

Recent Developments in Tennessee Law

4th Annual Year-in-Review "Update" Course



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The Law According to

PEANUTS

December 2010

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Recent Developments in Tennessee Law

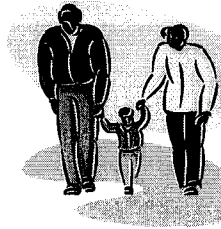
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FAMILY LAW



CASE LAW

1. (A) Court not required to adopt as father's income amounts reported on his tax returns and listed on his paycheck stubs! – (B) Recognition of role of stay-at-home parent is not limited to cases just involving pre-school aged children and under. *Massey v. Casals*, 12 TAM-Bytes No. 45 (Nov. 23, 2009) (WS).

Evidence did not preponderate against trial court's determination of father's income for purposes of setting father's child support obligation based on substantially larger income figure in father's 2004 mortgage application instead of income figures in his W-2s, his federal income tax returns, and his 2008 pay stub; trial court was not obliged to find that father's income was amount indicated on his tax returns and check stubs he proffered to court simply because Child Support Guidelines (Guidelines) cite tax returns and check stubs as examples of usually reliable evidence of income; in light of trial court's finding that father's tax returns and check stubs were unreliable, trial court would have been ill-advised to utilize them in determining father's income; evidence did not preponderate against trial court's finding that mother was not "voluntarily underemployed" based on mother's decision to work part time instead of full time when mother was charged with caring for two very young children in addition to parties' 14-year-old child, mother's long-time employer no longer had full-time position available to her, and recognition in Guidelines of role of stay-at-home parent is not limited to children who are not yet school age.

2. (A) How much did you say I owe in child support?!?! If mother files petition against man for legitimation of child within time period allowed by statute, and man is determined to be child's biological father, court should order him to pay child support retroactive to date of child's birth, and not just to date of filing of petition. . . even if mother's petition is not filed until child is 14 years old! (B) Just because maternal grandmother provided financial assistance to mother to support child did not relieve father of any child support obligations. *K.A.G. v. B.L.I.*, 12 TAM-Bytes No. 49 (Nov. 25, 2009) (ES at Nashville).

In case in which mother filed petition against father seeking legitimation of her 14-year-old son and award of child support, parties stipulated that father was child's biological father based on DNA test results, and father was ordered to pay mother child support retroactive to filing of legitimation petition plus 36 months, trial court abused discretion in failing to award mother child support retroactive to date of child's birth; trial court, despite finding both parties responsible for failure to legitimate child earlier, penalized mother by denying her retroactive support for more than 10 of 14 years that she was responsible for child's support; mere action of seeking award of retroactive child support within time frame permitted by statute cannot render request for child support either "unjust" or "inappropriate"; fact that maternal grandmother provided financial assistance to mother for child's benefit did not relieve father of any portion of his child support obligation.

- 3. Court was without authority to sua sponte modify Georgia child custody decree; at time court entered modification, it had no pleading requesting modification before it and did not first find existence of material change in circumstances. *Wilson v. Baines*, 12 TAM-Bytes No. 49 (Nov. 25, 2009) (MS).**

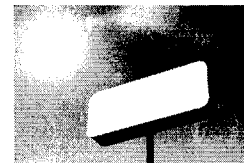
In case in which father registered and sought modification of Georgia decree related to custody of parties' children, and trial court dismissed father's petition, but *sua sponte* modified foreign decree, without pleading requesting modification before it and without finding of material change in circumstances, trial court was without authority to modify final order of custody; trial court did more than merely "tweak" final custody order when it designated new counselor for children and changed days and amount of visitation given to parties, including giving mother almost six additional weeks of visitation throughout year.

- 4. Just because I'm going through "personal crisis" and am alcoholic doesn't mean I'm unfit father! Change of custody from mother to father not warranted, even though father was admitted alcoholic and allowed children to temporarily live with mother while he went through "personal crisis." *Pentecost v. Pentecost*, 12 TAM-Bytes No. 49 (Dec. 1, 2009) (MS).**

Evidence did not preponderate against trial court's finding that no material change of circumstances had occurred warranting change of custody of parties' two children to mother from father when, although children had lived with mother for eight-month period (from 1/08 to 8/08), and father admitted that he is alcoholic and that he had been arrested for DUI in 2/08, father provided stable, satisfactory home environment for children except for short time during early part of 2008, and children lived with father for majority of relevant time period, except for eight-month period during which father acquiesced to their staying with mother during period of personal crisis.

5. ***Even though adult is highly intelligent and educated, parents can still be named co-conservators over his/her property if he/she suffers from mental illness. In re Conservatorship of Jewell***, 12 TAM-Bytes No. 50 (Dec. 4, 2009) (WS as Nashville).

Clear and convincing evidence supported trial court's decision to name parents co-conservators over property and person of adult daughter, who is highly intelligent and educated, but, according to testimony of five physicians, suffers from mental illness.



Divorce lawyer's racy billboard ad draws fire

Folks in Chicago are still buzzing about a billboard that was removed from a posh downtown location after only one week. The ad was placed by two divorce lawyers, Kelly Garland and Corri Fetman, who focus their practices in divorce. The ad featured a photo of a scantily clad – and voluptuous – young woman and a very buff man's torso. Between the photos, the ad read, "Life's short. Get a divorce." It then provided the law firm name and phone number. Other lawyers complained that the sign reflected poorly on the profession. Neighbors also complained. The city, claiming there was no permit for the sign, removed it. Nonetheless, the divorce lawyers in question say that, despite the billboard's short life, it was good for business.

6. ***To all ex-husbands out there required to pay transitional alimony to wife, don't celebrate too quickly when ex-wife remarries. . . because court might not terminate alimony if ex-wife and her new hubby "divide household bills" and judge determines she still needs your support! Audiffred v. Wertz***, 12 TAM-Bytes No. 50 (Dec. 4, 2009) (WS at Nashville).

In case in which husband was ordered to pay wife transitional alimony at time of divorce, and based on wife's remarriage (to Bridgewater), and thus, cohabitation, husband filed petition to terminate his alimony obligation, evidence did not preponderate against trial court's determination that wife had rebutted statutory presumption that either she was supporting third person or that third person was supporting her, such that she no longer needed alimony awarded, when wife presented evidence that she and Bridgewater "divided up the household bills" and demonstrated her continued need for support – even with Bridgewater's contribution to household expenses, wife has monthly deficit of \$42.

7. ***In child custody case, before awarding parent no time with child, trial court must first (1) make specific findings that visitation would be harmful, based on clear and convincing evidence; (2) consider existence of any less restrictive visitation plan that would not harm child; and (3) create least restrictive plan available. Rudd v. Rudd***, 12 TAM-Bytes No. 50 (Dec. 9, 2009) (WS).

In case in which trial court entered permanent parenting plan designating mother as primary residential parent of parties' two children and allowing mother to relocate with two children to Texas, where her parents and other relatives lived, and granting father no parenting time with