**Recent Cases:**

**No Shortcuts:**

***In re Jaxon*** (Court of Appeals, November 2, 2021). In Jaxon, the Court of Appeals vacated and remanded a trial court order modifying child support after finding that the trial court had made its ruling based on submissions by counsel for the mother and father, but without taking any evidence or testimony from either party. As the appellate court found,

The matter before us concerns the trial court’s determination regarding child support for the parties’ minor child. Based on the record before us, we conclude that the trial court did not have evidence before it from which it could make a ruling. We find no indication in this record that there was an evidentiary hearing where the parties were permitted to put on proof subject to cross-examination regarding the setting of child support.

Rather, as we perceive it, the trial court merely accepted Father’s proposed order and the attached exhibits as the “proof” upon which it relied. Indeed, the court’s final order setting child support reflects that its decision was based on “income exhibits” submitted by Father’s counsel. It is well-settled that “[m]erely attaching a document to a pleading does not place that document in evidence.” Pinney v. Tarpley, 686 S.W.2d 574, 579 (Tenn. Ct. App. 1984).

Indeed, this Court has previously vacated a juvenile court’s judgment when it set a father’s child support obligation because “[w]ithout testimonial evidence, stipulations, or properly introduced documentary evidence, there [was] no evidence from which the trial court could have made its ruling in [the] case.” Dayhoff v. Cathey, No. W2011-02498- COA-R3-JV, 2012 WL 5378090, at \*3 (Tenn. Ct. App. Nov. 1, 2012). If “there [is] neither testimonial evidence nor stipulations, the documents included in the record [are not considered] properly introduced.” State ex rel. Moody v. Roker, No. W2019-01464-COAR3-JV, 2021 WL 872686, at \*7 (Tenn. Ct. App. Mar. 9, 2021) (quoting Dayhoff, 2012 WL 5378090, at \*2–3).

Id*.* The Court of Appeals, recognizing that “lives do not stand still during the appellate process,” made clear that the trial court should take proof as to incomes up to the date of the new hearing.

**Jurisdiction, Jurisdiction, Contempt, and More:**

***Sykes v. Sykes*** (Court of Appeals, November 2, 2021). Sykes, a case which traveled from Williamson County, brought a few surprises along the way. For those who thought the Tennessee divorce statute required a party to reside in Tennessee for more than six months prior to filing a divorce action in this state, think again. Here, the wife and child moved to Tennessee from Missouri, and the father sort of moved to Tennessee but returned to Missouri. The father questioned the jurisdiction of the trial court on the divorce, citing Tennessee Code Annotated section 36-4-104(a), which states:

A divorce may be granted for any of the causes referenced in § 36-4-101 if the acts complained of were committed while the plaintiff was a bona fide resident of this state or if the acts complained of were committed out of this state and the plaintiff resided out of the state at the time, if the plaintiff or the defendant has resided in this state six (6) months next preceding the filing of the complaint.

Id. The trial judge (Judge Woodruff) found that, while the wife had not resided in Tennessee for six months at the time of the divorce filing, she had become a bona fide resident of the state through several actions (obtaining a Tennessee drivers’ license, working in Tennessee, living in Tennessee, etc.), and thus this state had jurisdiction over the divorce. As the court of appeals held in regard to Husband’s assertion that he was not a bona fide Tennessee resident:

As to this argument, we first note that it appears to assume that Husband’s residency may obviate the trial court’s jurisdiction over the divorce matter. However, this is an incorrect interpretation of the statute. It matters not whether Husband himself “moved his residence to Tennessee.” Rather, the statute, in relevant part, states that “a divorce may be granted for any of the causes referenced in § 36-4-101 if the acts complained of were committed while the plaintiff was a bona fide resident of this state.” Tenn. Code Ann. § 36-4-104(a) (emphasis added).

As we perceive it, Husband’s residence is technically irrelevant to this statutory question. Rather, the pertinent inquiry is whether Wife was a bona fide resident of this state when the acts complained of in her divorce complaint were committed. Indeed, acts giving rise to a divorce may occur in Tennessee while one of the parties is not a bona fide resident pursuant to the statute. See Barnett, 1998 WL 787043, at \*2–4 (finding jurisdiction to be proper where the wife was a Florida resident, but the husband was a bona fide Tennessee resident and the act complained of in the divorce action occurred in Tennessee).

Id.

The trial court also found that Tennessee had subject matter jurisdiction over matters concerning child custody, even though Tennessee was not the “home state” of the child. The trial court based its finding on the fact that, at the time of the filing of the divorce action, both parents had moved from the original state (Missouri) and that Tennessee could therefore exercise jurisdiction under T.C.A. 36-6-216(a)(2), which provides that

[A] Tennessee court may have jurisdiction if a court of another state does not have jurisdiction under subdivision (a)(1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under §§ 36-6- 221 or 36-6-222, and:

(A) The child and the child’s parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

Id. On this question, it was necessary for the trial court to find that the father was *not* a resident of Missouri at the time of the filing of the divorce action by the wife, which it did. The court of appeals affirmed.

The Husband had more success on appeal in overturning the trial court’s finding of contempt for failure to abide by an order requiring him to appear for a hearing on a date certain, and to bring the child with him to court. The key: Husband had discharged his original lawyer and proceeded *pro se*. The court of appeals held as follows:

Although the trial court was not inaccurate in recognizing that email is an available method of service under Rule 5, Rule 5.02 specifically provides that service sent via email may be effectuated “on any attorney.” Tenn. R. Civ. P. 5.02(2)(a) (emphasis added). Here, Husband was without counsel at the time of email, and the attempted service was on him directly as a pro se individual, not on an “attorney.” Because Rule 5.02(2)(a) specifically provides that email service is proper “on any attorney,” id. (emphasis added), and Rule 5 does not provide that email service is permitted otherwise, the trial court’s reliance on Rule 5 was in error. Service on Husband by email was not proper, and the trial court erred in finding him in contempt with respect to the August 16th order.

Id. The lesson: “*pro se*” apparently does not mean that one is acting as his or her own *lawyer*; rather, it means that one is acting without the assistance of a lawyer, or, in the actual Latin translation, “for oneself.”

The Husband also escaped contempt charges related to his failure to abide by the prohibition against relocation of a minor child during the pendency of the case. The reason? Because the provision in the Williamson County standard statutory injunction does not match the actual statutory provision, which the court of appeals held was mandatory. (Parties can seek additional or different relief than that provided by the statutory injunction, but the statutory version “shall” be included in the service package in a divorce action.)

Here, the statute provides for an order “restraining both parties from relocating any children of the parties outside the state, or more than fifty (50) miles from the marital home, without the permission of the other party or an order of the court.” Tenn. Code Ann. § 36-4-106(d)(5). The Williamson County order “provided for an injunction which restrained parents from relocating children ‘without permission of the Court or by consent order,’ language which is in effect more restrictive than that required by the statute.” As the court of appeals held, “Because the statutory provision relied upon by the trial court was not included in the form order attached to the complaint, it was not in effect as an order against Husband, and Husband could therefore not be held in contempt of it.” Id.

The court of appeals went on to affirm the trial court’s division of property and an alimony in solido award for Wife’s attorneys’ fees. It rejected Wife’s request for her fees on appeal.

**Sperm Donor Rights—NOT!:**

***Harrison v. Harrison*** (Court of Appeals, October 15, 2021). The court of appeals concisely stated the issue raised in this case:

“The primary issue in this appeal is whether Tenn. Code Ann. § 68-3-306 applies to establish Pamela as a legal parent of the children born during the marriage. Tennessee Code Annotated section 68-3-306 states: “A child born to a married woman as a result of artificial insemination, with consent of the married woman’s husband, is deemed to be the legitimate child of the husband and wife.”

The trial court held that Tenn. Code Ann. § 68-3-306 applies to establish Pamela as the legal parent of the children. In so holding, the trial court interpreted the artificial insemination statute in connection with Tenn. Code Ann. § 1-3-104(b) and the United States Supreme Court’s opinion in Obergefell v. Hodges, 576 U.S. 644 (2015).

Mr. Compton asserts that the artificial insemination statute should not apply to confer parentage because, in this context, “consent” requires an “express written agreement” and there was no written agreement between Pamela and Shannon regarding the artificial insemination. He further argues that Tenn. Code Ann. § 36-2-302(5) applies to establish him as the children’s legal father in this case.

Id. The court of appeals, in affirming the trial court’s rejection of the sperm donor’s demand for parental rights regarding the child, held that, “construing Tennessee Code Annotated section 68-3-306 literally, in a non-gender neutral manner, places it at odds with the United States Supreme Court’s holdings in Obergefell and Pavan because it would deny same-sex married couples the same ‘constellation of benefits’ that married opposite-sex couples enjoy. Specifically, it would deem a child born to a married woman as a result of artificial insemination to be the legitimate child of a male spouse of that woman but not the legitimate child of a female spouse of that woman. We are not constrained to this unconstitutional interpretation, however, because courts have a duty to construe a statute in a way that will sustain it and avoid constitutional conflict if such a reasonable construction exists.” As the court further stated,

“Therefore, section 68-3-306 applies in a gender-neutral manner to Pamela who was Shannon’s wife during the artificial inseminations, and both children born to Shannon via artificial insemination during her marriage to Pamela are “deemed” to be Pamela’s “legitimate children.”

Id. The court of appeals went on to reject the donor’s argument that the statute required a written agreement between the married couple (it requires consent, not a written contract), and his argument that he was not permitted to testify at trial regarding his intent to be an active parent. In the absence of a transcript, the court of appeals accepted the words of the final trial court memorandum which referenced hearing testimony from both parties and argument from both counsel.