juvenile court and have gone above and beyond their requirements of probation.

All Saints Episcopal School Board, 2008-2010.

East Tennessee Legal Aid Board, 2009-2010.

Encore Theatre Group Board, 2008-2010 and 2015.

Healing and Hope Board, 2008-2010.

Ridin' High Board, 2008-2010.

Girls' Inc., 2015

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.

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. 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 Council of Juvenile and Family Court Judges, 2010-2014  
Tennessee Bar Association, 2004 -present  
American Bar Association, 2004-2010  
East TN Council on Children and Youth, 2010-present

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.

None

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

None

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.

None

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.

Appointed Hamblen County Juvenile Magistrate, April 2010-September 2014

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

No

34. Attach to this questionnaire 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.

Attached as Exhibits 1 and 2. Exhibit 1 is an example of my opinion as Magistrate and Exhibit 2 is an appellate brief, both of which I wrote independently.

### ESSAYS/PERSONAL STATEMENTS

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

Pursuing professional growth is important to me. I am ready for a new opportunity in the law. I enjoy championing a cause for my clients, but as Magistrate, I realized that my true interest is in listening to the opposing parties and resolving their conflicts within the framework of our current laws. I find it motivating to interpret case law and statutes and then apply them to a dispute. I like to work through the many subtleties and equities of each case.

I am encouraged by the support that I have received from my colleagues and attorneys that represented clients in front of me when I served as the Juvenile Court Magistrate. I have been fortunate and received compliments upon my courtroom demeanor and fairness as a judge.

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)*

For three years, I have hosted a pro bono clinic at my office. I am very excited to be a part of the growth of this endeavor which gives people the tools that they need to be successful in court. The clinic has helped hundreds of people and continues to grow. I also served on the Board of Directors for Legal Aid of East Tennessee.

In addition, I have been committed to pro bono work throughout my entire career. My Judicial District is an economically depressed area and people need legal guidance but do not have access to the system. I routinely take court appointed work which is at a reduced fee. I also represent many clients that have no ability to pay and continue my representation through the appellate court level.

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 applying for Circuit Court Judge. I would serve Hamblen, Hancock, Greene and Hawkins County. In each of these counties, I have represented clients and developed a collegial relationship with the attorneys. The Circuit Court adjudicates a wide variety of civil cases. My selection as Judge would allow for a seamless transition as I have handled hundreds of cases in

that court.

I believe that each case must be individually evaluated and researched to be properly adjudicated. Each case has nuances and intricacies that must be addressed. As Judge, I would strive to listen to the people in my court, interpret and apply the most current law, and have an unbiased mind.

Currently, our civil Circuit Court Judges are from Hawkins and Greene Counties and our Chancellor is from Hawkins County. I am a Hamblen County resident with an active practice in the other counties.

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 am very committed to the local community with activities that range from championing the arts to informing the community about legal issues. I was asked to chair Governor Haslam's VOTE YES ON TWO campaign for Hamblen County and enjoyed activating the community to adopt the Governor's vision for appointing our appellate judges. I spoke to our local high school as a participant in the SCALES project of the Supreme Court of Tennessee.

I have served on many boards and continue to do so. Judges must be vigilant to remain impartial. I believe if I were to serve on boards dealing with the betterment of the legal system, such as the Access to Justice Committee or the Mentoring Task Force, there would not be a conflict. I would continue to serve on the Kidz Succeed board as I do not think that it would implicate my propriety.

As Magistrate, I have seen the devastating effect that a lack of basic education has on a community and our state. I would like to strengthen the tutoring programs in schools so that even if a child comes from an educationally impoverished home, he still has access to those who can nurture him in achieving educational independence. If Tennessee is to be a competitive state, our future workforce must be highly skilled and less focused on access to aid programs for their financial support. Everyone should work towards stimulating positive change in the legal profession and our state.

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)*

My sister lost her battle with neuroblastoma, a childhood cancer, when she was twelve and I was fourteen years old. That experience taught me patience, humility and strength. I learned lessons in patience waiting at my sister's bedside for her to be well enough to live her life again. There is no more humbling an experience than to be powerless to cure or help a loved one.

Many litigants feel that same sense of insignificance upon entering a courtroom. It is important

that the parties know that they are part of the process and that they have an opportunity to be heard. No matter how emotional the parties become in my courtroom or in my office, my job is to maintain control and decorum and defuse the personalities. The practice of law has no need for mercurial emotions or unprofessional behavior.

Ultimately though, after listening to the parties, the tough decisions must be made. I can make the hard choices when they are just. I am motivated by my conscience even when it is an unpopular choice. Although no one loves criticism, I am strong enough to hear and learn from it.

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)*

Overall, I believe the legal system works in an equitable fashion. Law is an ever-evolving creature. When a society demands change, the laws also change. Out of necessity, these changes are slow but that is a positive thing. To change precipitously would throw too much uncertainty into the course of daily dealings and business. Society would not benefit from the law changing as fast as fashion.

However, sometimes when you are faced with a situation that you believe is unjust, there is little you can do but to uphold the law and wait for the forces of change to have impact. I have had to zealously advocate for clients with whom I did not share their beliefs. My job is to uphold the law as written, while advocating for change when I see the opportunity. There have been many hard calls for me as Magistrate. But when I adjudicated the delinquent and unruly children in my court, I believe I always upheld the laws of Tennessee.

#### 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.  
Honorable W. Douglas Collins

B.  
Thomas C. Jesse, Attorney at Law  
Jessee & Jesse

C.  
Honorable Mindy Norton Seals

D  
Mark McGarel, CEO of Filmtech, Inc.

E.  
George O. Haggard, Jr., Entrepreneur

**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 Circuit Court for the Third Judicial District 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 questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire 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: January 28, 2015.

  
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Signature

When completed, return this questionnaire to Debbie Hayes, 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.

Beth Boniface

  
Signature

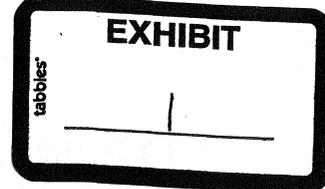
January 28, 2015  
Date

023226  
BPR #

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

Virginia 37883                      Ohio 0068969

**THIRD JUDICIAL DISTRICT OF TENNESSEE**  
**IN THE JUVENILE COURT OF HAMBLLEN COUNTY**



OCT 12 2010

#

RUBY BOLDEN, Petitioner

v.

No. 16325 J

STEPHANIE ST LAURENT/COVINGTON, Respondents

IN THE MATTER OF:

Child Under The Age of Eighteen (18) Years

**MEMORANDUM OPINION**

**FACTS**

The mother of the child is Stephanie St. Laurent/Covington. ("Mother") The Father is Stephen Paul Atkins. ("Father") Ruby Bolden is the paternal grandmother. ("Paternal Grandmother") The parents were divorced sometime in 1998 and included in the Final Judgment of Divorce was a custody arrangement granting Mother primary custody and Father standard visitation. According to all witnesses, this custody arrangement was never followed.

At trial, there was conflicting testimony regarding the physical custody of the minor child following the divorce. Mother claims that she had physical custody until September, 2009. All other witnesses state that for at least the past four years the minor child has resided with the paternal grandparents. Minor child and Paternal Grandparents testified that all of the child's belongings are at the paternal grandparents' home. Child states that he packs a bag when he visits his mother. Mother has not paid child support to Paternal Grandmother. Mother has bought minor child an IPOD touch, comforter for his bed, paid for half of the cost of Nike shoes and a few items of clothes in the past year. Paternal Grandmother claimed minor child on her income taxes for 2007 and 2008. It is abundantly clear that since the beginning of the 2009/2010 school year the child has resided with the paternal grandparents. Prior to the 2009/2010 school year the Mother, Father and paternal grandparents met and discussed where the minor child would live for the school year. Partially due to the minor child's threats of suicide if forced to return to Mother, the parties verbally agreed that the paternal grandparents would have primary

physical custody of the minor child and that Mother and Father would visit on alternating weekends.

This schedule was followed until April 23, 2010 when Mother showed up during Father's weekend visitation and tried to force the minor child to go with her. Minor child resisted and ultimately the police were dispatched to evaluate the situation. The minor child testified that Mother scratched him and hit him on the face. Mother denies purposefully scratching him or striking him in the face but did state that she grabbed him and tried to get him into her car. No criminal charges were filed following the incident. The minor child chose to stay in the Youth Emergency Shelter for three days rather than being in Mother's home. There was a Department of Children's Services Referral and a Child and Family Team Meeting was held. During the Child and Family Team Meeting, Mother threatened to "wear out with a belt when she got him home." Paternal Grandmother filed a *Petition for Temporary Emergency Custody*.

### **ISSUES PRESENTED**

The primary issues presented for adjudication are:

1. Does TCA 37-1-102(b)(12)(J)(i) apply to the instant case?
2. Is the minor child exposed to substantial harm in Mother's care?

#### **1. TCA 37-1-102(b)(12)(J)(i)**

TCA 37-1-102(b)(12)(J)(i) defines dependent and neglected child as a child who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen consecutive months by the child's parent, parents, or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative. There was clear and convincing evidence that Mother has been caring for the child every other weekend since September 2009. Mother has provided for the child's needs during those visits. The minor child has not been left in the sole physical custody of Paternal Grandmother for eighteen consecutive months.

#### **2. PARENT v. NON-PARENT CUSTODY DISPUTES**

It is well-settled that the Tennessee Constitution protects a natural parent's fundamental right to have the care and custody of his or her children. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002) (citing *Nale v. Robertson*, 871 S.W.2d 674, 680 (Tenn. 1994); *Hawk v. Hawk*, 855 S.W.2d 573, 579 (Tenn. 1993)). The standard applied to parent and non-parent custody disputes is very different from the standard applied to disputes involving two parents. "The comparative fitness analysis commonly associated with custody disputes between biological parents cannot be used because it fails to take into account that the custody claims of biological parents and the custody claims of third parties do not have the same legal weight." *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001). Parental rights are superior to the rights of others and continue without interruption unless a parent consents to relinquish them, abandons the child, or forfeits parental rights by conduct that substantially harms the child. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002) (citing *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995)).

Courts deciding initial custody disputes must give natural parents a presumption of "superior parental rights" regarding the custody of their children. *Blair*, 77 S.W.3d at 141 (citing *In re Askew*, 993 S.W.2d 1, 4 (Tenn. 1999)). This means that in an initial custody dispute involving a parent and a non-parent, a natural parent may only be deprived of custody of a child upon a showing of substantial harm to the child. *In re Adoption of Female Child*, 896 S.W.2d 546, 548 (Tenn. 1995). Specifically, the non-parent has the burden of establishing by clear and convincing evidence that the child will be exposed to substantial harm if placed in the custody of the parent. *Ray*, 83 S.W.3d at 732-33; see also *Hall v. Bookout*, 87 S.W.3d 80, 86 (Tenn. Ct. App. 2002). Only after a clear showing of substantial harm may the court engage in a general "best interest of the child" analysis. *In re Adoption of Female Child*, 896 S.W.2d at 548. It follows then, that in an initial custody dispute, if a court awards custody to a non-parent over a parent's objection, the original custody order must contain the requisite finding of substantial harm, or else it is invalid and unenforceable. See *In re Askew*, 993 S.W.2d 1, 5 (Tenn. 1999); *Baker v. Smith*, No. W2004-02867-COA-R3-JV, slip op. at 11 (Tenn. Ct. App. Aug. 5, 2005).

### **STANDARD OF PROOF**

Paternal Grandmother must show by clear and convincing evidence that returning the minor child to his mother would expose him to a substantial risk of harm, or the court must give Mother custody of her child. *In re C.L.J.*, 2003 No. M2003-01949-COA-R9-JV (Tenn. App. 11/7/2003) (Tenn. App., 2003). The "clear and convincing evidence" standard is more exacting than the "preponderance of the evidence" standard, but it does not demand the certainty required by the "beyond a reasonable doubt" standard. *In re D.J.R.*, No. M2005-02933-COA-R3-JV, slip op. at 5 (Tenn. Ct. App. Jan. 30, 2007).

## DISCUSSION

Paternal Grandmother presented evidence of one incidence of violence when Mother tried to force minor child to go with her on Father's weekend for visitation. Both the police and the Department of Children's Services investigated and found no harm to the minor child. The minor child stated that his mother had not been violent except on this one occasion. Mother also threatened to "wear out with a belt." This statement was made during an emotionally charged situation and there is no evidence of prior violent acts of this nature. The Paternal Grandmother did not meet her burden of showing clear and convincing evidence of risk of violent behavior by Mother.

As a general matter, clear and convincing evidence of the sort of psychological harm that would be severe enough to justify denying custody to a biological parent should take the form of expert testimony. *Ray v. Ray* 83 S.W.3d 726, 738 (Tenn. Ct. App. 2001) Psychologist, Dr. Sharon Farge, stated that the minor child needed individual therapy prior to therapy with his Mother. Dr. Farge further testified that minor child needed individual and family therapy prior to being placed with mother. Dr. Farge did not recommend that the minor child's visits with Mother be curtailed. When asked by Mother's attorney on cross examination "what substantial harm would occur if were placed with his mother?", Dr. Farge testified that minor child might kill himself and that she took that threat seriously. Dr. Farge testified that the minor child did not have any suicidal ideation at this time. Child is currently placed with Paternal Granmother. Dr. Farge testified that the minor child was not ready to have therapy with his mother. Dr. Farge further testified that forced therapy with mother might have a negative impact on the minor child's psychological growth.

There is no doubt that Mother and minor child have a strained relationship. The child chose to stay at the Youth Emergency Shelter for three days rather than go home with Mother. Mother testified that during the pendency of this case she had taken the minor child to the Juvenile Court Services' Office during her weekend visitation because she could not control him. Minor child testified that he and Mother fight all the time. Mother testified that she believed their relationship was getting better. Minor child stated that he did not consider Mother his mother and that there was no bond between them. He stated his home and his family were his paternal grandparents.

The psychologist's testimony regarding the minor child's emotional fragility, lack of bond with mother, and threats of suicide are clear and convincing evidence of substantial risk of harm to minor child if placed in Mother's care. The Court gives great weight to Dr. Farge's testimony of substantial harm to the child. The minor child is not ready to have family therapy

with his Mother much less be placed in her home. Suicide is irrevocable and the threat thereof by a fifteen year old boy is not to be taken lightly.

**CONCLUSION**

There is clear and convincing evidence of risk of substantial harm to the minor child if placed in Mother's custody. The Paternal Grandmother shall have temporary custody of the minor child and Mother shall continue her every other weekend visitation. Child is to continue with therapy and follow all recommendations. Mother is to communicate with child's psychologist and participate when deemed appropriate by said psychologist. All parties involved should use all available means to promote and repair the relationship between Mother and Minor Child. Counsel for Paternal Grandmother is requested to prepare the appropriate Order.

**SO ORDERED**

  
\_\_\_\_\_  
**JUDGE BETH BONIFACE**

**CERTIFICATE OF SERVICE**

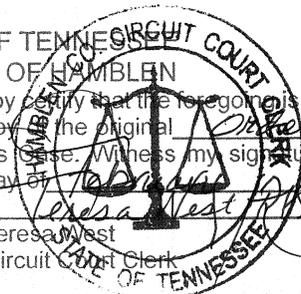
On October 12, 2010, I mailed a copy of this *Memorandum Opinion* to Gerald Eidson, attorney for Mother; Jill Sexton, attorney for Petitioner; Dana Scott, attorney for Father; and David Byrd, Guardian ad Litem.

By:   
**Linda Wilder, Clerk of Court**

STATE OF TENNESSEE  
COUNTY OF HAMBLEN

I hereby certify that the foregoing is a true and correct copy of the original filed in this case. Witness my signature on this 13<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
Teresa West  
Circuit Clerk





**IN THE COURT OF APPEALS**  
**EASTERN DIVISION AT KNOXVILLE, TENNESSEE**

**REBECCA GRIBBLE WADDELL,**  
**Appellant**

**vs.**

**No. E2010-02342-COA-R3-CV**  
**Trial Court No. 08-102**

**GREGORY C. RUSTIN,**  
**Appellee**

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**BRIEF OF THE APPELLANT**  
**REBECCA GRIBBLE WADDELL**

---

**Respectfully submitted:**

**Beth Boniface, BPR 023226**  
**1125 West First North Street, Suite A**  
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**Phone: 423-581-1885**

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### **III. STATEMENT OF ISSUES PRESENTED FOR APPEAL**

1. Did the parties place their money, assets, labor, or skill in commerce with the understanding that profits would be shared between them?

2. After finding that an implied partnership did not exist, did the trial court err in divesting all right, title and interest to the "Sea Doos, Tractor, Trailer, all other tools, equipment, trailers, motorcycles, ATVs, etc. acquired from 1999-2007" even though some were registered in Ms. Gribble's name, bought from Ms. Gribble's checking account and Mr. Rustin did not have any pleading on file that would have asked for such relief?

#### **IV. STATEMENT OF THE CASE**

On or about June 19, 2008, Ms. Gribble filed a *Petition* against Mr. Rustin seeking adjudication of her right, title and interest in and to certain real and personal property based on the theories of implied partnership, resulting trust and constructive trust. On or about September 16, 2009, Mr. Rustin filed an *Answer* denying the existence of a partnership, constructive trust or resulting trust. He also filed a *Counter-Complaint* for payments on an automobile loan and insurance policy. On or about October 11, 2010, the trial court denied Ms. Gribble's request to find a partnership existed. The trial court further denied Mr. Rustin's recovery of automobile and insurance payments. Ms. Gribble appealed the trial court's ruling.

## V. STATEMENT OF THE FACTS

### A. LOTS OF CHRISTMAS

In 1999, the parties began a romantic relationship. Ms Gribble was 21 years old and Mr. Rustin was 35 years old. Mr. Rustin was living in a single wide trailer on a lake lot. At the time of their meeting, Mr. Rustin was employed by Dillard Smith Construction and Ms. Gribble was employed at a convenience store. (TR. Vol. I, p. 47) Early in the relationship, Ms. Gribble obtained her LPN license and began working in a physician's office in Knoxville. Ms. Gribble also obtained her real estate license in 2007 due to the couple's business endeavors. (TR. Vol. I, p. 84) In addition to being an employee of a construction business, Mr. Rustin was in a partnership with his brother running a business known as *Lots of Christmas*. (TR. Vol. I, p. 48) Ms. Gribble had a son from a former marriage and as a product of Mr. Rustin's and Ms. Gribble's relationship a daughter was born in 2003.

In 2000, Mr. Rustin and his brother had a falling out and Mr. Rustin bought out his brother's interest in the partnership by splitting the inventory. Mr. Rustin's brother previously had handled the day to day activities of the business since Mr. Rustin had a full-time job. (TR. Vol. I, p. 49) After the split, the store was closed the majority of the time because no one could staff it. At that time, Mr. Rustin asked Ms. Gribble to join with him and run the store. (TR. Vol. I, pp. 43 & 49) Ms. Gribble's responsibilities at the store were to help customers, assemble the products to be sold, keep the books, reconcile the checkbook, mow the grass, clean the store, deliver orders to customers, and take payments from the customers. (TR. Vol. I, pp. 49-50) Ms. Gribble ordered inventory and had full access to the checkbook and account. (TR. Vol. I, pp. 51 & 65) She had a Sam's Card in her name for *Lots of Christmas*. (Trial Ex. 2) Debra McCarter, employee of the Company's accountant, testified that she met both Mr. Rustin and Ms. Gribble "through **their** business ... *Lots of Christmas*." *emphasis added*

(TR. Vol. I, p. 18) She further stated that she went to "**their** business once a month to pick up their accounting work and that Ms. Gribble was there." *Id.* After a couple of years, Ms. Gribble told Mr. Rustin that they needed to rename the store to more accurately describe their best selling products. Ms. Gribble analyzed that their current market was for aluminum products more than the Christmas decorations. Ms. Gribble renamed the store *Aluminum Decor and More*. (TR. Vol. I, p. 51) Ms. Gribble and Mr. Rustin manned the store together but the majority of the labor came from Ms. Gribble. (TR. Vol. I, pp. 28 & 49)

Charlene Spurgeon, Ms. Gribble's mother, testified that her daughter worked at the store seven days a week. "As far as I knew it was. We were over there on Sunday and it was open. I was over there on a Wednesday and it was open. I was over there at some point in time on a Monday or Tuesday and it was open." (TR. Vol. I, pp. 34-35) Ms. Gribble continued to mow the business property even when she was eight months pregnant. (TR. Vol. I, pp. 25 & 43) Ms. Spurgeon further testified that her daughter had to go to the store the day she was released from the hospital after birthing her daughter because Mr. Rustin did not know what a client had ordered. (TR. Vol. I, p. 29) Because Ms. Gribble was the primary caregiver for the two minor children, Mr. Rustin and Ms. Gribble bought a newer building for the store that better suited the children. Ms. Gribble actually had a playpen and video games in the store so that she could care for the children while working there. (TR. Vol. I, pp. 27 & 44)

Mrs. Rhonda Gribble, Ms. Gribble's former mother-in-law, stated that she saw Ms. Gribble at the business often. (TR. Vol. I, p. 37) Officer Mark Self, Tennessee Highway Patrolman, stated that his sister-in-law, Ms. Gribble, quit her job as an LPN to work in Lots of Christmas. (TR. Vol. I, p. 43) He further stated that Mr. Rustin told her that it would be cheaper on them if she would just quit work as nurse and work at the *Lots of Christmas* store. *Id.*

## B. CONSTRUCTION BUSINESS

In 2001, Ms. Gribble and Mr. Rustin started a construction business. They would buy lots and construct cabins and houses. (TR. Vol. I, p. 53) Most of these properties were sold "turn key." (TR. Vol. I, pp. 59 & 88) A property is considered "turn key" if once the owner turns the key and enters the property everything that you would require to rent the cabin is already furnished. The cabin is essentially completely ready to be occupied. Mr. Rustin would do the building of the cabins and Ms. Gribble would design the interiors, run supplies, contract with suppliers, buy appliances, design lighting and electrical outlet placement, buy equipment, buy all interior items from forks to beds, pay invoices and clean up after the workers. Ms. Gribble testified "But while Greg would go to the cabins, I would stay at the store, run the store, and anytime they needed something I would take it to them. Anytime, you know, they wanted advice or my opinion, I gave it to them. If you know, when it came time to what would work out, what was functional, a lot of times I would see what would be more functional than what he viewed would be functional. So we done--that's what we done together." (TR. Vol. I, pp. 53-54) Ms. Gribble and Mr. Rustin would select the lots together that they thought would sell easily and bring a profit. (TR. Vol. I, p. 49)

Except for a few cabins, Ms. Gribble chose everything from the silverware, to the curtains, to the toilets. Ms. Gribble chose and ordered the paint colors of the walls, the cabinets, the carpets, the appliances, the mailboxes, the blankets, the sheets and the pictures. (TR. Vol. I, pp. 62-64, 84, 90) Ms. Gribble was responsible for all interior decor after the cabins were constructed. Ms. Gribble occasionally would help with the actual construction of the cabins. Ms. Gribble testified

"It varied from cabin to cabin, from home to home. Some of the cabins, I didn't do anything. It was just the funds that we had made from the other cabin sales and the store...And other homes, I done everything from going every day to clean up after the workers, to hanging the cabinets, the kitchen cabinets, to you know, putting the forks and knives in it, the towels, the decorations. It varied from cabin to cabin, from home to home.

Some of the cabins I was full throttle on that he needed me a lot on to do decorations, pick out everything, all the interiors. He pretty much controlled and handled the infrastructure and I would go in and do the girl stuff, you know, what color paint, what cabinets, what color of carpet, the design of the carpet. You know, the railing. Are we going to have, you know, wood spindles or scroll work spindles. The metal, you know, the countertops, the lighting, that would be my... Well, I was consider where my cabinets are going to go, which side I wanted the TV on, how the cabinet was going to be laid out. If we were going to have a mantel over the fireplace, did I want track lighting over it. Do I want can lights, How did I want the room to be lit up, whether--some of the cabins had numerous glass in it, like the whole wall on some of the cabins would be glass windows, And it just varied on how I wanted the lighting and how much lighting I wanted and what kind of furniture I planned on putting in these houses" (TR. Vol. I, pp. 57-58)

Ms. Gribble dealt with subcontractors and suppliers. She had knowledge regarding the proper installation of hardwood flooring and was responsible to ensure that it was properly done. She negotiated with a flooring supplier to get a Ten Thousand Dollar (\$10,000) job for free due to the improper installation of the flooring.

"They didn't pull. When you lay hardwood, you normally open five boxes and pull from each box to mix it up. That way it all blends together. And they didn't pull from five boxes. And so, when we went into the home, all the hardwood was patchy. I hadn't been there that day. I had been out doing something else when they laid the hardwood and whenever I went in, the hardwood was laid in patches. It was a really dark -- it was Imperial Cherry hardwood and it was extremely dark. And you could see the floor, the different colors of the hardwood where they hadn't pulled separate. And I had to take pictures of that and deal with the company out of Kentucky to get that hardwood free. The whole project was \$10,000 right at -- it was over \$9,000 we got all that free in that home because they had installed it wrong... The other homes I would pick out the tile, grout, the paint. We used Old Gold Five or Six... I coordinated the countertop color with the wall colors. I coordinated the cabinets, the carpet, with all the colors I used in the walls. My lighting that I used, I coordinated it with the whole plan of the house." (TR. Vol. I, pp. 60-62)

Ms. Gribble hauled supplies to the work sites. She brought straw, seed, tractor front loader bucket teeth and pins. (TR. Vol. I, p. 64) Mr. Rustin even testified that Ms. Gribble was in training "to be a real estate agent, which is -- real

estate agents tell you what looks good in a home so you can move the house. This is true. But I 'm not going to take that from her. She did do that. She picked the colors... lights, fixtures, and all that" (TR. Vol. II, p. 220)

Dennis Young, electrical contractor, testified that he had performed electrical work on four of their construction projects. (TR. Vol. I, p. 12) He testified that Ms. Gribble picked out the paint colors and that she had authority to pick out and placement of the lighting, cabinets and electrical sockets. (TR. Vol. I, p. 14) Mr. Young testified, "We put in -- like in the kitchen, we put extra can lights in. And we had to have her approval to make sure that's what she wanted."... Ms. Boniface asked "And you actually had to move some things one time, move an electrical socket I believe?" -- Mr. Young "Yes Ma'am." Ms. Boniface "because she had changed where the cabinets were going in" Dennis Young "Yes Ma'am".(TR. Vol. I, pp. 14-15) Ms. Gribble had the authority to move walls and design bathrooms. (TR. Vol. 1 I, p. 87)

Charlene Spurgeon testified that "I went with her shopping for stuff. We went to Lowe's. We went to Sears. We went to Wal-Mart. She purchased bedspreads, towels, linens. When she was at Sears, she was looking at pool tables to go in them. When we went to Lowe's, she looked at the faucets and stuff, because she helped me pick out a faucet for my house. She ...Towels, linens. Pictures to go on the wall, the decorations." (TR. Vol. I, p. 32) Ms. Spurgeon also testified to caring for the children while her daughter went to Texas to get inventory, stocked the cabins, or labored at the job sites. (TR. Vol. I, pp. 33-34) She testified that she went with her daughter to install interior decor items at a cabin and do the final cleaning at a job site. (TR. Vol. I, pp. 30-31)

Mrs. Rhonda Gribble testified that she saw Ms. Gribble working at a construction project on Forgety Road. "They had laid tile down, painting. She was

cleaning up where they had done some other items or whatever, like sawdust or whatever, inside the house there." (TR. Vol. I, p. 40)

Ms. Gribble testified as to her obligations for many of the development projects. (TR Vol I, pp 83-95) There were very few projects to which she did not contribute extensive time and energy. She testified that she did not do as much work on the project with Mr. Farmer as she was working at Lots of Christmas. (TR Vol I p 96).

Ms. Gribble also secured contracts for the construction business. Ms. Gribble testified that while she was working as a real estate agent she met Richard Gregory.

"Richard Gregory was a customer who had actually looked at Lot 6... to purchase. And he liked the lot that Mr. Sims of Sims Tractor owned across the street better. So I helped him. He was only in town for a brief time. And he didn't like my lot. So I helped him contact Mr. Sims and purchase that lot directly from Mr. Sims. I didn't make any money off the purchase of that lot. And during the process of me working with him I told him that ... we did construction and that we had big machinery and that we built housing. And he said that he was a builder in Pensacola, Florida, and he wanted to build his own house but he needed someone to do the excavating. So I recommended that we do it... I remember it being a \$50,000 job." (TR. Vol. I, pp. 94-95)

Ms. Gribble had full authority to use the company bank account. (TR. Vol. I, p. 65) Further she had full authority to order and pay for supplies and equipment. (Ex. 1) The parties used Ms. Gribble's bank account as a personal and business account. (Ex. 1 and TR. Vol. I, pp. 66-77) Ms. Gribble testified "If I had the construction account, I wrote out of the construction account. If I had the store account, I wrote out of the store account, whatever we needed at the time, because all of our money was pulled together at the end of the day, so it didn't matter what account it came out of." (TR. Vol. I, p. 78) Ms. Gribble asked for discovery of the bank accounts from the business but was never provided any information. She testified that the requested information would have shown "my handwriting all over them. They would have shown where I wrote checks

where I had paid invoices. It would have showed a lot of my ... inventory." (TR. Vol. II, pp. 170-171) Ms. Gribble believed her account was joint. All the money was jointly used. (TR. Vol. I, p. 85)

There wasn't no -- we didn't have no set way of doing finances in our home. Sometimes I paid for stuff. Sometimes he paid for stuff. I had a private checking account. He had accounts, construction accounts, savings accounts. We had cash on-hand. So it just varied. It was basically whatever was convenient for us at the time. If I had cash, paid cash. If we had a checkbook, we paid checkbook. Whatever was convenient at the time to pay with. If I was out and needed something for the business, or if he needed something for the business, he paid for it. If he needed something for the house, he paid for it. It was just whatever we had at the time. (TR. Vol. I, p. 55)

When Ms. Gribble met Mr. Rustin he had a small money bag in which he kept cash. After their efforts started to succeed, Mr. Gribble bought a locked Sentry box for them to transport cash. Eventually, Ms. Gribble bought a floor safe to hold the excess cash which at times could be around \$140,000. They both had access to the cash and could use it freely. (TR. Vol. I, pp. 55-57, 168) The testimony was contradictory on whether Mr. Rustin had a large sum of cash when he met Ms. Gribble. She stated that he did not have much money in his money bag only some old jewelry he had repossessed from his ex-girlfriends. (TR. Vol. II, pp. 276-277) She further stated that she was the one who purchased the safe and lockbox after they met and were making money together. Mr. Rustin also admitted to not owning any equipment within two years of their meeting each other and starting their businesses. (TR. Vol. II, p. 250)

Upon review of the federal income tax returns, it is clear that each party would have different years when they were the primary income producer. (Ex. 10-15, 24-26 & TR. Vol. II, pp. 168-170) Mr. Rustin claimed that in 2001, he had an adjusted gross income of negative Two Thousand Four Hundred and Ninety Three Dollars (-\$2,493). In 2002, he claimed a loss of Seven Thousand Five Hundred and Eighty Nine Dollars (-\$7589). Clearly Mr. Rustin was not the sole provider during those years. Mr. Rustin

held out Ms. Gribble as his partner. In 2002, Mr. Rustin's tax return has a Federal Income Form 1099-Misc attached in his or Becky Rustin's name and also a receipt from Cabin Forever Vacations listing Greg and Becky Rustin. (Ex. 26)

Ms. Gribble did not receive paychecks for her work. (TR. Vol. II, p. 153) The parties shared in the profits buying multiple items of personal property such as Sea Doos, jewelry, motorcycles, televisions, tractors, etc. (TR. Vol. II, pp. 163-165) Ms. Gribble received a tennis bracelet from Mr. Rustin as a gift but believed it to be too extravagant. She returned the item and purchased a cheaper tennis bracelet. She deposited the Two Thousand Five Hundred Dollars (\$2,500) back into their safe because she did not want to waste their money. She did not put the cash into her own account. (TR. Vol. II, pp. 172-173) Although Ms. Gribble was never listed as a partner on any of the businesses, she contracted with suppliers, she wrote checks out of their checking account for business purposes, and she shared in the profits and obligations of the businesses.

Mr. Rustin called Mr. Farmer who testified that he and Mr. Rustin never had a written partnership agreement but that he knew Mr. Rustin, they had a relationship and he could trust him. (TR Vol. II, p. 203) Mr. Farmer never received a Federal Income Tax Return Form K-1 and the property that was developed was only titled in Mr. Rustin's name. (TR Vol. II, pp. 203-205) The Trial court found that a partnership had existed between Mr. Rustin and Mr. Farmer. (TR Vol. II, p. 295) Ms. Gribble testified that joint money was used to finance that endeavor but all parties agreed that she did not provide any design work on that project. She may have delivered a few items but her major contribution was the financing with Mr. Rustin.

## **VI. LAW AND ARGUMENT**

**A. Did the parties place their money, assets, labor, or skill in commerce with the understanding that profits would be shared between them?**

*Bass v. Bass*, 814 S.W.2d 38 (Tenn. 1991), is the leading case in Tennessee regarding implied partnerships coexisting with romantic relationships. That case is very similar to the facts at hand. In *Bass*, the Supreme Court stated that a partnership is defined as an association of two or more persons to carry on as co-owners a business for profit, TCA § 61-1-105(a), and the receipt of a share of the profits of that business is prima facie evidence that a partnership exists, TCA § 61-1-106(4). *Id* at 41 Although a contract of partnership, either express or implied, is essential to the creation of partnership status, it is not essential that the parties actually intend to become partners. *Wyatt v. Brown*, 281 S.W.2d 64, 67. Stated another way, the existence of a partnership may be implied from the circumstances where it appears that the individuals involved have entered into a business relationship for profit, combining their property, labor, skill, experience or money. *Bass*, 814 S.W.2d at 41. If the parties' business brings them within the scope of a joint business undertaking for mutual profit - that is to say if they place their money, assets, labor or skill in commerce with the understanding that profits will be shared between them - the result is a partnership whether or not the parties understood that it would be so. *Pritchett v. Thomas Plater & Co.*, 144 Tenn 406, 232 S.W.961, 969-970(1921).

In *Bass*, Ms. Bass had "assisted Mr. Bass in the daily servicing of the video machines, helped decide where new machines should be located and kept most of the records of the various businesses. Although she was not listed as a partner or co-owner of any of the businesses, she wrote and signed most of the checks for the operation of the businesses, worked on the machines, and collected money from them. She was not paid a salary or wages for her efforts... She recognized that the checking accounts, savings accounts, safety deposit box and real property were all listed in William Bass' name exclusively." *Bass* at 40 The Supreme Court noted that the "uncontroverted evidence before the trial court was that all income from the businesses was pooled and that the Plaintiff received whatever was necessary from those funds to maintain her standard of living... Similarly, Plaintiff, by virtue of her reliance on the pooled funds, necessarily

incurred business obligations whenever expenditures were made from those funds." *Id* at 43.

The proof at trial in the present case is very similar to the facts as noted by the Supreme Court of Tennessee in *Bass*. In the present case, Mr. Rustin expressly asked Ms. Gribble to join him in running *Lots of Christmas*, later renamed to *Aluminum Decor and More*, and the construction business. Both parties made day to day decisions and discussed the various projects in which they were engaged. They both picked out potential lots to be developed. They discussed the layout of the homes to be built. They shared the profits and thereby shared the responsibilities of the businesses. They divided labor and tasks according to each person's talents but they each had responsibilities. Ms. Gribble handled funds and paid invoices for *Aluminum Decor and More* and the construction business. She changed the name of the company from *Lots of Christmas* to *Aluminum Decor and More*. The employee from the accounting firm testified that she considered it "their" business. Neither party received a formal paycheck. They maintained their standard of living according to the profits realized from their efforts.

Ms. Gribble had authority to deal with suppliers such as the flooring company from Kentucky. She negotiated contracts and pursued relief when work was not performed adequately. She promoted the businesses by securing an excavation job which totaled approximately Fifty Thousand Dollars (\$50,000). She re-trained herself as a real estate agent in an effort to promote the construction business. The parties decided her real estate license would bring more money to the business if she received the commissions for sales instead of a third party and would also put her in the market to hear of new business. She purchased tractors, carpeting, appliances, and all interior decor for the construction projects. She freely wrote checks from her personal account and the business accounts for business related items. She interacted with the electrician to tell them where to place, and what type of, lighting and electrical sockets were to go in the homes. She picked out cabinetry and helped with designing the layout of the homes. She had intimate knowledge of the businesses. She had to return to work on her

discharge date from the hospital due to her being the only person who knew what a customer had ordered.

Mr. Rustin's own tax return has attachments in both of their names. Ms. Gribble never took a paycheck but had full access to the money made through their joint efforts. Mr. Rustin tried to portray her as merely a girlfriend. She was much more than that, she invested all of her time to their businesses and their successes. It would be inconceivable for a mere romantic relationship to require Ms. Gribble to do so many jobs for no payment. Mr. Rustin did not have a construction company when he met her. In fact the trial court found that he did not own construction equipment prior to meeting Ms. Gribble. (TR. Vol. II, p. 293) While he worked on job sites, Ms. Gribble worked the store and got supplies for the construction projects. She designed the interiors, she marketed and sold some of their constructed homes. A review of the tax returns show that there were at least two years where Mr. Rustin showed negative income and Ms. Gribble showed modest income. Again more evidence of combining their resources toward a common goal.

Mr. Rustin questioned Ms. Gribble's education in interior design even though he also had no such training. He claimed that she brought nothing to the partnership. Upon review of the testimony, it is evident that she did not have formal training in interior design but Mr. Rustin agreed that she did do all of the interiors. In reviewing her testimony, it becomes apparent that she had knowledge as to the installation of flooring, lighting, cabinetry and electrical outlets. She knew what each cabin would require to be placed on the rental market and performed all the functions of an interior decorator. There are many successful people with no formal interior design training. She also put in sweat equity. She worked on numerous projects and in both businesses. She did everything from cleaning the cabins to hanging cabinetry. The only items that she did not do was the actual construction of the infrastructure. Mr. Rustin admitted that her efforts helped to sell the houses quickly.

The facts in *In re Estate of Helen Price*, 273 S.W. 3d 113, are vastly different than those at hand. Mr. Fenner opened his bowling alley refinishing business before he and Ms. Price began living together, and Mr. Fenner purchased all of the equipment to operate that business prior to meeting Ms. Price. Although Ms. Price occasionally drove a truck to one of Mr. Fenner's job sites to deliver materials, this was not a regular responsibility for her and she was not significantly involved in the daily activities of the business. Rather the record is uncontroverted that Ms. Price's "job" was raising Mr. Fenner's children... There is also no evidence that Ms. Price participated in any business decisions. " *Id* at 139 The labor was typically done out of state and Ms. Price had no contribution thereto. *Id*, at 136. Similarly to Ms. Price, Ms. Gribble was the main caregiver for the minor children. But the similarities end there, Ms. Gribble had a thorough knowledge of all business endeavors. She often ran the store alone. She brought her children with her to the store so that she could care for them and work. She guided subcontractors, dealt with suppliers and purchased items for the businesses. She obtained her real estate license in an effort to further the construction company's business and maximize the couple's finances.

The trial court held that Ms. Gribble had not proven by clear and convincing evidence that a partnership existed. The Court listed the reasoning as below:

The Court:

"It seems to the court reasonable over a period now--we're talking about nine years 1999-2008, when they separated. We're talking about a lot of property, a lot of real property coming and going during that period of time. I don't know how many parcels of real property, but several, several parcels of real property coming and going, a lot of personal property coming and going during that period of time. And it seems to the court that had Ms. Gribble thought --she really thought she was a partner, she would have--there would have been something, something in writing somewhere. If not a contract between, there would have been something showing, look that out of the sale of this cabin, out of the sale of the other house, out of the sale of whatever, there would have been some check or

checks whereby her share of the money would have been distributed to her. There is absolutely none.

...A lot of other factors that enters into it is that these parties did have a personal relationship. And once again Ms. Boniface is quite correct just the fact that they had a personal relationship the Bass case tells us that for sure and certain that just the fact that you had a personal relationship, a romantic relationship, does not necessarily mean that you cannot still be a partner with respect to a specific project or projects with your boyfriend or your girlfriends. You can be, if you can prove it, if you can prove it, to the standard of clear cogent and convincing. So I understand that. But nevertheless, in this case look at the situation as it has been presented to the court. When these parties came to know one another in 1999, the evidence is clear to the court Ms. Gribble brought nothing to the relationship. She brought nothing in the way of property that she could have contributed to a partnership. She brought nothing in the way of money that she could have contributed to the partnership. She was working as a clerk in a convenience store, which there is not a thing in the world wrong with that. Any work is honorable and good for somebody who is willing to work whatever the job may be. But Ms. Gribble brought nothing to this relationship. So you might say, okay if a partnership was to be formed, whether express or implied, what was to be Ms. Gribble's contribution, what was to be her contribution, because ordinarily you form a partnership and you're going to say we're going to be 50/50 partners, all right, we need some money, we need some capital, we need something to start with. Okay you contribute \$10,000, I'll contribute \$10,000, we'll put it in the bank up here, we'll start doing business, you own 50% I own 50%. That's the way it works. Ms. Gribble brought nothing to contribute to the partnership...So once again the court takes the point--and I think it was Mr. Rustin that testified that well look a partnership here with Ms. Gribble, what did I need her for, she didn't have experience in the construction business..." (TR. Vol. II, pp. 288-291).

The trial court noted that Mr. Rustin had construction skills and that Ms. Gribble brought "nothing" to the partnership. This conclusion is against the weight of the evidence at trial. Ms. Gribble brought her labor, her decorating skills and her income to the table. Ms. Gribble worked the entire time that the couple was together as shown by witness testimony as well as her tax returns. She worked as a nurse and supplemented

the couple's income while the construction business was developing. (TR. Vol. II, p. 169) She then quit the nursing position to run the store. There were five witnesses that testified in great detail of Ms. Gribble's work at the store. The trial court also found that she worked in the store. (TR. Vol. II, p. 296) There was uncontroverted testimony that Ms. Gribble obtained skills as a licensed realtor which allowed the couple to retain commissions as well as garner a Fifty Thousand Dollar (\$50,000) contract for excavating. The excavating contract with Mr. Gregory came from Ms. Gribble's efforts not Mr. Rustin. Mr. Rustin admitted that her skills as a realtor allowed them to market and sell their lots. There was uncontroverted testimony that Ms. Gribble negotiated a Ten Thousand Dollar (\$10,000) flooring installation for free. It is against reason to believe that a sole proprietor would allow an outsider to negotiate contracts, settle disputes, purchase inventory and supplies and deal with subcontractors. There was uncontroverted testimony from the electrician that Ms. Gribble had authority to direct his work. Mr. Rustin admitted that Ms. Gribble picked out the interiors of the construction projects. Ms. Gribble wrote numerous checks for the business from her personal account and knew with great detail what each and every check concerned. (Ex. 1, TR. Vol. I, pp. 65-77) Ms. Gribble was too extensively involved with both businesses to be just a girlfriend.

The trial court also noted that there were no writings, no checks, "nothing" showing that Ms. Gribble had an interest in a partnership. The lack of a writing, the lack of paychecks, the titling of property in one person's name are hallmarks of these cases. In the cases where a partnership has been upheld such as *Bass, Wyatt v. Byrd*, W2009-02635-COA-R3-CV and *In Re Estate of Thornton*, 81 Wash.2d 72, 499 P2d 864 (1972), the facts are the same, no paychecks, property titled in one name with no written documentation of a partnership. The existence of a partnership is not a question of the parties' undisclosed intention or even the terminology they use to describe their relationship, nor is it necessary that the parties have an understanding of the legal effect of their acts. *Roberts v. Lebanon Appliance Service Co.*, 779 S.W.2d 793 at 795-796. It is the intent to do the things which constitute a partnership that determines whether

individuals are partners, regardless if it is their purpose to create or avoid the relationship. *Wyatt* 281 S.W.2d at 67. Mr. Rustin did not have to intend to create a partnership, he did intend for Ms. Gribble to work at *Lots of Christmas*. Likewise, he did intend for her to decorate the interiors and negotiate with suppliers and subcontractors. He did intend for her to market and sell the homes. These actions created a partnership.

The trial court also noted that there was no showing of money contributed by Ms. Gribble to the partnership. The trial court is in error to require money from both parties to create a partnership. Partnerships can be formed without the same type of contribution. In *Pritchett*, 144 Tenn 406, 232 S.W.961, 969-970 (1921), the court quoting Chancellor Kent in his Commentaries defines a partnership as "a contract of two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions." 3 Kent's Commentaries, 23. And likewise it has been declared that a partnership is a voluntary contract between two or more persons who place their money, effects, labor, and skill, or some or all of them, into lawful commerce or business, with the understanding that there shall be a community of profits between them. *Carter v. McClure*, 98 Tenn. 109, 38 S.W. 585, 36 L. R. A. 282, 60 Am. St. Rep. 842.

There is a partnership wherever there is a community of interest in the profits of the business or transaction by the parties as principals or proprietors. 115 Am. St. Rep. 418, 431. It is unnecessary to the creation of a partnership that the business relation entered into, which constitutes it, be called by that name. *Fougner v. First Nat. Bank*, 141 Ill. 124, 30 N. E. 442; *Beecher v. Bush*, 45 Mich. 188, 7 N. W. 785, 40 Am. Rep. 465; *King v. Remington*, 36 Minn. 15, 29 N. W. 352; *Fairly v. Nash*, 70 Miss. 193, 12 South 149. Ms. Gribble was working at the time and at all times during the relationship. She also combined her labor and skill to the partnership.

The court further reasoned:

The overall evidence, to me, I believe establishes that this was a boyfriend/girlfriend relationship, that it was not a partnership, that surely there was some--there was evidence--**and I 'm not saying at all that I find that Ms. Gribble didn't work. I believe she did. I believe she did work, at the Christmas store, at -- I believe she did. I believe she did some work with respect to the cabins and so forth.** But that by itself does not establish a partnership. Here you had a man and a woman in a very close relationship. Though they didn't get married, they had a daughter together. **And each was contributing to a household.**

By the way, it was the way that--Mr. Rustin's way of earning a living was to do what he knew how to do, and that was and is to do the excavation, to do--conduct an excavation business, to conduct a construction business to buy, sell and trade in land. And that's what he did. And that's how they paid the light bill, the water bill, the phone bill, the car payments, the -- bought Sea-Doos, bought motorcycles. But the point is, to the court, that **they were doing what was necessary to maintain the household.** *emphasis added* (TR. Vol. II, pp. 296-297)

The trial court did find that Ms. Gribble had worked and was contributing to the household. The trial court failed to notice that she never received compensation for her efforts. Instead all of the money that was earned was put into a joint fund that both parties used to maintain their lifestyle. When Ms. Gribble worked at the store, when she decorated cabins, when she negotiated contracts, the proceeds went to their cash reserve not to her directly.

The Court of Appeals has held that

**B. After finding that an implied partnership did not exist, did the trial court err in divesting all right, title and interest to the "Sea Doos, Tractor, Trailer, all other tools, equipment, trailers, motorcycles, ATVs, etc. acquired from 1999-2007" even though some were registered in Ms. Gribble's name, bought from Ms. Gribble's checking account and Mr. Rustin did not have any pleading on file that would have asked for such relief?**

The trial court found that no partnership existed. The trial court then divested Ms. Gribble of all property that she had purchased from her account and had titled in her name. In the pleadings, there was nothing alleged in Mr. Rustin's *Counter-complaint* that would have allowed for this relief. The trial court ruled:

Ms. Boniface: "There was no proof that those were paid for by Mr. Rustin."

The Court: "It's a partnership or it is nothing. And I've held that it is not a partnership...The problem is Mr. Rustin didn't have the burden of proof. The problem is Ms. Gribble had the burden of proof. And if she doesn't carry the burden of proof, he wins, which is what I've held. To the extent that he doesn't--that she does not carry the burden of proof on anything that was at issue, to the extent she does not carry the burden of proof, he wins.

Ms. Boniface: "But these were items that she purchased for her son, is what I'm saying."

The Court: "No the court holds that she was trying to establish a partnership here and has not carried the burden of proof to do it, and accordingly, those items belong to Mr. Rustin because she has failed to carry the burden of proof to show that she had a partnership interest in them." (TR. Vol. II, pp. 305-306)

If there were no partnership, then the assets should remain as titled or as registered. In order to divest a person of property there must be some filing that asks to divest the person of their property. Since the Court found no partnership, then the property should have remained as purchased and registered. *Exhibit 8* has a voluminous list of items purchased during their relationship. The trial court should have divided said property according to who purchased the property.

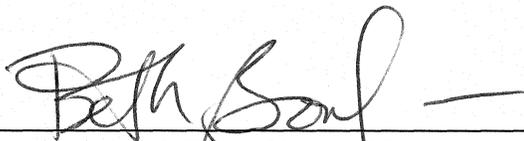
The trial court found that there was no partnership and accordingly no assets were derived from a partnership. The trial court also held that "The Sea-Doos. The Sea Doos. What's the definition of a partnership? It's parties entering into business jointly

for what? For a profit. For a profit, even under Ms. Gribble's testimony. Sea-Doos had nothing to do with profit and --clearly had just, had nothing to do with profit...Well by that strict definition \$50,000 worth of jewelry or \$20,000 worth of jewelry or whatever it is in between, by that definition, would be partnership property, wouldn't it? But it's not, because it clearly had nothing to do with a profit motive either did it? There is no evidence here that the jewelry was bought to speculate on, to buy, sell, trade on, rather" (TR. Vol. II, p. 295-296) Since the Sea-Doos, motorcycles, trampolines, etc. were not found to be part of the partnership then they should remain as purchased. There was no relief prayed for by Mr. Rustin which would allow for the divesture of this property from Ms. Gribble.

## VII. CONCLUSION

As the *Bass* court noted quoting *Thornton* "A partnership can be implied in this case while completely ignoring the parties' social relationship. If these parties had, for example, been brothers, it is doubtful that there would have been any question raised to begin with about whether a partnership existed... The fact that the parties may be involved socially should not, and does not, slam shut the courthouse doors to a claimant such as Linda Bass who invests time, money, labor, and energy into establishing a profit producing enterprise." *Bass*, 814 S.W.2d 38, 44. If Ms. Gribble was merely a girlfriend and Mr. Rustin wanted to shower her with gifts that would be very different. In this case, Ms. Gribble contributed money, time, labor and energy for years to help create a business and she should be allowed to reap the benefits of her labor.

Respectfully submitted this 17<sup>th</sup> day of January, 2011.



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**BETH BONIFACE**  
Attorney for Ms. Gribble

**VIII. CERTIFICATE OF SERVICE**

On January 17, 2011, I faxed and mailed a copy of this *Appellant's Brief* to Mr. Rustin's Attorney, Ronald J. Attanasio, at 865-971-6929.

  
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BETH BONIFACE

**IX. APPENDIX**

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