

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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Haywood 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). 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 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, 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.

Self-employed as an Attorney for the public

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

1980, BPR# 007055

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, BPR # 007055, Active, licensed October 4, 1980

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).

NONE

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).

Graduation May 10, 1980, Memphis State University

May 1980 to June 1982, Staff Attorney with Reid and Banks, Attorney At Law, with a concentration in litigation. Both civil and criminal. Tried my first Criminal Jury Trial, March 1981. First criminal appeal thereafter in the same matter.

Entered Solo-Private Practice in Crockett County, Tennessee, in June 1982 until March, 1985. Engaged in the General Practice of Law with a concentration in litigation with 50% Criminal and 50 % Civil. Tried my first successful criminal trial in the Fall of 2002; tried my first Capital Murder case in the matter of State v Willie Claybrook (guilty verdict) with an successful appeal

to the Tennessee Supreme Court.

March 1985 until January 1986 worked as a Staff Attorney for Memphis Area Legal Service with no criminal involvement.

January 1986 until January 1987 worked as a staff Attorney with James T. Sanderson Associates in Bolivar, Tennessee, with 50 % Civil-Criminal. Tried several Criminal Jury trials as Co-Counsel with Mr. Sanderson and singularly; wrote four (4) Appellate Briefs during that year of employment.

January 1987 until present in the General Solo Practice of Law in Brownsville, Tennessee, in which I have had countless jury trials in and about West Tennessee with considerable Appellate experience associated with Criminal and Civil matters.

In 2013, I was requested by the Haywood County Bar Association to provide to the Tennessee legislature two proposed Judicial Redistricting Plans for consideration by the Tennessee Legislature. I authored both plans solely.

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.

Employed continuously.

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.

General Litigation Practice with 50% Criminal and 50% Civil. Please note that I have had considerable jury trial experience in the criminal area through West Tennessee with the major concentration being in the 28th Judicial District.

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.

Trial Courts: I have appeared in the Criminal Courts, General Sessions, Circuit, and Criminal Court in the following Counties concerning criminal matters: Shelby, Hardeman, McNairy, Hardin, Lauderdale, Haywood, Madison, Fayette, Dyer, Gibson, Carroll, Henderson, and Crockett. I have likewise appeared in Civil matters in all the above counties including those listed and Lake, Weakley, Henry, Obion, Decatur, Chester,

I have handled serious felony matters in most all the above listed Counties ranging from Class A. Felonies down to the Class C Misdemeanors.

I have principally worked five days a week since January 1987. (taking three vacations).

My work background consist of serving as a Law Clerk for Reid and Banks, Attorney At Law, Brownsville, Tennessee, from June 1978 until date of licensing.

In an attempt for complete disclosure, all I have performed all legal research associated with clients, all preparation of Motions, all hearing of Motions, all preparation of trial, trial of the matters regularly after entering the solo-practice in January 1987.

Consulted with Doug Jones, Attorney at Law, Nashville, Tennessee concerning needed revisions of the Tennessee Heritage Preservation Act, which is currently under consideration by the Tennessee Legislature.

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

First Chair in the Capital Murder case of State v Claybrook, in 1984, conviction reversed on the issue that I briefed and argued before the Tennessee Supreme Court. 736 S. W. 2d 95 (Tenn. 1987)

Have obtained numerous reversals of convictions before the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court.

The following list are reversals of significant criminal matters before the Appellate Court:

State v Jennifer Gale McClure, 74 S. W. 3d 362 (Tenn. Crim. App. 2001)

State v Edward Carl Womack, unreported (1999 Lexis 1212)

State v Rufus Stewart, unreported (1995 Lexis 388)

State v Barbara Sanders, James Earl Conner and Dorothy Benson, unreported (1990 Lexis 124)

State v Willie Claybrook, ibid.

The following is a list of cases which I defended at trial and appealed the conviction which were either affirmed, reversed in part, or modified:

State v Tony Martin,

State v Danny Anderson

State v Edward Halton

State v Elbert H. Austin

State v Michael Allen Underwood

State v Harold Shaw

State v Michael Murphy

State v Wayne Conner

State v Dorie Miller Currin

State v John E. Fields

State v Roy Whittington

State v Malcom Powell

State v Wright and Keith Palmer

Underwood v State

State v Jackie Wayne Kirkman

Wilcox v State

Underwood v State

State v Thomas Slates

In addition to the listed appeals, counsel has tried at trial and prosecuted numerous appeals to the Court of Appeals and the Tennessee Supreme Court.

With regards to the special matters of note, *State v Willie Claybrook* still remains the standard by which individuals A are entitled to individual and separate voir dire in Capital Murder cases.

The Womack and McClure cases corrected an unconstitutional procedure employed by the Tennessee Department of Safety at various weigh scales.

The Benson and Conner matters stands as the affirmation that mere presence at the scene of the crime is not sufficient evidence to sustain a conviction.

The Sanders matter sets limitations on search incident to arrest and the plain view doctrine.

At trial, the counsel has had a run of success with currently 72 not guilty verdicts out of the last 74 trials.

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.

City Judge- Whiteville, Tennessee, 1986 to 1987 (traffic matters, appointed)

Substitute General Sessions Judge, Haywood County, Tennessee, 1987 to 1993 (conflict matters including preliminary hearings and trials on the merit, appointed)

Substitute City Judge, Brownsville, Tennessee, 1987 to 1993 (traffic matters, appointed)

None of the particular cases are significant.

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.

Guardian Ad Litem by appointment of various Courts in and about Haywood County, Tennessee, for incompetent people in Juvenile matters and in various assundry civil matters .

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

Served as counsel for the poor for one (1) year with Memphis Legal Services.

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.

NONE

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.

University of Tennessee at Martin, August 1973 through May 1977, B. S. Business Administration (Major Accounting),

Passed Public Accountants Exam August 16, 1977, license # P1626, passed all parts first setting.

University of Memphis School of Law, August 1977 through May 1980, J. D.

Sat for June Tennessee Bar Exam, passed first attempt, License # 4121, issued October 4, 1980.

PERSONAL INFORMATION

15. State your age and date of birth.

Age: 61, Date of Birth 2/12/1955

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

61 years

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

31 years (all but three years of my life)

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

Haywood County, Tennessee

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 now 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.

NONE

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.

NONE

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.

I have had 8 inquiries by the Board of Professional Responsibility that have been concluded favorably in my behalf with no formal complaint being filed.

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)?

Yes (1985)

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.

Bankruptcy 1985 Western Section of the United Bankruptcy Court for West Tennessee.(discharge granted)

2 Divorces, Livingston v Livingston (divorce), September 1986, Haywood County Chancery (divorce granted)

Livingston v Livingston (Divorce), October 1986, Haywood County Chancery (divorce granted)

An additional Civil matter filed by a prisoner while in prison approximately 1993, in Haywood County Chancery Court. The matter was dismissed on Motion for Summary Judgement.

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.

Masonic Lodge, Alamo Chapter

Lebanon Methodist Church

Contributing Sponsor West Tennessee National Rifle Association

Contributing Sponsor Haywood County Rely for Life

Contributing Sponsor to Haywood County School Athletics

Contributing Sponsor NAACP Banquet

Brownsville Country Club (member)

Contributing Member of YMCA, Brownsville, Tennessee

Brownsville-Haywood County Chamber of Commerce

Haywood County Republican Party---Chairman, 2010 to present

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.

Masonic Lodge, Alamo, Tennessee. I have been a member of the Masonic Lodge of Alamo, Tennessee since 1983. My previous membership was in the Masonic Lodge in Brownsville, Tennessee, in which I was introduced into the rank of 3rd degree Master mason and served as Junior and Senior Warden. I have not participated actively in the organization except have denoted regularly to the Shriners Burn Hospital and have regularly paid my annual dues. If nominated and selected, it is my intention to inquire with the Board of Judiciary as to the propriety of remaining a member. If advised to withdraw, I will withdraw from the organization.

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.

Haywood County Bar Association, 1987 to date.

Was requested by the membership to author two (2) separate Judicial Redistricting Plans given or suggested to the Tennessee Legislature as alternatives for Redistricting Plans in 2013.

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.

Served as Research Assistant for Lawrence A. Pivinick, author of Chapter 26 regarding Class actions that was used for the basis of Professor Pivinicks Book on Tennessee Civil Procedure 1980.

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.

City Attorney, Bells, Tennessee 1983-1986 (appointed)
City Judge, Whiteville, Tennessee, 1985 to 1986 (appointed)

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

NONE

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.

Example 1 is a condensation of a memorandum written in support of Pretrial Motions in the matter of State v Billy Wayne Price. This matter was selected because of the unique nature of the subject matter concerning the Humboldt Law Court.

Example 2 is a recent brief before the Court of Appeals which was successfully concluded in my clients favor.

ESSAYS/PERSONAL STATEMENTS

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

The Court of Criminal Appeals is a venue by which a Judge may make significant changes in the life of the citizen of the State of Tennessee. By such he may influence the law in a positive manner for the protection of society as a whole. It is a difficult thing as a lawyer to positive influence the legal community

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)*

Throughout my life I have demonstrated my commitment to the less fortunate by providing excellent professional services at a reasonable rate and have on numerous occasions provided services without compensation. Since 1990, any and all criminal matters of an appointed nature

in which I have served have gone uncompensated because of my refusal to submit a claim form for services rendered. Having served as an Attorney for the West Tennessee Legal Services for one year, it is readily apparent that the less fortunate are in dire need of good representation but in many cases can not afford experienced counsel. On a weekly basis I counsel numerous less fortunate individuals in a personal and professional matters. It is the commitment of an Attorney to leave his fellow man in a better condition from which he found 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)*

Judge of Tennessee Court of Criminal Appeals, Western Section.

State of Tennessee Criminal cases. Number of Judges 12.

My selection will impact the Court in a positive manner. The other Judges will find me to be amicable, congenial, and at all times willing to assist one another in all professional capacities. It is my desire to be a team player.

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)*

As a young lawyer, I participated in various civic organizations including the Brownsville Jaycees which I served as President of the local Chapter which was involved in the distribution of Christmas Baskets for the poor and general service for the County. I was likewise member of the Rotary Club in Brownsville, Tennessee, and continued as a faithful member until moving my practice to Crockett County, Tennessee. After returning my practice to Brownsville, Tennessee, in 1987, I served as various offices with the local Bass Federation Club which had a significant portion of its activities of conservation and nature. I further served on the State Board of Directors as a District Director for two years.

Since 2000, I have participated in the Haywood County Republican Party in various capacities as major contributor and as Chairman since 2010. I have served as Chairman/Co-Chairman of various campaigns including John Wilder (2000, 2004), Ed Bryant (2002), Dr. Jessie Cannon (2004), George Bush (2004), Dolores Gresham (2012), Bill Haslam (2014), Lamar Alexander (2014), Stephen Fincher (2010, 2012, 2014), and Mario Rubio (2016).

Applicant intends to refrain from any political activities prohibited by the Board of Judiciary. I will consult with the Board as to its direction.

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)*

As a child, I was raised to believe to respect all people equally and demand equally respect from all people. In the 3rd grade, Haywood County became racially intergraded due to freedom of choice. Many of the young African American students were picked on by some of the white students. I, being the most athlete member of my class served as a defender of the less fortunate at a very young age. At age 16, when Haywood County consolidated with the local African American High School, Haywood County experienced "White Flight" from the High School to various private schools. A very difficult time in Haywood County history. Though coming from a wealthy family and being offered a High School Football Scholarship at an all white private school, I choose to remain in the Haywood County School System that was then approximately 87% black. I do not and have never regretted my decision to remain in the public school system because it has allowed me to obtain a greater understanding of different cultures and different people. The practical education taught me how to deal with people of other cultures and that education has served me well. I have many friends of different races, religions, and different economic levels each are worthy of respect. Throughout my early life, I have always been described as the "Ultimate Team Player" willing to follow instructions without argument.

During my professional career, I have many times taken cases without compensation that other attorneys would not take for fear of adverse impact to their practice.

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. The Legislature writes the laws, the Court interprets the Laws. The adjective of any criminal trial is to see that justice is done.

Throughout my professional career, there have been many examples of procedural or substantive law that appears to work an injustice on the system as a whole. We as citizens have a sense of right and wrong, good and evil, justice and injustice. Throughout the criminal law, there are many examples of exclusion of evidence that is otherwise competent. The exclusionary rule has seen great favor in the Law of State of Tennessee. The public policy of the State of Tennessee has dictated that compliance with the Constitutional Rights of a Defendant outweighs the introduction of otherwise competent evidence.

A rational and consciences person many times find it difficult to balance one sense of right and wrong with the exclusion of evidence that allows guilty to go free when technical rules are abridged. One must believe in the system of juris prudence to operate therein.

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. Judge Clayburn L. Peeples, Presiding Circuit Judge, 28th Judicial District
Haywood County Justice Complex

B. Garry G. Brown, District Attorney General, 28th Judicial District

C. Ray Dixon, Retired History Teacher, Haywood High School

D. Melvin Bond, Sheriff of Haywood County, Tennessee

E. Michael J. Banks, County Attorney, haywood County, Tennessee

F. James S. Haywood, City Judge, Brownsville, Tennessee

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, 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 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: February 25, , 2016 .


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.

David M. Livingston

Type or Print Name

Signature

Date

007055

BPR #

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

Public Accountant, License # P1626

Issued August 16, 1977 from Tennessee State Board of Accountancy. License currently retired and has been such since mid 1980.

IN THE CIRCUIT COURT OF GIBSON COUNTY, TENNESSEE IN
HUMBOLDT

STATE OF TENNESSEE,

VS.

NO. 7451

BILLY WAYNE PRICE,

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS INDICTMENT**

This memorandum is written to assist in the assessment of the facts and law associated with the Motion to Dismiss the indictment of the defendant returned by the Grand Jury of the Humboldt Law Court on the 13th day of March, 2003.

INTRODUCTION:

Counsel for the Defendant desires to state to this Honorable Court certain interesting historical facts that may bear note as to why the Humboldt Law Court was created. In 1865, the Civil War was coming to a conclusion and the Brownlow Administration was extremely severe with former confederate troops and their families. Certain facts occurred which made fifteen (15) separate counties throughout the State of Tennessee create the Law and Equity Court System. The Humboldt Law Court is only one of two survivors of that era. Lost documents, forgotten memories, and long since destroyed chronicles fail to memorialize the plight of the former confederate soldiers and their families which necessitated the creation of the Law and Equity System. For those that are unfamiliar with the Humboldt Law Court, it is comprised of a portion of Gibson County. (only six (6) Civil Districts comprised the jurisdiction of the Court). The determination of the boundary lines creates tremendous problems as to venue between the Gibson County Circuit Court and the Humboldt Law Court. Please note that the Court when created had three (3) Civil Districts of Gibson County that were removed from Gibson County when Crockett County was created. The adjustments and changes of the area of the Court as to the removed districts was without mention concerning the jurisdiction of the Humboldt Law Court by the Legislature.

FACTS

The Humboldt Law Court was created by the action of the Legislature dividing Gibson County, Tennessee, into two separate and distinct jurisdictions for which venue is established by virtue of occurrence of a crime in their particular Civil Districts. The Civil Districts of Gibson County were originally established by Township and Range fashion in 1835. The Civil Districts have been altered, amended, combined, and changed several times since their creation. Undisputed, the County Court has made changes to the Civil Districts without regards to the requirements of Tennessee Law as evidenced by the Affidavits of the Tennessee Secretary Of State and the County Court Clerk of Gibson County. Both officials answered the requested subpoena with statements of their respective inability to find the documents necessary to alter the respective Civil Districts in question.

In 1869, the legislature set up the Humboldt Law Court from six (6) then Civil Districts of Gibson County. The Humboldt Law Court was founded in the **Tennessee Public Acts § 1, Chapter 22 (1868-1869)** as follows:

Be it enacted by the General Assembly of the State of Tennessee, that there shall be held at Humboldt a common law court for the first, second, third, fourth, sixteenth, and twentieth

Civil Districts in Gibson County, to be called the Law Court of Humboldt, and to constitute one of the Courts of the Fourteenth (14) Judicial District, and to be held by the Judges thereof with Common Law Jurisdiction original and appellate, over all cases arising at law, within said Civil District, of a civil, commercial, or criminal nature, and that the Attorney General of said the Fourteenth (14) District shall attend said Court and transact the business appertaining to his office there .

§ 2. Be it further enacted that the Law Court of Humboldt has general common law jurisdiction original and appellate, in all cases at law, or of a Civil or Criminal nature, arising in the Civil Districts named in first § of this Act, and that no resident of said district shall be sued in the Circuit Court of Gibson County, nor presented or indicted therein unless the offense was committed in the court of said Districts. Where the court has the jurisdiction of the cause of action, counter-parts of writs may issue from said Court for joint Defendants residing out of said Districts. § 4 provides be it further in-acted that the Law Court of Humboldt shall have all the powers within the local jurisdiction that belongs to the Circuit Court of this State.

In the Tennessee Constitution adopted in 1870, the provisions granting the right to trial by an impartial jury were modified by deleting the term “**District**” from the previous Constitution and substituting the term “**County**”, **Art. I § 9**.

In February 22, 1870, the legislature increased the jurisdiction of the Humboldt Law Court to include Civil Districts 13 and 18. (Chapter 70, Tenn. Pub Act 1870). On December 20, 1870, the legislature changes again the territory of the Circuit Court of Gibson County to embrace Civil Districts 13th and 20th.

In 1871, the Legislature created Crockett County, Tennessee, from a portion of 4 separate counties with Gibson County donating three Civil Districts. The Civil Districts donated were the 16th, 20th, and part of the 4th, which is the land that lays between the middle and north fork of the Forked Deere River.

On December 15, 1871, the jurisdiction of the Circuit Court of Gibson County, Tennessee, was repealed as to the 13th Civil District (chapter 149, Tenn. Pub Acts of 1871)

In 1873, the County Court created a new 4th Civil District from portions of 3rd and the 16th and 5th Civil Districts. No mention of expansion of the Humboldt Law Court was including in the change.

In 1878, the County Court revised the 16th Civil District to include a portion of the 6th and 7th Civil Districts. Again no mention was made in the change concerning the Humboldt Law Court.

In 1881, the County Court created a new 20th civil district from portions of the 3rd, 4th, and 7th Civil Districts. The confusion persists because many of the commentaries on the law of the day were incorrect.

There were several codes or codification that were published during the relevant periods of time. In 1873, the Thompson Steger Code, in Chapter 123A stated the jurisdiction of the Humboldt Law Court was comprised of the First, Second, Third, Fourth, Sixteenth and Twentieth Civil Districts of Gibson County.

In June 1, 1884, the Milliken and Vertress Code in Chapter 158, stated the jurisdiction of Humboldt Law Court as being the First, Second, Third, Fourth, Thirteenth, Sixteenth and Eighteen Civil Districts.

In 1889, the jurisdiction of the Thirteenth Civil District was transferred back to Circuit Court of Gibson County in Trenton.

1896, the Shannon Code in Chapter 152, stated the jurisdiction of the Humboldt Law Court to include the First, Second, Third, Fourth, Sixteenth and Twentieth Civil Districts of Gibson County.

In 1917, the Shannon Code, Chapter 152, again published the jurisdiction of the Humboldt Law Court as being the First, Second, Third, Fourth, Sixteenth and Eighteenth Civil Districts of Gibson County, Tennessee.

In 1918, the Thompson Code in Paragraph 152 stated the jurisdiction of the Humboldt Law Court to be First, Second, Third, Fourth, Sixteenth and Eighteenth Civil District of Gibson County, Tennessee.

PLEASE NOTE THAT THE PRESENT JURISDICTION OF THE HUMBOLDT LAW COURT APPEARS TO BE A PORTION OF THE FIRST CIVIL DISTRICT, THE SECOND CIVIL DISTRICT, THE THIRD CIVIL DISTRICT, THE NEW REVISED FOURTH CIVIL DISTRICT, THE EIGHTEENTH CIVIL DISTRICT, AND THE TWENTIETH CIVIL DISTRICT.

The challenge to the indictment comes from three separate argument. First: the Grand Jury was chosen from only a portion of the jurisdiction of that that should be in the Humboldt Law Court. Second: the Grand Jury was chosen from certain areas of Gibson County that were not properly included in the jurisdiction of the Humboldt Law Court by the legislature. Third: the failure of the Legislature

to alter or amend the jurisdiction of the Humboldt Law Court to coincide with the changes of the Civil District make the boundary of the Court undeterminable.

LAW:

The creation of a court is the exclusive providence of the Legislature and the Tennessee State Constitution. Art. VI § 8, states as follows:

JURISDICTION OF INFERIOR COURTS:

The jurisdiction of the Circuit, Chancery, and other inferior court, shall be as now established by law, until changed by the Legislature.

Unquestionably, the jurisdiction of an inferior court is exclusive providence of the Legislature and as such the directives of the Legislature are controlling. Jackson Morris & Company v Nemmo & Thornhill, 70 Tenn. 597 (1879).

Tennessee has long spoken to the right and composition of juries should remain inviolate from the 1796 Constitution continuing to date. The Tennessee Constitution speaks in inclusive terms of the Defendants right to a fair trial by a jury of his peers.

Art I, §, 6 states ... Trial by Jury--- Qualifications of Jurors.

That the right to trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

Art I, § 8 states.....No Man to be disturbed by law.

That no man shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property , but by judgement of his peers, or the law of the land.

Art I, § 9 concludes Rights of the accused in Criminal Prosecution.

That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and the cause of the accusations against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecution by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

The Tennessee Courts recognizes that the rights of the defendant to an impartial jury includes the right to have a properly drawn Grand Jury. *Treece v Hamilton*, 378 S.W.2d. 198 (Tenn. Crim. App. 1963) . *State v. Zanone*, 97 Tenn. 100 (Tenn. 1896) makes it clear that jurors can not be excluded erroneously.

The Court has entertained the issue of whether the Jury must come from the County as a whole in two separate previous cases. (In *State v Ellis*, 92 Tenn. 85 (Tenn. 1892) and *State v Zanone*, 97 Tenn. 100 (Tenn. 1896). In the comparison of the two cases, they appear opposite in conclusion. The Court of Criminal Appeals entertained a similar issue in the case of *State v Barbara Joyce Tole*, 1984 Lexis 3022 (Tenn. Crim. App. Nov. 21, 1984). Please note that the language of the Tole case is dictum because the Motion of Arrest of judgement due to the improper composition of the jury venire comes untimely. Such Motions must be made prior to the seating of the jury to preserve the objection. The discussion of the Court of Criminal Appeals regarding whether the jury must come from the entire body of Gibson County is dictum. Throughout the discussion in the Tole matter, the Court made reference as to the lack of a statute or a case. Your movant would bring forth the matter that the right to trial by a jury is a right of common law derived through the State of North Carolina and England and would offer the following cases in support thereof.

Bank of State v Cooper, 10 Tenn. 599 (Tenn. 1831) states the following:

“a trial by jury has been considered in England and America as the most distinguished badge of liberty. Great solitude was manifestly felt upon the subject by the framers of our Constitution. In the 9th Article of the Bill of Rights it is secured in Criminal cases, and in the Article before referred to, it is

secured in Civil cases. And so great was the solitude which was felt on the subject , that in the Fifth Article and Fifth § of the Constitution, a provision is introduced (in order that Judges may be prevented from the exercise of any influences on the minds of jury) expressly requiring that the charge of the Court should only state the evidence and declare the law”.

The Court continued by stating the language of Chief Justice Marshall in **(Fletcher v Peck 6, Cranch 87)**

“ it is the particular products of the legislature to prescribe general rules for the government for society; the application of these rules to individuals and society would seem to be the duty of other departments” Justice Catron says a “the right to life, liberty and property of every individual, must stand or fall by the same rule of the law that governs every other member of the body politic or land.

The Judges are not only forbidden to violate these rights themselves, but are clothed with ample power, and required by the most solemn obligation, to see, that as to any and every citizen, they are not violated in one jot or title.

Please note the following language out of *Zanone v State*:

“At the early common law the jury came from the visne or neighborhood or hundred in which the offense occurred, because such a jury was supposed to be more intimately acquainted with the merits of the controversy, and therefore were better qualified to do justice in the premises than mere strangers; but by statute, in England it was subsequently provided that the jurors should be taken from the body of the County. Thompson and Merriam on Juries, § 1 and 2, Shaffer v State, 1 How. 243 (Miss.)

A similar provision was found in all of the State Constitution, in right of trial by jury of the County, or from

the body of the County, is guaranteed. This right has, from the earliest time, be regarded as one of the greatest securities of life, liberty and property of the citizens.

CHALLENGE AS TO CHANGE OF CIVIL DISTRICTS

The Defendant challenges the modification of any Civil District after the original codification in 1835. The code as presently exist in **Tenn. Code Ann. § 5-1-110** requires the County legislative body to file with the County Court Clerk and the Secretary of State of the State of Tennessee, a map showing Civil Districts of the County and on the same or separate map the Civil Districts from which the members are elected.

Tenn. Code Ann. § 5-1-110 (b) requires that a copy of the map or maps and accompanying description of Civil District Boundaries and County District Boundaries shall be filed with the County Clerk, and a copy also filed with the Secretary of State. This filing is required within 90 days of any revision of any Civil District.

Tenn. Code Ann. § 8-3-104 (13) requires the Secretary of State to preserve carefully in the Secretary of State records a copy of records of the boundaries of Civil Districts forwarded to the Secretary of State by the Clerks.

Proof will show there is no evidence or record that any modification of any Civil District prior to 1891 was ever forwarded to the Secretary of State, hence counsel urges that any revision of the Civil Districts comprising the Humboldt Law Court is void.

ARGUMENT

GRAND JURY MUST COME FROM THE ENTIRE COUNTY

The Grand Jury must be comprised of Citizens from the entire County. See **Art. 1 § 9** of the Tennessee State Constitution; **Art. 1 § 6** of the Tennessee State Constitution; **Art. 1 § 8** of the Tennessee Constitution. The Defendant relies upon **Treece v Hamilton 378 S.W. 2d 198 (Tenn. Ct. App. 1963)** which states that the right to an impartial jury including the right to a properly drawn Grand Jury is a closely guarded right. The Defendant relies upon **State v Zanone, 97 Tenn. 100 (Tenn. 1996)**.

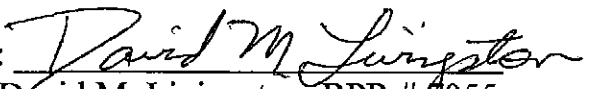
**THE THREE CIVIL DISTRICTS OF CROCKETT COUNTY
MUST BE INCLUDED IN THE VENIRE**

The creation of Crockett County in 1871, poses a tremendous probable for the Jurisdiction of the Humboldt Law Court. Since the Humboldt Law Court is not confined to the boundaries of Gibson County, the lack of mention or change of the jurisdiction of the Court in the creation of Crockett County leaves one to conclude concurrent jurisdiction may exist between the two Courts. Irrespective of the concurrence or exclusive jurisdiction of the Humboldt Law Court, the citizenry of the original 16th, 20th and 4th Districts of Gibson County should be included in the venire.

MODIFICATION OF CIVIL DISTRICTS UNLAWFUL

In the alternative, if the Court would conclude that the creation of Crockett County excluded those areas from the Humboldt Law Court, the modification of the remaining districts without concurrence of the Legislature as to jurisdictional changes makes the boundaries of the Court undeterminable. Please note the testimony of Circuit Court Clerk, Janice Jones, who concluded that the boundary between the two jurisdictions is totally confused.

Respectfully Submitted,

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IN THE COURT OF APPEALS OF TENNESSEE
WESTERN DIVISION, AT JACKSON

STEPHANIE BRUMMETT ZARECOR,
PLAINTIFF-APPELLEE,

VS.

COURT OF APPEALS CASE NUMBER
W2014-01579-COA-R3-CV

GLENN PAYNE ZARECOR,
DEFENDANT-APPELLANT,

BRIEF OF APPELLEE
STEPHANIE BRUMMETT ZARECOR

Appeal from Order of Absolute Divorce from the
Chancery Court for Tipton County, Tennessee

David M. Livingston, BPR # 7055
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Attorney for Plaintiff/ Appellee

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TABLE OF AUTHORITIES

Cases

Gonsewski v Gonsewski 350 S. W. 3d 99, 105 (Tenn. 2011)
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Robinson v Robinson 76 S. W. 3d 337, 343 (Tenn. 2002)
..... Pages 12, 13, and 14

Crabtree v Crabtree, 16 S. W. 3d 356-360 (Tenn. 2000)
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Wright v Wright ex rel. 337 S. W. 3d 166, 176 (Tenn. 2011)
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Henderson v Saia, Inc., 318 S. W. 3d 328, 325 (Tenn. 2010)
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INTRODUCTION: STATEMENT REGARDING CITATION OF RECORD ON APPEAL

The record in this cause consist of 13 volumes. The first and the second volume are composed of the technical record. They shall be referred to as Volume 1 and Volume 2 with reference to the page number that the pertinent information appears thereon.

Volume 3 through Volume 7 is composed of the trial transcript and the Ruling of the Court. Reference to pertinent information contained to those volumes shall be referred to by Volume number, page number, and line upon which the pertinent information appears. If the pertinent information is contained in several lines, reference will be made to the initial question regarding the pertinent information through the conclusion of the answer. The Volume shall be abbreviated by Vol. The Page shall be abbreviated by P. The Line shall be abbreviated by L.

STATEMENT OF THE ISSUES

1. The trial Court did not error in findings of fact and conclusion of law regarding T. R. C. 52.01.
2. The trial Court did not error in awarding \$10,000.00 alimony in solido and awarding seven (7) years of transitional alimony to the Appellee.

STATEMENT OF THE CASE

The Appellee, Stephanie Brummett Zarecor and the Appellant, Glenn Payne Zarecor were married on November 21, 2001. (Vol 1, P 2), (Vol 3, P 158, L 22-23) The parties had a minor child, Glenn Payne Zarecor, Jr. on April 15, 2003. (Vol 1, P 10) The parties separated in May 2012, after ten (10) years and six (6) months of marriage. (Vol 1, P 2) Mrs. Zarecor filed a Complaint for Absolute Divorce on November 21, 2012. (Vol 1, P 1). Mrs. Zarecor filed her Amended Complaint for Absolute Divorce on November 30, 2012. (Vol 1, P 19) Answer and Counter-Claim was filed by Mr. Zarecor on December 12, 2012. (Vol 1, P 38). Reply to the Counter-claim was filed on November 30, 2013. (Vol 1, P 125). The Issues of Primary Residence for the minor child, Visitation, Child Support except for after School Care, Division of Personalty with exception of Division of Retirement, Savings and Debt Payment were settled in mediation. (Vol 1, P 132-133) and (Vol 1, P 134-141) The parties appeared for trial on November 20 and November 22, 2013. (Vol 3, 4 and 5) The trial Court issued its ruling on March 12, 2014. (Vol 7) The trial Court in its pronouncement regarding the issues before the

Court appears in (Vol, P 108, L 12- P 110, L 2) The trial Court awarded the Appellee the sum of \$10,000.00, as alimony in solido, gave a judgement for the arrearage for unpaid temporary alimony, and awarded monthly alimony in the sum of \$1,000.00 per month for three (3) years and thereafter \$650.00 per month for an additional four (4) years . (Vol 2, P 198-204) (Vol 7, P 108, L 12-P 110 L 2)

Order of the Court was then reduced to writing filed with the Trial Court on July 15, 2014. (Vol 2, P 198-204)

Notice of Appeal was filed by Appellate, Glenn Payne Zarecor on August 13, 2014. (Vol 2, P 220)

STATEMENT OF THE FACTS

The parties were married on November 21, 2001. (Vol 5, P 23, L 12) The parties had one (1) minor child, namely: Glenn Payne Zarecor Jr., born April 15, 2003. (Vol 1, P 10), (Vol 2, P 205) Prior to the marriage of the parties, both worked for the United States Department of Agriculture. (Vol 4, P 145, L 2-5) (Vol 3, P 149, L 8-9) The Appellee, Stephanie Brummett Zarecor quit her job to have the parties' minor child in October, 2002. (Vol 3, P 145, L 11-14, Vol 3, P 155, L 19-22) The Appellee, age 41, quit her job to have the parties' child, and the parties planned for her not to resume work but to stay home with the parties' minor child. (Vol 3, P 145, L 18-25, Vol 3, P 146, L 1-5)

At the time of the hearing on the divorce of the parties, the Appellee was 51 years of age. (Vol 3, P 153, L 25- Vol 3, P 154, L 1) with high blood pressure (Vol 3, P 154, L 2-3) with some business college education (Vol 3, P 154, L 10), but does not have an Associates Degree. (Vol 3, P 154, L 17) The Appellee had Clerical skills only. (Vol 4, P 56, L 21-24) Her computer skills were limited. (Vol 4, P 55, L 25- Vol 4, P 56, L 1-2) The Appellee described her previous work experience as "Data Entry". (Vol 4, P 56, L 5) At the time of trial, the Appellee had obtained

a job with the Exchange Club, Carl Perkins Child Abuse Center (Vol 3, P 160, L 8-11) with a gross income in the amount of \$1,500.00 per month. (Vol 3, P 160, L 14-18)

During the pendency of the divorce, the said Appellee applied for in excess of 20 jobs. (Vol 3, P 159, L 23-25) The Appellee took a part time job as a Pharmacy Tech at Rite-Aid Pharmacy (Vol 3, P 159, L 11-15) because it was the first available job offered to her. (Vol 3, P 160, L 1-3) and continued to work there from March until the end of August (Vol 3, P 160, L 4-7) and thereafter at the Exchange Club, Carl Perkins Center for the Prevention of Child Abuse with a salary of \$1,500.00 gross per month. (Vol 3, P 160, L 8-18) The Appellee described herself as having no vocational skills. (Vol 3, P 159, L 5-8)

In contrast, the said Appellant, Glenn Payne Zarecor, Age 49, (Vol 5, P 14, L 7-8) has been employed with the same employer (United States Department of Agriculture) (Vol 5, P 17, L 6-20) since graduating from the University of Tennessee at Martin in 1986. (Vol 5, P 17, L 6-13) with a gross yearly income of \$89,450.00. (Vol 10, Exhibit 17) See affidavit entered of record in (Vol 5, P 75, L 3)

In reviewing the proof, the Court stated as its findings of facts and conclusions of law as follows, to wit:

“Now as to alimony the wife is 51 years old, she’s been out of the work force for about 10 years, her skills are rusty and out dated and she has only looked for Federal Government jobs through this Farm program and she’s not going to be able to find a job there comparably as she going—it’s going to take her a while to build up, if she even can build up.

But I also look at the salaries. The husband’s take home or his net pay is \$5,112.94 from one of these Exhibits. Now some of that goes – some of that – of his – the difference between his gross salary and his net salary is not only taxes, but I think some of this is what he puts into his Thrift Plan. He’s still doing that so his Thrift Plan is building up.

The wife gets \$1,125.00 net and so obviously I don’t think – she doesn’t have any kind of savings plan from Carl Perkins so we’ve got a little bit of disparity there, but what I want to point out is this is all these parties money.

There is nothing else anywhere. We don’t have a million dollars of stock that brings in dividends. This is it. They’ve got to live on \$6,300.00 a month. That’s bottom line. I can’t change these figures any. So when I deduct I just rounded off these are just rough figures. I deduct \$900.00 from the husbands and added the \$900.00 to the wife and the husband is going to have about \$4,212.00 net to deal with. And the wife is going to have \$2052.00 to deal with.

So when you have – the husband does have ability. The \$4,200.00 is for one person, the \$2,052.00 is for 2 so I am going to have the husband pay \$1,000.00 per month for 3 years and \$650.00 per month for 4 years and after the end of that then there is no more—The wife should have her money from the Thrift Plan, she has her money from the FERS and they go their separate ways and there’s nothing else to deal with.” (Vol 7, P 108, L 12- Vol 7, Page 110, L 6)

In addition to the above statements of the Court, the Court stated the additional statements of findings of fact and conclusion of law regarding Alimony in Solido to wit;

“ As alimony in solido to help the wife have a marital residence, I’m going to award her \$10,000.00 from the husbands sole share of the Thrift Savings Plan. She’s not going to be able to purchase a house with what she makes, but I don’t think that either party – I don’t think it’s fair to take \$50,000.00 from the husband’s separate property of the Thrift. (Vol 7, P 103, L 6-14)

ARGUMENT

1. STANDARD REVIEW:

THE APPELLEE CONCURS WITH THE STATEMENT OF THE STANDARD REVIEW AND THE AUTHORITY CITED BY APPELLANT EXCEPT APPELLEE REACHES A DIFFERENT CONCLUSION.

In accordance with *Gonsewski v Gonsewski*, 350 S. W. 3d 99, 105 (Tenn. 2011), the Tennessee Supreme Court did emphasize wide discretion in determining Spousal Support (Alimony). Appellee agrees that the Trial Court has wide discretion in determining whether spousal support is needed, if so, the nature, amount, and duration of the award. *Ibid.*

Only after abuse of discretion will a decision of spousal support be reversed. *Robinson v Robinson* 76 S. W. 3d 337, 343 (Tenn. 2002)

Abuse of discretion occurs only when the trial Court causes injustice by applying an incorrect legal standard, reaching illogical result, resolving the case on a clearly erroneous assessment of the evidence, or relying on reasoning that

causes injustice. *Gonsewski*, 350 S. W. 3d at 105 (citing *Right v Right*, 337 S. W. 3d 166, 176 (Tenn. 2011); *Henderson*, 318 S. W. 3d 335.

The Appellee states that the Trial Court did not apply an incorrect legal standard; did not reach an illogical result; did not erroneously assess the evidence; and did not cause injustice based upon its reasoning in making its assessment of the facts and conclusions of law. The Appellee states that the Court applied the proper standards and proper analysis by evaluating the amount of income of both households and relative need and marshalling the joint income accordingly. The two most relevant factors in determining the amount of alimony awarded are the economically disadvantaged spouse's need and the obligator spouses ability to pay. *Robertson v Robertson* 76 S. W. 3d 337, 338 (Tenn. 2002).

**2. THE TRIAL COURT DID MAKE THE FINDINGS OF FACTS
AND CONCLUSIONS OF LAW REQUIRED BY T. R. C. P.
52.01.**

The Appellee has previously stated in the statement of the facts, on Pages 10 and 11 herein the analysis of the Court went through in reaching its conclusion regarding alimony.

Appellee contends that the trial court used the appropriate analogy once used by the Late Chancellor Marion Holmes of the Twenty-Eighth Judicial District referred to as the “amount of pie to go around”. It is obvious from the conclusion stated by the Trial Court that the court found Stephanie Brummett Zarecor disadvantaged economically and that the said Glenn Payne Zarecor had the ability to pay. See *Robinson v Robinson*, 76 S. W. 3d 337, 338 (Tenn. 2002) stated

“ the court in this case did not specifically resite the factors it considered in determining its alimony award. We, however, have carefully examine the record in light of the factors set forth in Tenn. Code. Annotated Section 36-5-101 (d) (1) (A) - (L) (2001) and conclude that the evidence preponderates in favour of the trial Court’s judgement. See *Crabtree v Crabtree*, 16 S. W. 3d 356-360 (Tenn. 2000) stating that when a trial Court has made no

findings of fact regarding the relevant statutory factors, an Appellate Court must conduct its "own independent review of the record to determine where the preponderance of relevance arrives".

In conducting its analysis, the Appellate Court will find a 51 year old female (Vol 3, P 153, L 25- Vol 3 P 154, L 1) with high blood pressure (Vol 3, P 154, L 2-3) without a college degree (Vol 3, P 154, L 17), who has limited computer skills (Vol 4, P 55, L. 25- Vol 4, P 56, L 1-2) who quit her job at age 41 to have a baby and stay home with the parties minor child not to resume work (Vol 3, P 145, L. 18-25, Vol 3, P 146, L 1-5). During the pendency of this divorce, the Appellee took a part-time job at a Pharmacy because it was the first available job (Vol 3, P 159, L 11-15 and Vol 3, P 160, L 1-3) and continued there until she gained full employment at the Exchange Club, Carl Perkins Center for Prevention of Child Abuse in August, 2013, with a gross salary of \$18,000.00 per year (Vol 3, P 16, L 8-18). The record reflects that the Appellee has no financial resources and no prospects of additional financial resources within which to support herself other than her salary (Vol 3, P 160, L 22- Vol 3, P 161, P 24).

The Appellant, Glenn Payne Zarecor is a 49 year old man (Vol 5, P 14, L 7-8) employed by the U. S. Department of Agriculture (Vol 5, P 17, L 6-20) since graduating from the University of Tennessee in Martin in 1986 (Vol 5, P 17, L 6-13) with a gross annual income of \$89,450.00 (See Exhibit 17 entered of record in Vol 5, P 75, L 3)

The Appellee suggest that a 51 year old female with limited education that has been out of the workplace for a substantial portion of time, with no source of income or wealth other than from her salary making approximately 20 % of the gross monthly income of her husband is substantially economically disadvantaged.

The Appellee further suggest that the Court made arrangements for the payment of most of the parties' marital debt. (Vol 2, P 198-204)

3. THE COURT MADE A PROPER ALIMONY AWARD TO THE APPELLEE

The Court in its findings stated that the lump sum alimony was for the purposes of allowing the Appellee sufficient funds as a down payment on a house. (Vol 7, P 103, L 6-14) The Court did not state that these funds were for the purposes of balancing or adjusting distribution of the parties' marital property, but stated that it was for the purpose to allow additional funds to Mrs. Zarecor in obtaining a new house. It is obvious that Mrs. Zarecor is economically disadvantaged, and needs financial assistance in adjusting to the economic consequences of divorce. *Gonsewski v Gonsewski*, 350 S. W. 3d 99 (Tenn. 2011)

The award of \$10,000.00 is obviously a form to assist in bridging the gap between marriage to single life. *Gonsewski*, id.

The statement that the Court makes no finding is in error that Mrs. Zarecor will be able to adjust to single life without an award of transitional alimony. The Court states the following, to wit:

Now as to alimony the wife is 51 years old, she been out of the work force for ten years, her skills are rusty and out of date, and she has only looked for Federal Government through this Farm Program and she's not going to be able to find a job there comparable as she going - its going to take her a while to build up, if she ever can build up.

The Court is obviously finding that she is going to have severe difficulty in obtaining gainful employment sufficient to support herself and concludes that a period of time is necessary to assist her in providing funds to obtain a standard of living anywhere close to that she enjoyed while married.

CONCLUSION

The Court should conclude from the record that the trial court did apply the proper standards and did state with specific particularity those facts that it found that justified both the award of \$10,000.00 and the periodic payment of \$1,000.00 per month for three years and \$650.00 per month for four additional years.

If this Court finds that the trial court did not comply with the requirements of T. R. C. P. 52.01 and this Honorable Court chooses to refrain from making its own analysis as directed hereinabove the Appellee respectfully suggest that a remand to the trial court without vacating the prior order would accomplish the purpose of the Court in determining whether the trial court applied the correct standard in its analysis. Vacating of the order would leave the Appellee without sufficient funds to pay her monthly expenses until further court action is taken.

Respectfully Submitted,

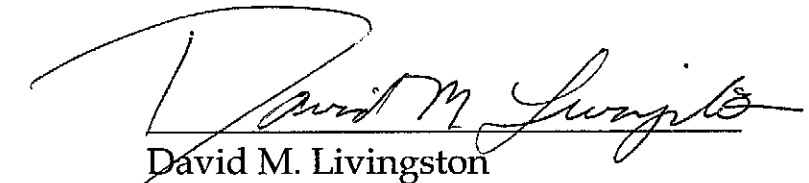
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CERTIFICATE OF SERVICE

I, David M. Livingston, certify that I have served a true and exact copy of the foregoing Brief to the following person in accordance with Tenn. R. App. P 20, by U. S. Mail on this the 23rd day of March, 2015.

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