

1. *Carden v. Carden*, No. E2022-00721-COA-R3-CV (Tenn. Ct. App. Oct. 4, 2023)

Issue: Relocation

In a parental relocation dispute, the modified parenting plan was inadequate under Tenn. Code Ann. § 36-6-307 because although it appeared the trial court intended for grandparents to receive court-ordered visitation with the children, it overlooked making the best interest factors addressing the visitation petition. Relocation of the children out-of-state with the mother was proper under Tenn. Code Ann. § 36-6-108(c) because the mother was the primary caregiver, she performed all of the children's day-in-and-day-out needs from medical to educational, and both father and grandparents admitted she was a good parent.

2. *Howard v. Howard*, No. E2022-01385-COA-R3-CV (Tenn. Ct. App. Oct 4, 2023)

Issue: Attorney's Fees

In a divorce action, the trial court erred by failing to make sufficient findings of fact and conclusions of law in its order denying plaintiff's Tenn. R. Civ. P. 60.02 motion seeking to set aside the attorney's fee provision contained within a final divorce decree because the appellate court was unable to adequately review the matter due to the lack of evidence in the record, among other things, since the trial court entered its order without conducting any further hearing and without stating the precise basis for the ruling.

3. *Hyatt v. Hyatt*, No. M2023-00037-COA-R3-CV (Tenn. Ct. App. Oct. 10, 2023)

Issue: Final Judgment

In a post-divorce action, the court lacked jurisdiction to consider the appeal because the trial court's order never stated whether it found the husband in contempt. It also failed to resolve the wife's request for attorney fees. Therefore, the trial court failed to fully resolve the wife's petition, and the judgment was not final.

4. *Greene v. Greene*, No. M2022-01171-COA-R3-CV (Tenn. Ct. App. Oct. 11, 2023)

Issue: Attorney's Fees

In a divorce action, the appellant's appeal in a divorce case of the trial court's valuation and division of marital property, there was insufficient evidence to preponderate against the trial court's determinations concerning the value of the parties' assets or the division of the marital estate because the trial court found wife's testimony to be more credible than appellant's. The appellant's appeal about the trial court's award of attorney's fees as alimony to the wife was successful because the trial court failed to make findings under Tenn. Code Ann. § 36-5-121, and further failed to consider the factors relevant to the reasonableness of the award of attorney's fees to the wife.

5. *Barnes v. Barnes*, No. M2022-00328-COA-R3-CV (Tenn. Ct. App. Oct. 17, 2023)

Issue: Prenuptial Agreement/Valuation and Distribution of Marital Property

In a divorce action, the appellate court could not say that the trial court's ruling declined to allow testimony updating valuation under Tenn. Code Ann. § 36-4-121(b)(2)(A) was not in accordance with what was reasonably possible because the trial court honored the parties' three-day trial projection in their certificate of readiness for trial and the delay between valuation evidence being presented and the final divorce hearing was the parties', not the court's, fault. While the trial court ruling was extremely detailed in most respects, the appellate court did not have an adequate basis for its ruling to assess the trial court's order under Tenn. R. Civ. P. 52.01 in connection with the failure to attribute any income to the wife concerning her earning capacity in a job.

6. *Balch v. Cilley*, No. M2022-01100-COA-R3-JV (Tenn. Ct. App. Oct 20, 2023)

Issue: *Ex Parte* Orders

In a post-divorce action, a mother's appeal from a judgment holding her in criminal contempt, denying her motion to dissolve an ex parte no-contact order and denying her motion to transfer the case, the order appealed from showed that the court found the mother in criminal contempt of the court's order. Thus, the mother's argument that the trial court lacked subject matter jurisdiction was unsuccessful. The evidence did not preponderate against the trial court's finding that the issue

underlying the no-contact order, including the mother's badgering of the child and disregard of the order prohibiting discussion of the case, remained. Thus, the trial court's denial of the mother's motion was proper. There was no abuse of the trial court's discretion on the ISSUE of transfer because the court explained its reasoning in the order and made a finding of fact.

7. *Booker v. Booker*, No. E2022-01228-COA-R3-CV (Tenn. Ct. App. Oct. 24, 2023)

Issue: Prenuptial Agreement

In an appeal from a divorce, the husband failed to disclose any information about his ownership interest in his father's successful business and did not satisfy his burden of proving that the prenuptial agreement was entered into knowledgeably under Tenn. Code Ann. § 36-3-501. The trial court erred in concluding that \$250,000 of the marital home's value was the husband's separate property under Tenn. Code Ann. § 36-4-121(b)(2)(A) because the husband put forth nothing evincing his intent to keep a portion of the marital home his separate property and absent any additional evidence from the husband, it appeared his intent to keep a portion of the home as his separate property surfaced only after the demise of the marriage.

8. *Lazaroff v. Lazaroff*, No. M2022-01004-COA-R3-CV (Tenn. Ct. App. Oct 26, 2023)

Issue: Child Support

In a child support case, The trial court's calculation of a father's child support arrearage was proper because, although the father argued the amount should be modified to reflect past changes in income, the record was devoid of any evidence establishing a separate action for modification was filed and that notice was mailed to the mother under Tenn. Code Ann. § 36-5-101(f)(1)(A). The father's argument that he should not be held in contempt for failure to pay when the child support office stopped accepting his payments due to the mother's failure to collect was without merit because the mother's failure to collect did not obviate the child support order.

9. *Bradley v. Bradley*, No. M2022-00259-COA-R3-CV (Tenn. Ct. App. Oct. 27, 2023)

Issue: Custody Modification

A material change in circumstances had occurred, and it was in the child's best interest under Tenn. Code Ann. § 36-6-106 to modify custody to establish the father as the primary residential parent because the child had developed serious emotional issues from the use and threatened use of corporal punishment in the mother's home, and the father was more attuned to the child's emotional needs and developmental level than the mother.

10. *Nedumthottathil v. Thomas*, No. M2020-00473-COA-R3-CV (Tenn. Ct. App. Oct. 27, 2023)

Issue: Sanctions and Spousal Support

In an appeal from a divorce action, the Trial court did not abuse its discretion by imposing discovery sanctions on the wife under Tenn. R. Civ. P. 37.04 because she had ample opportunity to respond to the husband's discovery requests before trial, and she never objected to the discovery requests or moved for a protective order. The Trial court did not abuse its discretion when it declined to award spousal support to the wife because the wife was highly educated, capable of full-time employment, and was awarded the marital home in the property division.

11. *Woodward v. Woodward*, No. M2023-01298-COA-T10B-CV (Tenn. Ct. App. Nov. 7, 2023)

Issue: Recusal

In a divorce action, to the extent that the father failed to address the trial court's in-court statements in his arguments on appeal under Tenn. R. App. P. 27 and Tenn. Ct. App. R. 6, any arguments based upon those statements were waived on appeal. The trial court's decision not to entirely exclude the doctor's testimony did not satisfy the father's burden of proving pervasive bias or an utter incapacity to be fair under Tenn. Sup. Ct. R. 10, Canon 5, Rule 1.2 because the doctor's small mistake about the audio recordings that she listened to did not amount to perjury

but a mere misstatement which the court dealt with in a measured response of striking the portions of her testimony and report dealing with the December 19, 2021 incident.

12. *Stratienko v. Stratienko*, No. E2022-01802-COA-R3-CV (Tenn. Ct. App. Nov. 7, 2023)

Issue: Jurisdiction

In a post-divorce action, because the husband failed to file a notice of appeal or any of the motions that were specified in Tenn. R. Civ. P. 59.01 for more than thirty days following entry of the April 29, 2022 contempt order, the court had no jurisdiction to consider issues on appeal concerning interpretation or alteration of the terms of that order, including the finding of civil contempt and the amount set to purge said contempt. To substantiate, the husband's time for filing the notice of appeal, or specified post-trial motion, began to run when the court entered its contempt order and not from the date the court issued the resulting mittimus.

13. *Hastings v. Hastings*, No. W2020-01665-COA-R3-JV (Tenn. Ct. App. Nov. 9, 2023)

Issue: Jurisdiction

In a protracted and contentious child support action, the special judge was properly appointed and had the authority to issue the order of dismissal under Tenn. Code Ann § 17-2-122(b) because although the mother objected twice, she did not specify a legal or factual basis for her objection, and she never mentioned or argued during the hearing that she did not believe the original judge's absences were necessary. The order of dismissal was a final judgment under Tenn. R. Civ. P. 3(a) because the only remaining pending matters in the child support action had been filed by the mother, and she failed to appear at the hearing to resolve those matters, and she did not show any fact or make any cognizable argument substantiating her failure to appear or why the order should have been altered or amended.

14. *Hastings v. Hastings*, No. W2022-00433-COA-R3-JV (Tenn. Ct. App. Nov. 9, 2023)

Issue: Jurisdiction

In a child support action, the judge did not err in continuing to make decisions pending a written order on the mother's recusal motion, per Tenn. Sup. Ct. R. 10B because the judge denied the motion from the bench. The judge denied the recusal motion before she heard and decided the matters addressed in her June 26, 2020 order. However, the better practice would have been to enter the order denying the motion for recusal before entering the orders. The judge did not lack jurisdiction to hear and decide matters while the mother's Tenn. Sup. Ct. R. 10B accelerated appeal was pending because neither the trial court nor the appellate court issued a stay in the case. The judge was authorized to hear and rule upon matters in this case while the mother's interlocutory appeal was pending.

15. *Smallman v. Smallman*, No. M2022-00592-COA-R3-CV (Tenn. Ct. App. Nov. 13, 2023)

Issue: Child Support

In a post-divorce action, both parents sought to modify the permanent parenting plan under Tenn. Code Ann. § 36-6-106(a) the trial court's decision to include the father's capital gains as income for child support purposes was proper as the father had the ability to control how his income would have been reported and, by utilizing this control, he made the calculated decision to place the net proceeds from the sale of seven properties into a Qualified Opportunity Zone Tax Credit fund while maintaining a lavish lifestyle. Mother was entitled to attorney's fees on appeal pursuant to Tenn. Code Ann. § 36-5-103(c) because the mother had succeeded on every issue on appeal and had demonstrated good faith throughout the proceedings.

16. *Van Zandbergen v. Van Zandbergen*, No. M2022-00886-COA-R3-CV (Tenn. Ct. App. Nov. 13, 2023)

Issue:: Alimony & Attorney's fees

In a divorce action, The trial court erred with the amount of alimony in futuro awarded to the wife as the amount exceeded the wife's need and, as such, was modified to reflect a more appropriate amount, per Tenn. Code Ann. § 36-5-121. The wife was not entitled to expenses that were not considered necessary, such as cigarettes and alcohol; the husband could not be charged with the expense of marijuana, medicinal or recreational, as it was not legal in Tennessee, and her insurance largely covered the wife's legal prescription drugs. The trial court erred by failing to limit the time period for the alimony in futuro award, and so it was set to terminate upon the wife's death or remarriage or the husband's death, per Tenn. Code Ann. § 36-5-121(f)(3).

17. *Wallace v. Wallace*, No. M2022-01279-COA-R3-CV (Tenn. Ct. App. Nov. 16, 2023)

Issue: Property Division

In a divorce action, a husband's appeal from the trial court's division of property following his divorce, the husband waived consideration of the issue regarding whether the court erred in denying his motion for continuance because the record did not contain an order from the trial court denying the husband's motion for a continuance. While it was apparent that the husband's motion was denied, it was unclear from the record whether any written order was entered. The husband's second continuance argument was deemed to have been waived because while the husband asserted that the trial court erred in failing to continue the proceedings, he failed to develop any argument or provide any authority that the trial court had an obligation to sua sponte cease the civil divorce proceedings in opposition to the evident wishes of the husband and without any request from his counsel.

18. *Batts-Richardson v. Richardson*, No. M2023-00395-COA-R3-CV (Tenn. Ct. App. Nov. 16, 2023)

Issue: Modification of alimony and child support

In a post-divorce action, the Mother brought a petition to an extension of transitional alimony, an increase in child support, a determination of child support arrearages, and attorney's fees, and that she be allowed to claim one of the parties' children on her income tax return. Father moved to dismiss Mother's petition under Tennessee Rule of Civil Procedure 12.03. On March 31, 2023, the trial court dismissed Mother's request for modification of transitional alimony and her request to claim one child on her tax return. However, the trial court declined to dismiss Mother's request to modify child support and granted Mother permission to amend her petition. There is no indication from the record that Mother ever filed an amended petition. The mother filed a notice of appeal. There was no final judgment when the appeal was filed. The Court of Appeals denied the appeal without prejudice because no final judgment was entered.

19. *Malone v. Malone*, No. W2023-00843-COA-T10B-CV (Tenn. Ct. App. Dec. 6, 2023)

Issue: Recusal

In a post-divorce contempt action, the wife was not entitled to the recusal of the trial judge under Tenn. Sup. Ct. R. 10B because she failed to demonstrate that a person of ordinary prudence in the judge's position, possessing the same knowledge as the judge, would find a reasonable basis to question the judge's impartiality.

20. *Tate v. Jones*, No. E2022-01524-COA-R3-JV (Tenn. Ct. App. Dec. 8, 2023)

Issue: Child Support

In a child support action, the appellate court could not consider the father's appeal from the juvenile court's child support order concerning both parents' incomes because the juvenile court's final judgment did not provide adequate findings of



fact and conclusions of law under Tenn. R. Civ. P. 52.01. The judgment was vacated and remanded.

21. *Polster v. Polster*, No. M2022-01432-COA-R3-CV (Tenn. Ct. App. Dec. 8, 2023)

Issue: Property Division

In a divorce action, as the trial court determined, the issue of division of assets/unconscionability could not be raised at this point in the proceedings because the appellant did not raise the division of assets in the previous appeal, and, therefore, the issue was waived. In addition, the appellant's unconscionability argument, that the marital dissolution agreement was unconscionable, was based on the alleged unconscionability of the division of assets.

22. *Esposito v. Esposito*, No. E2022-01784-COA-R3-CV (Tenn. Ct. App. Dec. 12, 2023)

Issue: Property Division

In a divorce action concerning the distribution of marital assets, the court of appeals was unable to discern by what theory the trial court found the marital residence to be marital property; therefore, remand was necessary to determine whether the trial court reached its conclusion pursuant to the doctrine of transmutation or the statutory definitions of marital and separate property provided in Tenn. Code Ann. § 36-4-121. The trial court did not err by adopting the auction sale price as inclusive of the personal property located at the marital residence because the parties agreed to sell the contents of the residence, which was not awarded to either party when they had entered into the stipulation agreement.

23. *Lowe v. Lowe*, No. E2023-00338-COA-R3-CV (Tenn. Ct. App. Dec. 14, 2023)

Issue: Property Division

In a divorce action, the trial court erred under Tenn. Code Ann. § 36-4-121(c) by awarding the husband an interest in the wife's separate property because the parties had stipulated that each would retain, free from any claim of the other, the property they had each inherited from their respective families. The trial court did not abuse its discretion by declining to extend an order of protection because there

was insufficient evidence to show that the appellant needed protection since there were no allegations of domestic violence, assault, or stalking.

24. *Sykes v. Cox*, No. M2022-00970-COA-R3-JV (Tenn. Ct. App. Dec. 20, 2023)

Issue: Proposed Orders

In this child custody case, remand was appropriate pursuant to Tenn. R. App. P. 36 because there was serious doubt that the order underlying this appeal did not in any respect represent the trial court's independent judgment since the record did not reflect that the trial court provided any independent decision for the father's order and the trial court later signed and entered the father's order without any modification. Insofar as the transcript admitted, the judicial task of providing a basis for the court's ruling (itself then technically unpronounced) was essentially delegated to the father's attorney.

25. *Averwater v. Averwater*, No. M2020-00851-COA-R3-CV (Tenn. Ct. App. Dec. 28, 2023)

Issue: Alimony

In a divorce action, the trial court did not abuse its discretion in denying the wife's request for a continuance to depose employees from a bank because she had already received an explanation from the bank regarding an allegedly fraudulent deposit, did not show how further discovery would resolve her concerns and the case had been pending for four years. The trial court erred under Tenn. Code Ann. § 36-4-121(a)(4)(A) in not dividing the profit from a business husband created during the pendency of the divorce as marital property. The trial court did not err in failing to award alimony to the wife upon entry of the divorce decree because neither spouse worked during the pendency of the divorce, and they had similar monthly expenses and abilities to pay.

26. *McDonald v. Coffel*, No. E2022-01569-COA-R3-CV (Tenn. Ct. App. Jan. 9, 2024)

Issue: Modification of permanent parenting plan

In an action to modify a permanent parenting plan, the father's three undisputed incidents of domestic violence between himself and two women, his controlling

behavior, his capability of inflicting fear and emotional disturbance on someone with their child in the home, and his hostility toward the child's mother were sufficient for the trial court to determine that a material change in circumstance had occurred that affected the child's best interest pursuant to Tenn. Code Ann. § 36-6-101(a)(2)(C). There was no error in the trial court's decision to limit the father's co-parenting time pursuant to Tenn. Code Ann. § 36-6-406(a) because although the trial court did not find that the father had abused the child, the trial court did find that the father had engaged in domestic abuse against his previous partners, both of whom the father had dated, based upon arrest reports and witness testimony.

27. *Parker v. Parker*, No. E2022-00644-COA-R3-CV (Tenn. Ct. App. Jan. 9, 2024)

Issue: Transmutation of separate property

In this divorce appeal, The record supported the trial court's factual findings and application of the doctrine of transmutation under Tenn. Code Ann. § 36-4-121(c)(5)(a) because even though the property was titled separately, the preponderance of the evidence was that the husband intended for the property to be marital property as the wife testified that she contributed money to the property renovations from the sale of a house she had inherited; she contributed another sum to assist in the remodeling and improvement of the property, and she claimed to have paid off credit card debt that arose out of transactions used for the property renovations and family debt.

28. *Barton v. Barton*, No. E2022-01574-COA-R3-CV (Tenn. Ct. App. Jan. 10, 2024)

Issue: Property Division

In this divorce action, the court of appeals found that there was no reversible error in the trial court's finding that the husband had dissipated assets of the LLC, of which his 100% interest was, in fact, a marital asset because by expending the proceeds of the LLC's claim against the government to satisfy a personal judgment against him, he effectually diminished the value of his ownership interest to benefit himself personally. The evidence did not preponderate against the trial court's

findings regarding the division of the marital estate because some factors in Tenn. Code Ann. § 36-4-121(c) strongly weighed in the wife's favor. Regarding Tenn. Code Ann. § 36-4-121(c)(2), the trial court found that the husband's skill and earning capacity far exceeded the wife's and that they both had substantial needs since the husband was a successful businessman while the wife worked multiple jobs.

29. *Harris v. Allen*, No. W2023-01794-COA-T10B-CV (Tenn. Ct. App. Jan. 11, 2024)

Issue: Recusal

In this divorce action, the motion for recusal pursuant to Tenn. Sup. Ct. R. 10B, § 2.01 was denied because the mayor raised the appearance of impropriety issue at the end of September, six months after the court accepted the case and two months after the trial court ruled on the competing petitions, therefore, the issue was waived as it was not raised promptly. The mayor knew of his budget duties at the time he filed for divorce and he stated in his appellate petition that he had denied funding requests from the county chancellors in the past; if he felt the issue was or could be a problem, the time to raise it was at the beginning of the case — not six months later and not after a full evidentiary hearing on competing petitions for permanent parenting plans.

30. *Davis v. Reilly*, No. E2023-01250-SC-R10-CV (Tenn. Ct. App. Jan. 24, 2024)

Issue: Parentage of children conceived through artificial insemination

In a child visitation action, The trial court erred by establishing parentage per Tenn. Code Ann. § 68-3-306 (2023), because there was no legal basis for establishing parentage of a child born to a married same-sex couple but conceived through sexual intercourse with a third party; the statute only applied when a child was born to a married woman as a result of artificial insemination. The court erroneously found that the circumstances were tantamount to artificial insemination because it was the intention of the parties to parent a second child, which extended the statute well beyond its plain and ordinary meaning.

31. *Ehsani v. Ehsani*, No. M2022-01819-COA-R3-CV (Tenn. Ct. App. Jan. 26, 2024)

Issue: Sanctions

In this divorce action, the court of appeals concluded that the trial court abused its discretion in entering sanctions against the husband under Tenn. R. Civ. P. 37.02 because in addition to the lack of specific findings, the trial court's order failed to make use of, or even mention, the factors outlined in *Mercer*, as there was no discussion of the husband's excuses, the importance of the evidence, the wife's need for time to prepare to meet such evidence, or the possibility or propriety of granting a continuance. Furthermore, there was no finding as to whether the husband's behavior was contumacious and no discussion of the proportionality of the sanctions entered. Of course, these deficiencies were compounded by the fact that the order strikingly failed to designate what prior orders were even at ISSUE.

32. *Tittle v. Tittle*, No. M2022-01299-COA-R3-CV (Tenn. Ct. App. Jan. 29, 2024)

Issue: Grounds basis and Alimony

In a divorce action, the trial court correctly found that the husband had an alcohol problem that adversely affected the marriage to the extent that it constituted inappropriate marital conduct because the trial court's factual findings concerning the husband's lack of credibility did not support different or contrary findings. Additionally, the trial court made the required findings of fact, and the evidence in the record did not preponderate against those findings under Tenn. R. App. P. 13(d). The award of alimony was vacated because the husband's transitional alimony obligation for the first two years, or a portion of that period during which he paid childcare expenses, created a burden on him that appeared greater than what he was able to pay and thus, it may have constituted an injustice to him.

33. *Sexton v. Sexton*, No. E2023-00136-COA-R3-CV (Tenn. Ct. App. Jan. 30, 2024)

Issue: Property Division

In a divorce action, the trial court erred in awarding real properties owned by the husband's LLC to the wife because it only had jurisdiction over the husband's ownership interests in the LLCs itself under Tenn. Code Ann. § 48-249-502(a). The

court may have intended to award the husband's interest in the company rather than the properties to the wife. There was no reversible error in the trial court's decision to appoint a receiver because the appointment was more akin to the responsibilities of a special master. His responsibilities were unlike a true receiver under Tenn. Code Ann. § 29-1-103. In granting the divorce, the trial court committed an inadvertent mistake in including the ground of irreconcilable differences pursuant to Tenn. Code Ann. § 36-4-101(14).

34. *Key v. Gonzales*, No. W2021-01465-COA-R3-CV (Tenn. Ct. App. Feb. 5, 2024)

Issue: Relocation and Attorney's fees

In a child custody case, mother's relocation request was in the children's best interest under Tenn. Code Ann. § 36-6-108(c)(2) because prior to the initiation of the dependency and neglect action, mother was the primary caregiver of the children; stepfather did not pose a danger to the children; the move would enhance mother's quality of life in that she could advance in her employment; and father paid no child support. Mother was entitled to attorney fees under Tenn. Code Ann. § 36-6-108(f) because father failed to cite any authority to suggest that her attorney could not be compensated for travel time and mileage, and the amount was reasonable and necessary.

35. *Ramsey v. Ramsey*, No. E2022-01295-COA-R3-CV (Tenn. Ct. App. Feb. 7, 2024)

Issue: Child custody and attorney's fees

In this divorce action, the court of appeals found that the trial court did not abuse its discretion in determining a permanent parenting plan that designated mother as the primary residential parent because mother had been the primary caregiver for the child for his entire life and mother had more of a propensity to provide the child with food, clothing, medical care, education, and other necessary care. Mother was entitled to an award for attorney fees pursuant to Tenn. Code Ann. § 36-5-103(c) because she was the prevailing party in the child custody dispute and father's actions during the pendency of the divorce case detrimentally affected the financial situation for mother and child.

36. *Amarino v. Amarino*, No. M2023-00340-COA-R3-CV (Tenn. Ct. App. Feb. 14, 2024)

Issue: Division of property

In this divorce case, the court of appeals found that the trial court did not err in awarding the vehicle to wife as part of the equitable division of marital property because, although it initially misidentified it as her separate property, the circumstances justified granting it to her. Given the short marriage duration and her need for transportation for herself and their child, the decision was proper, Tenn. Code Ann. § 36-4-121(c)(12). The trial court did not err in dividing the remaining debt on the vehicle between the parties under Tenn. Code Ann. § 36-4-121(i)(1) because considering factors like the purpose of the debt and the income disparity between them, it was equitable for both spouses to contribute to the debt. The vehicle served as wife's primary transportation and husband's income was significantly higher.

37. *Lusk v. Lusk*, No. E2024-00226-COA-T10B-CV (Tenn. Ct. App. Feb. 22, 2024)

Issue: Recusal

In appellant's interlocutory appeal as of right pursuant to Tenn. Sup. Ct. R. 10B from a circuit court judge's denial of a motion to recuse, appellant's argument that recusal was warranted because the court sua sponte and without consideration for her schedule set a trial date was unsuccessful because setting a trial on a date which drew no objection and was mutually agreeable to the parties was, simply put, no basis for recusal. The judge did not err in denying the motion to recuse because the mere filing of a complaint against a party's attorney with the Board of Professional Responsibility, without more, does not establish bias warranting recusal. Appellant's issue with what she characterized as "extra-judicial" criticism of her attorney was unsuccessful because the judge's expressions of impatience with the attorney did not exhibit personal bias against the party.

38. *Robinson v. Robinson*, No. E2023-00546-COA-R3-CV (Tenn. Ct. App. Mar. 1, 2024)

Issue: Rule 60.02 Motion

In this divorce action, the trial court did not abuse its discretion in denying a husband relief from a final decree of divorce under Tenn. R. Civ. P. 60.02 because the husband failed to present clear and convincing proof that the wife had withheld evidence, offered perjured testimony, or misrepresented anything. The husband was not entitled to relief because he did not show that the fraud due to the wife's misrepresentation of income and assets prevented him from fully and fairly presenting his case. The question of the valuation of restaurant franchises was fully litigated with the husband offering his own opinion of what they were worth so that the husband's motion appeared to be merely an attempt to relitigate the case, which was not an appropriate basis for a Tenn. R. Civ. P. 60.02 motion.

39. *Pendzich v. Woodall*, No. E2023-01235-COA-R3-JV (Tenn. Ct. App. March 5, 2024)

Issue: Final Judgement

Because the order from which appellant sought to appeal did not constitute a final appealable judgment, the motion to dismiss the appeal for lack of jurisdiction was properly granted. The order did not contain the required determination and direction and thus did not constitute a final appealable judgment under Tenn. R. Civ. P. 54.02.

40. *Burks v. Burks*, No. E2022-00776-COA-R3-CV (Tenn. Ct. App. Mar. 7, 2024)

Issue: Alimony

In this divorce action, the trial court did not err in awarding the wife transitional and in solido alimony instead of alimony in futuro under Tenn. Code Ann. § 36-5-121 because the wife had been awarded 60% of the marital estate, the wife was in good health and capable working outside of the home, and the wife had a college degree and could find employment if she chose.



41. *Trezevant v. Trezevant*, No. W2023-00682-COA-R3-CV (Tenn. Ct. App. Mar. 7, 2024)

Issue: Contempt

In this divorce action, The husband waived his issues concerning, inter alia, whether a one-year statute of limitations applied to the wife's criminal contempt claims and whether prosecution against him commenced within the applicable statute of limitations because, although the husband argued these issue in his brief, he failed to include them in his statement of the issues pursuant to Tenn. R. App. P. 27(a)(4).

42. *Pallekonda v. Pallekonda*, No. W2023-00574-COA-R3-CV (Tenn. Ct. App. Mar. 7, 2024)

Issue:: Child Support & Alimony

In this divorce action, the trial court did not err when it determined that the husband was willfully and voluntarily underemployed, per Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(2), because the court considered what he had previously earned over the course of a defined decade, as well as the husband's testimony regarding his average earnings as a chief medical officer. The husband had allowed certain credentialing and board certifications to lapse, and he specifically did so without taking steps to remedy same such that he could be capable of earning more. The court did not abuse its discretion by awarding alimony to the wife, rather than awarding only rehabilitative alimony, because per Tenn. Code Ann. § 36-5-121(i), the record supported the notion that the wife would be unable to achieve the post-divorce standard of living expected to be available to the husband.

43. *Elser v. Elser*, No. E2023-00628-COA-R3-CV (Tenn. Ct. App. Mar. 7, 2024)

Issue: Order of Protection

The evidence did not preponderate against the trial court's finding that husband abused wife because the record contained no clear and convincing evidence contradicting the trial court's credibility assessment that wife was more credible and gave more weight to her version of events; Under Tenn. Code Ann. § 36-3-

602(c), husband waived any objection to venue because husband testified that the parties' residence was in Bledsoe County, not Rhea County, and that wife was not a resident of Rhea County. In his brief, husband notes this testimony, but there was nothing in the statement of the evidence to indicate that he made any objection. Moreover, the statement of the evidence did not memorialize any ruling by the trial court suggesting that the court treated husband's testimony as an objection. Furthermore, husband defended the merits of the claim at the hearing.

44. *Duffer v. Duffer*, No. M2021-00923-COA-R3-CV (Tenn. Ct. App. Mar. 8, 2024)

Issue: Property Division

In this divorce action, The trial court did not err by determining that the marital residence had once been the husband's separate property but had transmuted into marital property, per Tenn. Code Ann. § 36-4-121(b)(2)(A), and thus ordered the property sold and the proceeds distributed equally between the parties, because the evidence showed that the parties intended for it to be marital property and both parties contributed to the ongoing maintenance and management of the property. The court erred by finding that the credit of the non-owner spouse was used to improve the property. The trial court erred in its valuation of the marital residence because per Tenn. Code Ann. § 36-4-121(b)(1)(A) (2017), using the wife's valuation was incorrect as the evidence was not close enough in date to the date the court entered the divorce decree.

45. *Tate v. Tate*, No. M2022-01438-COA-R3-CV (Tenn. Ct. App. Mar. 25, 2024)

Issue: Property Division

In this divorce action, the court of appeals held that the Evidence preponderated in favor of the trial court's determination that the property did not become marital property under Tenn. Code Ann. § 36-4-121(b)(2)(A) due to commingling or transmutation and remained separate property at the time of divorce because the husband's refusal to put the wife's name on the title despite requests evidenced his intention that the property remained his separate property.

46. *Vandenberg v. Vandenberg*, No. M2023-00479-COA-R3-CV (Tenn. Ct. App. Mar. 26, 2024)

Issue: Proper Appeal

In this divorce action, the court of appeals dismissed the appeal. They reasoned that because the final order was silent on Wife's request for attorneys fees the case was not fully adjudicated. Because the judgment was not fully adjudicated then it was nonfinal. Thus, the court of appeals did not have jurisdiction because the judgement was not properly finalized.

47. *Remus v. Nunn*, No. M2023-00589-COA-R3-CV (Tenn. Ct. App. Mar. 27, 2024)

Issue: Modification of Marital Dissolution Agreement

In a post-divorce case, where the former husband sought a declaratory judgment on the issue of whether a provision of the parties' marital dissolution agreement (MDA) concerning military retirement was modifiable, although the trial court erred in granting the former wife's motion to dismiss for failure to state a claim, it nonetheless reached the correct result on the merits of the dispute because it properly found that an award of the husband's military retirement was not subject to modification because it was a division of marital property; However, the trial court erred in awarding attorney fees to the wife because an MDA provision regarding such fees limited its applicability to the party who instituted legal proceedings.

48. *Durunna v. Durunna*, No. M2022-00415-COA-R3-CV (Tenn. Ct. App. Apr. 4, 2024)

Issue: Judicial Authority, Property division, and Alimony

The trial court did not err in declaring the parties divorced because, under Tenn. Code Ann. § 36-4-129, the court was authorized to declare the parties to be divorced, rather than awarding a divorce to wife alone since each party had grounds for divorce against the other. The trial court erred in failing to account for a property in Nigeria when dividing the marital estate because evidence showed that husband had pursued an eviction action in Nigeria concerning the subject property, wife provided testimony as to its value and the parties purchased the

property using proceeds from their former Arkansas marital residence. The trial court erred in awarding husband futuro alimony because it failed to demonstrate that husband's rehabilitation was not feasible, and that long-term support was necessary.

49. *Hastings v. Hastings*, No. W2020-01225-COA-R3-JV (Tenn. Ct. App. Apr. 5, 2024)

Issue: Jurisdiction and Recusal

In this child support case, the judge did not err in continuing to make decisions pending a written order on the mother's recusal motion, per Tenn. Sup. Ct. R. 10B, because the judge denied the motion from the bench. The judge denied the recusal motion before she heard and decided the matters addressed in her June 26, 2020 order, although the better practice would have been to enter the order denying the motion for recusal before entering the orders; The judge did not lack jurisdiction to hear and decide matters while the mother's Tenn. Sup. Ct. R. 10B accelerated appeal was pending because neither the trial court nor the appellate court issued a stay in the case. The judge was authorized to hear and rule upon matters in this case while the mother's interlocutory appeal was pending.

50. *Wilson v. Wilson*, No. M2023-01026-COA-R3-CV (Tenn. Ct. App. Apr. 11, 2024)

Issue: Attorney's Fees

In this post-divorce action, The mother was entitled to her reasonable attorney's fees under Tenn. Code Ann. § 36-5-103(c) because she was the prevailing party on the petition for civil contempt to enforce the child support decree and she prevailed to a greater degree than the father on his petition to modify child support, in which he sought to compel the mother to pay him child support but failed; The mother was entitled to recover her reasonable and necessary attorney's fees and costs incurred on appeal under Tenn. Code Ann. § 36-5-103(c) because she was the prevailing party in this appeal.

51. *Nienmeyer v. Nienmeyer*, No. E2022-01690-COA-R3-CV (Tenn. Ct. App. Apr. 17, 2024)

Issue: Child Support

In this divorce action, The trial court did not abuse its discretion in setting the monthly support obligation under Tenn. Code Ann. § 36-5-101(k), because the child was over 21 years of age and was severely disabled, and court relied on the testimony of both parents and the uncontradicted corroboration of the other witnesses in finding that the child's disability was severe and preceded her turning 18 years of age.

52. *Gabriel Calleja v. Whitney Bradfield*, No. E2022-01074-COA-R3-JV (Apr. 17, 2024).

Issue: Relocation

In this relocation case, any error in applying the child custody statute in this parental relocation case was harmless. Although the juvenile court did not reference the parental relocation statute, [Tenn. Code Ann. § 36-6-108](#), the juvenile court considered whether the mother's relocation was in the child's best interest and thus fulfilled the essential requirement of the parental relocation statute by applying the factors of the child custody statute, [Tenn. Code Ann. § 36-6-106](#); Evidence did not preponderate against the finding that mother's relocation with the child was in the child's best interest; at most, the parties made different assessments of the severity of the child's problems, and father's concerns were insufficient to overcome the presumption of correctness given to the juvenile court's factual findings.

53. *Hughes v. Hughes*, No. E2023-00952-COA-R3-CV (Tenn. Ct. App. Apr. 19, 2024)

Issue: Contempt

In this post-divorce action, the father's complaint that he was not given proper notice of the contempt charges was waived because he raised it for the first time on appeal. The trial court did not abuse its discretion in sentencing the father to 186 consecutive days in jail, notwithstanding the fact that the only factor from Tenn. Code Ann. § 40-35-115 weighing against the father was the contempt finding itself because the father did not cease to send the mother inappropriate messages, in

violation of a valid court order, despite repeated requests from the mother, a cease and desist letter from the mother's counsel, or even advice from his own counsel.

54. *Berl v. Berl*, No. M2023-00558-COA-R3-CV (Tenn. Ct. App. Apr. 22, 2024)

Issue: Attorney's fees

In this post-divorce action, the trial court did not abuse its discretion in awarding the father a portion of his attorney's fees under Tenn. Code Ann. § 36-5-103(c), as the court adequately considered the parties' incomes and that the father was the prevailing party. The trial court erred by placing a cap on the child's therapy fees because it was not part of the relief sought by the father and the father had testified at trial that he was happy with the child's therapist and that he would support it. The appellate court declined to award either party their attorney's fees in terms of Tenn. Code Ann. § 36-5-103(c) because while the father prevailed on the substantial issues in the case, the mother prevailed on the issue as to therapy costs.

55. *Neuman v. Phillips*, No. M2023-00813-COA-R3-CV (Tenn. Ct. App. Apr. 22, 2024)

Issue: Foreign Decree

In an appeal concerning the attempt to register and enforce a foreign decree purporting to modify the terms of a divorce decree, the trial court correctly determined that the foreign decree was void for lack of subject matter jurisdiction when the Utah court did not have jurisdiction under Utah Code Ann. § 78B-13-202(1)(b) as the parties and the child had not resided in Utah for several years. The mother was not entitled to attorney's fees under Tenn. Code Ann. § 36-5-103(c) because she was not the prevailing party with respect to her attempt to register and enforce the relocation order.

56. *Collins v. Harrison*, No. M2023-00248-COA-R3-JV (Tenn. Ct. App. Apr. 24, 2024)

Issue: Child Support Modification

In a modification of child support case, trial court abused its discretion when it denied the mother's motion to compel the father to produce documents related to the father's inheritance and income he received from his investments because

pursuant to Tenn. R. Civ. P. 26.02(1), that information was relevant to the issue of the father's child support obligation; Trial court erred in assessing guardian ad litem fees to the mother because trial court dismissed the mother's petition for a restraining order based on the father's agreement to refrain from the behaviors complained of and in the view of the parties' long and ongoing dispute, it was unlikely that the matter would have been resolved by addressing her concerns with the father.

57. *Del Vicario v. Miller*, No. M2024-00475-COA-T10B-CV (Tenn. Ct. App. Apr. 25, 2024)

Issue: Recusal

In this divorce action, wife moved to have the judge recused from the case. However, wife waited too long to file her motion and the court of appeals denied her motion to recuse.

58. *Laura Adams v. Timothy Adams, sr.*, No. M2023-00069-COA-R3-CV (Apr. 24, 2024).

Issue: TRANSMUTATION

In a divorce action, the husband had waived the only two issues on appeal by failing to comply with Tenn. Ct. App. R. 7 because he did not include a Tenn. Ct. App. R. 7 table in or appended to his appellate brief and his two issues on appeal involved issues of classification and division of property, issues that fell squarely within the parameters of Tenn. Ct. App. R. 7.

59. *In re Justus P.*, No. W2023-00140-COA-R3-JV (May 9, 2024).

Issue: CHILD SUPPORT

In a child custody modification case, father's material change in circumstances was sufficient to modify the residential parenting schedule under Tenn. Code Ann. § 36-6-101(a)(2)(C) because his work schedule precluded the mid-week visitation ordered in the 2018 plan and missing those reduced his visitation significantly; Modification of the residential parenting schedule was in the child's best interest under Tenn. Code Ann. § 36-6-106(a) because their current arrangement was

unworkable as the mother blocked the father from calling her, and her insistence that the father gets information, if at all, from third parties and through his own cold calling was not in the best interest of the child.

60. Mary McCabe Peirce v. Lee Wesson Hope, No. W2023-00621-COA-R3-CV (Jun. 6, 2024)

Issue: Grandparent Visitation: Attorney's Fees.

In a grandparent visitation case, trial court's dismissal of grandmother's petition for grandparent visitation was proper because even assuming arguendo that grandmother was entitled to a presumption of harm under Tenn. Code Ann. § 36-6-306(a)(5), father's proof clearly rebutted the notion that there was a danger of irreparable or substantial harm resulting from an absence of visitation between the child and grandmother.

61. Leslie Burke, et al. v. Department of Children's Services, No. E2023-00904-COA-R3-CV (Jun. 20, 2024).

Issue: UCCJEA

This is a child custody matter involving the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201, et seq. ("the UCCJEA"). Leslie Burke and Melissa Burke ("the Burkes") received temporary custody pending adoption of the minor child Jane Doe ("the Child") from an Indiana court ("the Indiana Court"). The Burkes then brought the Child to Tennessee. The Tennessee Department of Children's Services ("DCS") later filed a dependency and neglect action in the Juvenile Court for Greene County ("the Juvenile Court"). DCS alleged that the Child disclosed having been sexually abused in previous adoptive homes, and that the Burkes were not cooperating with individual therapy for the Child. The Juvenile Court ordered the Child's removal into DCS custody. The Child's legal parents in Indiana surrendered their parental rights. DCS moved for guardianship of the Child in the Circuit Court for Greene County ("the Circuit Court"), which the Circuit Court granted. The Burkes sued DCS<sup>2</sup> in the Circuit Court challenging the legal parents' surrender of their parental rights and the Circuit Court's award of full



guardianship to DCS. The Burkes and DCS filed motions for summary judgment. The Circuit Court ruled in favor of DCS, dismissing the Burkes' complaint. The Burkes appeal, arguing that the Circuit Court lacked subject matter jurisdiction even though the Indiana Court expressly ceded jurisdiction to Tennessee. We hold, *inter alia*, that Indiana relinquished its exclusive, continuing jurisdiction. We affirm.

62. James Nicholas Howard v. Ama Narvarte Howard, No. M2022-01478-COA-R3-CV (May 1, 2024)

Issue: Child Support Modification

The parties to this appeal separated in 2019 and executed a separation agreement requiring the husband to pay child support for the parties' three children. When the husband filed for divorce in 2021, he requested that the child support be modified pursuant to a provision in the separation agreement. Following a bench trial, the trial court determined that the husband's child support obligation should be modified due to a substantial change in the parties' circumstances. Following a motion to alter or amend filed by the wife, however, the trial court reversed its initial ruling, holding that the husband's child support obligation was non-modifiable. On appeal, the Court reversed the trial court and held that an agreement to pay child support above the guideline amounts does not remain non-modifiable in perpetuity; rather, once a contractual agreement for child support merges into an FDD, the child support provision is modifiable unless it is a provision extending a parent's child support obligation past a majority age.

63. Robert Howard v. Monica Howard, No. E2023-01438-COA-R3-CV (Jul. 23, 2024).

Issue: Order of Protection/Attorney Fees

This appeal concerns the trial court's dismissal of a petition for an order of protection filed by the appellant husband. We affirm the trial court's dismissal of the order of protection but reverse the trial court's award of attorney fees to the respondent wife.

The Wife's communications to her Husband, wherein she used derogatory language to voice her feelings towards him and threatened to kill herself, did not establish an immediate and present danger of abuse to Husband or children. Husband had testified that he was not fearful for his or the children's safety during the relevant time period, which is evidence not supporting a finding that Wife's actions caused Husband to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Although the trial court awarded the Wife attorney's fees to Wife because no new evidence was presented in Husband's motion for reconsideration, it failed to make the requisite findings under the Domestic Violence statute that permits attorney fee awards to the respondent.

Domestic Violence statute permits attorney fees being awarded to the respondent only when the trial court makes certain findings:

- The petitioner is not a domestic abuse victim, stalking victim, sexual assault victim, or victim of a felony offense under title 39, chapter 13, part 1, 2, 3, or 5;
- Determination not because the petitioner requested that the petition be dismissed, failed to attend the hearing, or incorrectly filled out the petition.
- Petitioner knew that the allegation of domestic abuse, stalking, sexual assault, or felony offense under title 39, chapter 13, part 1, 2, 3, or 5 was false at the petition was filed.

64. Jamie Cooper v. Bradley Cooper, No. W2023-00555-COA-R3-CV (Jul. 22, 2024).

Issue: Custody/Domestic Abuse

In a divorce action, the trial court did not err in limiting the husband's parenting time pursuant to [Tenn. Code Ann. § 36-6-406\(a\)](#) because the evidence clearly established that he engaged in a pattern of emotional abuse against the wife throughout the pendency of the matter; the husband did not desire the divorce, but

as the trial court cautioned, much of his conduct only worsened his situation, rather than working toward a reconciliation with the wife.

65. Alyssia Arnold et al. v. Jay Witt, No. M2023-00803-COA-R3-JV (Jul. 18, 2024).

Issue: Standing

This appeal arises out of a petition filed by adult siblings seeking visitation with three minor children, their half-siblings. The respondent moved to dismiss Appellants' petition for visitation due to a lack of standing. The Juvenile Court granted the motion to dismiss. Appellants appealed to the Lincoln County Circuit Court ("circuit court"), which also granted a motion to dismiss. On appeal, the Court affirmed the trial court's decision as adult siblings do not have standing to sue for visitation rights to a minor child..

66. Linda R. Kerley v. George Olin Kerley, No. E2022-01206-COA-R3-CV (Jul. 17, 2024)

Issue: Alimony and Property Division

In this divorce action, remand was required for the issue of spousal support because the trial court did not make sufficient findings regarding the applicable statutory factors. The court did not include specific findings of fact relative to the parties' incomes and did not state how those incomes affected husband's ability to pay alimony or wife's financial need. There was nothing in the divorce decree that demonstrated the trial court's analysis or reasoning in determining the nature, amount, length of term, or manner in which the spousal support award should be paid as per Tenn. Code Ann. § 36-5-121(i). The absence of sufficient findings and conclusions left appellate court unable to review the alimony determination or to presume the correctness of the decision.

67. Tina Marie Eltzroth v. Danny Ray Eltzroth, E2023-00484-COA-R3-CV (Jul. 11, 2024).

Issue: Setting Aside Default Judgment

This appeal concerns setting aside a default judgment in a divorce case. Tina Marie Eltzroth ("Wife") filed for divorce in the Circuit Court for Sevier County ("the

Trial Court”) against Danny Ray Eltzroth (“Husband”). Husband was served but failed to timely answer. Wife filed a motion for default and notice of hearing. Husband, who was staying at multiple places during this time, failed to appear for the hearing. The Trial Court granted Wife a default judgment. Husband later filed a motion to set aside, which the Trial Court granted. Wife appeals. No abuse of discretion was found in the trial court’s granting of Husband’s motion to set aside the default judgment.

68. Teofila H. Mocny v. Ronald G. Mocny, No. M2023-00737-COA-R3-CV (Jul. 3, 2024)

Issue: Dissipation/Attorney Fees

In a divorce appeal, there was no error in the trial court’s classification of the separate and marital property. In particular, there was no dispute that the house was purchased during the marriage and titled jointly to the parties; The trial court’s finding of dissipation was not supported by the record, as there was no finding that the husband wasted any marital funds or that funds available for distribution had been actually reduced by the husband’s actions; Although the trial court claimed to consider the value of the separate property, as was appropriate under Tenn. Code Ann. § 36-4-121(c)(6), its engagement with this subject was only in general terms, and for certain items of separate property that were mentioned by the court, no value was assigned.

69. BRETT THOMAS FERGUSON v. LUCY MARIA TRAUGHBER, No. M2023-01052-COA-R3-JV (Jul. 2, 2024)

Issue: Name Change

The juvenile court erred in granting the father’s petition to change his son’s surname from the mother’s surname to his because the father’s reasoning, based on personal and cultural perceptions of an “active father,” did not address the child’s best interest. His testimony did not shift the burden of proof to the mother, and he failed to show that a change of surname would be in the child’s best interest

and, regardless of the surname, the father's active involvement in the child's life would establish his role as a parent.

70. Tina M. Vasudeva v. Kathie Barker, No. M2023-01121-COA-R3-CV (Jul. 2, 2024)

Issue: Order of Protection

The trial court granted Appellee's motion for extension of an order of protection against Appellant. Appellant argues that her due process rights were violated insofar as she was denied the opportunity to confront witnesses and offer testimony. Based on the statement of the evidence, we agree. Vacated and remanded.

71. Kathleen Nell Snapp v. Timothy Alva Snapp, No. E2023-00251-COA-R3-CV (Jun. 28, 2024)

Issue: Property Division/Transmutation

The trial court's finding that the husband's property, which was titled in his and his father's name, had transmuted from his separate property into marital property was affirmed due to the wife's significant contributions to the preservation and appreciation of the property, i.e., using joint credit cards and savings to construct a home on the property, physical labor, etc.

72. Delvon Paden v. Kyrstylen Davison, No. M2023-00240-COA-R3-JV (Jun. 25, 2024).

Issue: Custody Modification

The trial court entered a permanent parenting plan in 2014 that governed the parties' custody arrangement for nine years. In 2022, the child's father petitioned the juvenile court to modify the parenting plan. During the pendency of the modification petition, he also filed a motion for a restraining order to prevent the child's mother from removing the parties' daughter from his custody, which was granted. After a hearing on the modification petition, the court found a material change in circumstances had occurred warranting modification, and that modification of the custody arrangement was in the child's best interest due to the

mother's failure to co-parent and unwillingness to facilitate a relationship between the child and the father.

73. Roger Glen Vincent v. Deborah Lynn Vincent, No. M2023-01116-COA-R3-CV (Jun. 24, 2024) .

Issue: WAIVER

In a divorce action where the wife claimed that the trial court erred in its division of the parties' marital estate, she had waived her right to challenge the trial court's distribution of the parties' marital estate because she failed to include a Tenn. Ct. App. R. 7 table in her appellate brief. Also, her brief included some factual citations, but they were of little value in aiding the appellate court in addressing the issues on appeal. Where the husband requested an award for his attorney's fees incurred in defending the appeal pursuant to Tenn. Code Ann. § 36-5-103(c), the court lacked authority to award the husband his appellate attorney's fees because this was not a proceeding to enforce, alter, or modify a decree of alimony as the trial court found that an award of alimony to the wife was not appropriate and the wife did not contest this finding on appeal.

74. Lisa A. Welch v. William M. Welch, W2022-00227-COA-R3-CV (July 30, 2024).

ISSUE: CRIMINAL CONTEMPT: SENTENCING

In a divorce action, a sentence of imprisonment was vacated because the court did not reference any of the statutory factors in imposing a sentence or in determining that the sentence should run consecutively and the evidence was insufficient on two of the five counts for which husband was sentenced and the trial court suspended a significant portion of the original sentence. The factual findings were sufficient on the issue of husband's ability to comply with the court's orders at the time of the violations because for each count of criminal contempt, the court found that husband willfully and knowingly violated the orders of the court.

75. Stephen Charles Johnson v. Elizabeth Johnson, No. E2023-01272-COA-R3-CV (Jul. 31, 2024).

Issue: Proposed Orders.

In a case where the husband filed for divorce against the wife, vacation of the trial court's judgment adopting the wife's 59-page proposed findings of fact and conclusions of law in full and remand for a new trial was warranted because the court wholly adopted Wife's 59-page proposed findings of fact and conclusions of law without stating on the record in advance how he intended to rule or why, he merely adopted the wife's proposed findings of fact and conclusions of law in full.

Per *Smith v. UHS of Lakeside, Inc.*, party-prepared orders must; 2) accurately reflect the trial court's decision and 2) not create doubt that the decision represents the trial court's own deliberations. Here, the trial court merely adopted the wife's proposed order without alterations, which did not comply with *Smith*.