

ALIMONY DIAGRAM a/k/a ALIMONY FLOWCHART^[1]

Introduction of GMR; practice devoted to family law.

Arguably, Rule 52.01 of the Tennessee Rules of Civil Procedure is the most important rule for judges who determine that an alimony award is appropriate, based on the facts of the case:

Rule 52.01 of the Tennessee Rules of Civil Procedure:

“In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rules 41.02 and 65.04(6).”^[2]

There is nothing in Rule 52.01 of the Tennessee Rules of Civil Procedure that prevents the trial court judge from assigning this task to trial counsel, at least in the first instance. After submission of the proposed findings of fact and conclusions of law, Rule 52.01 of the Tennessee Rules of Civil Procedure does require the trial court judge to make his/her own findings, hopefully, aided by the trial counsel findings.

In the following cases [there are more], the case was remanded to the trial court to make appropriate findings pursuant to Rule 52.01 of the Tennessee Rules of Civil Procedure with regard to Court’s award of alimony and the reasons justifying the alimony:

Masserano v. Masserano, 2019 WL 2207476;
Howard v. Beasley, 2020 WL 6149577; and
Woody v. Woody, 2022 WL 678976.

Practice Tip:

If trial counsel receives an Order or Memorandum with inadequate findings of fact and conclusions of law, then the trial court should expect that a Motion for Additional Findings [Rule 52.02 of the Tennessee Rules of Civil Procedure] will be filed.

^[1] Or, for Judges who don’t have time to read the Alimony Bench Book, or How to Make Alimony Awards Bulletproof on Appeal.

^[2] Rule 52.01 of the Tennessee Rules of Civil Procedure.

Definition of Alimony:

“...[a]ward alimony to be paid by one spouse to or for the benefit of the other, or out of either spouse’s property, according to the nature of the case and the circumstances of the parties. The court may fix some definite amount or amounts to be paid in monthly, semimonthly or weekly installments, or otherwise, as the circumstances may warrant. Such award, if not paid, may be enforced by any appropriate process of the court having jurisdiction including levy of execution...”^[1]

Few issues or words pack the emotional punch of an alimony or spousal support award. Divorce litigants readily accept the notion that all property, real and personal, amassed during the marriage is divided between the spouses. But, an award of alimony feels personal and unnecessary to most. Of all the forms of relief available, alimony is the most reviled.

Purpose of Alimony:

“(c)(1) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse’s own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.”^[2]

Alimony is the mechanism to equalize the financial burden of the divorce, usually for women and children. Is this the only way? What is your personal bias?

Goal of Alimony:

“(2) The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage, the general assembly finds that the economically disadvantaged spouse’s standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.”^[3]

^[1] T.C.A. § 36-5-121(a). This section also creates the modification of alimony, if the Court finds a substantial and material change of circumstances.

^[2] T.C.A. § 36-5-121 (c)(1).

^[3] T.C.A. § 36-5-121(c)(2).

Types of Alimony:

1. **Alimony *in futuro* or periodic alimony:**

Definition of periodic alimony:

Long term support until the death or remarriage of the recipient. “*Such alimony may be awarded when the Court finds that there is relative economic disadvantage and that rehabilitation is not feasible, meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse’s standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.*”^[1]

When is an award of periodic alimony not appropriate? Short term marriage? How does the trial court judge make the finding that rehabilitation is not feasible?

Change in amount of periodic alimony:

Periodic alimony remains within the jurisdiction of the court, subject to modification, if there is a showing of a substantial and material change of circumstances. If this burden is met, then, periodic alimony can be increased, decreased, terminated, extended, or held in abeyance.^[2]

Termination of periodic alimony:

- a. Death of the recipient – always.
- b. Death of the obligor – unless expressly stated otherwise.
- c. Remarriage of the recipient.^[3]

^[1] T.C.A. § 36-5-121(f)(1). Notice that this definition mimics the statutory goal of alimony [see above] but includes the preference for rehabilitative alimony.

^[2] T.C.A. § 36-5-121(f)(2)(A).

^[3] T.C.A. § 36-5-121(f)(3).

2. **Rehabilitative alimony.**

Definition of Rehabilitative alimony:

“(e)(1) Rehabilitative alimony is a separate class of spousal support, as distinguished from alimony in solido, alimony in futuro, and transitional alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse’s standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.”^[1]

There is a legislative and caselaw preference for rehabilitative alimony. Periodic alimony may only be awarded when the court finds that rehabilitation is not feasible.

Change in the amount of rehabilitative alimony:

Like periodic alimony, rehabilitative alimony remains within the jurisdiction of the court to be extended, increased, decreased, or modified if there is a showing that circumstances have changed since the rehabilitative alimony was established.^[2]

Unlike periodic alimony, rehabilitative alimony can only be extended if the alimony recipient proves that all reasonable efforts at rehabilitation have been made but were unsuccessful.^[3]

Termination of rehabilitative alimony:

- a. Death of the recipient.
- b. End of award of rehabilitative alimony, unless extended.
- c. Death of the obligor spouse, unless specified otherwise specifically.^[4]

^[1] T.C.A. § 36-5-121(e)(1). Note how similar this definition is to the definition of periodic alimony and the purpose of alimony. The difference resides in the legislative preference for rehabilitative alimony. See *Crabtree v. Crabtree*.

^[2] T.C.A. § 36-5-121(e)(2).

^[3] T.C.A. § 36-5-121(e)(2).

^[4] T.C.A. § 36-5-121(e)(3), T.C.A. § 36-5-121(f)(3). Notice that remarriage of the recipient does not automatically terminate rehabilitative alimony.

3. **Transitional alimony.**

Definition of transitional alimony:

“Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other legal proceeding where spousal support may be awarded, such as a petition for an order of protection.”^{[\[1\]](#)}

Change in the amount of transitional alimony:

The amount of transitional alimony does not change unless the parties agree otherwise in an agreement, which is incorporated into a divorce decree or legal separation or order of protection. Alternatively, the court could order that transitional alimony would be modifiable under certain circumstances.^{[\[2\]](#)}

Termination of transitional alimony:

- a. End of the determinate period of time set by the court or the parties in an agreement.
- b. Death of the recipient spouse.
- c. Remarriage, if ordered by the Court.
- d. Death of the obligor spouse, unless expressly ordered otherwise.^{[\[3\]](#)}

4. **Alimony *in solido* or lump sum alimony.**

Definition of alimony *in solido*:

“(h)(1)(A) Alimony in solido, also known as lump sum alimony, is a form of long-term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments if the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse, to enable the court to equitably divide and distribute marital property, or both.”^{[\[2\]](#)}

Historically, alimony *in solido* was awarded for attorney fees. In light of the new statute, this function may be in jeopardy.

New statute, located at T.C.A. § 36-4-121 (i)(1), (2), and (3), provides as follows [effective March 31, 2022]:

“(i)(1) In allocating responsibility for the payment of marital debt, the court shall consider the following factors:

- (A) The purpose of the debt;
- (B) Which party incurred the debt;
- (C) Which party benefitted from incurring the debt; and
- (D) Which party is best able to repay the debt.

^{[\[1\]](#)} T.C.A. § 36-5-121(g)(1).

^{[\[2\]](#)} T.C.A. § 36-5-121(g)(2).

^{[\[3\]](#)} T.C.A. § 36-5-121(h)(1)(A). Note that the definition of alimony *in solido* does not limit its use to pay attorney fees.

(2) *In allocating responsibility for payment of unpaid attorney fees and expenses incurred in connection with the proceedings, the court shall consider the factors in subdivision (i)(1) and the following factors:*

- (A) *The total amount of attorney fees and expenses incurred by each party in connection with the proceedings;*
- (B) *The total amount of attorney fees and expenses paid by each party in connection with the proceedings;*
- (C) *Whether the attorney fees and expenses incurred by each party are reasonable under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct; and*
- (D) *Whether the attorney fees and expenses were necessary.*

(3) *The court may order the payment of all or a portion of the marital debt from the marital property prior to the allocation of responsibility for paying marital debt by either party, and may charge the party's share of the marital estate with all or a portion of the attorney fees and expenses paid by that party.”*

Change in the amount of alimony *in solido*:

An award of alimony *in solido* is not modifiable unless the parties agree otherwise.^[1]

Termination of alimony *in solido*:

- a. Alimony *in solido* does not terminate upon the remarriage of either the recipient or obligor.
- b. Death does not terminate alimony *in solido*, whether recipient or obligor.^[2]

TO AWARD ALIMONY OR NOT?

Of all the factors, need and ability to pay are the most important. *Robertson v. Robertson*, 76 S.W.3d 337 (Tenn. 2002).

Deakins v. Deakins, 2009 WL 3126245.

Franklin v. Franklin, 2008 WL 1901113.

If there is no need, there is no alimony.

If there is no ability to pay, there is no alimony.



END ~ NO ALIMONY_____

^[1] T.C.A. § 36-5-121(h)(2).
^[2] T.C.A. § 36-5-121(h)(3). Alimony *in solido* is another form of property division.

How to ferret out the economically dependent spouse’s need? Isn’t need always present? Mr. Deakins said he was not sure that he needed alimony. In *Franklin*, the Court of Appeals said that there was no evidence of need.^[1]

By the same token, how to ferret out the economically dominant spouse’s ability to pay? The economically dominant spouse rarely admits to being capable of paying alimony.

Income & Expense Statements become so very important. These two exhibits may be the most important documents in the case.

Please view these documents with some latitude: Remember that the economically dependent spouse has probably never lived with budget – may not have made any of the financial decisions. And, obviously, this is a time of great upheaval and turmoil in the life of the economically dependent spouse and the children. Unless the divorce trial attorney has asked the economically dependent spouse to use a particular method, the resulting Income & Expense Statement may be full of inaccuracies. Resist the attempt to make easy and fast credibility findings based on an Income & Expense Statement that may not be totally accurate. Colon hydrotherapy.

The economically dominant spouse may submit an Income and Expense Statement riddled with different kinds of errors, such as the failure to include all income, particularly variable income. It is too common for the economically dominant spouse to fail to include all sources of income, such as investment income, rental income, or income derived from the payments or expenses paid by a third party.

Fortunately, even though these two factors are pointed to time and again as the most important factors, the statute requires consideration of all of the following factors before an alimony award is made; however, the statute does not provide the weight given to each factor:

“(1) *The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;*”^[2]

This statute requires the fact finder or trial court judge to consider the income from all sources, including income from “*pension, profit sharing or retirement plans.*” Does this require an expert witness? Does this section conflict with T.C.A. § 36-5-121(j)? Since retirement accounts are generally not drawing income that is reflected on tax returns, what proof is required to determine the interest on accounts mentioned in T.C.A. § 36-5-121(j)?

^[1] *Franklin*, 2008 WL 1901113, pg. 14.

^[2] T.C.A. § 36-5-121(i)(2).

Please note that this statute probably requires a finding about the earning capacity of each spouse. What is the earning capacity of a spouse who has been at home for 20 years, but was involved in a lucrative career prior to being a stay-at-home spouse? Is this a matter of expert proof? What if there is no evidence of the current earning capacity of a stay-at-home spouse? Should the court accept the employment income that is 20 years old? What about the intervening changes in the workforce? What if there is no plan of rehabilitation submitted?

What if the income from retirement accounts is not accessible by reason of the parties’ ages? What if part of the rental income expense is building equity for the parties? Is only the net income considered? Like income for child support purposes, should income be increased by depreciation and expenses that are excessive?

“(2) *The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party’s earnings capacity to a reasonable level;*”^[1]

This factor and the attendant calculus are easy if one party is a high school graduate but the other party is a physician. What if the educational level is about the same, but one (1) spouse elected to remain at home with the children and the consequence is that the stay-at-home spouse has missed out or been bypassed for promotions due to the need to be available for the vagaries of children?

It is under this factor that the spouse with less education probably needs to be prepared to justify additional education, the cost of such education, the amount of time needed, and the amount of income earned if all goes to plan? How is this not speculation?

“(3) *The duration of the marriage;*”^[2]

Even though some “*years are harder than others,*”^[3] one would expect agreement on this issue.

One to seven years is a short-term marriage.

Seven to nineteen years is a marriage of middle duration.

Twenty plus years is a long-term marriage.

A short-term marriage is treated very differently from a long-term marriage. The legal treatment of a short-term marriage is a recognition that the marriage was never a genuine partnership and the parties should be restored to their condition or situation at the time of the marriage. *Batson v. Batson*, 769 SW2d 849 (Tenn.Ct.App. 1985).

^[1] T.C.A. § 36-5-121(i)(2).

^[2] T.C.A. § 36-5-121(i)(3).

^[3] An unnamed friend.

A long-term marriage means that the parties have settled into the relationship and the result needs to recognize this reality.

“(4) *The age and mental condition of each party;*”^{[\[1\]](#)}

In the recent case of *Murdock v. Murdock*, 2022 WL 611024, Mrs. Murdock, an attorney, was not able to establish a successful career because of her mental health issues. Mrs. Murdock hired an expert who testified about diagnosis based on his review of the records. Based on Mrs. Murdock’s profound mental health issues, she was awarded alimony *in futuro* for a period of time. As discussed below, the case also clarified that the trial court judge needs to divide the marital estate first as the division of the marital estate must be considered in the award of alimony.

Not sure what role age plays but clearly, if the parties were married for a short period of time and are both young, it would seem that alimony would be inappropriate. What if both parties are elderly but the incomes are roughly the same due to retirement income? What if the only difference is social security income?

“(5) *The physical condition of each party, including but not limited to, physical disability or incapacity due to a chronic debilitating disease;*”^{[\[2\]](#)}

What if one spouse has rheumatoid arthritis and the cost of insurance and medication is very high? What about the progression of the disease which ultimately causes total immobility and inactivity? T.C.A. § 36-5-121(k) permits the trial court judge to require the healthy party to “[p]ay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate.”^{[\[3\]](#)}

Should the spouse with the chronic, debilitating illness bring the treating physician to court or take his deposition to talk about the disease process and what will happen? What about the cost of the health care costs? This fact situation is easy to remedy with money.

“(6) *The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage.*”^{[\[4\]](#)}

Does the child have to be disabled? The statute does not require disability. What if the parties had agreed in happier times that the spouse would be a stay-at-home spouse and the child had become accustomed to this lifestyle? What if the child is an adult but is disabled?

“(7) *The separate assets of each party, both real and personal, tangible and intangible.*”^{[\[5\]](#)}

What if one spouse has a trust fund of one million dollars (\$1,000,000) that pays no present income? As the trial court judge, does this provision allow you to assume that the trust corpus should be invested to generate income? What if the marital assets are relatively modest but the quantity of separate assets is large?

Should the trust be examined to see what assets are held in trust and when the trust will terminate? What if the separate assets are a mere expectancy, are they still separate? What if the marital assets are such that the non-titled spouse will be well taken care of even if the other spouse has tremendous separate assets?

What if the separate assets are not income producing, must they still be considered? How are the separate assets considered?

^{[\[1\]](#)} T.C.A. § 36-5-121(i)(4).

^{[\[2\]](#)} T.C.A. § 36-5-121(i)(5).

^{[\[3\]](#)} T.C.A. § 36-5-121(k)

^{[\[4\]](#)} T.C.A. § 36-5-121(i)(6).

^{[\[5\]](#)} T.C.A. § 36-5-121(i)(7).

“(8) *The provisions made with regard to the marital property, as defined in § 36-5-121;*”^{[\[1\]](#)}

This is the statute that requires the marital property to be divided before alimony is awarded. What if there is enough property to make alimony irrelevant? What is that number?

Is it permissible to award a greater percentage of the marital property and no alimony? If yes, when would this approach be appropriate?

Does little marital property increase the chances of alimony being awarded?

“(9) *The standard of living of the parties established during the marriage;*”^{[\[2\]](#)}

What does this mean? That the frugal and the thrifty are punished? Both periodic alimony and rehabilitative alimony require the court to try to ensure that the economically inferior spouse is allowed to maintain the same standard of living. Is this ever possible after a divorce?

What if one spouse demonstrated frugality during the marriage and the other spouse did not? Does the standard of living increase for the frugal spouse? Is this a recognition that post-divorce spouses do not change their spending habits?

“(10) *The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;*”^{[\[3\]](#)}

This provision captures the classic case where the now stay-at-home spouse put the other spouse through school and then, a divorce happens. Should this now stay-at-home spouse receive more of the marital estate? To compensate him/her?

There are some jurisdictions where the degree or enhanced earning power is an asset of the marriage. Is this provision a recognition that such a spouse should be compensated by receiving alimony?

“(11) *The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and*”^{[\[4\]](#)}

The consideration of fault is entirely discretionary with the court, but this is the issue that generates the most angst. There is no zone of privacy in a divorce action. This provision spawns so many games.

This provision allows each party to extract leverage, in terms of money, for a promise to not air particular bad acts. However, this does not allow the trial court to be punitive. See *Anderton v. Anderton*, 988 S.W.2d 675 (Tenn.Ct.App. 1998).

This provision is often top of mind for divorce litigants who are worried about their client’s bad conduct. What value, monetary value, will be placed on the non-disclosure of the evidence?

^{[\[1\]](#)} T.C.A. § 36-5-121(i)(8).

^{[\[2\]](#)} T.C.A. § 36-5-121(i)(9).

^{[\[3\]](#)} T.C.A. § 36-5-121(i)(10).

^{[\[4\]](#)} T.C.A. § 36-5-121(i)(11).

“(12) *Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.*”^[1]

Finally, the catchall provision that allows consideration of the “*equities*” between the parties.

Now that the tax consequences of alimony have been largely removed, what else does this provision mean? The tax consequences attendant to liquidation of accounts? To accomplish equity? The tax consequences of selling a business? Long-term and short-term capital gain consequences.

Make findings. Make findings. Make findings of fact.

What happens after alimony is established? And appropriate findings are made?

As an aside, the factors listed in T.C.A. § 36-5-121(i)(1) through (12) do not seem to be listed individually for the seminal cases, but are listed without comment. Seemingly, there is a recognition that each factor has been considered.

A. Security for Alimony:

To make sure the alimony is paid in the event something untoward happens to the obligor spouse, the statute allows the alimony to be secured with life insurance. The statute provides:

“(l) *To secure the obligation of one party to pay alimony to or for the benefit of the other party, the court may direct a party to designate the other party as the beneficiary of, and to pay the premiums required to maintain, any existing policies insuring the life of a party, or to purchase and pay the premiums required to maintain such new or additional life insurance designating the other party as the beneficiary of the insurance, or a combination of these, as the court deems appropriate.*”^[2]

What if the premium cost is very high due to the age or medical condition of the obligor parent? What kind of alimony is life insurance? What if the premium cost of the policy increases over time? Is this increased cost required by the language of the statute? Does the classification of the alimony matter in this context?

If the cost of a life insurance policy or policies is cost prohibitive, could some other property stand as security? What if the death benefits are significantly greater than the unpaid balance of the life insurance? What happens to the balance of the death benefits?

Does this provision only apply to lump sum alimony or alimony *in solido*? Does the alimony need to extend beyond the death of the obligor in order for this provision to apply? If alimony ends at the death of the obligor spouse, how does this provision work? If the alimony is secured in periodic alimony, how is the balance determined?

^[1] T.C.A. § 36-5-121(i)(12).

^[2] T.C.A. § 36-5-121(l).

See *Stratienko v. Stratienko*, 529 S.W.3d 389 (Tenn.Ct.App.2017):

*“Under appropriate circumstances, courts have placed a lien on the obligor spouse's property to secure the payment of alimony in solido in lieu of requiring the maintenance of a life insurance policy. See, e.g., [Tenn. Code Ann. § 36–4–121\(e\)\(2\)](#) (“The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support....”); [Ligon v. Ligon](#), 556 S.W.2d 763, 768 (Tenn. Ct. App. 1977); [Coke](#), 1993 WL 477016, at *4; [Tooley v. Tooley](#), No. 01-A-01-9009-CV-00315, 1991 WL 11535, at *1 (Tenn. Ct. App. Feb. 6, 1991). Because the award of alimony in solido is for a definite sum, we conclude that placing a lien on Husband's assets in the amount of \$540,000 would reduce the amount of life insurance necessary to secure Husband's alimony obligations but would also provide Wife with a means of enforcing the alimony in solido award. We therefore modify the trial court's judgment to impose a lien upon a portion of Husband's assets in the amount of \$540,000 in order to secure the alimony in solido award to Wife. We remand this matter to the trial court for a determination regarding which asset(s) would be appropriate to encumber. We also modify the trial court's judgment by reducing the amount of Husband's court-ordered life insurance obligation from \$1,000,000 to \$500,000, which amount we determine to be sufficient to secure Husband's alimony in futuro obligation.”*^[1]

^[1] *Stratienko*, 529 S.W.3d 389, 409 (Tenn.Ct.App.2017)

B. Forms of Alimony:

Periodic alimony, rehabilitative alimony, transitional alimony, and alimony in solido may be awarded in combination or singularly. The court possesses the jurisdiction or discretion to determine the type(s) of alimony to be awarded. If the equities require more than one (1) type of alimony, then the court is vested with the discretion to award more than one kind.

“(d)(1) The court may award rehabilitative alimony, alimony in futuro, also known as periodic alimony, transitional alimony, or alimony in solido, also known as lump sum alimony or a combination of these, as provided in this subsection (d).”^[1]

C. Live in Lover Statute:

Periodic alimony and transitional alimony may be suspended entirely or in part, if the court finds that the alimony recipient lives with a third party.^[2] Although this statute is known as the “*Live in Lover*” statute, it is important that the statute does not require that the live-in be someone with whom the alimony recipient is romantically involved. Living with any third party gives rise to the deadly presumption – even an aged parent or an adult child.

“In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is raised that:

(i)The third person is contributing to the support of the alimony recipient and the alimony recipient does not need the amount of support previously awarded, and the court should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient does not need the amount of support previously awarded, and the court should suspend all or part of the alimony obligation of the former spouse.”^[3]

The transitional alimony statute contains the same language.^[4] The rehabilitative alimony statute does not? Why not?

How is the presumption overcome? What happens to the burden of proof? What if the expenses [household] are being equally divided between the alimony recipient and the third party, but the alimony recipient needs her alimony in order to meet her share of the obligations?

^[1] T.C.A. §36-5-121(d)(1).

^[2] T.C.A. §36-5-121(f)(2)(B), (g)(2)(C).

^[3] T.C.A. §36-5-121(f)(2)(B).

^[4] T.C.A. §36-5-121(g)(2)(C).

D. Retirement:

What impact does retirement possess for alimony?

Bogan v. Bogan, 60 S.W.3d 721 (Tenn.2001):

“However, even when an obligor is able to establish that a retirement is objectively reasonable, and therefore that it constitutes a substantial and material change in circumstances, the obligor is not necessarily entitled to an automatic reduction or termination of his or her support obligations. As evidenced by its permissive language, the statute permitting modification of support awards contemplates that a trial court has no duty to reduce or terminate an award merely because it finds a substantial and material change in circumstances. See [Tenn.Code Ann. § 36–5–101\(d\)\(2\)](#). Instead, the change in conditions resulting from retirement merely allows the obligor to demonstrate that reduction or termination of the award is appropriate. Cf. [McFadden, 563 A.2d at 184](#); [Silvan, 632 A.2d at 530](#). Accordingly, when assessing the appropriate amount of modification, if any, in the obligor's support payments, the trial court should consider the factors contained in [Tennessee Code Annotated section 36–5–101\(d\)\(1\)](#) to the extent that they may be relevant to the inquiry. See, e.g., [Watters, 22 S.W.3d at 821](#); [Seal, 802 S.W.2d at 620](#); [Threadgill v. Threadgill, 740 S.W.2d 419, 422–23 \(Tenn.Ct.App.1987\)](#).”^[1]

In *Bogan*, the Tennessee Supreme Court was quite clear that even though Mr. Bogan’s retirement was not contemplated [generally a requirement for substantial and material changes of circumstances] at the time the parties’ Marital Dissolution Agreement was negotiated, nonetheless, his objectively reasonable retirement constituted a substantial and material change of circumstances. However, the Court also held that the fact that Mr. Bogan [or someone contemplated a normal retirement after a long career] was retiring at a reasonable age did not mean that he was automatically entitled to have his alimony reduced, but he was entitled to have his alimony reviewed – in other words, he met his burden of proof with regard to a substantial and material change of circumstances.

^[1] *Bogan*, at pg. 730.

E. Substantial and Material Change of Circumstances:

In *Jekot v. Jekot*, 362 S.W.3d 76 (Tenn.Ct.App. 2011), the Tennessee Court of Appeals quoted the long-standing rule with regard to the how and why of alimony modification:

*“Modifications of alimony may be granted only upon a showing of substantial and material change in circumstances since entry of the original support order. [Tenn.Code Ann. § 36–5–101\(a\)\(1\)](#). A change is considered substantial when it significantly affects either the obligor’s ability to pay or obligee's need for support. [Bogan v. Bogan, 60 S.W.3d 721, 728 \(Tenn.2001\)](#); [Watters v. Watters, 22 S.W.3d 817, 821 \(Tenn.Ct.App.1999\)](#). A change is considered material if the change occurred since the original support decree’s entry. Even a substantial and material change of circumstances does not automatically result in a modification. [Bogan, 60 S.W.3d at 730](#). Modification must also be justified under the factors relevant to an initial award of alimony, particularly the receiving spouse's need and the paying spouse's ability to pay. *Id.* Where there has been such a change in circumstances, the ability of the obligor spouse to provide support must be given equal consideration to the obligee spouse's need. [Id.](#) Generally, the party seeking the modification bears the burden of proving the modification is warranted. [Freeman v. Freeman, 147 S.W.3d 234, 239 \(Tenn.Ct.App.2003\)](#).”*¹¹

In *Jekot*, the Court of Appeals, in a very practical way, looked at Dr. Jekot’s income for the four years predating his Motion for Modification of his alimony and compared his average income to his pre-divorce income. Dr. Jekot’s income actually increased post-divorce quite significantly. As a result of the increase in his income, Dr. Jekot could not rely on this fact in support of his Motion for Modification as obviously, he had not suffered a decline in his income or more succinctly, he still had the ability to pay the court-ordered alimony.

Dr. Jekot also argued that the alimony he paid caused a reduction in his income. Obviously, his alimony obligation was not imposed post-divorce, therefore, it could not constitute a material change.

Finally, Dr. Jekot argued that Mrs. Jekot no longer needed as much alimony due to her enhanced earnings or rental income. However, the property that generated the rental income for her was awarded to her in the divorce action. So, again, this did not constitute a change in her circumstances as it was clearly contemplated that she would have some income as a result of the marital property she was awarded.

So, the justification for a change in alimony can be a very practical endeavor and should be approached in this manner.

¹¹ *Jekot*, at pg. 80.