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Williamson County, Clerk & Master

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

WILL P. COTTEN,	)	
	)	
Plaintiff/Husband,	)	
	)	
v.	)	Case No. 20CV-49582J
	)	
ELIZABETH AUSTIN COTTEN,	)	
	)	
Defendant/Wife.	)	

Karen Johnson Davidson County
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MEMORANDUM AND ORDER

This is a divorce case. On July 9, 2020, Will Cotten ("Husband") filed a complaint for divorce against his wife, Elizabeth Cotten ("Wife"). On September 1, 2020, Wife filed an answer. On April 30, 2021, Wife filed an amended answer and counter-complaint. With this pleading, Wife raised various tort claims. Wife requested a jury hear and decide the tort claims. Wife also adamantly requested the jury hear the divorce case, against Husband's strenuous objections. After conducting extensive research and instructing the attorneys to conduct extensive research on what divorce matters a jury could hear and decide, the Court allowed the jury to hear much of the divorce matters. The Court also found it would be appropriate for the jury to answer very discreet, yes or no questions about the divorce.

In March and April 2022, the Court heard from certain experts in this case; the parties and the Court agreed this expert

testimony would be part of the trial testimony and it would be used by the Court in rendering this opinion. On August 8, 2022, through August 12, 2022, the tort claims and some of the divorce issues were tried to a jury. The jury rendered a verdict in favor of Wife on the tort claims as follows:

I. **Invasion of Privacy**

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten invaded her privacy?

YES ___X___ NO _____

2. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's conduct regarding invasion of privacy.

$ 105,000

II. **Intentional Infliction of Emotional Distress**

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten committed the tort of intentional infliction of emotional distress?

YES ___X___ NO _____

2. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's conduct regarding intentional infliction of emotional distress.

$ 21,435

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III. Unlawful Photography

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct would constitute a violation of the unlawful photography statute, Tennessee Code Annotated § 39-13-605(a)?

YES X NO _____

2. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding unlawful photography was the cause in fact of Ms. Cotten's injuries?

YES X NO _____

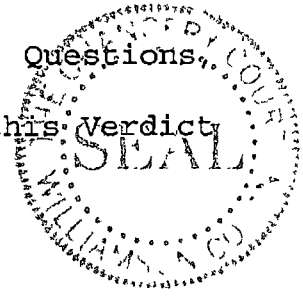
3. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding unlawful photography was the legal cause of Ms. Cotten's injuries?

YES X NO _____

4. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding unlawful photography caused her to suffer damages?

YES X NO _____

If you selected YES to all of the above Questions, proceed to Question #5. If you selected NO to any of the above Questions, skip Question #5 and proceed to the Next Section on this Verdict Form.



5. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's conduct regarding unlawful photography.

$ 210,000

IV. Electronic Tracking of Motor Vehicles

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct would constitute a violation of the electronic tracking of motor vehicles statute, Tennessee Code Annotated § 39-13-606?

YES _____ NO X

2. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding the electronic tracking of motor vehicles was the cause in fact of Ms. Cotten's injuries?

YES _____ NO X

3. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding the electronic tracking of motor vehicles was the legal cause of Ms. Cotten's injuries?

YES _____ NO X

4. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct

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regarding the electronic tracking of motor vehicles caused her to suffer damages?

YES _____ NO ___X___

If you selected YES to all of the above Questions, proceed to Question #5. If you selected NO to any of the above Questions, skip Question #5 and proceed to the Next Section on this Verdict Form.

5. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's conduct regarding electronic tracking of motor vehicles.

$___0_____

V. Observation without Consent

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct would constitute a violation of the observation without consent statute, Tennessee Code Annotated § 39-13-607?

YES _____ NO ___X___

2. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding observation of consent was the cause in fact of Ms. Cotten's injuries?

YES _____ NO ___X___

CHANCERY COURT SEAL WILLIAMSON CO., TN

3. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding observation of consent was the legal cause of Ms. Cotten's injuries?

YES _____ NO ___X___

4. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding observation without consent caused her to suffer damages?

YES _____ NO ___X___

If you selected YES to all of the above Questions, proceed to Question #5. If you selected NO to any of the above Questions, skip Question #5 and proceed to the Next Section on this Verdict Form.

5. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's observation without consent conduct.

$ 0

VI. Stalking

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct would constitute a violation of the stalking statute, Tennessee Code Annotated § 39-17-315?

YES _____ NO ___X___

CHANCERY COURT SEAL WILLIAMSON

2. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding stalking was the cause in fact of Ms. Cotten's injuries?

YES _____ NO ____X____

3. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding stalking was the legal cause of Ms. Cotten's injuries?

YES _____ NO ____X____

4. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding stalking caused her to suffer damages?

YES _____ NO ____X____

If you selected YES to all of the above Questions, proceed to Question #5. If you selected NO to any of the above Questions, skip Question #5 and proceed to the Next Section on this Verdict Form.

5. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's stalking conduct.

$ 0

VII. Wiretapping and Electronic Surveillance

1. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct would

constitute a violation of the wiretapping and electronic surveillance statute, Tennessee Code Annotated § 39-13-601(a)(1)(A)?

YES _____ NO X

2. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding wiretapping and electronic surveillance was the cause in fact of Ms. Cotten's injuries?

YES _____ NO X

3. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding wiretapping and electronic surveillance was the legal cause of Ms. Cotten's injuries?

YES _____ NO X

4. Do you find that Ms. Cotten has met her burden and proved by a preponderance of the evidence that Mr. Cotten's conduct regarding wiretapping and electronic surveillance caused her to suffer damages?

YES _____ NO X

If you selected YES to all of the above Questions, proceed to Question #5. If you selected NO to any of the above Questions, skip Question #5 and proceed to the Next Section.

CHANCERY COURT SEAL WILLIAMSON CO. TN

5. Please fill in the amount of money, if any, that would reasonably compensate Ms. Cotten for her damages as to Mr. Cotten's conduct regarding wiretapping and electronic surveillance.

$ 0

Proceed to Next Section.

VIII. Punitive Damages

1. Do you find that Ms. Cotten met her burden and proved by clear and convincing evidence, a standard that is higher than preponderance of the evidence, the Mr. Cotten, Will P. Cotten, acted intentionally, recklessly, maliciously, or fraudulently?

YES X NO _____

Please total the amounts of money, if any, you have awarded to Ms. Cotton here:

Invasion of Privacy:	$ 105,000
Intentional Infliction of Emotional Distress:	$ 21,435
Unlawful Photography:	$ 210,000
Electronic Tracking of Motor Vehicles:	$ 0
Observation Without Consent:	$ 0
Stalking:	$ 0
Wiretapping & Electronic Surveillance:	$ 0

The jury later awarded Wife $125,000 in punitive damages against Husband.

Total Amount of Award to Ms. Cotten: $ 461,435.00

As for the divorce claims submitted to the jury, Wife's counsel drafted questions for the jury to answer about the divorce. After comments from both parties and revisions by the Court, the following questions were asked and answered by the jury:

1. Has Mother performed the majority of parenting responsibilities relating to the daily needs of the children?

   Instruction: Parenting responsibilities can include, but are not limited to, getting the children ready in the morning, taking the children to the medical appointments, feeding the children, taking the children to school, giving children a bath, preparing the children's meals, reading books, doing bedtime routines, laundry, and shopping or acquiring children's clothes.

   Yes _____ No X

2. Has Father performed the majority of parenting responsibilities relating to the daily needs of the children?

   Instruction: Parenting responsibilities can include, but are not limited to, getting the children ready in the morning, taking the children to the medical appointments, feeding the children, taking the children to school, giving children a bath, preparing the children's meals, reading books, doing bedtime routines, laundry, and shopping or acquiring children's clothes.

   Yes _____ No X

3. Has there been any evidence of abuse to the children?

Yes_____ No__X___

4. Has there been any evidence of abuse to any other person?

Yes_____ No__X___

a. If so, were the children present?

Yes_____ No__X___

5. Do you find that Will Cotten has physically abused Elizabeth Cotten?

Yes _____ No __X___

6. Do you find that Will Cotten has sexually abused Elizabeth Cotten?

Yes _____ No __X___

7. Do you find that Will Cotten has emotionally abused Elizabeth Cotten?

Yes _____ No __X___

a. If so, were the parties' children present during any act of abuse?

Yes _____ No __X___

On September 22 and 23, 2022, the remaining divorce issues were tried to the Court only. Husband has admitted fault in this divorce and, therefore, the Court previously granted Wife a divorce based on Husband's inappropriate marital conduct. This Memorandum and Order addresses the division of the marital estate, which party shall be the primary residential parent, the parenting schedule, and attorneys' fees. The Court hereby affirms the jury verdict and

has taken into consideration the jury's verdict and answers to the questions posed.

On January 31, 2023, Husband submitted his Affidavit of Fees and Expenses to which Wife lodged an objection. On February 22, 2023, a hearing was held regarding the parties' attorneys' fees and litigation expenses. On March 10, 2023, Husband filed a supplemental attorneys' fees and expenses affidavit and on March 21, 2023, Wife filed an amended affidavit of attorney's fees and expenses.

FINDINGS OF FACT

I. The Parties

The parties have been married for twelve years and have two children together: John Austin who is five years old and Meredith who is three years old.

Husband is thirty-eight years old. He grew up in Lebanon, Tennessee and graduated high school in 2003. He attended Lipscomb University and majored in management and marketing.

Husband worked in landscaping for a while. He worked at Western Express at night during college. After college, Husband worked for supply chain companies. At the time of trial, Husband worked at Asurion where he had worked for four years running pilots and tests for clients. Husband works from home a lot, but does go to the office about three days per week. At the time of trial, Husband was compensated through salary ($125,000 per year) and was

eligible for a bonus. Husband did not receive stock options every year; but the company selects individuals who can receive them and Husband received stock options in 2022. Husband also received a department bonus in 2022. With the bonus, Husband earned $147,000 in 2022. Husband had no other income at the time of trial. Thus, Husband's two-year average annual salary for the years 2021 and 2022 was $136,000 and is the amount the Court will use for child support purposes.

Wife is thirty-eight years old. She attended Lipscomb University and received degrees in marketing and human resource management - double major. After the parties married, Wife worked at Ascension as a project manager to implement two software systems. Wife later worked at Info Works and did very well there. Wife now works for Optum Services, Inc. as the Director and Project-Program Manager. She has worked there eight years and her annual salary is $157,933. In 2021, Wife earned a $26,000 performance bonus which was paid to her in 2022. In early 2021, Wife was offered a $20,000 retention bonus in exchange for her staying with her employer for one year from the time it was offered. The Court has added Wife's annual salary of $157,933 and the $26,000 performance bonus in 2022 to calculate a salary of $183,933 in 2022. Then, the Court calculated a two year average of $183,933 in 2022, plus Wife's annual salary of $157,933 and divided by two for a two year average of $170,933. This is the amount of

annual income the Court will use for Wife for child support purposes. The Court did not include the $20,000 retention bonus because it was a one-time payment.

II. The Beginning

The parties met their senior year of college. They dated for two and a half to three years and then married on June 19, 2010.

Husband had purchased a house on Sutton Hill Road in Nashville, Tennessee in 2009. The parties lived in the house for a few years after they first married until they moved to Brentwood, Tennessee in 2013. The parties then rented out the Sutton Place house. The parties agree the Sutton Place house is marital property.

Husband denies he ever assaulted Wife. The jury apparently found Husband credible and found he has never assaulted Wife. Husband did call the police on Wife in 2011 because they had a fight in the winter. Wife locked Husband and the dog outside. Husband was in shorts and a tee shirt. The jury also found Wife did not abuse Husband.

III. The Break-up

In the early days of the parties' marriage, Wife worked seventy to eighty hours per week and was rarely home. Husband wanted to spend more time with Wife. The parties went to marriage counseling early on in their marriage. The parties were not intimate very often, which was a problem. Wife got pregnant with

their first child, John Austin, in 2016. It was a planned pregnancy. The marriage was not much better after the birth of the first child. Nevertheless, the parties decided to have another child.

The parties went to counseling but it did not work. Also, the parties met with their families about the marriage. In May 2020, the parties had a meeting at their house with family members to discuss the parties' failing marriage.

Husband moved out of the marital residence because their "whole marriage was hostile." Husband slept on the couch for the three months before he moved out because Wife would not let him sleep in the guest room. Husband moved to his aunt's house in Lebanon for a couple weeks and then into his parents' house for a while. When the Sutton Place renters' lease ended, Husband moved into it. Husband exercises his parenting time at this house.

IV. The Children

The first year of John Austin's life, Husband worked from home and took John Austin to and from daycare. Sometimes Wife transported John Austin to and from daycare. The morning routine was John Austin awoke and Wife nursed him. Husband got John Austin ready for daycare and made sure they had bottles, wipes, etc. Husband then took John Austin to daycare. After work, Husband picked up John Austin and went home.

On August 8, 2019, the parties' second child, Meredith, was born. Husband changed jobs to make more money and had to commute to Smyrna, Tennessee for work. Husband continued to drive the children to daycare, although Wife sometimes transported the children to daycare.

At the time Husband filed for divorce in July 2020, Meredith was only eleven months old and Wife was still nursing her. Therefore, the Court ordered a parenting schedule to accommodate the nursing schedule and required the parties to exchange the children every two days.

John Austin is healthy and energetic. He has "an engineering inquisitive mind." Meredith is very sweet. The children play with their cousins on Husband's side of the family and are very close; they get together very frequently. Exhibit 8 is a collective of pictures of Husband with the children.

Husband met Marie Woodlee in July or August 2021 at the swimming pool. Ms. Woodlee's children and the Cotten children would play together. Ms. Woodlee is a pediatric physical therapist. Over time, Husband and Ms. Woodlee became friends as their children played together. Then, in early fall 2021, Husband and Ms. Woodlee began dating. Later, Wife learned of the dating and Wife filed a motion to keep Ms. Woodlee away from the children. As a result of the hearing on that motion, the Court declared the parties divorced on July 5, 2022.

When Husband has the children, they are very structured. The children awake at 7:30 a.m. and eat Krispix or Cheerios for breakfast and eat vitamins. Husband allows the children to watch something educational on television while he packs their bags and gets their lunches ready. Husband gathers their toys and "lovies" and "buddies." After everything is packed, Husband takes the children to school or to his parents' house in Mt. Juliet. At the end of the day, Husband goes to Mt. Juliet to pick up the children and take them home. Husband does bath and dinner, has play time, and reads books to the children. The children do not have problems sleeping through the night at Husband's house. John Austin will occasionally defecate a little in his underwear and not tell Husband or his parents. Also, for a while, John Austin tried to intimidate Meredith with his hands on his hips like Captain America. Husband is not alarmed about that behavior and neither is the Court. Husband attended the parenting education seminar early on in this divorce.

Husband provides the children with all their medical needs while they are with him. Meredith uses an inhaler and nasal spray for allergies. There are no particular educational or emotional needs for either child. The children see Husband's parents at least four times per week. Husband has never harmed either child. Husband has no concerns about Ms. Woodlee being around the children. She is good with them and the children in the area love Ms. Woodlee.

The Court has no concerns about Ms. Woodlee being around the parties' children.

Husband does not feel the every-other-day exchange is good for the children. Husband wants 50-50 parenting time with a week-on/week-off schedule in order to have fewer transitions for the children. Also, packing and transferring the children is cumbersome. Husband would like to exchange the children on Saturdays at 10:00 a.m. at the Brentwood Police Department.

Wife called the pediatrician about comments Meredith made. The pediatrician said Wife needed to call the Department of Children's Services ("DCS") and report it. Wife called DCS and they scheduled a session at Our Kids for a medical examination of Meredith and a forensic interview at a facility in Nashville. Wife does not allege any wrong doing by Husband as to this situation. Thus, the Court will not consider this situation in deciding custody or parenting time.

Wife has taken fifty-seven photographs of the children to show bruises on them. The photographs begin in July 2020 and go to August 2021. Wife does not claim the bruises shown in the photographs are evidence of abuse by Husband. Wife does not claim Husband sexually abused the children. The jury found Husband did not abuse the children. Accordingly, the Court will not take the photographs into consideration when deciding custody or parenting time.

Wife secretly recorded co-parenting sessions with Tammy Daughtery sometime in the first three months of 2021. Wife did not tell Ms. Daughtery she was recording the sessions.

Wife claimed John Austin made disclosures to her during the last week of trial. He initially told Wife "the boys at school touched me." John Austin later said he was wearing his pajamas when the boys touched him. Wife told the directors at the school John Austin had said boys at school touched him inappropriately and they did nothing except to say they would pray for her. Nevertheless, Wife returned John Austin to the school even though he had made these disclosures. The Court finds Wife not credible on this issue and finds Wife did not believe John Austin. The Court will not take this situation into consideration when deciding custody or parenting time.

The parties have had 50-50 parenting time for the last two years, except for the three months during which Husband could not see the children because of an Order of Protection. Husband has had 50-50 unsupervised parenting time since March 2022. The parties exchange the children every two days.

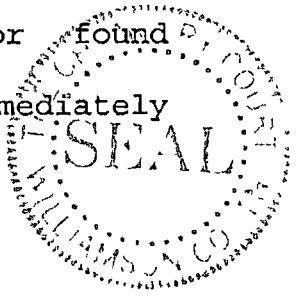
Caitlin Coile is a therapist at the Refuge Center and is the Director of the Child and Teen Program. Ms. Coile's records for John Austin are Exhibits 50 and 51. Ms. Coile began seeing John Austin on September 8, 2021. Wife signed John Austin up for therapy because he was dealing with "emotional deregulation;" Wife brought

him to the first appointment. Ms. Coile saw John Austin weekly for several months. Between September 2021 and December 2021, John Austin was making progress. But, at some point, he regressed and was behaving more aggressively. He began to misbehave in Ms. Coile's office - he would throw objects at the wall or toward Ms. Coile. She told him to stop and he did. In January 2022, John Austin began to shut down.

During therapy between November 2021 and February 2022, John Austin would become very high strung and then calm down. On February 3, 2022, John Austin had an accident in his pants in the therapy office. On February 9, 2022, John Austin started to engage in more aggressive play with the foam swords. John Austin's aggression during therapy was getting worse.

V. Husband's Bad Conduct

As stated above, Husband filed the complaint for divorce on July 9, 2020. After nearly a year of discovery, Wife grew concerned Husband had not turned over all the financial information. Wife remembered Husband had left a laptop at the marital residence when he moved out the year before. So, Wife took the laptop to a computer forensic investigator, Fifth Gear, to search for undisclosed financial information. The Fifth Gear investigator found concerning information, but it was certainly not the financial information Wife sought. Instead, the investigator found concerning pictures and videos on the laptop and immediately



informed Wife about them. Wife then took the laptop to another computer forensic company, Forensic Pursuit. Ultimately discovered on the laptop were pictures of Wife and her sister taken up their skirts, dresses, and shorts, as well as other highly offensive pictures and videos. Links to numerous pornography sites were also found on the laptop as were search terms such as "teen," "pee cam," "toilet cam," and "bathroom cam."

For nearly a year, Wife sought to have Husband admit he had taken the pictures and videos and had uploaded and viewed the pornography and performed the searches to highly offensive websites. Husband made no such admissions on the advice of counsel. However, a couple weeks before the jury trial began, Husband admitted he had taken pictures and videos of Wife and her sister unbeknownst to the two women. Husband took pictures up Wife's sister's shorts and skirt in Tennessee and in Florida while they were on vacation. Husband engaged in this conduct between 2017 and 2019. Husband claims he deleted the pictures when he and Wife separated. Husband further claims he stopped this behavior because he felt guilty in August 2019 when Meredith was born and he saw "this new baby rolling around." Husband claims he also thought of his niece who was five years old and he felt guilty for his conduct. No evidence contrary to Husband's claims was presented.

Husband surreptitiously took pictures and videos of Wife while she was in the shower, bedroom, and kitchen between 2017 and



2019. Husband claims he deleted those pictures and videos as well. Husband also made an audio recording of Wife within the car they both drove while she was in the car. Husband claims he made this audio recording because he thought Wife was having an affair. The Court finds Husband not credible on this issue. Nobody other than Husband saw or heard the videos or audios he recorded. He admits he used them for sexual gratification.

Husband also looked at a lot of pornography during the marriage "because he and Wife were not intimate." Husband does not look at pornography very often anymore. Husband admits to searching for the term "teen." Husband denies he specifically searched for the terms "pee cam," "toilet cam," and "bathroom cam," even though these search terms were found on the laptop in question. Husband denies ever watching video of Wife urinating or defecating.

Wife video recorded her sister in the hospital after childbirth. This video was "backed up" on the parties' computer along with all other videos and pictures the parties took. Husband admits he watched the after childbirth video of Wife's sister for sexual gratification.

Husband denies using the children as tools to accomplish these acts. However, the children were present when some of the videos and pictures were taken.

Robert Kelso is a computer forensic analyst and works for Forensic Pursuit. Mr. Kelso was retained by Wife. Husband's

forensics expert is Dr. Stuart Wells who is a professor at Tennessee Tech. By order of the Court, Mr. Kelso and Dr. Wells met to confer about their computer forensic findings. Mr. Kelso and Dr. Wells agreed there was no child pornography on the computer and no evidence of any effort to locate child pornography on the computer. They also agreed that, in the commercial porn industry, "teen" refers to females over the age of seventeen. According to both experts, commercial pornography websites are not in the business of letting child pornography on their websites because they would get shut down by law enforcement. They do their best to police it, according to both experts.

Husband is currently under an Order of Protection which prevents Husband from having any contact with Wife or her sister, Kate McClinton. Ms. McClinton's children attend the same daycare the Cotten children attend. Consequently, the parties exchange the children at the Brentwood Police Department rather than daycare or Husband's parents take and/or pick up the children from daycare. Husband would like the Court to require the children attend a different daycare.

The parties communicate through Our Family Wizard which is an application for divorced or divorcing families to communicate. Husband's mother receives and sends Husband's messages.

After she learned of the disgusting pictures and videos, Wife requested and was granted an order of protection covering herself

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and the children. Husband was not allowed to see the children for about three months while the attorneys worked through scheduling and forensic issues. A hearing was held in December 2021 regarding the order of protection and the Court lifted the order of protection as to the children. However, the Court required Husband's parenting time be supervised. The Court also ordered Husband undergo a psychosexual evaluation. Husband's parenting time was supervised until March 2022 when Husband began unsupervised parenting time with the children 50% of the time.

Dr. Bradley Freeman is a Forensic Psychiatrist. Dr. Freeman performed a psychosexual evaluation on Husband as ordered by the Court. Dr. Freeman could not see Husband for several months but put him on a list for cancellations. When a cancellation arose, Dr. Freeman called Husband and he jumped at the chance to get in a month early and cancelled some work appointments to make it happen.

Dr. Freeman testified any time a parent commits a crime in the presence of their child there is a risk to the child. Dr. Freeman speculated that sometime in the future Husband could be arrested in the presence of the children. However, Dr. Freeman was unable to identify any specific risk to the Cotten children if Husband were to have unsupervised parenting time.

Husband told Dr. Freeman the act of voyeurism was not heightened by the idea he was doing something risky. According to

Dr. Freeman, this is unusual; usually the riskiness of the conduct is the thrill. Husband did tell Dr. Freeman he was afraid of getting caught. However, the chance of getting caught did not inhibit Husband.

Dr. Freeman opined Husband's parenting time should be supervised for three months. Husband's parenting time was already supervised for three months prior to trial and Dr. Freeman's testimony.

Dr. Jay Woodman was hired by Wife to serve as an expert. Dr. Woodman is a Clinical Psychologist. Dr. Woodman reviewed the report produced by Dr. Bradley Freeman. Dr. Woodman did not meet with Husband prior to the trial. Dr. Woodman believes Dr. Freeman's report was sound.

Dr. Woodman last attended a continuing education seminar on voyeurism fifteen years ago and has never published anything on voyeurism. He last treated someone with voyeurism fifteen years ago. Dr. Woodman agrees with Dr. Freeman and believes parenting time should be supervised until there is adequate treatment. Now that Husband has admitted taking the pictures and videos of Wife and her sister, his parenting time should be supervised, according to Dr. Woodman. Husband saying the fear of getting caught was an inhibiting factor and it still did not inhibit him concerns Dr. Woodman.

The fact that the children were present when this occurred and it did not inhibit Husband is concerning to Dr. Woodman. If everything about Husband video recording and taking pictures of Wife and her sister is kept from the children it may not be a problem, according to Dr. Woodman. He opined that when a parent is acting out and including the children, it puts the children at risk. However, like Dr. Freeman, Dr. Woodman was unable to give specifics about how the Cotten children are in danger or put at risk. According to Dr. Woodman, engaging in a crime in front of your children is child abuse. However, Dr. Woodman failed to specify how engaging in a crime in the presence of your children is child abuse.

According to Dr. Woodman, Husband's admission is a positive. However, clicking on teen sites indicates the person has "a predilection." The initial response of not accepting responsibility and saying it did not occur is also concerning to Dr. Woodman.

According to Dr. Woodman, if the goal is fifty-fifty parenting time, the children would need to be well-adjusted. Dr. Woodman suggested Husband could have Friday nights over-night and then every other weekend. That schedule could be in place for a couple months and then the parties could add Monday night every other weekend for two months and then move to a more permanent 50-50 plan. However, the Court notes this schedule would be going

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backwards from what has occurred over the last year -- since March 2022. The Court further notes Dr. Woodman has never seen the children.

Dr. Woodman was paid about $30,000 for his work in the case. Dr. Woodman did not know how much money he made as an expert witness in 2021 and does not know how many cases in which he testified in 2021. Dr. Woodman's lack of knowledge of such basic information routinely asked of experts testifying in court is extremely concerning to the Court.

Husband is taking the Batterers Intervention classes. Husband is seeing a certified sex addiction therapist. At the time of trial, Husband had attended six Sexaholics Anonymous meetings.

Husband has not brought the children to some activities because Wife and Ms. McClinton have orders of protection against Husband. He cannot go to the children's school where Ms. McClinton's children attend school because of a Florida order, his probation, and he has signed pieces of paper agreeing he would stay away or go to jail. Husband was told by Florida law enforcement he would sit in jail for two months in Florida if he went around Ms. McClinton. Husband would take the children to these activities if he could.

Husband does not think it would be in the best interest of the children for him to have supervised parenting time because the children did not know why the supervisor (a stranger) was there

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and why they were only at "daddy's house" for a few hours. Husband also does not believe the two-days-on and two-days-off is good. Husband believes Dr. Woodman's idea of relegating Husband to a short period of time is not good. The children do well at Husband's house. They eat meat and vegetables and are able to sleep through the night. John Austin rarely defecates in his underwear while with Husband or his parents.

Both children attend school on Tuesday, Wednesday, and Thursday. Husband wants one-week-on and one-week-off parenting time and to change weeks on Saturday at the Brentwood Police Department. Husband does not want to take the children to school because Ms. McClinton's children attend school there. According to Husband, the 5-5-2-2 schedule will be difficult because of the children's current school schedule and it adds more times at the police station.

Paris Goodyear-Brown is the court-appointed counselor for the parties for co-parenting. She met the parties in May 2021 and wrote her first report in July 2021. Ms. Goodyear-Brown met the parents together, then met each parent individually, then met with the parents with the children, and then met with John Austin. At this time, Ms. Goodyear-Brown did not know about the pictures, videos, and pornography sites. Ms. Goodyear-Brown sent a letter (p.48 of Exhibit 69) and recommended 50-50 parenting. She believed Husband had been truthful with her.

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In August 2021, Husband contacted Ms. Goodyear-Brown and said there were several images found on the computer; Husband claimed he had no idea how the images got on the computer or what they were.

Ms. Goodyear-Brown continually recommended to both parents that the children be in counseling, especially John Austin. Ms. Goodyear-Brown also recommended continued co-parenting counseling for the parents.

Ms. Goodyear-Brown went to Wife's attorney's office and saw the images and websites Husband had visited. Ms. Goodyear-Brown then met with Husband. He cried and showed shame. He said about Ms. McClinton, "she would put her short shorts on, parade around the house, and show her butt to me so what was I supposed to do?"

At trial, Ms. Goodyear-Brown recommended Husband have supervised visits until he has counseling with the CSAT counselor and attend Sexaholics Anonymous meetings. Husband's therapist will then collaborate with the children's counselor. However, the Court notes Husband had been exercising unsupervised parenting time for several months prior to trial. Ms. Goodyear-Brown also recommended not making a backward movement if the court decides Husband is safe. Ms. Goodyear-Brown thinks the stress of the litigation will subside.

Ms. Goodyear-Brown has only had two visits with Husband, which does not tell her a lot.

According to Ms. Goodyear-Brown, once the court makes the decision, the children's therapist can work with the children to improve their behavior. The children are picking up on Wife's anxiety, according to Ms. Goodyear-Brown. According to Ms. Goodyear-Brown, a two-day-on and two-day-off schedule is too short for the children to get regulated; but a week-on/week-off schedule may be too long for the children.

Ms. Goodyear-Brown noted in her July 2021 report that each child feels secure with both parents. John Austin said he liked being in both homes and feels safe with both parties. The children spend a lot of energy adjusting from one house to the next, which is true for many children whose parents are going through divorce. Ms. Goodyear-Brown wants to make sure the children don't go through a lot of "flux." The transitions themselves can be part of the children's struggles. As the children grow older, a week-on/week-off plan may be appropriate. When it is so difficult for parents to communicate with one another, the fewer hand-offs there should be. Ms. Goodyear-Brown opined that the "physical expressions of distress" is common when the children are going through a stressful divorce and are handed back and forth. According to Ms. Goodyear-Brown, research shows children can be very resilient to different rules in two different households.

Justin McClinton, Wife's brother-in-law, attends the parenting exchanges as do other members of Wife's family. Husband's

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parents help with the exchanges at the daycare because Ms. McClinton's children attend the same daycare as the Cotten children and Husband is prohibited from being near Ms. McClinton. Husband's parents must drive four hours on these days.

At the time of trial, Husband had criminal charges pending in Florida and Tennessee for his conduct in taking video and pictures of Wife and Ms. McClinton. Husband was scheduled to attend court in Florida the week after the trial. Husband knew the Florida charges could result in Husband having a felony criminal record. The charges in Tennessee are misdemeanors. Notwithstanding the pending criminal charges, the possibility of new criminal charges, and his Fifth Amendment right to remain silent, Husband chose to testify at trial "to clear the record." Husband invoked his Fifth Amendment rights previously based on his lawyers' advice and the fact that new pictures and videos were surfacing.

Husband was arrested for driving under the influence in 2020. He pled guilty to reckless endangerment. He had an alcohol and drug assessment by Tony Owens. According to Tony Owens, Husband said he would abstain from the use of alcohol during the divorce proceedings. Husband did abstain for about eight months.

Both parties drank alcohol every day and drank the same amount during the marriage. Wife had expressed concerns to Husband about his drinking when he has the children. The Court has no concerns about either party's consumption of alcohol.

Wife also expressed concerns about Husband's possession of guns. Husband has fourteen firearms, eight of which are handguns. Because of the Order of Protection, the firearms are at Husband's brother's house in a safe. Prior to the Order of Protection, Husband kept the firearms in safes with key locks. Wife never expressed concerns about the firearms until the divorce started. In fact, the parties discussed that Husband was a responsible gun owner. When Wife's family members wanted to go to the gun range, Husband was the one who took them. The Court has no concerns about Husband's firearms. While he is under an order of protection, he will be prohibited from possessing firearms. If he is convicted of a felony in Florida, he will be prohibited from possessing a firearm. These prohibitions are sufficient in this case and the Court finds no need to address firearms further in this case.

Wife wanted to work with professionals to help the children with the divorce. Wife wanted to meet with Dr. Woodman; but Husband declined on the advice of counsel. Husband proposed Ms. Daughtery as a co-parenting counselor and Wife accepted. Wife also found books to help the children cope with the divorce, such as *Dinosaurs Divorce*.

Husband went to the children's daycare and met with teachers. Husband's parents help him with his parenting time, especially school drop-offs and pick-ups. Husband's job requires he travel; but he can control the travel schedule so it rarely interferes

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with his parenting time. Husband has travelled overnight a couple times while the divorce has been pending. Husband did not let Wife know about his travel. Recently, Husband had to travel and was going to be gone the majority of the day; Husband asked Wife if she wanted to keep the children.

Both children have had food problems and have attended food therapy. Neither child attends food therapy any longer. Meredith is on the low end of the weight and height chart. She wears clothes which are eighteen to twenty-four-month-old size even though she is three years old. Wife wants Meredith in a five-point car seat and both parties agree it will occur.

Wife does not notify Husband about Meredith's trips to the doctor, even emergencies. He only learns of the medical visit when he gets the bill.

The children have been invited to birthday parties by their friends. Wife has sent notices of these parties to Husband. Husband was aware of one or two birthday parties for friends at school; but Husband did not take the children to the parties.

In May 2022, Husband was dating Marie Woodlee. On Mother's Day Sunday, Husband received the children at 9:00 a.m. He had just finally gotten unsupervised parenting time and wanted to be with the children. Husband took the children to church and had lunch with Ms. Woodlee and her children. In 2022, Father's Day fell on

Wife's schedule but she offered Husband to have the children, which he did.

Husband had COVID early in 2022. Husband had supervised parenting time at his parents' house with a four-day-on and four-day-off schedule at the time. Husband did not notify Wife he had COVID. Wife had COVID before Husband had it. Wife notified Husband's family she had it.

In 2021, Husband sent the children's Valentine's Day cards to the school. In 2020, Husband was staying with his parents and his mother could have helped with Valentine's Day cards.

As stated above, Justin McClinton attends nearly every exchange of the children. Husband asked that Justin McClinton not be at the exchanges because he is very intimidating toward Husband's mother at the transitions. A few months before trial, when Husband was present, Mr. McClinton threw Meredith's bag at least eight feet. Wife's mother, Carol Austin, apologized for this. Also, Mr. McClinton stares even when he walks away. He has slammed car doors and made the car shake. Mr. McClinton has gotten in Husband's face and screamed at him in the presence of the children. Mr. McClinton has also pointed to Husband to "get out of here." Mr. McClinton does this in the presence of Carol Austin. Wife's family asks for the police to be present during the exchanges.

Neely Cotten[1] is Husband's sister-in-law; Neely is married to Husband's brother. Neely has known Husband since 2010. Neely has three children who spend a lot of time around the parties' children. Neely has observed Husband with his children; he is loving, fun, and light-hearted. The children adore him and they have a close bond. Husband provides for his children's needs. Neely has never observed any abuse. Neely has no concern about leaving her daughter alone with Husband.

Denise Cotten[2] is Husband's mother. Mike Cotten[3] is Husband's father. Mike and Denise live in Mt. Juliet, Tennessee where they have lived for six years. Before that, Mike and Denise lived in Lebanon, Tennessee for twenty-five years. They have been married for forty-one years. They have been at the same church for thirty-seven years. Mike is currently an Elder in the church.

While she did not have a career, Denise has worked odd jobs over the years. She has worked in the children's ministry/Sunday school for many years. Mike previously worked at Tom Jones, a custom men's clothing store.

Denise spends a lot of time with the parties' children and loves to be around them. Denise has observed that the children

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[1] The Court will use Neely Cotten's first name for clarity because there are two Mrs. Cottens discussed in this Order. No disrespect is intended.
[2] The Court will use Denise Cotten's first name for clarity because there are two Mrs. Cottens discussed in this Order. No disrespect is intended.
[3] The Court will use Mike Cotten's first name for clarity. No disrespect is intended.

love to be with Husband and show him their toys. Husband can get the children to eat things Denise cannot get them to eat. Husband lived with Denise and Mike for a while and the children visited there. Husband did the feeding, clothing, and cared for the children. Denise has observed Husband and the children with their cousins and they have a lot of fun together.

Denise went to feeding therapy with Meredith because Wife set the appointments without checking with Husband on his schedule and he needed to work.

After the divorce was filed, Wife continued to communicate with Denise and Husband about the children's activities until the Order of Protection was granted.

Denise and Mike took John Austin to an activity because the Order of Protection was in place.

John Austin did great with his potty-training when the parenting time was three-days-on and three-days-off. Now that the parties have gone to two-days-on and two-days-off, John Austin has soiled his underwear.

Denise has done hundreds of exchanges of the parties' children. Justin McClinton is present 99% of the time. Mr. McClinton will very often drop the bags at Denise's feet. She has had knee replacement and is sixty-six years old. Mr. McClinton glares at Denise and has come after her aggressively. Denise has asked that Mr. McClinton not attend the exchanges.

Mike has observed Husband as a loving and excellent father. The children anticipate his arrival and listen for him. Mike has three other grandchildren. The five grandchildren get together frequently.

Mike has done at least 125 exchanges and they are horrible for the children because it happens so frequently that they do not have consistency. Justin McClinton is at nearly every exchange. To Mike, it feels like Mr. McClinton is a secret service agent and he monitors the exchanges. It makes Mike and Denise feel uncomfortable. Mr. McClinton is never friendly or helpful. He sets the bags down next to his car and makes Mike and Denise go get them.

Carol Austin is Wife's mother and lives in Nolensville, Tennessee. Ms. Austin believes Wife is a great mother. Ms. Austin sees Wife and the parties' children frequently. Ms. Austin did not see the children as frequently before the divorce started.

In Ms. Austin's opinion, Wife is patient with the children. For discipline, she uses time out and talks to the children and teaches them about kindness. Wife does not use corporal punishment. John Austin was potty-trained before the parties separated; now he defecates in his pants. John Austin has become more aggressive and has been hitting since the divorce started. Both children are clingy when they're with Wife and it takes about a day to get them situated. It has been a struggle.

Prior to the divorce, Ms. Austin observed Husband and his parenting. He was always at family events and would carry the pack and play. Husband took care of John Austin a lot after Meredith was born. For example, he would take John Austin outside to help him wash a car. Husband helped with the feeding and changing diapers. Husband's mother helped and would watch John Austin so Wife could nap.

Meg Cox is related to Wife. In January or February 2020, Ms. Cox began working as a nanny for the parties. Ms. Cox has been working with children for many years and currently works as a substitute teacher.

Ms. Cox began watching the McClintons' child, Harrison, about six months after he was born. She watched him for about two years when the parties asked her to watch their children. When she first began working for the parties, Ms. Cox mostly worked with Meredith and then helped with John Austin when he returned home from school. From March 2020 until May 2020, Ms. Cox was not around much because of COVID. In May 2020, Ms. Cox worked as the parties' nanny for about one week before Husband moved out of the marital residence.

After the parties separated, Ms. Cox noticed a change in the children. When Wife left the room, Meredith would go into a panic. Meredith was afraid to sleep and it was difficult to get her to sleep. Also, the children began to fight for Wife's attention. John Austin began to act out just to get attention. John Austin

began defecating in his pants every day and hitting others. John Austin would get frustrated and dis-regulated and could not come out of it.

After Wife obtained the Order of Protection in August 2021, Ms. Cox began to see a slow change in the children. John Austin went to therapy and had a routine. His behavior improved. By October 2021, he only defecated in his pants once a week or every two weeks. By December, he had not defecated in his pants at all. He was back to his regular self. He was not defiant for defiance sake.

Then, in December 2021, the Court allowed the children to see Husband every three days. Ms. Cox did not see the children until middle January because of the Christmas holidays. By then, "all hell had broken loose" with the children. They were beginning to act out, taunt each other, and say "shut up." John Austin began hitting and defecating in his pants again. Meredith again had difficulty sleeping. John Austin began spitting. Any time they tried to correct his behavior, he responded with spitting, hitting, and acting out.

Between August 2022 and September 2022, the children's behavior ramped up and intensified. It appeared to Ms. Cox the stress level had increased, especially for John Austin. He hits his sister on top of her head. Things will be going fine, then all of a sudden, he loses his temper and hits Ms. Cox or Meredith. It

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is much more difficult to reason with John Austin. He has started to say, "I'll kill you" or "I'll hit you next time."

Also, Ms. Cox has caught John Austin lying. Twice he said, "Aunt Meg, stop choking me," when Ms. Cox was across the room. In addition, John Austin twice said to Wife, "don't hit me" when she was across the room. Every time Ms. Cox sees John Austin, there is an instance of him hitting or spitting on someone. He is now five years old.

No proof was offered as to how the children behave when at daycare. No witnesses from the children's daycare testified. Wife's witnesses testified about how terribly John Austin behaves and the problems with John Austin, especially when Husband's parenting time is restored. Husband's witnesses testified John Austin does just fine with Husband and his parents.

Wife registered the children for daycare at Brentwood United Methodist church. John Austin attended daycare at Brentwood United Methodist from early 2018 through August 2020. He went from 8:30 a.m. or 9:00 a.m. until 5:00 p.m. Wife was the primary contact and she interacted a lot with the teachers.

The parties changed the children's daycare to Brentwood Baptist church in September 2020 so the children could spend more time with family. They went from 9:00 a.m. to 2:30 p.m. John Austin went three days per week and Meredith went two days per week. Wife

was the primary contact for daycare at Brentwood Baptist church. The parties attended Brentwood Baptist church together.

Wife chose the schools. Husband participated but left the decisions up to Wife. Wife also chose the children's pediatricians. She did the research for John Austin's feeding therapy.

Wife works from home and has always worked from home. Prior to COVID, Wife was travelling about four times per year for one or two nights. Since COVID, Wife has only been on two business trips - one in June or July 2022 and one in August 2022.

As soon as the divorce was filed, Wife spoke with people at Daystar Counseling about how best to message the divorce for the children. Wife told Husband what she was doing. John Austin started play therapy at Daystar in September or October 2020. The children were asking "where is daddy?" Wife interacted with the counselor at Daystar about John Austin's progress. The parties took turns taking John Austin to Daystar. Some of it was by Zoom which did not work very well. John Austin went to Daystar for about nine months. Husband told the staff at Daystar Wife had been recording sessions. So, the Cotten family was kicked out of Daystar.

The staff at Daystar recommended the parties consult Dr. Jay Woodman. Wife asked Husband to participate with her and Dr. Woodman. Wife contacted Dr. Woodman and went to him to discuss parenting problems during divorce as well as co-parenting. Dr. Woodman made recommendations on how to address certain issues.

Wife discussed with Dr. Woodman John Austin's hitting and getting in an inconsolable state.

John Austin is in the normal percentile for height and weight. But, he still does not eat meat or vegetables when with Wife. Meredith won't eat meat or vegetables when with Wife, either. The children will eat meat and vegetables at Husband's house. They try new foods at Husband's house.

Wife schedules the medical and dental appointments and takes the children to them. Husband sometimes went as well to the medical appointments but he never went to the dental appointments.

Before consulting Husband, Wife registered Meredith for soccer, baseball, and dance. Wife registered John Austin for soccer. Wife notified Husband about these registrations after she had already registered the children. Husband later registered the children for swim lessons.

Wife has prepared a proposed permanent parenting plan. (Exhibit 49). Wife proposes 0 days of parenting time for Husband. Wife wants Husband to have no overnight visits and to have the children on Tuesday from 2:30 p.m. to 6:30 p.m. and Sunday from 12:30 p.m. to 4:30 p.m. Wife wants Husband's parenting time to be supervised by a professional supervisor. Wife also has ten specialized provisions. Wife wants to be the decision-maker for the children. Wife wants Husband to pay half of the extracurricular.

activities for the children and the children's pre-school education.

Husband has also submitted a proposed permanent parenting plan. Husband proposes the parties have joint custody and 50-50 parenting time of 182.5 days each per year with the children. Husband also proposes the parties have joint decision-making authority.

Husband pays $8.31 per pay period for medical insurance for the children (Exhibit 7) and Wife pays $6.62 for dental insurance for the children. (See Exhibit 38).

VI. The Finances

Wife wants the household goods to be divided by each party keeping what they have now. Wife values the household goods at a different amount than Husband because the parties disagreed on values and Husband counted some items as marital property which Wife claims are her separate property. Exhibit 55 is Wife's list of her separate property. The items in red are her separate property which Husband claimed as marital property. The $7,500 at the end of Exhibit 55 was money Husband's aunt gave to both Wife and Husband; he was supposed to put the money in the marital account. He did not do that and Wife wants her half. The Court agrees Wife should have half of this money. In addition, the Court finds Exhibit 55 to be an accurate list of Wife's separate property.

Wife wants to be named the custodian of the children's 529 accounts. The Court finds Wife is more fiscally responsible than Husband and further finds Wife shall be named custodian of the children's 529 accounts.

Wife wants each party to keep the retirement accounts which are in their names and for each party to keep their bank accounts which are in their names. The Court agrees.

Wife based the vehicle values on Kelly Blue Book and put in the condition and mileage. Wife thinks she put in the VIN. The GMC Envoy is titled in Carol Austin's name and it was a gift to Wife before she was married rewarding her for her golf accomplishments. The Court finds the GMC Envoy is Wife's separate property.

Neither party has life insurance with cash value. Wife proposes each party maintain their own life insurance policies and each party maintain life insurance on themselves in the amount of $100,000 for the benefit of the children with each party choosing their own custodian. The Court agrees.

Wife obtained a loan from Pinnacle Bank to pay for legal fees. (Exhibit 54, Section I, Item #8); Wife pays the loan down monthly at the rate of about $120-$150. Wife's mother put up the collateral for the loan. Wife also obtained a loan from Pinnacle Bank for $60,000 to pay attorneys' fees. (Exhibit 54, Section I, Item #9). Wife's sister and brother-in-law put up collateral for this loan.

Wife has incurred attorney's fees and litigation expenses totaling $410,960.22. Wife has paid $76,061.48 of these fees and expenses, all from marital funds. Wife still owes $334,898.74 for attorney's fees and litigation expenses. The Court has considered the factors enumerated in Rule 8, RPC 1.4 of the Rules of the Tennessee Supreme Court and finds all of Wife's attorney's fees to be reasonable and necessary. The Court also finds Wife's litigation expenses to be reasonable and necessary.

Husband has incurred attorneys' fees and litigation expenses totaling $296,104.05. Father used marital funds to pay $94,617.94 of these fees and expenses and still owes $201,486.11 for attorneys' fees and litigation expenses. The Court has considered the factors enumerated in Rule 8, RPC 1.4 of the Rules of the Tennessee Supreme Court and finds all of Husband's attorney's fees to be reasonable and necessary. The Court also finds Husband's litigation expenses to be reasonable and necessary.

From June 2020 to August 2021, the parties' expenses were running through the joint account. Beginning in September 2021, the parties separated their accounts. Wife created a spreadsheet of the marital expenses she has been paying since the time the parties split their money and what Husband has been paying during that same time frame. (Exhibit 56). Wife has paid $44,568 of the marital expenses and Husband has paid $15,654 of the marital expenses. Wife wants Husband to pay half of the difference. Wife

admitted Husband had his own expenses, such as the mortgage on the Sutton Hill residence as well as utilities. Thus, the Court declines to order Husband to pay the difference in the amount of money Wife paid of the marital expenses and what Husband paid.

Wife also did a spreadsheet for the children's expenses each party has paid.

Wife's Income and Expenses Statement is Exhibit 59.

Exhibit 60 is the parties' expenses in 2019, 2020, and 2021. Husband spent substantially more than Wife in 2020 and 2021. During the divorce, Husband has spent substantially more than he did before the divorce. For example, Husband's expenses for Amazon, groceries, restaurants, and entertainment are much higher. However, no proof was presented as to what these expenses were for. No proof was presented as to what was purchased on Amazon and for whom grocery, restaurant, and entertainment expenditures were made. To equalize and offset Husband's spending, Wife wants more of the Vanguard ESPP & Fidelity retirement accounts. (Exhibit 54). Wife wants each party to be responsible for their own expenses incurred before they split their accounts. According to Wife, had Husband not spent so much, there would be more money to divide. Again, there is no evidence what these expenditures were for. Accordingly, the Court cannot award Wife more of the marital estate to off-set Husband's higher expenditures. Therefore, Wife's request is, respectfully, denied.

Prior to the separation, the parties rented the Sutton Hill Road property and earned rental income. Wife did not ask Husband to move out of the house and the Court did not order him to move out of the house. Husband moved out of the marital residence in June 2020 and moved into the Sutton Hill house. So, the parties no longer had the $1,800 per month for rental income. Wife claims this is dissipation. (Exhibit 65). Wife insists Husband should have lived with his aunt or with his parents. The Court disagrees. This is not dissipation.

Mother has a judgment against Father for attorney's fees for failure to comply with discovery entered June 24, 2021, in the amount of $6,225 and a judgment for the Order of Protection ($47,531.77) (because of the expert fees) which was filed June 2, 2022.

The parties had booked a marriage retreat for $3,995. They both signed forms agreeing if they cancel they would not get their money back. Husband refused to go and they lost their deposit, which came out of marital funds. Wife wants the Court to order Husband to pay her the $3,995. The Court declines to do so.

The Court ordered the parties not to take money out of the accounts without an agreement or court order. In August 2021, Husband withdrew $7,000 from the Vanguard account to pay for mediation. The mediation was cancelled. Wife took the money back and wanted to return it to the Vanguard account. But, she did not

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have access to the Vanguard account so she put the $7,000 into her separate account. Thus, Wife owes Husband half of that money ($3,500).

Wife has paid $4,020 for John Austin's counseling at the Refuge Center. Wife wants Husband to pay half of those expenses. The Court agrees Husband should pay half of those expenses. The Court hereby awards Wife a judgment against Husband in the amount of $2,010, for which execution may issue.

Wife pays $155 per session for Meredith's counseling, which she attends twice per month. Meredith began counseling in April 2022. Wife wants Husband to be responsible for half of the costs for Meredith's counseling and for half of the sessions going forward. (Exhibit 58). As of the end of the trial, Meredith would have attended ten counseling sessions, and, therefore, Wife would have spent $1,550 on the counseling sessions. The Court finds Husband must reimburse Wife $775 (half) for this counseling. The Court hereby awards Wife a judgment against Husband in the amount of $775, for which execution may issue.

Dr. Woodman has not provided therapy for either child. However, on Exhibit 58, Wife included Dr. Woodman's fees as expenses for the children. Dr. Woodman is Wife's expert witness.

Wife wants Husband to pay her for Meg Cox's nanny fees. The Court finds that request is not well-taken and declines to order Husband to pay for Meg Cox's nanny fees.

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Wife has asked the Court to order Husband to reimburse Wife for her counseling expenses incurred after she discovered the pictures of herself and her sister. (Exhibit 56). It appears to the Court reimbursement for Wife's counseling fees was addressed by the jury in its verdict in damages. The Court declines to address these counseling expenses further.

Wife wants Husband to reimburse her for half of the tithing she made to a church she no longer attends. The Court finds this request is not well-taken and declines to order Husband to reimburse Wife for tithing.

The parties agreed at Wife's attorney's office they would file the 2021 tax return married filing jointly.

On her assets and liabilities statement, Wife wrote $615,000 for the Foothills Drive house based on the appraisal done in 2021; but Wife believes it is worth more now. Wife asked someone to do some comps and they came back higher than $615,000. However, the only evidence admitted at trial for the value of the Foothills Drive house was $615,000. Accordingly, the Court finds the value of the Foothills Drive house as of the date of trial was $615,000.

In August 2021, Wife withdrew $10,000 from the parties' joint Bank of America account and put it into another Bank of America account in her sole name. Wife used the money to pay bills. Wife withdrew this money and moved it to her separate account because Husband was paying his bills early and leaving no money for Wife.

to pay her bills. They would then get overdraft charges. Husband was putting attorney's fees on his credit card and then paying it in full from the joint account. The Court declines to order reimbursement for this money.

Husband has 1060 stock options at Asurion; however, these stock options have no value. Husband must be at Asurion for five years and the company must meet certain financial goals before the stock options obtain value. If Asurion does not meet plan, it could take seven years for the stock options to vest. Husband cannot exercise the stock options. Husband thinks he might be able to exercise the stock options in three years. The stock options are transferrable; thus, the Court could award the stock options to Wife.

When he moved out of the marital residence, Husband took his clothes, some plates, and pots and pans. Husband would like to get from the marital residence the dresser and small oak chair he built for the children. Husband would also like to get the cedar lumber from the cedar tree his grandfather cut down. In addition, Husband would like to get the routers, sanders, clamps, and other tools he left at the marital residence. Also, Husband would like to get his backpacking, hiking, and climbing gear and year books from the marital residence as well as his childhood belongings in the attic. Finally, Husband would like the two bourbon barrels he was supposed to work on for his aunt and her friend. Wife stipulates and the

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attorneys will schedule a time and way to get these items for Husband.

Husband wants to keep the home he is living in as he is required to give notice before moving because of his probation and his probation would have to be transferred if her were to move. Also, if Husband tries to apply for a loan it will be difficult with a felony. Furthermore, Wife has threatened to file additional criminal charges against Husband. In addition, he is facing new criminal charges in Williamson County General Sessions court. Husband is prepared to accept the value of his house as well as the amount of debt on it listed on the Joint Statement of Assets and Liabilities. (Exhibit 54).

CONCLUSIONS OF LAW

I. Grounds for Divorce

As stated above, Husband has admitted he is guilty of inappropriate marital conduct. The Court agrees and previously granted the parties a divorce pursuant to Tennessee Code Annotated, Section 36-4-129. An Order to this effect was entered on July 5, 2022.

II. Identification of Property

Tennessee is a "dual property" jurisdiction because its divorce statutes draw a distinction between marital and separate property. *Batson v. Batson*, 769 S.W.2d 849, 856 (Tenn. Ct. App.

1988). Tennessee Code Annotated, Section 36-4-121(a) provides only for the division of marital property and, therefore, proper classification of a couple's property is essential. *Id.* Thus, as a first order of business, it is incumbent on the court to classify the property, to give each party their separate property, and then to divide the marital property equitably. *Id.*

A. Separate Property

Pursuant to Tennessee law, separate property is owned exclusively by either the husband or the wife and is defined as follows:

> (2)(A) All real and personal property owned by a spouse before marriage. . . ;
>
> (B) Property acquired in exchange for property acquired before the marriage;
> (C) Income from and appreciation of property owned by a spouse before marriage *except* when characterized as marital property under subdivision (b)(1);
> (D) Property acquired by a spouse at any time by gift, bequest, devise or descent. . . .

Tennessee Code Annotated, Section 36-4-121(b)(2)(A)-(D) (2022); *Keyt v. Keyt*, 244 S.W.3d 321, 328 (Tenn. 2007).

Wife has as her separate property the GMC Envoy which is titled in Carol Austin's name. Ms. Austin gifted this vehicle to Wife before the parties married to reward Wife for her golf accomplishments. Wife also has a plethora of items listed on Exhibit 55 as her separate property. The Court finds these items are all Wife's separate property. The total value of these items

is $86,434. Husband's separate property is the items he requested from the marital residence listed above in this Order. No value was given for these items and Wife agreed Husband could have them.

B. Marital Property

The Definition of "marital property" is found in Tennessee Code Annotated, Section 36-4-121(b)(1)(A)-(E):

> (1)(A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property;
>
> (B)(i) "Marital property" includes income from, and any increase in the value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation;
>
> (ii) "Marital property" includes the value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefit rights accrued as a result of employment during the marriage;

(iii) The account balance, accrued benefit, or other value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefits accrued as a result of employment prior to the marriage, together with the appreciation of the value, shall be "separate property." In determining appreciation for purposes of this subdivision (b)(1)(B)(iii), the court shall utilize any reasonable method of accounting to attribute postmarital appreciation to the value of the premarital benefits, even though contributions have been made to the account or accounts during the marriage, and even though the contributions have appreciated in value during the marriage; provided, however, the contributions made during the marriage, if made as a result of employment during the marriage and the appreciation attributable to these contributions, would be "marital property." When determining appreciation pursuant to this subdivision (b)(1)(B)(iii), the concepts of commingling and transmutation shall not apply;

(iv) Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire separate assets of the employee spouse shall be deemed to have come from the separate portion of the account, up to the total of the separate portion. Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire marital assets shall be deemed to have come from the marital portion of the account, up to the total of the marital portion;

(C) "Marital property" includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property;

(D) As used in this subsection (b), "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine;

(E) Property shall be considered marital property as defined by this subsection (b) for the sole purpose of

> dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, *except to the extent the asset will create additional income after the division;* . . .

Once property has been classified as marital property, the court should place a reasonable value on property which is subject to division. *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at *11 (Tenn. Ct. App. May 13, 2003). The parties have the burden to provide competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998). When valuation evidence is conflicting, the court may place a value on the property which is within the range of the values presented. *See Watters v. Watters*, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997).

The Court finds the schedule set forth in Attachment A to this Memorandum and Order to constitute the assets which comprise the marital estate with the fair market value as designated beside each asset.

III. Division of Assets and Liabilities

A. Legal Analysis of Distribution of Marital Assets

The trial court's responsibility in a divorce case is to divide the marital property in an essentially equitable manner, and "equity" is dependent on the facts of each case. *Watters v. Watters*, 959 S.W.2d 585, 591 (Tenn. Ct. App. 1997). Each case involving the division of marital property must be determined under its own

unique set of facts and circumstances. *See Wade v. Wade*, 897 S.W.2d 702, 717 (Tenn. Ct. App. 1994).

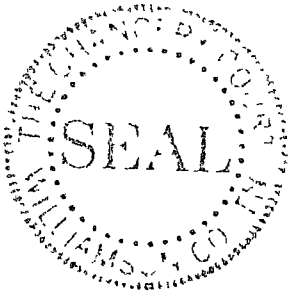
Although there is a presumption that marital property is owned equally, there is no presumption that marital property should be divided equally. *See, Bookout v. Bookout*, 954 S.W.2d 730, 731 (Tenn. App. 1997). Rather, the trial court's goal should be to divide the assets in a fair and equitable manner. *See Fulbright v. Fulbright*, 64 S.W.3d 359, 366 (Tenn. Ct. App. 2001). The court is to consider all relevant factors in its distribution, including those listed in Tennessee Code Annotated, Section 36-4-121(c). *Jolly v. Jolly*, 130 S.W.3d 783, 786 (Tenn. 2004); *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003). The court must consider any other factors necessary in determining the equities between the parties, Tennessee Code Annotated, Section 36-4-121(c)(11), except that division of marital property is to be made without regard to marital fault. Tennessee Code Annotated, Section 36-4-121(a)(1). Some factors may be significant in reaching an equitable division and importance of others may be diminished depending on the unique facts of each case. *See Cronin-Wright v. Wright* 121 S.W.3d 673, 675 (Tenn. Ct. App. 2003). "The decision is not a mechanical one and is not rendered inequitable because it is not precisely equal, or because both parties did not receive a share of each piece of property." *Brown v. Brown,* 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994) (citations omitted).



The factors courts should consider in making a division of the marital estate include:

(1) The duration of the marriage;
(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
(3) The tangible or intangible contributions by one (1) party to the education, training, or increased earning power of the other party;
(4) The relative ability of each party for future acquisitions of capital assets and income;
(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation, or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled his or her role;
(6) The value of the separate property of each party;
(7) The estate of each party at the time of the marriage;
(8) The economic circumstances of each party at the time the division of property is to become effective;
(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset and other reasonable expenses associated with the asset;
(10) The amount of social security benefits available to each spouse; and
(11) Such other factors as are necessary to consider the equities between the parties.

Tennessee Code Annotated, Section 36-4-121(c). The Court has considered each of these factors and, based on the evidence, has determined all relevant facts in dividing the marital estate. The Court, therefore, discusses these factors, followed by allocation of the marital property.



1. The Duration Of The Marriage

The parties married in June 2010. They have been married for over twelve years.

2. The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities, and financial needs of each of the parties

Both parties are thirty-eight years of age and are in good physical and mental health. Both parties have very good earning capacity. The parties have ordinary "financial liabilities." The parties have a healthy marital estate. Neither party had much of a pre-marital estate. Husband purchased the Sutton Place home prior to the marriage; however, both parties agree this property is marital property. Wife had the GMC Envoy vehicle her mother gave her to reward her for her golf accomplishments and the separate property discussed above, which is valued at $86,434. Each party will receive an equitable portion of the marital estate. The parties have ordinary financial needs.

3. The tangible or intangible contributions by one (1) party to the education, training, or increased earning power of the other party

No evidence was presented as to this factor.

4. The relative ability of each party for future acquisitions of capital assets and income

Presumably, both parties will maintain their employment and continue to earn a good living.

5. The contribution of each party to the acquisition, preservation, appreciation, depreciation, or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled his or her role

Both parties contributed to the marriage as very good wage earners and both parties contributed to the marriage as homemakers and caretakers of the children. Wife claims Husband's decision to reside in the Sutton Hill residence during the nearly three years of divorce litigation was "dissipation" because the parties could have accumulated $1,800 per month in rent if Husband would have resided with his aunt or parents. The Court disagrees. Wife has presented no legal authority for her claim of dissipation.

6. The value of the separate property of each party

Wife has as her separate property the GMC Envoy given to her by her mother for golf accomplishments and the other items listed in Exhibit 55 valued at $86,434. Husband has as his separate property the items he wanted from the marital residence identified above in this Order and agreed to by Wife. No value was given for these items.

7. The estate of each party at the time of the marriage

The evidence did not reveal either party had an estate at the beginning of the marriage, other than what is addressed above.



8. The economic circumstances of each party at the time the division of property is to become effective

Husband and Wife both receive net income in an amount exceeding $100,000 per year.

9. The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonable expenses associated with the asset

Neither party submitted evidence of this factor.

10. The amount of social security benefits available to each spouse

No evidence was submitted regarding this factor.

11. Such other factors as are necessary to consider the equities between the parties

The Court has taken into consideration the fact that Wife was much more frugal than Husband during this litigation and Husband spent much more money than did Wife. The Court has also taken into consideration the jury award of $461,435 against Husband in favor of Wife.

B. Property Division

Considering all the factors discussed above, the Court awards to Wife assets totaling $1,205,717.51 as set forth in Attachment A to this Order. Considering all of the factors discussed above, the Court awards assets to Husband totaling $541,042.72 as set forth in Attachment A.

C. Marital Debt

In Tennessee, marital debt is defined as follows:



> (3) "Marital debt":
>
> (A) Means all debt incurred by either or both spouses during the course of the marriage through the date of the final hearing and any proceedings brought pursuant to Rule 59 of the Tennessee Rules of Civil Procedure; and
>
> (B) Includes debt incurred to pay attorney fees and expenses incurred in connection with the proceedings, and unpaid attorney fees and expenses incurred in connection with the proceedings through the date of the final hearing and any proceedings brought pursuant to Rule 59 of the Tennessee Rules of Civil Procedure;

Tennessee Code Annotated, Section 36-4-121 (a)(3), effective March 2022. Additionally, the Supreme Court of Tennessee has held that marital debts are all debts incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing. *Alford v. Alford*, 129 S.W.3d 810, 813 (Tenn. 2003). Once the debt is determined to be marital debt:

> Tennessee courts should use the four factors listed in *Mondelli* as guidelines in the equitable distribution of marital debt: (1) the debt's purpose; (2) which party incurred the debt; (3) which party benefitted from incurring the debt; and (4) which party is best able to repay the debt. *Mondelli*, 780 S.W.2d at 773. A careful application of these factors will insure the fairest possible allocation of debt. It will also protect the spouse who did not incur the debt from bearing responsibility for debts which are the result of personal excesses of the other spouse.

Id. at 814.

All the parties' debt is marital debt and consists mostly of the mortgages on the houses, credit card debt, and debt for attorneys' fees and litigation expenses. The Court has thoroughly

considered the *Alford* and statutory factors and assigns the debt as indicated on Attachment A. The Court finds it equitable for each party to be responsible for his or her mortgage. The Court further finds it equitable for Wife to be responsible for the credit card debts in her name and for Husband to be responsible for the credit card debts in his name. These findings are indicated on Attachment A to this Order.

Considering the Court's assignment of assets and liabilities, Wife will receive $707,768.45 of the net marital estate and Husband will receive $338,134.50 of the net marital estate.

D. Other

Wife has requested the Court award her numerous reimbursements from Husband. The Court will address those requests here. The Court has found Exhibit 55 to be an accurate list of Wife's separate property and the Court hereby awards Wife the items listed on Exhibit 55. That property is valued at $86,434, which is reflected on Attachment A to this Order.

The Court declines to award Wife the difference in what she paid of marital expenses since the parties split their money and what Husband has been paying during that same time frame, as discussed above in this order. (Wife = $44,568 and Husband = $15,654). Wife conceded it takes twice as much money to run two households as it takes to run one household and Husband also had

living expenses during the divorce litigation, such as a mortgage and utilities.

The Court orders Husband to pay half of the children's expenses as indicated on Exhibit 58. Half of those expenses is $6,387.32. Wife has a judgment against Husband in the amount of $6,387.32 for which execution may issue.

The Court has given Wife a judgment against Husband for attorney's fees for failure to comply with discovery. This judgment was entered on June 24, 2021, in the amount of $6,225. This is a judgment for which execution may issue.

Wife also has a judgment against Husband in the amount of $47,531.77 for the litigation in pursuing the Order of Protection. (See page 47 above). This is a judgment for which execution may issue if necessary.

The Court declines to order Husband to reimburse Wife $3,995 for the marital retreat.

Wife owes Husband $3,500 for half of the $7,000 she took from the parties' account after mediation was cancelled.

Husband owes Wife $3,500 for half of the $7,000 Husband's aunt gave to the parties. Wife is hereby awarded a judgment against Husband in the amount of $3,500 for which execution may issue.

Husband owes Wife $2,010 for half of John Austin's counseling. Wife is hereby awarded a judgment against Husband in the amount of

$2,010 for half of John Austin's counseling. This is a judgment for which execution may issue.

Wife is awarded a judgment against Husband in the amount of $775 for half of Meredith's counseling sessions.

The Court declines to order Husband to pay half of Meg Cox's nanny fees or half of Wife's tithing to the church.

The Court finds the jury award adequately compensates Wife for her counseling expenses because said expenses were presented as damages during the jury trial and the jury awarded Wife damages for invasion of privacy, intentional infliction of emotional distress, and unlawful photography.

The Court finds Wife does not need to reimburse Husband for the $10,000 she withdrew from the parties' joint Bank of America account. Wife was justified in withdrawing this money from the parties' joint bank account and using it to pay her bills because of Husband's conduct in paying his bills early and leaving no money for Wife to pay her bills.

The Court assigns Husband's 1060 stock options at Asurion to Wife. Husband shall prepare the proper paperwork for that transfer.

IV. Parenting and Child Support

A. Custody

Custody determinations are committed to the sound discretion of the trial court guided by the factors set out in Tennessee Code Annotated, Section 36-6-106. The Court has taken those factors

into consideration in making the following determination and the Court has made the determination based on the best interests of the children. The Court finds both parties shall be designated the Primary Residential Parent for the children.

As for factor number 1 listed in Tennessee Code Annotated, Section 36-6-106, the Court finds the "strength, nature, and stability of the children's relationship" with both Husband and Wife is good. During the more than two years of litigation of this case, the parties have shared in the care-giving of the children, except for the three-month period during which the order of protection was in place. Additionally, prior to the parties' separation, they shared in the parenting responsibilities. When Husband has had parenting time, he has been able to perform the parenting responsibilities appropriately. In some instances, Husband has performed parenting responsibilities in a manner superior to Wife. For example, the children eat meat and vegetables when with Husband but do not eat them when with Wife. Also, the children do not have difficulty sleeping when with Husband but do when they are with Wife. This factor weighs in favor of joint custody.

The Court finds factor number 2 also weighs in favor of joint custody for the same reasons as factor number 1. Additionally, at times, both parties have facilitated and encouraged a close and continuing parent-child relationship with the other parent. At

other times, not so much. For example, Wife submitted a Proposed Parenting Plan which gave Husband zero parenting days. This plan proposed Husband have eight hours per week of supervised parenting time. Such a proposal does not facilitate and encourage a close and continuing parent-child relationship between Husband and the parties' children. Nevertheless, the Court is optimistic the parties will continue to improve in this regard.

As for factor number 3, there was no proof at trial either party refused to attend a parenting seminar.

As for factor number 4, the Court finds both parties have the financial ability to provide the children with food, clothing, medical care, education, and other necessities. This factor weighs in favor of both parties being the primary residential parent.

As for factor number 5, as stated above regarding factor number 1, both parties have performed the parenting responsibilities for the children. This factor weighs in favor of both parties being the primary residential parent.

As for factor number 6, both parties have clearly demonstrated their love and affection for the children. The children's emotional ties to both parties are strong. As Ms. Goodyear-Brown testified, each child feels secure with each parent and likes being with each parent. Both parties' relationship with the children is very strong. This factor weighs in favor of both parties being the primary residential parent.

As for factor number 7, the children have normal emotional needs and are at normal developmental levels. The children have struggled with eating problems. However, they eat better at Husband's house than at Wife's house. In addition, the children have had some difficulty adjusting to the break-up of their family. However, this is not uncommon. The children are in therapy and, as testified to by Ms. Goodyear-Brown and Ms. Coile, should stabilize once the divorce litigation is over.

As for factor number 8, the Court finds both parties have the "physical, mental, and emotional fitness" to be the primary residential parent. However, Husband's moral fitness is severely lacking. Husband has engaged in horrendous criminal conduct in taking video and still photographs of his wife and her sister. But, Husband testified he no longer engages in this conduct and there is no evidence to the contrary. Also, Husband has engaged in bad conduct in looking at pornographic material. But, Husband testified he rarely looks at pornography anymore and there is no evidence to the contrary. Notwithstanding Husband's horrendous conduct, the Court must follow the mandate of *Rudd v. Rudd*, 2011 WL 6777030 (Tenn. Ct. App. 2011). This factor weighs in favor of Wife being the primary residential parent.

Factor number 9 weighs in favor of joint custody. The children are close with their paternal grandparents and cousins; they do a lot together. The children are also close with their maternal

grandmother. The children are very active in extracurricular activities at Wife's house. Once Husband can do so without being around Ms. McClinton, Husband will be able to be involved with the children's extracurricular activities.

Factor number 10 weighs in favor of joint custody. The parties have had 50-50 parenting time for the over two years of this divorce litigation. Once this divorce is over, the children will have more structure and continuity and, hopefully, less stress from the divorce.

Factor number 11 weighs in favor of neither party. There is no evidence either party has abused the children or the other party. Indeed, the jury found as much.

There was no evidence presented at trial regarding factor number 12. There was discussion about Ms. Woodlee. But, the Court has no concerns about her.

Factor number 13 is inapplicable in this case.

As for factor number 14, both parents work full-time jobs and have the ability to work remotely a great deal.

Based on all of these factors, the Court finds each party shall be the Primary Residential Parent and the parties shall have joint custody of the children.

B. Parenting Time

The parties have each submitted proposed parenting plans. The Court has studied and considered Tennessee Code Annotated

Sections 36-6-404(b) and 36-6-106(a)(1-15) and the factors enumerated therein. The Court has considered the best interest of the children. Applying all the factors in these sections, the Court makes the same analysis as outlined in the previous section.

Carol Austin testified it takes a day for the children to get situated after the exchanges and stated the every two-day exchanges have been a "struggle." Husband and his mother also testified about the difficulty the frequent exchanges pose. Furthermore, Paris Goodyear-Brown testified a two-day schedule is too short and the children could eventually go to a week-on/week-off schedule. Ms. Goodyear-Brown also testified the frequent exchanges are stressful for the children, especially when the parents have difficulty communicating, as in this case. The Court notes that, at one time during the litigation, the parties had a four-day-on/four-day-off parenting schedule which went well. Accordingly, the Court finds the parties shall have 50-50 parenting time, which shall be exercised week-on and week-off beginning April 22, 2023. The parties shall exchange the children every Saturday at the Brentwood Police Department at 10:00 a.m. Justin McClinton shall not be present for these exchanges. For the duration of any orders of protection against Husband with respect to Wife, only Wife and Denise Cotten shall be present at the exchanges of the children. Once all orders of protection against Husband have expired, only Husband and Wife shall be present at the exchanges.

The following schedule applies notwithstanding the day-to-day schedule: Husband shall have the children on his birthday and every Father's Day from 7:00 p.m. the night before until 9:00 a.m. the day after. Wife shall have the children on her birthday and every Mother's Day from 7:00 p.m. the night before until 9:00 a.m. the day after. In odd-numbered years, Wife shall have the children from the time of dismissal from school for the Christmas break until 3:00 p.m. on Christmas Day. Then Husband shall have the children from 3:00 p.m. on Christmas Day until 6:00 p.m. on the Sunday before school resumes. In even-numbered years, Husband shall have the children from the time of dismissal from school for the Christmas break until 3:00 p.m. on Christmas Day. Then, Wife shall have the children from 3:00 p.m. on Christmas Day until 6:00 p.m. on the Sunday before school resumes. Wife shall have the children for Easter from 8:00 a.m. until 3:00 p.m. in even-numbered years. Husband shall have the children for Easter from 8:00 a.m. until 3:00 p.m. in odd-numbered years. Wife shall have the children for Spring Break in even-numbered years from the time of dismissal from school until 6:00 p.m. the Sunday before school resumes. Husband shall have the children for Spring Break in odd-numbered years from the time of dismissal from school until 6:00 p.m. the Sunday before school resumes.

During Husband's parenting time, Wife, Kate McClinton, and Justin McClinton shall not attend the children's extracurricular activities.

Wife has made the majority of the decisions regarding education and non-emergency medical for the children. For example, Wife scheduled the medical and dental appointments for the children and took the children to the appointments. Husband sometimes attended the medical appointments but never attended the dental appointments. Wife also chose the children's daycares. Wife has registered the children for their extracurricular activities and took the lead on counseling for the children. Accordingly, Wife shall have decision-making authority regarding the children as to non-emergency medical, educational, religious, and extracurricular activities, except that the children shall not be enrolled in the same school as the McClinton children.

C. Child Support

At the time of trial, Husband earned $136,000 per year and Wife earned $170,933 per year. Husband paid $8.31 per month for health insurance for the children and Wife paid $6.62 per month for the health insurance for the children.

Each party shall maintain life insurance in the amount of $100,000 for the benefit of the children with each party choosing their own custodian.

Each party shall pay for the extracurricular activities for which they register the children.

The parties shall split, 50-50, the cost of the children's daycare.

Husband's attorney shall draft and file the Permanent Parenting Plan and the Child Support Worksheet consistent with this opinion by May 1, 2023.

V. Attorneys' Fees

In a divorce proceeding, attorneys' fees constitute alimony *in solido*. Tennessee Code Annotated, Section 36-5-121(h)(1); *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 113 (Tenn. 2011). In making an award of attorneys' fees as alimony *in solido*, the Court should consider the factors enumerated in Tennessee Code Annotated, Section 36-5-121(i); *Gonsewski*, 350 S.W.3d at 113. A spouse with adequate property and income is not entitled to an award of alimony to pay attorneys' fees and expenses. *Id.* Such awards are appropriate only when the spouse seeking them lacks sufficient funds to pay his or her legal expenses or the spouse would be required to deplete his or her resources in order to pay them. *Id; Ellis v. Ellis*, 621 S.W.3d 700 (Tenn. Ct. App. 2019).

In the instant case, the Court has considered the factors enumerated in Tennessee Code Annotated, Section 36-5-121(i). Each party incurred a substantial amount of attorneys' fees and

litigation expenses. The parties each earn a very good living and earn nearly the same amount of money. The parties have each been awarded a sizeable estate but the parties each owe quite a lot of money in attorneys' fees and litigation expenses. Husband owes Wife a substantial amount of money as a result of the jury verdict and award of damages to Wife. Accordingly, the Court finds the law requires each party to pay their own attorneys' fees.

VI. Conclusion

Based on the foregoing, the Court hereby awards Wife a divorce from Husband on the grounds of inappropriate marital conduct;

The Court awards Wife $707,768.45 of the marital estate and awards Husband $338,134.50 of the marital estate;

The Court finds both parties shall be the primary residential parent of both minor children and the parties shall have joint custody;

Wife shall have primary decision-making authority for all non-emergency medical, educational, religious, and extra-curricular activities, except that the children shall not attend the same daycare as the McClinton children;

The Court hereby orders each party to maintain life insurance on themselves in the amount of $100,000 for the benefit of the children with each party choosing their own custodian;

The Court hereby awards the parties 50-50 parenting time, which shall be exercised week on and week off and as otherwise

indicated in this Order. Attorney for Husband shall draft and file the Permanent Parenting Plan and the Child Support Worksheet consistent with this Order by May 1, 2023; and

The Court orders both parties to pay their own legal expenses, other than those expressly identified in this Order.

The Court hereby affirms the jury verdict and award.

Husband owes Wife the following monies:

$6,387.32	Half of the children's expenses (See Exhibit 58);
$6,225.00	Judgment for attorney's fees for failure to comply with discovery;
$47,531.77	Litigation in pursuing the Order of Protection;
$2,010.00	Half of John Austin's counseling expenses;
$775.00	Half of Meredith's counseling expenses; and
$3,500.00	Half of the money Husband's aunt gave the parties;
$66,429.09	
- $3,500.00	Wife owes Husband for half of the money she took after mediation was cancelled
Total = $62,429.09	
+ $461,435.00	Jury Verdict
Grand Total = $524,364.09	Total Judgment Wife has against Husband for which execution may issue.

This is a final Order.

IT IS SO ORDERED.

SEAL

ENTERED this the 17th day of April, 2023.

DEANNA BELL JOHNSON
CHANCELLOR

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Memorandum and Order was mailed, postage prepaid, and/or emailed, and/or faxed, to:

Dana McLendon, Esq.
2020 Fieldstone Parkway, Suite 900-217
Franklin, TN 37069
dana@danamclendonlaw.com

Rebecca Byrd, Esq.
317 Main Street, Suite 204
Franklin, TN 37064
rbyrd@byrdhoodlaw.com

This the 18th day of April, 2023.

CLERK

STATE OF TENNESSEE
WILLIAMSON COUNTY
I, THE UNDERSIGNED CLERK & MASTER DO HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL OF THIS INSTRUMENT FILED IN THIS CAUSE
JAKOB L. SCHWENDIMANN, Clerk & Master

ATTACHMENT A

	VALUE	DEBT	EQUITY	To Husband	To Wife
1. MARITAL PROPERTY					
A. Real Property					
1 Address: 834-B Sutton Hill Road, Nashville, TN 37204					
Titled: Will Cotten					
Date of Purchase: 7/31/2009					
Estimated FMV as of (date):	$ 313,000.00	$ (123,914.45)	$ 189,085.55	$189,085.55	
Balance of First Mortgage as of (date & Balance):					
$123,914.45 as of 8/3/22 per H					
2 Address: 9466 Foothills Drive, Brentwood, TN 37027					
Titled: Will P. Cotten, Elizabeth A. Cotten					
Date of Purchase: 8/15/2013					
Estimated FMV as of (date):	$ 615,000.00	$ (196,279.48)	$ 418,720.52		$418,720.52
Balance of First Mortgage as of (date & balance):					
Totals	**$ 928,000.00**	**$ (320,193.93)**	**$ 607,806.07**	**$ 189,085.55**	**$ 418,720.52**
B. Checking and Savings Accounts					
1 Pinnacle					
Type of Account: Checking					
Last 4 digits of account #: 4463					
Style of Account: Elizabeth Cotten					
Balance as of (date & balance): $11,204.71 as of 8/4/22	$11,204.71	$11,204.71			($1)
inc $11,205.71 insurance check for roofing repairs					
$11,20471 - $11,205.71 = ($-1.00)					
2 Bank of America					
Type of Account: Checking					
Last 4 digits of account #: 5621					
Style of Account: Elizabeth Cotten					
Balance as of (date & balance): $9,455.49 as of 8/4/22	$ 9,455.49				$9,455.49

	VALUE	DEBT	EQUITY	To Husband	To Wife
3 Truist					
Type of Account: Checking					
Last 4 digits of account #: 3814					
Style of Account: Will Cotton					
Balance as of (date & balance): $1,912.83 as of 8/4/22	$ 1,912.83			$1,912.83	
Total	**$ 11,368.32**	**$ 11,204.71**	**$0**	**$1,912.83**	**$ 9,454.49**
Health Savings Accounts					
1 Name of Institution: Health Savings Administrators					
Type of Account: Health Savings Account (HSA)					
Last 4 digits of account #: 1817					
Style of Account: Will Cotten					
Balance as of (date & balance): $15,108.06 as of 8/3/22	$ 15,108.06			$15,108.06	
2 Name of Institution: Health Savings Administrators / Health					
Type of Account: Health Savings Account (HSA)					
Last 4 digits of account #: 0117					
Style of Account: Elizabeth A Cotten					
Balance as of (date & balance): $10,026.07 as of 8.1.22	$10,026.07				$ 10,026.07
3 Name of Institution: Pinnacle					
Type of Account: Health Savings Account (HSA)					
Last 4 digits of account #: 2350					
Style of Account: Elizabeth Cotten					
Balance as of (date & balance): $3,310.13 as of 8/4/22	$ 3,310.13				$ 3,310.13
4 Name of Institution: Optum Bank					
Type of Account: Health Savings Account (HSA)					
Last 4 digits of account #: 1619					
Style of Account: Elizabeth Cotten					
Balance as of (date & balance): $9,545.44 as of 8/4/22	$ 9,545.44				$ 9,545.44
Totals	**$ 37,989.70**			**$ 15,108.06**	**$ 22,881.64**

	VALUE	DEBT	EQUITY	To Husband	To Wife
Money Market/Brokerage Accounts/ESPP					
1 Name of Institution: Vanguard Type of Account: Brokerage Last 4 digits of account #: 6178 Style of Account: Will P Cotten Balance as of (date & balance): $191,932.31 as of 8/3/22	$ 191,932.31			$ 191,932.31	
2 Name of Institution: Fidelity Investments Type of Account: Employee Stock Purchase Plan (ESPP) Last 4 digits of account #: 6908 Style of Account: Elizabeth Cotten Balance as of (date & balance): $321,331.45 as of 8/4/22	$ 321,331.45				$321,331.45
3 Name of Institution: Sallie Mae Bank Type of Account: Money Market Account (MMA) Last 4 digits of account #: 8453 Style of Account: Liz Cotten Balance as of (date & balance): $25.45	$ 25.45			$ 25.45	
4 Vanguard Type of Account: Brokerage Last 4 digits of account #: 1705 Style of Account: Elizabeth Cotten Balance as of (date & balance): $0 as of 6.30.22	$0				$0
5 Asurion Stock Options Number of Options: 1060 Strike Price: $66 Target Value of this Grant: $70,000	$0				$0
Totals	**$ 513,289.21**	**$0**	**$0**	**$ 191,932.31**	**$ 321,356.90**

	VALUE	DEBT	EQUITY	To Husband	To Wife
Children's Accounts					
1 Name of Institution: my529 Type of Account: 529 Plan Last 4 digits of account #: 6767 Style of Account: Will Cotten, Meredith Cotten beneficiary Balance as of (date & balance): $4,963.77 as of 8/3/22	$ 4,963.77				$ 4,963.77
2 Name of Institution: my529 Type of Account: 529 Plan Last 4 digits of account #: 9334 Style of Account: Will Cotten, John Cotten beneficiary Balance as of (date & balance): $10,559.77 as of 8/3/22	$ 10,559.77				$ 10,559.77
Totals	**$ 15,523.54**				**$ 15,523.54**

D. Retirment Accounts

1 Name of Institution: Vanguard Type of Account: Rollover IRA Name of custodian, if applicable: How account is styled: Elizabeth Cotten Last 4 digits of account #: 8708 Balance as of 6.30.22: $58,676.82 as of 8/4/22	$ 58,676.82				$ 58,676.82
2 Name of Institution: Vanguard Type of Account: Roth IRA Name of custodian, if applicable: How account is styled: Elizabeth Cotten Last 4 digits of account #: 9609 Balance as of 6.30.22: $52,219.80 as of 8/4/22	$52,219.80				$ 52,219.80
3 Name of Institution: unknown (not listed with annual update) Type of Account: Employee Stock Ownership Plan					

	VALUE	DEBT	EQUITY	To Husband	To Wife
Name of custodian, if applicable: InfoWorks How account is styled: Elizabeth Cotten Last 4 digits of account #: Balance as of (date & balance): $128,451.97 as of 12/31/20	$ 128,451.97				$ 128,451.97
4 Name of Institution: Fidelity Investments Type of Account: 401K Savings Plan Name of custodian, if applicable: How account is styled: Elizabeth Cotten Last 4 digits of account #: 2057 Balance as of (date & balance): $155,102.83 as of 8/4/22	$ 155,102.83				$ 155,102.83
5 Name of Institution: Vanguard Type of Account: Roth IRA Name of custodian, if applicable: How account is styled: Will P Cotten Last 4 digits of account #: 9167 Balance as of (date & balance): $77,452.39 as of 8/3/22	$ 77,452.39			$ 77,452.39	
6 Name of Institution: Principal Type of Account: 401k Name of custodian, if applicable: How account is styled: Will Cotten Last 4 digits of account #: 6230 Balance as of (date & balance): $29,193.56 as of 8/3/22	$ 29,193.56			$ 29,193.56	
7 Name of Institution: TransAmerica Type of Account: 401k Name of custodian, if applicable: How account is styled: Will P. Cotten Last 4 digits of account #: 0001 Balance as of (date & balance): $11,562.01 as of 8/3/22	$ 11,562.01			$ 11,562.01	
Totals	**$ 512,659.38**	**$0**	**$0**	**$ 118,207.96**	**$ 394,451.42**

	VALUE	DEBT	EQUITY	To Husband	To Wife
E. Motor Vehicles					
Year, Make and Model: 2016 Lincoln Navigator Titled: Will Cotten, Elizabeth Cotten Kelly Blue Book value based on private party transaction: Balance of debt secured by lien on vehicle as of (date & Debt owed to: n/a Monthly Payment: n/a	$ 23,329.00				$ 23,329.00
Year, Make and Model: 2017 Ford F-150 Titled: Will Cotten Kelly Blue Book value based on private party transaction: Balance of debt secured by lien on vehicle as of (date & Debt owed to: Suntrust Monthly Payment: $497.42	$ 40,232.00	$ (15,585.99)	$ 24,646.01	$ 24,646.01	
Totals **NET TOTAL OF VEHICLES $47,975.01**	**$ 63,561.00**	**$ (15,585.99)**	**$ 24,646.01**	**$ 24,646.01**	**$ 23,329.00**
F. Life Insurance					
1 Name of Insurance Company: Cigna Policy #: 3337186 Owner: Will Cotten Insured: Will Cotten Beneficiary: Elizabeth Cotten Death Benefit: $116,000 Cash Surrender Value as of (date & balance): $0 Outstanding Loans against Cash Surrender Value Premium Payment: employer/payroll deduction Paid (monthly/annually):				X	
2 Name of Insurance Company: United Healthcare Insurance Policy #: 168504, Basic Life & AD&D Owner: Elizabeth Cotten Insured: Elizabeth Cotten Beneficiary: Will Cotten					X

	VALUE	DEBT	EQUITY	To Husband	To Wife
Death Benefit: $352,000 as of 6/30/22 Cash Surrender Value as of (date & balance): $0 Outstanding Loans against Cash Surrender Value as of (date Premium Payment: employer paid Paid (monthly/annually): bi-weekly					
3 Name of Insurance Company: United Healthcare Insurance Policy #: Employee Supplemental AD&D Owner: Elizabeth Cotten Insured: Elizabeth Cotten Beneficiary: John A Cotten, Meredith A Cotten Death Benefit: $528,000 as of 6/30/22 Cash Surrender Value as of (date & balance): $0 Outstanding Loans against Cash Surrender Value as of (date Premium Payment: $2.44 Paid (monthly/annually): bi-weekly					X
4 Name of Insurance Company: United Healthcare Insurance Policy #: Employee Supplemental Life Insurance Owner: Elizabeth Cotten Insured: Elizabeth Cotten Beneficiary: John A Cotten, Meredith A Cotten Death Benefit: $528,000 as of 6/30/22 Cash Surrender Value as of (date & balance): $0 Outstanding Loans against Cash Surrender Value as of (date Premium Payment: $12.67 Paid (monthly/annually): bi-weekly					X
G. Other Assets					
Trailer	$ 150.00			$ 150.00	
Totals	**$ 150.00**			**$ 150.00**	

	VALUE	DEBT	EQUITY	To Husband	To Wife
H. Unsecured Debt					
Other Debts					
1 Charge account or Credit Card Issuer: Chase Last 4 digits of credit card: 7200 Name in which charge account or credit card issued: Elizabeth Cotten Additional authorized users: Outstanding balance as of (date & balance): $2,263.39 as of 7.13.22		$ (2,263.39)			$ (2,263.39)
2 Charge account or Credit Card Issuer: Citi Last 4 digits of credit card: 0021 Name in which charge account or credit card issued: Elizabeth Cotten Additional authorized users: Outstanding balance as of (date & balance): $37.47 as of 07.15.22		$ (37.47)			$ (37.47)
3 Charge account or Credit Card Issuer: TJX Last 4 digits of credit card: 9767 Name in which charge account or credit card issued: Elizabeth Cotten Additional authorized users: Outstanding balance as of (date & balance): $0 as of 6.30.22		$0			$0
4 Charge account or Credit Card Issuer: US Bank Corporate Last 4 digits of credit card: 0146 Name in which charge account or credit card issued: UHG Additional authorized users: Elizabeth Cotten Outstanding balance as of (date & balance): $751.45 as of 07.06.22		$ (751.45)			$ (751.45)
5 Charge account or Credit Card Issuer: Bank of America Last 4 digits of credit card: 2868 Name in which charge account or credit card issued: Will Patterson Cotten Additional authorized users: Outstanding balance as of (date & balance):		$ (1,422.11)		$ (1,422.11)	
6 Charge account or Credit Card Issuer: Amex Corporate Card Last 4 digits of credit card: 2008 Name in which charge account or credit card issued: Asurion		$0		$0	

	VALUE	DEBT	EQUITY	To Husband	To Wife
Additional authorized users: Will Cotten Outstanding balance as of (date & balance): pd by company					
7 Charge account or Credit Card Issuer: Southwest Chase Last 4 digits of credit card: 1472 Name in which charge account or credit card issued: Will Cotten Additional authorized users: unknown Outstanding balance as of (date & balance):		$0		$0	
8 Charge account or Credit Card Issuer: Pinnacle Bank Last 4 digits of account: 1294 Name in which charge account issued: Elizabeth Cotten Additional authorized users: none Outstanding balance as of (date & balance): $99,998.01 as of 7.5.22		$ (99,998.01)			$ (99,998.01)
9 Charge account or Credit Card Issuer: Pinnacle Bank Last 4 digits of account: 5479 Name in which charge account issued: Elizabeth Cotten Additional authorized users: none Outstanding balance as of (date & balance): $60,000 as of 7.20.22		$ (60,000.00)			$ (60,000.00)
Total		**$ (164,472.43)**	**$0**	**$ (1,422.11)**	**$ (163,050.32)**
I. Attorneys' Fees					
Husband's Attorney's Fees		$ (201,486.11)		$ (201,486.11)	
Wife's Attorney's Fees		$ (334,898.74)			$ (334,898.74)
Total		**$ (536,384.85)**		**$ (201,486.11)**	**$ (334,898.74)**
TOTAL NET ASSETS	**$ 1,746,760.23**			**$ 541,042.72**	**$ 1,205,717.51**
TOTAL CREDIT CARD & BANK LOANS	**$ (164,472.43)**			**$ (1,422.11)**	**$ (163,050.32)**
TOTAL ATTORNEY'S FEES	**$ (536,384.85)**			**$ (201,486.11)**	**$ (334,898.74)**
NET VALUE OF ESTATE	**$ 1,045,902.95**			**$ 338,134.50**	**$ 707,768.45**