



**Thursday June 25, 2009
11:30 A.M. – 1:00 P.M.**

“HOT CASES IN FAMILY LAW 2008-09”

**Presented by
Circuit Court Judge Clara Byrd, 15th Judicial District
Wilson, Jackson, Smith, Macon and Trousdale Counties**

**“Important Legislative Issues in the
Tennessee Legislature 2009”**

**Presented by
Steve Cobb, Legislative Counsel to TBA**

**Approved for 1 Hr. CLE – General Credit
1 Hr. CME Family Law**

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HOT CASES IN DOMESTIC LAW AND WHAT THEY MEAN TO YOUR PRACTICE

INCOME TAX EXEMPTIONS

The Child Support Guidelines for Tennessee assume that the primary residential parent will claim the tax exemptions for the parties' children.

TENN. COMP. R. and REGS. 1240-2-4-.03(6)(b)(2)(ii)(2006) provides: "The alternate residential parent, will file as a single wage earner claiming one withholding, and the primary residential parent claims the tax exemptions for the child." (Exhibit 1 attached)

The trial court, however, may award the exemptions to the alternate residential parent as the circumstances dictate. Eaves vs. Eaves No. E 2006-02185-COA-R3-CV 2007 WL 4224715, (ES Tenn. App. November 30, 2007) The Court of Appeals has, on occasion, reversed the trial court's award of the federal tax exemptions to the primary residential parent, where the alternate residential parent had substantial income and need for the exemptions and wife had little or no income apart from spousal support. Burnett vs. Burnett, 2008 WL 727599, (WS Tenn. App. March 19, 2008)

See Long vs. Long, No. M2006-02526-COA-R3-CV (MS Tenn. App. July 3, 2008) (Exhibit 2 attached)

See also, Farmer vs. Stark, No. M2007-01482-COA-R3-CV (MS Tenn. App. March 27, 2008) (Exhibit 3 attached)

**** Practical Tip: Have client figure their taxes with and without exemption. Be sure to check out the Head of Household status and the difference it makes in amount of refund!! Have these figured before mediation to be informed about their future filings! Present Hypothetical returns to Judge.

PARENTING TIME – RELATED TRAVEL EXPENSES

Tenn. Comp. R. and Regs. 1240-2-4-.07(2)(c)(2006) state: “If parenting time-related travel expenses are substantial due to the distance between the parents, the tribunal may order the allocation of such costs by deviation from the presumptive child support obligation, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made.” (Exhibit 4 attached)

A deviation from the Guidelines should be granted only upon a finding that, if applied they would be “unjust or inappropriate”.

See discussion on Long (Exhibit 2 attached)

**** **Practical Tip**: Have the mileage figured and the approximate cost of each round trip. Be sure to figure travel time also.

SPECIAL EXPENSES OF CHILDREN

TENN. COMP. R. and REGS. 1240-2-4-.07(2)(d)(2)(i) and (ii) allow for special expenses to be added to child support if they exceed 7% of child support obligation. The court is required to consider a deviation but is not required to order a deviation. See Farmer vs. Stark, (Exhibit 3 attached)

Special expenses include summer camp, music or art lessons, travel, school-sponsored extracurricular activities (ie. Band, clubs, and athletics) and other activities intended to enhance the athletic, social or cultural development of a child. (Exhibit 6 attached)

**** **Practical Tip**: Have client prepare documentation of these expenses during the marriage.

ALIMONY IN FUTURO

Alimony in futuro is appropriate when spouse is incapable of being rehabilitated or “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.” T.C.A. 36-5-121 (e) (1)

See *Carpenter vs. Carpenter*, No. W2007-00992-COA-R3-CV, (WS Court of Appeals, December 31, 2008), wife awarded alimony in futuro of \$5,500 per month for 10 years and \$4,000 per month thereafter. Wife has a master’s degree and is a licensed clinical social worker. Husband is an attorney. (Exhibit 7 attached)

**** Practical Tip: Have client pull a social security earnings history and estimate amount of retirement.

REHABILITATIVE ALIMONY

Rehabilitation is achieved through re-education and retraining, and the alimony is a means to support the economically disadvantaged spouse through this period.

See *Neamtu vs. Neamtu*, No. M2008-00160-COA-R3-CV (MS Court of Appeals, January 21, 2009), Court awarded wife in futuro alimony due to illness. Court of Appeals affirmed and remanded to trial court to determine attorney fees on appeal. (Exhibit 8 attached)

See also, *Pedine vs. Pedine*, No. E2008-00571-COA-R3-CV (ES Court of Appeals, March 9, 2009), Wife awarded rehabilitative alimony of \$6,000 per month for 4 years followed by \$3,000 per month in futuro. (Exhibit 9 attached)

**** Practical Tip: Make sure client has researched tuition costs, books, and other school related expenses.

CONTEMPT

State ex rel Correll vs. Correll, No. E2008-00845-COA-R3-CV (ES Court of Appeals, January 29, 2009), Trial Court’s order must state on its face “that the person is guilty of willful contempt and has the ability to make the required payment at the time the order is entered. (Exhibit 10 attached)

Court must also rule on petition to modify child support (if previously filed)

**** Practical Tip: Be sure to include key language in order!!!

ALIMONY IN SOLIDO AND DIVORCE JURISDICTION OVER THIRD PARTIES

In *Atkins vs. Motycka*, No. M2007-002260-COA-R3-CV (MS Court of Appeals, November 6, 2008), held trial court cannot issue injunctions against third parties unless they have been added as a party and duly served with process. Husband had standing to challenge the injunction on his mistress due to the fact that the injunction would likely interfere with his right to maintain a relationship with his children. (Exhibit 11 attached)

**** Practical Tip: You can always restrain a parent from having the paramour around the children if, that person is a threat to the welfare of the child. Otherwise, add them as a party so the court may enforce its orders.

This case also held that the trial court could not award an upward deviation in child support without making written findings as to why the application of the Child Support Guidelines would be unjust or inappropriate. (The trial court increased the award from \$1,153 to \$2,500 per month. Court had stated reasons “to aid in payment of the “children’s camp fees” and “to maintain the children’s lifestyle”. Camp fees were allowed. “Lifestyle” was not.)

In *Atkins*, the Trial Court was affirmed in awarding wife \$360,000 in solido and finding that award by assigning husband’s equity in the

residence (due to husband's life long aversion to gainful employment and all the other factors contained in T.C.A. 36-5-121 (i))

**** **Practical Tip:** Be sure to document all expenses.

TRANSITIONAL ALIMONY

In *Harris vs. Harris*, No. M2008-00601-COA-R3-CV (MS Court of Appeals, February 18, 2009), wife was awarded transitional alimony of \$4,000 per month for a period of 4 years with the provision that husband could petition for review of award if her annual earnings increased to more than \$150,000. Six months later wife remarried. (Exhibit 12 attached)

Transitional alimony is non-modifiable unless (1) the parties agree otherwise and the agreement is incorporated in the order, (2) the court provides otherwise in the order or (3) the alimony recipient begins living with a third person.

Original period of transitional alimony was from February 1, 2006, to January 1, 2010. Court reduced alimony to \$1,500 per month beginning March 1, 2008, and terminated effective January 31, 2009. Court of Appeals affirmed and awarded ex-wife attorneys fees on appeal.

**** **Practical Tip:** New spouse's income and expenses must be proven if alimony recipient lives with another person.

TRANSMUTATION OF SEPARATE PROPERTY

***Gleaves vs. Gleaves*, No. M2007-01820-COA-R3-CV (MS Court of Appeals, November 13, 2008), contains excellent discussion of law on transmutation. Court of Appeals awarded wife transitional alimony of \$500 per month for 60 months. (Exhibit 13 attached)**

****** Practical Tip: Be sure to have copy of deed in joint names, refinancing documents and money spent on house.**

PARENTAL RELOCATION

In *Webb vs. Webb*, No. E2008-00862-COA-R3-CV (ES Court of Appeals, February 11, 2009), Mother allowed to relocate child to Caymen Islands. Mother proved her assurance of a job, family support, superior education opportunities, and a better lifestyle. The move was not unreasonable, relocation did not pose a threat of specific and serious harm to minor child and relocation was not vindictive or intended to defeat or deter father's visitation rights. (Exhibit 14 attached)

****** Practical Tip: Include documentation on the schools where the parent intends to move. Bring in witnesses on family support, job opportunities, crime rate, etc.**