

**2008: Case Law Update
For Tennessee Society of Certified
Public Accountants**

Materials Prepared by

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BIOGRAPHICAL SECTION

Mr. Smith is a 1985 graduate of Vanderbilt School of Law and a member of Stites & Harbison, PLLC. He practices primarily in the area of domestic relations. Mr. Smith is also a Rule 31 family law mediator. He has been a member of the Board of Directors of the Nashville Bar Association, head of the Circuit and Chancery Court Committee for the Nashville Bar Association, and was named by the *Nashville Business Journal* as one of the “Best of the Bar” in 2008. Another “Best of the Bar” listee, Helen Rogers of Rogers & Associates, was instrumental in the preparation of these materials, and much of the credit for these materials goes to Mrs. Rogers.

2008 DOMESTIC LAW REVIEW¹

The following cases deal primarily with identification, valuation and division of marital property in divorce. Most were decided in 2008, although some are from 2007. It is clear that accountants play a larger and larger role in divorce cases, whether in tracing assets, determining the marital portion of retirement accounts, or valuing businesses and other properties. There are some odd cases, like **Bertuca**, where the Court of Appeals conducted its own valuation analysis to overturn a valuation adopted by the trial court. There are other cases that have results that are more familiar, and expected.

Alimony awards continue to be among the most frequently litigated issues on appeal in Tennessee court. These are important in property valuation cases primarily because the award of property often goes hand in hand with an award of alimony, or negates the need to award alimony. See, for example, **Franklin v. DeKlein-Franklin**, 2008 WL 1901113 (ES Tenn. App. April 30, 2008). Husband now age 65 and wife now 64 years old met in Cancun, Mexico, in 1983. They married in 1987 after each divorcing their spouses and had a 16 year marriage. Wife is a native of the Netherlands and was fluent in many languages and also an accomplished artist. Husband was a plastic surgeon who had a well-established career in Chattanooga. There were no minor children. In a long decision written by Judge Susano, the division of the marital estate was affirmed but the Court of Appeals reversed the award to wife of transitional alimony based on her receiving \$2,548,530 in marital property and having separate property totaling \$318,979. The transitional alimony had been \$2,500 per month for

¹ There is a smattering of 2007 cases included in these materials, most of which were decided within the past year but were interesting enough to include in these 2008 materials.

24 months. Husband also had health issues that he raised as limiting his ability to earn in the future.

Attached to these materials is a table containing a brief description of most, if not all, of the alimony cases decided by the Court of Appeals from January 1, 2008 through the end of September 2008, in which one part or the other challenged an alimony award on appeal. Of the 35 cases cited, 22 were affirmed as decided by the Court of Appeals, and 12 were modified or reversed; one appeal was dismissed as not being a final order. Three of the cases affirmed involved unsuccessful applications to modify or terminate alimony based on a change of circumstances. The highest monthly alimony award affirmed by the Court of Appeals was \$5,000 per month, in two cases: in one of these cases, the \$5,000 was to continue for 10 years; in the second case, the \$5,000 was to terminate upon the youngest child reaching the age of 18. In the first case, **Bearb**, the husband earned \$613,000 the year prior to the divorce. In the second case, **Altman**, the husband earned \$26,500 per month.

In **Davis**, the trial court denied the Husband's request for alimony and the Court of Appeals reversed, awarding him \$800 per month for 36 months. In **Cardella**, the Court of Appeals reversed an alimony *in futuro* award which was designed by the trial court to protect a \$288,000 judgment for negligently passing a sexually transmitted disease to Wife.

Bearb v. Bearb, 2008 WL 538977 (WS Tenn. App. February 28, 2008) dealt not only with alimony, but also attorneys fees. After 12 years of marriage, wife filed for divorce and then spent 7 years divorcing. Husband was a cardiologist and wife a nurse and at the time of the final divorce was 50 years old. Husband and wife each received \$1.2 million, and wife was awarded \$5,000 per month of alimony for 10 years and \$2,500 per month thereafter *in futuro*. She also received \$100,000 as an alimony *in solido* award and her attorney's fees. On

appeal, the trial court was affirmed except on the issue of attorney's fees. The Appellate Court noted that need was a primary factor in attorney's fees and in this case, Ms. Beard had more than sufficient assets from which to pay her attorneys.

Business Valuations

(a) **Marketability discount excluded**

Bertuca v. Bertuca (Tenn. Ct. App. November 14, 2007). 2007 WL 3379668. This Wilson County Circuit Court case involved the valuation of the husband's business in a McDonald's franchise and a battle of the expert witnesses as to that value. Husband owned 90% of Capital Food Services, a general partnership. The trial court's decision that husband's value in the business had increased about \$900,000. The Appellate Court, on rehearing, calculated the value of the business which varied significantly from the trial court's valuation as follows:

Cash Flow (Landers)	\$412,663
Capitalized at 12%	\$3,438,858
Add: Current Assets	\$1,016,829
Less: Current Liabilities	(\$ 525,891)
Less: Notes Payable 6/30/2005	(\$2,199,028)
<u>Less: Lebanon Rebuild Note</u>	<u>(\$ 950,000)</u>
VALUE:	\$ 780,768

Thus, the wife's adjusted share in the business should be \$351,345. However, what is significant is that the Court of Appeals did not allow a "lack of marketability" discount which is frequently done in valuation cases "unless it appears from the records that his needs or situation were such that the sale of his interest would be necessary or desirable."

The Court of Appeals also rejected a similar argument that the buy-sell agreement was applicable to husband's 90% partnership interest since the record did not reflect that husband had plans to sell his interest in the partnership. The payments of the wife of \$351,345 interest

were spread over 84 months with no interest. Wife claimed that this was error because she claimed this was an *in solido* alimony award rather than a division of the marital property. The Court reasoned under the analysis of **Price v. Price**, 472 S.W.2d 732 (Tenn. 1971), that interest did not accrue on the judgment until it became due and in this case it was due in 84 installments and thus interest was not properly accessible. The valuation was also complicated by the fact that the restaurants had been recently acquired and there were not lengthy earnings history. This most interesting opinion was written by Senior Judge Donald Harris but Judges Patsy Cottrell and Frank Clement joined in the opinion.

(b) Division of Assets

Keyt v. Keyt (Tenn. S.Ct. Dec. 19, 2007). 2007 WL 4409712, 244 S.W.3d 821 (Tenn. 2007). In an 18-year marriage with one child, the husband with three years of college, was employed by his family business service, Transport, Inc., and based in Putnam County. He had been gifted stock, which according to the tax return, was valued at \$253,229 at the time of marriage. In 2002, husband's father and the remaining shareholders, agreed to sell their stock in the business for \$18,000,000 which resulted in net proceeds from the sale to husband of \$1,283,367. Husband also retained a 14.24% interest in the real estate reserved from the sale which was valued at \$709,904.

The Court of Appeals addressed two issues: (1) whether the increase, if any, and the value of husband's separately owned stock interest in the family owned company for which he worked, qualifies as marital property and, if so, (2) whether the chance of correctly assess the increase in value. Chancellor Vernon Neil findings in the case were not affirmed to the end that he held that the increase in husband's separate property was marital and the Court of Appeals decision in this matter was reversed. Key to the opinion written by Justice Connie

Clark is the finding that “nothing in the record demonstrates to us that husband’s contributions substantially led to the increase in the value of the company stock.” Husband performed duties of an average employee. They were not managerial; they did not substantially contribute to the profitability of the business. This case has an excellent discussion and analysis of cases that have found where both parties substantially contributed to the appreciation of separate property, that value would be treated as marital and also contains an interesting dissent from Justice Gary Wade who felt that the husband’s long-term employment with the company substantially contributed to the preservation and appreciation of this separately-owned stock and was upheld that increase in value during the marriage would qualify as marital property.

Civil Procedure

(a) Spoliation

Cincinnati Insurance Company v. Mid-South Drillers Supply, 2008 WL 220287 (Tenn. Ct. App. January 25, 2008). The issue being presented on appeal is whether a trial court may exercise its discretion to grant under Rules 34 and 37 of the *Tennessee Rules of Civil Procedure* a dismissal of a party’s case for spoliation of evidence where spoliation may have been inadvertent rather than intentional. The Tennessee Court of Appeals held that the trial court does have the discretion to sanction a party by dismissing their case where the destruction of evidence severely prejudices an adverse party’s defense irrespective of whether the destruction was inadvertent or intentional. In this case a blue hose was destroyed apparently in testing, and it was a critical piece of evidence that justified a grant of summary judgment in a case that was worth over \$105,000.

(b) Sanctions to Attorney.

GMAC Bank v. HTFC Corporation, 248 FRD 182 (B.D. Pa. 2008). This is a case of first impression in Federal Court which, under a motion to compel deposition testimony in addition to a sanction against the defendant for misconduct at his deposition, defendant's attorney was also ordered to pay plaintiff and was jointly and severally with the defendant \$13,026 in attorney fees and expenses plaintiff incurred in connection with this motion to compel defendant's testimony. The inaction of the defendant's attorney in faith of the defendant's gross misconduct at his deposition impeded and contributed to the total frustration of the deposition and thus the attorney was jointly and severally liable with the defendant an additional \$16, 296 in costs and fees. In this case, the deponent used the "f---" word repeatedly through his deposition, told the questioner to "shut up" and was generally belligerent and completely inappropriate.

Division of Assets

(a) Mother-in-law does not succeed.

Catherine Smith v. Sally Smith and John Smith (WS Tenn. App. September 24, 2008), 2008 WL _____. In an appeal from Judge Soloman's court, there was a joinder of the mother-in-law, Catherine Smith in the divorce case where the mother-in-law claimed that certain monies she had given the couple were in fact loans. Mother-in-law had filed a separate lawsuit after the divorce was filed in Chancery Court against husband and wife, alleging breach of an agreement to replay and seeking a security interest in the marital home. She also filed a lien lis pendens. The husband allowed a judgment to be taken against him in mother's Chancery suit but the Circuit Court granted wife's motion to join the husband's mother in the divorce proceeding as a necessary party. After the transfer, there was found no

agreement by the wife to repay but Judge Soloman and the mother-in-law's claim against the wife was dismissed. Husband's mother was awarded damages against the husband for the full amount of the money loaned to be paid out of his share of the sale of the marital home; however, the husband's share of the marital home sale was diminished by a \$5,000 attorney's lien and a \$26,552 *in solido* judgment which depleted his share of the net proceeds leaving the mother-in-law with nothing but a bad attitude. Judge Kirby for the Western section reminded us that it is elementary that when two courts have concurrent jurisdiction of a particular subject matter that the tribunal which first obtained jurisdiction retains it and, thus, it was found that the transfer of the Chancery case to Circuit was proper and the judgment of the Court of Appeals affirmed.

(b) Contribution to Appreciation.

Marciante v. Perry, (MS Tenn. App. March 26, 2008). 2008 WL 820502. After a 13-year marriage, husband was 40 years old and wife 36 years old. It was husband's second marriage and wife's first with no minor children. The appeal revolved around the classification of assets specifically premarital assets that have appreciated and substantial marital debts. Husband had owned several Florida condos and continued to own those during the marriage in his separate name. The condos were rented whenever possible and eventually paid off their mortgages. On many occasions during the marriage, husband went to Florida to work on the condos and improve them, adding to their value. The Court of Appeals affirmed the decision to classify the appreciation of those condos as marital assets stating that "although wife did not physically perform the work on the condos, her continued employment in Tennessee and her maintenance of the marital home while husband gone were 'real and significant,' though indirect contributions to the increased value of the property. Wife was

ordered to pay to husband \$125,000 for his interest in the marital home rather than the \$38,000 which the trial court had ordered in order to make the distribution of assets equitable. This corrected distribution resulted in wife being awarded 57% of the assets and husband 43%. The Appellate Court also reversed the trial court on the division of debt finding it was equitable that the parties share the responsibility for the joint American Express account of \$41,000 but that husband should pay the entire marital debt on the account that he charged \$47,000 for his daughter's education.

(c) Six years down the drain.

Candy Adams v. Anthony Adams, (WS Tenn. App. June 30, 2008) 2008 WL 2579234. Husband and wife began living together in late 1998, became engaged in 1999 but did not marry until July 31, 2004. No children were born of the marriage. It was wife's second marriage and husband's third. A bench trial of the divorce was conducted on November 7, 2006. During the parties long engagement but brief marriage, they purchased a home in wife's name only and the deed of trust in wife's name only. Wife financed the construction of the home with a credit card in her name. Husband performed manual labor on the model home during and after the construction. During the marriage, the parties also operated a business that proved unsuccessful. Wife eventually left to start her own business in a different field around the same time as the divorce action. The parties introduced evidence on the value of the home, various personal property and a significant amount of credit card debt that resulted from the marriage. After the close of the evidence, the trial court granted the wife the divorce and awarded the home and debt associated with the home to her. It ordered the sale of some business property and application of the proceeds to the parties debt. The remaining debt that was not classified as marital or separate was not divided. Both

parties appealed. Husband argued that the trial court erred in not awarding him his share of the parties business and the increase in the value of the marital home. Wife argued that the trial court erred in failing to designate the assets and debts as marital or separate and to divide them between the parties. On appeal, the trial court's decision not to award the husband a share of the failed business or a share of the increase in the value of the parties' home was affirmed, but the remainder of the judgment was remanded for an allocation of the personal property and debt.

(d) Appreciation issue and fairness.

Dawson v. Dawson, (E.S. Tenn. App. September 5, 2008), 2008 WL 4117854. In an 18 year marriage, husband and wife moved into a home which husband had been living in on land owned by his parents. A year after the marriage, the parents deeded the real property to husband and wife. Both husband and wife worked during the marriage. Wife did chores around the farm and also paid for and installed certain improvements to the marital home. The trial court awarded 80% of the marital assets to the husband and 20% to the wife. On appeal, the Court of Appeals, reviewing this division as well as the broad discretion that a trial court would have, remanded the case to the trial court to make a 60-40% division with the husband still obtaining 10% more of the marital assets in recognition of the contributions that he brought into the marriage but giving wife more credit for her contributions during the marriage to the acquisition and contributions and preservation of the marital estate.

Evidence

(a) Computer documents admitted.

Easterling v. Easterling, 2007 WL 4530831 (MS Tenn. App. December 21, 2007). American Express cardholder, Elaine Easterling, obtained a guest credit card for her future

daughter-in-law with the understanding that the future daughter-in-law would reimburse her for any charges. Substantial debt was incurred on the account and the mother-in-law was forced to take out a \$32,000 home equity loan to pay off the American Express leaving a balance of approximately \$60,000 owed. At trial, the daughter-in-law had a judgment of \$93,500 added against her. On appeal, she claimed that the American Express records, which had been printed out off the computer showing plaintiff's account activity, were inadmissible hearsay under Rule 801. The Middle Section of the Court of Appeals, Judge Bennett, in delivering the opinion, found that these records may represent the "computer's self-generated record of operation" rather than "computer stored human statements or assertions which have been retrieved from the computer." **State v. Meeks**, 867 S.W.2d 361, 375 (Tenn. Crim. App. 1993). There is Tennessee case law indicating that such self-generated computer records do not constitute hearsay and that their admissibility hinges upon the reliability of the computer system. See **Meeks**, 867 S.W.2d at 375-376; and **State v. Hall**, 976 S.W.2d 121 (Tenn. Crim. App. 1998). In any case, the statement of evidence in the record is not clear as to whether any type of foundation was laid for this evidence. In this case, there was no need to decide if there was an error or not because the plaintiff independently testified to the amounts owed and the American Express records further supported plaintiff's testimony.

Mediation

Shell v. Shell, 2008 WL 2687529 (ES Tenn. App. July 9, 2008). Wife filed for divorce after an 11-year marriage. Husband was a dentist and wife was a landscaper. The parties went to mediation for a full day and completed mediation with the parties entering a mediation agreement that was reduced to a typed document and signed by the parties, the

attorneys and the mediator. The mediation agreement provided for division of the property and the parties were divorced from each other on stipulated grounds. The mediator made a final report of the mediation to the court and stated that mediation resulted in a settlement of the case. Wife then refused to execute the marital dissolution agreement and final judgment and instead nonsuited her case and refiled for divorce on the same day. The trial court ultimately set aside the nonsuit, tried the issues raised and approved the mediated settlement and granted the parties a divorce. On appeal, this decision was affirmed with the Appellate Court reasoning that the rule of voluntary nonsuit is a matter of right; however, plaintiff's right to voluntarily dismiss without prejudice is subject to exceptions expressed in Rule 41.01(1) as well as an implied exception that prohibits nonsuit when it would deprive the defendant of a vested right acquired during the course of a litigation. Anderson v. Smith, 521 S.W.2d 787, 790 (Tenn. 1975).

Prenuptials

What is necessary?

Homra, et al v. Harold Nelson, 2008 WL 684542 (WS Tenn. App. March 14, 2008).

Husband and wife were married in 1993 in a second marriage for both and entered into an antenuptial agreement. After 10 years of marriage, Mrs. Nelson was diagnosed with Alzheimer's Disease and she had executed a durable power of attorney naming her two children from a prior marriage as her attorneys in fact. For approximately a year, Mr. and Mrs. Nelson lived in a retirement assisted living center but she eventually progressed to where she was no longer able to live there and her husband and children placed Mrs. Nelson at a nursing home in Jackson, Tennessee. The controversy arose over paragraph 3 of the parties' antinuptial agreement that required the husband "to be responsible for providing food and

other daily necessities for the parties following the marriage.” The trial court found that the expenses of being in a nursing home are daily necessities for Mrs. Nelson and ordered the husband to be responsible for same under the terms of the antinuptial agreement. On appeal, this was viewed as a mixed question of law and facts and Judge Crawford and Judge Kirby affirmed the trial court’s opinion finding that the husband was responsible for paying the nursing home but there is a strong dissent by Judge John Everett Williams, stating that the antinuptial agreement should be reviewed in its entirety which also included that each of the parties would have separate Medicare supplements and pay for that separately as well as pay for debts separately and thus he would only hold that Mr. Nelson was obligated to provide such items as toothpaste, deodorant and toiletries but not extraordinary medical expenses.

Sattler v. Sattler, filed October 13, 2008 (Court of Appeals, Middle Section). In this case, the Court of Appeals invalidated a unilateral prenuptial agreement signed by the husband and sought to be enforced by the Wife. The Court of Appeals’ own description of the agreement is as follows:

In August, a month after their first meeting, Mr. Sattler started talking about marriage. Mrs. Sattler was cool to the idea at first and when she expressed concern about quitting her job and selling her home, he repeatedly told her he would give her “whatever she needed” to feel financially secure in marrying him. At Mr. Sattler’s suggestion, they briefly discussed a prenuptial agreement, and he asked his attorney, Jack Lowery, to propose an antenuptial agreement whereby she would receive \$100,000 per year for each year they were married. Following a brief discussion with Mr. Lowery, Mrs. Sattler told Mr. Lowery that she would discuss the proposal with Mr. Sattler and that one of them would contact him when a decision was made. After speaking with Mr. Lowery, she told Mr. Sattler that she did not like the terms of the antenuptial agreement as outlined by Mr. Lowery. She also told Mr. Sattler that she was not looking for an agreement to “reward” her for staying married to him; instead, she wanted an agreement that would “penalize” him if he divorced her.

Thereafter, there was essentially no discussion of an antenuptial agreement. Instead, on September 14, 2003, Mrs. Sattler walked into the bedroom and presented Mr. Sattler with a handwritten agreement she had prepared. Although the parties’ dispute

the circumstances surrounding the events of September 14, 2003, it is undisputed Mrs. Sattler wrote and presented the following for him to sign:

After we are married: I promise to put in Gay's personal savings a substantial amount (minimum \$50,000.00 year) every year as long as we are together. I will put both daughters through college and purchase them each a car. I agree that we will buy, remodel or build another home in Duck Key, FL. This process will begin within 6 months, with knowledge that this will take longer to complete than 12 months. I agree to the substantial remodel of the TN house to begin immediately. I will add a pool, too. I agree to put Gay's name on the house and in the event of my death they will be hers. In the event of a divorce they will remain ½ mine. Mr. Sattler testified at trial that the document he signed contained only two paragraphs, not three. He further testified that when he signed the document it was apparently folded, unbeknownst to him, so that the third paragraph was hidden from his view. He testified that he signed the document because he was voluntarily performing the requirements of the first two paragraphs.

After reading it, Mr. Sattler dated and signed the bottom of the handwritten document.

After a touching marriage proposal which involved Mr. Sattler placing a diamond ring on his toe and having Ms. Sattler remove his sock to find it, the parties were married. The marriage lasted a year and a half, and the divorce action lasted two years after that. The trial court upheld the agreement, but the Court of Appeals reversed, finding that neither party had "fully and fairly" disclosed to the other his or her assets, liabilities and income, nor was there any showing of either party gaining an independent knowledge of the other's financial condition, as required under Tennessee law for a valid prenuptial agreement. The Court of Appeals held that

When the unilateral agreement was signed by Mr. Sattler, the parties were in a confidential relationship; therefore, each of them owed the other a duty to exercise good faith in all matters bearing upon the agreement. Mrs. Sattler failed to establish by a preponderance of the evidence that there had been full and fair disclosure prior to Mr. Sattler signing the unilateral agreement. Moreover, we have concluded that Mrs. Sattler did not act in good faith because the unilateral agreement is wholly one-sided and in Mrs. Sattler's favor, she wanted the agreement in order to "punish him" if they divorced, and Mr. Sattler did not have the opportunity for an attorney to review the

agreement and provide independent advice of counsel to him prior to executing the agreement.

Id.

Retirement

Division of Accounts and Contractual Ambiguity.

Pierce v. Pierce, (ES Tenn. App. June 26, 2008). 2008 WL 2557363. In a post-divorce case, wife asked the court to find the husband in contempt for his purported failure to insure wife's share of his retirement benefits under the parties MDA. The MDA awarded wife a share of the retirement accounts with Boilermakers and National Guard." Wife argued that the phrase "retirement accounts" with the National Guard was in husband's civil service, which he earned from a fulltime week day job that was connected but distinct from his weekend National Guard duty at the Armory. Husband points out that the National Guard retirement account and the civil service annuity are separate accounts and argues that because the MDA did not grant wife any portion of the civil service account, it should go to him. After a bench trial, the court adopted wife's interpretation and awarded her one-half of the civil service account which was affirmed on appeal. The Court of Appeals found that the contract was ambiguous but it could not be interpreted and husband's self-serving manner in the agreement did not intended to be awarded solely the civil service retirement annuity, he should have said so directly in the MDA. The language was somewhat ambiguous since accounts were not specified but the court determined that wife's testimony was more credible and that husband had to join the National Guard in order to obtain the civil service provision and that both offices were located in such close proximity that wife could have confused those for being National Guard related.

Cardella v. Cardella, (WS Tenn. App. Sept. 17, 2008) 2008 WL 4367306. Wife filed a claim for negligent transmittal of a venereal disease relying upon the case of **Hamblen v. Davidson**, 50 S.W.3d 430 (Tenn. Ct. App. 2000). Husband admitted to having one extramarital affair but he and his paramour testified that they both wore condoms. Husband conceded that he does in fact have herpes Simplex 2 virus; however, husband asserts that he did not know he had the virus until January of 2007. The trial court found that during husband's infidelity, he continued to engage in sexual intercourse with the wife, placing the wife in a position of risk. The threshold question was "if a reasonable person would not have foreseen harm, then there was no duty of care, regardless of whether defendant's acts caused harm to the plaintiff." Damages of \$288,000 were awarded to the wife based on wife's age of 30 years and her life expectancy of 77 years and the cost of lifetime medication, semiannual checkups which came to \$217,000. In addition, wife was awarded \$24,067.13 as alimony *in solido* from the husband in the form of net proceeds from the marital home and husband's interest in an undeveloped piece of real estate. However, the court was found to have erred when it awarded wife alimony *in futuro* of \$1 per month as a means of circumventing husband's potential bankruptcy of the tort award.

Failure to Warn of Angry Wife

In ***Carter v. Bell***, Court of Appeals at Knoxville, filed August 15, 2007, the Husband brought his girlfriend to his home. The Wife found the girlfriend at the home and beat her. The girlfriend sued both the husband and the wife, and was awarded a judgment against both. Husband appealed, arguing that he owed no duty to the girlfriend. The Court of Appeals affirmed the judgment, finding that the husband owed a duty of care to the girlfriend just as he would owe a duty to any invitee to his home. (The court noted that the husband did not owe a

duty to protect his girlfriend from the “dangerous, criminal or intentional act” of a third party. However, he was aware of his wife’s temper, his wife had previously been arrested for assaulting a police officer, and he failed to inform his girlfriend that he was married and still residing with his wife.

Case	Case No.	Trial Court Finding	Disposition	Decided
Allen v. Allen	M2007-00356-COA-R3-CV	Court denied husband's Petition to Terminate \$400.00 monthly alimony in futuro based on material change.	Affirmed.	January 4, 2008
Vaughn v. Vaughn	W2007-00124-COA-R3-CV	Court awarded alimony in futuro in the amount of \$500.00 per month. Father appeals.	Affirmed.	January 18, 2008
Gentry v. Gentry	M2007-00876-COA-R3-CV	Court denied Husband's Petition to Terminate or Reduce Alimony based on material change in circumstances.	Affirmed.	January 31, 2008
Nesbitt v. Nesbitt	M2007-00176-COA-R3-CV	Court awarded alimony in futuro in amount of \$750.00 per month.	Affirmed.	February 4, 2008
Bearb v. Bearb	W2007-00402-COA-R3-CV	Court awarded alimony in futuro to Wife in the amount of \$5,000 per month for ten years and \$2,500 per month thereafter. The trial court additionally awarded Wife alimony in solido in the amount of \$100,000. Husband appeals.	Affirmed.	February 28, 2008
Camp v. Camp	W2006-02644-COA-R3-CV	Court awarded alimony in futuro in the amount of \$1600.00 per month to Wife. Husband appeals.	Affirmed.	February 28, 2008
Mathias v. Mathias	E2006-02294-COA-R3-CV	Court awarded alimony in futuro to Wife in the amount of \$3,500.00 per month. Husband appeals.	Affirmed.	February 28, 2008
Armstrong v. Armstrong	M2006-02713-COA-R3-CV	Court denied request for alimony to wife because she had no pleading requesting any relief before the court.	Affirmed.	March 5, 2008
Mohammed v. Mohammed	W2007-00360-COA-R3-CV	Court awarded alimony in futuro in the amount of \$2,000 to Wife. Husband appeals.	Affirmed.	March 11, 2008

Burnett v. Burnett	W2007-00038-COA-R3-CV	Court awarded alimony in futuro in the amount of \$1,255 per month to Wife. Husband appeals.	Vacated and remanded for recalculation.	March 19, 2008
Moore v. Moore	M2006-02624-COA-R3-CV	Court awarded alimony in futuro to wife in the amount of \$650.00 per month until wife reaches age 62. Husband appeals.	Modified to \$450.00 per month transitional alimony for three years.	March 19, 2008
Failey v. Failey	M2006-02510-COA-R3-CV	Court awarded transitional alimony in the amount of \$250 per week for a period of three years to Wife. Wife appeals.	Affirmed.	April 7, 2008
Solima v. Solima	M2006-01987-COA-R3-CV	Court awarded transitional alimony in the amount of \$1,000.00 per month for 36 months, and alimony in solido in the amount of \$20,000.00 to wife. Husband appeals.	Affirmed.	April 8, 2008
Fulford v. Fulford	M2006-02625-COA-R3-CV	Court awarded \$4,000 per month rehabilitative alimony for four years to Wife. Husband appeals.	Modified alimony award to \$2,000 per month transitional alimony for four years.	April 22, 2008
Hill v. Hill	M2007-00471-COA-R3-CV	Court ordered legal separation instead of granting divorce and awarded \$2,000 per month alimony in futuro to Wife. Husband appeals.	Reversed order of legal separation and remanded for reconsideration of alimony in light of wife's health insurance needs after divorce takes effect.	April 23, 2008
Cole v. Cole	M2006-00425-COA-R3-CV	Court awarded \$600.00 per month alimony in futuro to wife. Wife appeals.	Affirmed.	April 29, 2008
Franklin v. DeKlein-Franklin	E2007-00577-COA-R3-CV	Court awarded \$2500 per month transitional alimony in to wife. Husband appeals.	Reversed.	April 30, 2008
Williams v. Williams	E2007-01747-COA-R3-CV	Court awarded \$780.00 per month alimony in futuro to wife. Husband appeals.	Affirmed.	April 30, 2008
Slaughter v. Slaughter	W2007-01488-COA-R3-CV	Court awarded \$1500.00 per month alimony in futuro to wife. Husband appeals.	Affirmed.	May 8, 2008
Clayton v. Clayton	W2007-01079-COA-R3-CV	Court awarded \$200.00 per month alimony in futuro to wife. Husband appeals.	Affirmed.	May 21, 2008

Davis v. Davis	E2007-01252-COA-R3-CV	Court denied Husband's request for alimony.	Reversed and awarded rehabilitative alimony of \$800 per month for 36 months.	May 29, 2008
Hubbard v. Hubbard	E2007-00849-COA-R3-CV	Court denied Husband's "Motion to Suspend Alimony," ruling that he had failed to prove a material change in circumstances that would justify suspending alimony.	Dismissed Appeal - not an appealable final Order.	May 29, 2008
Strode v. Strode	M2007-00265-COA-R3-CV	Court awarded rehabilitative alimony in the amount of \$2100 a month for 47 months and \$1,300 in the 48th month for a total of \$100,000. Wife appeals.	Affirmed.	May 29, 2008
Cunningham v. Cunningham	W2006-02685-COA-R3-CV	Court found that amount of rehabilitative alimony should be retroactive to date of original divorce decree and not to the date of Order on Remand. Husband appeals.	Affirmed.	June 25, 2008
Long v. Long	M2006-02526-COA-R3-CV	Court awarded \$2,000 per month rehabilitative alimony for 10 years. Husband appeals.	Vacated with regard to duration and remanded for trial court to consider a shorter duration or a "tapering off" of the award.	July 3, 2008
Bottorff v. Bottorff	M2007-01792-COA-R3-CV	Court awarded \$2,800 per month alimony in futuro to wife. Husband appeals.	Affirmed.	July 21, 2008
Williams v. Williams	W2007-00109-COA-R3-CV	Court awarded \$1,000 per month alimony in futuro to wife. Husband appeals.	Affirmed.	July 28, 2008
Evans v. Young	M2007-02054-COA-R3-CV	Court denied Husband's Petition to Modify Alimony based on material change in circumstances.	Affirmed	July 31, 2008
Edwards v. Edwards	E2007-01680-COA-R3-CV	Court awarded \$2600 per month transitional alimony for a period of one year. Wife appeals.	Modified to \$1,000 per month alimony in futuro after transitional alimony ends.	August 8, 2008
Fickle v. Fickle	W2007-01509-COA-R3-CV	Court awarded \$75,000 in alimony in solido to Wife and \$1,500 per month in transitional alimony for a period of five years. Husband	Affirmed.	August 19, 2008

		appeals.		
Hughes v. Hughes	M2007-02216-COA-R3-CV	Court awarded \$1,800 per month rehabilitative alimony for 30 months. Husband appeals.	Affirmed	August 22, 2008
Averitt v. Averitt	M2007-01804-COA-R3-CV	Court awarded \$833 per month alimony in futuro to wife. Husband appeals.	Modified to \$833 per month rehabilitative alimony for a period of five years.	August 28, 2008
Cardella v. Cardella	M2007-01522-COA-R3-CV	Court awarded \$24,067 in alimony in solido to Wife for and alimony in futuro in the amount of \$1.00 per month as a means of circumventing the Husband's potential bankruptcy of the tort award (\$288,000 for negligently passing STD to wife).	Affirmed alimony in solido. Reversed alimony in futuro.	September 17, 2008
Wynns v. Wynns	M2007-00740-COA-R3-CV	Court awarded \$500 per month in alimony to Wife for four years and did not classify type. Wife appeals.	Modified to alimony in solido in the amount of \$1,200 per month for a period of five years.	September 26, 2008
Altmon v. Altmon	E2008-00081-COA-R3-CV	Court awarded \$5,000 per month alimony in futuro to wife. Husband appeals.	Modified to terminate upon youngest child turning age 18.	September 29, 2008

Case	Case No.	Trial Court Finding	Disposition	Decided
Sims v. Sims	E2007-00136-COA-R3-CV	Court ordered husband to pay \$17,200, half of equity in home, at time of foreclosure by Husband's parents, to Wife. Husband appeals.	Affirmed.	January 28, 2008
Maloy v. Maloy	M2006-02463-COA-R3-CV	Court denied husband's motion seeking to enforce the document prepared and signed by the parties, prior to filing for divorce, purporting to divide their property in the event of divorce. The Court divided the marital property, including in the marital estate the social security disability payments that had been received by the husband. The trial court refused, however, to divide the parties' marital debt. Husband appeals.	Affirmed with regards to social security payments included in marital estate and agreement is unenforceable. Reversed and remanded with regard to marital debt.	January 31, 2008
Ferguson v. Ferguson	M2005-02468-COA-R3-CV	Court awarded Corvette, boat and trailer to Wife. Husband claims items are separate property that he owned prior to the marriage. Husband appeals.	Affirmed.	February 13, 2008
Scoggin v. Scoggin	E2007-00579-COA-R3-CV	Court awarded 50% of any distribution of income or proceeds from sale of business to Wife. Wife appeals pro se, stating that she is entitled to other business interests that her attorney did not produce documents.	Affirmed.	February 21, 2008
Mathias v. Mathias	E2006-02294-COA-R3-CV	Court found values to the various properties and divided the marital properties between the parties. The court relied on Wife's expert witness to value the parties' businesses. Husband appeals.	Affirmed.	February 28, 2008

Cook v. Cook	E2007-00750-COA-R3-CV	Court ordered ex-husband to pay one third, by QDRO, of his retirement to wife during divorce proceeding. Numerous QDROs were rejected by plan administrator. In post divorce proceeding, Court ordered husband to pay one third of his retirement plan at the time of the divorce. Wife appeals, claiming that she should received one third of the actual shares.	Affirmed.	February 29, 2008
Armstrong v. Armstrong	M2006-02713-COA-R3-CV	Court awarded 60% of the wife's marital estate to the wife, after setting aside two college funds for the minor children. Wife was charged, however, with the proceeds from the sale of the marital residence that she had received during the pendency of the divorce and had depleted prior to the divorce hearing. Wife appeals.	Affirmed.	March 5, 2008
Sullivan v. Sullivan	E2007-00163-COA-R3-CV	Court granted Huband divorce based on default judgment in 1993. Wife claims that husband knew address or could have easily found it and service by publication was inadequate. Trial court declined to set aside the divorce, but altered the property distribution in Wife's favor and applied its new distribution retroactively, thus resulting in Husband owing a substantial arrearage. Husband appeals.	Affirmed.	March 31, 2008

Snodgrass v. Snodgrass	E2007-00576-COA-R3-CV	Court held that the parties' respective 401(k) accounts after subtracting the premarital portion were marital property, that the monthly pension benefits at the time of the divorce were held to be defined benefit pensions and divided between the parties. Husband appeals.	Reversed as to growth of the premarital portion of the 401(k) accounts were "retirement benefits". Reversed and remanded as to appreciation of the premarital balance of the wife's 401(k). Account should be classified as separate property if it can be segregated from the marital contributions and their gains on remand. Reversed and remanded as to premarital portion of husband's 401(k) account as marital property, subject to the division by the Court under the related doctrines of commingling and transmutation. Affirmed as to equally dividing the marital portion of the monthly benefits from the Alcoa pensions.	March 31, 2008
Failey v. Failey	M2006-02510-COA-R3-CV	Court awarded 43.87% of marital estate to Wife. Wife appeals.	Affirmed.	April 7, 2008
Solima v. Solima	M2006-01987-COA-R3-CV	Court accepted the wife's \$141,197.77 evaluation of the marital estate, of which husband was granted assets totaling \$103,383.77. Husband appeals.	Affirmed.	April 8, 2008

Greer, at al. v. Baker	W2007-00340-COA-R3-CV	Court granted Husband and Wife a divorce, but the division of marital property was held over. Before the property could be divided, Wife died, and her two daughters were substituted as parties. Wife's estate was opened and added as a party. Daughters appeal valuation and division of property.	Affirmed.	April 9, 2008
Summer v. Summer	E2007-01003-COA-R3-CV	Court held that the parties' guitar collection, the vast majority of which was acquired during the marriage, was marital property; and (2) the marital residence, purchased by the Husband prior to the marriage, was separate property, but the increase in value of the residence during the approximately fifteen-year marriage was marital property, because of Wife's substantial contributions to the preservation and appreciation of the marital residence by her homemaking. Husband appeals.	Affirmed.	April 10, 2008
Fulford v. Fulford	M2006-02625-COA-R3-CV	Court divided marital debt and did not allocate wife's debt incurred after the separation to Wife only. Husband appeals.	Affirmed.	April 22, 2008
Hill v. Hill	M2007-00471-COA-R3-CV	Court ordered legal separation instead of granting divorce and divided the marital estate, awarding 60% to wife. Husband appeals.	Reversed order of legal separation and vacated property division, in light of Wife's health insurance needs after the divorce, and remanded for reconsideration of property division.	April 23, 2008
Cole v. Cole	M2006-00425-COA-R3-CV	Court classified Husband's \$310,000 life insurance policy as a separate asset. Wife appeals.	Affirmed. Policy had no cash value.	April 29, 2008
Williams v. Williams	E2007-01747-COA-R3-CV	Court classified an annuity purchased during the marriage, with the husband's separate funds, and with wife listed as the owner as marital property. Husband appeals.	Affirmed.	April 30, 2008

Franklin v. DeKlein-Franklin	E2007-00577-COA-R3-CV	Court divided marital estate and treated two stock brokerage accounts, husband's disability insurance proceeds as marital property. Court also excluded evidence of pre-marital value of Husband's medical practice. Husband appeals.	Affirmed.	April 30, 2008
Franklin v. DeKlein-Franklin	E2007-00577-COA-R3-CV	Husband filed for divorce. Freeman intervened as biological parent of minor child. Court terminated Freeman's rights and awarded legal custody to Husband. Court divided marital estate. Wife and Freeman appeal.	Reversed the termination of Freeman's parental rights and Court's order granting custody of minor child to Husband. Vacated portion of the Court's order distributing the marital home, and remanded for an overall equitable distribution of the marital property .	April 30, 2008
Slaughter v. Slaughter	W2007-01488-COA-R3-CV	Court divided the marital estate. Husband claims that the split was 90/10. Husband appeals.	Affirmed. Husband did not attach Rule 7 chart showing values of property and trial court's values.	May 8, 2008
Clayton v. Clayton	W2007-01079-COA-R3-CV	Court divided the marital estate without placing values on the properties before allocating to the parties. Court held that the parties are responsible for placing values on the property and Husband presented no evidence with regard to values. Husband appeals.	Affirmed.	May 21, 2008
Strode v. Strode	M2007-00265-COA-R3-CV	Court classified a piece of rental property as husband's separate property. Wife appeals.	Affirmed.	May 29, 2008

Smith v. Smith	M2007-00439-COA-R3-CV	Court declined to divide Husband's accrued annual leave, sick time and compensatory time and treat as part of the marital estate. Wife appeals.	Affirmed.	June 4, 2008
Pierce v. Pierce	E2007-01403-COA-R3-CV	MDA approved by the court awarded one half Husband's retirement accounts with National Guard to wife. Husband argues that Civil Service annuity is a separate account and should not be awarded. Court disagreed and awarded half of the annuity to wife. Husband appeals.	Affirmed.	June 26, 2008
Adams v. Adams	W2007-00915-COA-R3-CV	Court awarded divorce to Wife. Husband argues that the trial court erred in not awarding him a share of the parties' business and the increase in value of the marital home. The wife argues that the trial court erred in failing to designate some of the assets and debts as marital or separate and to divide them between the parties.	Affirmed as to award of increase in value of business. Remanded as to designation of property.	June 30, 2008
Bunch v. Bunch	E2007-01475-COA-R3-CV	Court awarded divorce to Wife. Husband claims that the Court erred in valuing Husband's 401k as of the date of the trial rather than the date that the parties separated. Husband also claims that he is entitled to a credit for the monies he put into the parties' joint account for the House payments which unbeknownst to him were not being used to make payments on the Note.	Affirmed	June 30, 2008

Long v. Long	M2006-02526-COA-R3-CV	<p>Court awarded one half of Husband's bonus check, held by the Court Clerk, to the wife as part of the property division. Husband contends that the trial court in essence "double-counted" the funds held by the court clerk, by considering them in setting Husband's pendente lite obligations while also awarding half of them to Wife. Husband also contends that the Court failed to take into account Wife's alleged dissipation of marital assets, (2) inaccurately valued the parties' marital residence, and (3) awarded Husband assets that will incur tax consequences. Husband Appeals.</p>	Affirmed.	July 3, 2008
Campbell v. Campbell	W2007-01374-COA-R3-CV	<p>Court classified improvements made to the husband's home with monies taken from the parties' joint account as the husband's separate property. Wife appeals.</p>	Affirmed.	July 31, 2008
Edwards v. Edwards	E2007-01680-COA-R3-CV	<p>Court distributed marital property 60% to husband. Wife appeals.</p>	Affirmed.	August 8, 2008
Devereaux v. Devereaux	E2007-02189-COA-R3-CV	<p>Court awarded divorce to Wife and Divided marital property. Wife received a vehicle and all personal property in her possession. Husband received all personal property in his possession. Court did not divide real property, as it was subject to ruling in another case. Husband appeals.</p>	Affirmed. Husband failed to raise any of these issues with the trial court and failed to provide a transcript or an adequate statement of the evidence for us to review as to the trial court's factual findings.	August 19, 2008
Fickle v. Fickle	W2007-01509-COA-R3-CV	<p>Court valued Husband's closely held stock and classified appreciation as marital property. Husband appeals.</p>	Affirmed.	August 19, 2008

Woddall v. Woddall	W2007-01880-COA-R3-CV	Court divided marital property. Husband appeals based on classification and division.	Affirmed.	August 20, 2008
Dawson v. Dawson	E2008-00199-COA-R3-CV	Court awarded Husband a divorce and distributed the marital property. Wife appeals.	Vacated and Remanded to the trial court to value items of marital property as necessary to effectuate an equitable division of marital property such that Husband receives 60% and Wife receives 40%.	September 5, 2008
Lout v. Lout	W2007-02704-COA-R3-CV	Court construed the 1993 divorce decree as requiring Husband to pay to Wife an amount equivalent to 28 percent of his military retirement pay. The trial court calculated this amount as one-half the retirement pay received by Husband, multiplied by a fraction representing the number of years the parties were married divided by the number of years Husband served in the military.	Affirmed.	September 9, 2008
Curry v. Curry	M2007-02446-COA-R3-CV	Court classified increase in equity, after husband's down payment, as a marital asset; Court classified Vanguard Account as marital property because funds were commuted into marital estate. Husband appeals based on duration of marriage and asserts that increase in equity, after his down payment, is not a marital asset; Court classified remaining amount of 401k, after subtracting pre-marital balance, as marital funds; Court classified bank account as marital asset due to Wife's name being added.	Affirmed as to equity in home. Remanded to hear further testimony related to whether Vanguard account was transmuted into the marital estate. Affirmed as to 401k. Affirmed as to bank account	September 18, 2008

Odom v. Odom	E2007-02250-COA-R3-CV	<p>Court awarded one half on marital estate to each party. The amount awarded to each party totaled almost three million dollars. Husband and wife raise several issues. Husband: the Trial Court erred when it distributed the funds in his 401k account because the amount ordered to be distributed from that account exceeds the funds actually in that account; (2) the Trial Court erred by overvaluing Husband's interest in Chattanooga Orthopedic Group, P.C.; and (3) the Trial Court erred when it awarded Wife lot 111 in Wyoming. Wife claims Court erred by not awarding her a credit in the amount of the assets dissipated by Husband. Second, Wife claims the Trial Court should have ordered Husband to reimburse Wife for funds she spent on "household, automobile, medical and travel expenses."</p>	<p>Court divided Husband's 401k incorrectly by inadvertently distributing \$726,441.65 more from that account than was in the account. Judgment modified in order to be consistent with the Trial Court's overall determination, which is affirmed. On remand, the Trial Court is instructed to enter a new Qualified Domestic Relations Order consistent with the foregoing and to take other action as necessary, if any, to accomplish this change.</p>	September 30, 2008
Caldwell v. Caldwell	M2007-01205-COA-R3-CV	<p>Court awarded divorce to Wife. Husband appeals the trial court's division of marital assets and the allocation of Wife's retirement account to the Wife, in lieu of alimony. Husband appeals.</p>	Affirmed.	October 13, 2008
Sattler v. Sattler	M2007-02319-COA-R3-CV	<p>Court awarded divorce to Wife and found the unilateral contract signed before the marriage to be valid. The Court awarded property and money to Ms. Sattler based on the contract. Husband appeals.</p>	<p>Reversed and remanded for classification of the parties separate and marital property and for an equitable division of their marital estate.</p>	13-Oct-08

Clure v. Clure	E2008- 00157- COA-R3- CV	Court divided marital property, resulting in Husband receiving greater assets. Wife appeals.	Remanded to trial court to determine whether mathematical error made or payment of \$38,000 more to Husband was not error. If not error, Affirmed.	
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