

In the Best Interests of the Child: Kant's Influence on Child Custody Rulings in
Tennessee

by

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Abstract

This work provides a detailed analysis of Immanuel Kant's deontological ethics, Tennessee family laws and the correlation between the two. The laws that are in effect today have an undeniable foundation in philosophical theories. To have an understanding of where laws derive from is a beneficial and useful tool while applying them to the citizens they influence. This study aims to explain a clearer picture of reasoning for such domestic laws and their similarities to the foundation of Kantian deontology. In doing so, the subject of deontology will be explored, and more specifically, Immanuel Kant's application of deontology.

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1 | INTRODUCTION

The morality that we endorse both directly informs the activities that we can participate in and those we cannot and shapes the laws that are in place to regulate how citizens act. My aim is to explore the relationship between law and moral philosophy. This paper will be directed to civil law, specifically, family statutes and the application thereof.

While it is apparent that ethical theories are incorporated into what statutes are presented and passed, the relationship between moral philosophy and Tennessee laws has not been examined in detail. When research has been broached on the connection between specific laws and philosophical foundations, several approaches have been utilized. Charron (1975) suggests definitions are at the basis of our understanding. In order for someone to grasp the reasoning behind statutes or laws, they must know the meanings of the words within these statutes. Dictionaries such as Black's Law Dictionary are useful, but that's not quite Charron's point. Instead, he places importance on the application of the word in court. Other authors, such as García Figueroa (2016) focus more on the philosophical side and what parts of this discipline can actually be tied to laws. That branch of philosophy known as ethics is the most applicable. This is in contrast to other areas such as metaphysics and epistemology. Ethical theories have a variety of foundational perspectives. Some are based on actions that bring happiness to the most people, while others are egotistical and self-serving. Deontology places importance on one's duty, or responsibility, to society. Actions are viewed as morally right if they uphold the rules moral agents are bound to and wrong if they do not. The consequences of these actions are not under consideration, rather it is how one's acts

fulfill their obligation to society. Before law was codified, there were certain expectations about how to act in place. The deontological perspective explains that it is morally right to adhere to those expectations and rules.

Law in general has an undeniable foundation in moral philosophy. To demonstrate this in an effective way, one small piece of the puzzle will be analyzed, Tennessee Family Law. This is an important topic for not only scholars to understand but everyday people who are required to follow these laws.

First, the moral philosophy of Immanuel Kant will be examined in great detail. Next, the analysis of statutes specifically in terms of Tennessee and family codes will be presented. Additionally, up to date information on all laws will be provided because of the amendments that follow some statutes. Not only will it be crucial to study how these laws are defined, but the application thereof will be addressed. Lastly, the explanation of how Kant's deontological theory is best suited for understanding the moral foundation of law will be discussed. This will provide the opportunity to understand the claim that has been made: Kantian theories, and therefore applied standards, have a similar foundation to the statutes that are presented and passed within Tennessee Family Courts.

1.1 Immanuel Kant's Deontological Ethics

A deontological moral philosophy states that whatever action we take must be based on our duty to the world around us despite the good (or bad) outcomes that will follow from our actions. It is in direct opposition to consequentialism. It is important to note that right and wrong, and good and bad, are not interchangeable terms. According to Kant, if something is right, it is what we are morally obligated to do. However, that doesn't necessarily mean that the action is good or bad. Something can be morally wrong

to do but can be considered good in terms of what it generates. What is right and wrong is based on a set of universal rules rather than the consequences our actions produce.

Immanuel Kant is the leading proponent of this form of ethics. His examination of morality starts with the understanding that inclination has no bearing. What can be good, can turn bad if the person who embraces it wills it to be so. Directly, Kant states that

Intelligence, wit, judgement, and the other talents of the mind, however they be named, or courage, resolution, perseverance, as qualities of temperament, are undoubtedly good and desirable in many respects; but these gifts of nature may also become extremely bad and mischievous if the will which is to make use of them, and which, therefore constitutes what is called character, is not good (pg. 13).

Qualification is necessary for constituting something as good, expect for the good will.

Kant references the “coolness of a villain” as a prime example. One cannot proclaim that specific virtues make a person good in all respects. A good temperament is seen to be a desirable trait; however, it is not seen as desirable in every situation. Does the coolness of a villain not trouble someone more than if they were hotheaded? And therefore, if a person is bad, their moral decisions mirror this and they act wrongly because they do not possess a good will. A good will is not good because of the actions it produces, but it’s good ‘in itself.’ Attempting to do the right thing is what is commendable according to Kant. We must implement a good will to be the motivator to our actions.

Kant explains that this will should be derived from something that is already within us rather than being taught to us as something completely new. Because this concept is naturally developed from what we already know, it is understood by us without extreme explanation. While it does come with restrictions and clarification, the sense of duty is already embedded into humanity. The notion of duty surpasses the actions a good will produces. There is a difference in duty motivating actions and one

simply acting in a way that complies with their duty. In other words, doing the right thing isn't enough, one must do it because it is right. The notion of duty must be free from all selfish inclinations. It must not be based on egotistical desires, rather, it should be founded in something of moral worth. For example, being nice to people you like because you want them to like you back isn't bad; however, it's not admirable according to Kant. Being nice to a person that you don't like is what would be admirable. No benefit is gained nor is it something that personal inclination has an effect upon.

Kant lays out various propositions that clarify a moral agent's duties. His first proposition states that all men have the duty to strive for happiness. The effects of unhappiness have the potential to promote transgressions of one's duty. However, Kant believes that humans already have an innate responsibility to obtain happiness. This further supports his argument that the concept of duty is essential to who we are as humans. Kant doesn't support this from the standpoint of personal inclination, but rather the moral worth that it provides. Next, Kant explains where actions should originate. He states the following:

... That action done from duty derives its moral worth, not from the purpose which is to be attained by it, but from the maxim by which it is determined, and therefore does not depend on the realization of the object of action, but merely on the principle of volition by which the action has take place, without regard to any object of desire. (pg. 18-19).

This explanation further implies that the desire to perform such actions is not in examination. Rather, the standard by which the action was conceived is being assessed. His third proposition is a direct result of the previous two claims. In essence, it is the idea that to act in regard of the law, one must reference their duty. Because law is of a commanding nature, it can be respected while not being tainted by personal inclination.

Kant explains this by stating that “Now an action done from duty must wholly exclude the influence of inclination . . . and consequently the maxim that I should follow this law even to the thwarting of all my inclinations” (pg. 19).

If an action is taken that is morally right, then it is considered rational. With rationality comes the hypothetical and categorical imperatives that Kant poses. A hypothetical imperative is a command that is dependent upon other things. The moral agent must first decide what they’re trying to achieve, and the hypothetical imperative follows. The formulation goes as such: “if you want A, then you must do B.” A commonly used example is that if you want to do well on a test, then you must study. It is presented in the form of advising what one should do in order to meet their goals rather than the moral duties upon which one should act. The needs and desires of moral agents are at the core of hypothetical imperatives.

In contrast, morality concerns categorical imperatives. These commands educate individuals on what they *should* or *should not* do. “One should not lie” is an example of a categorical imperative. It is independent of any other factor or reasoning. Categorical commands are absolute from a moral standpoint and every rational being is obligated to adhere to them. Kant is trying to argue that moral rules should be universal and not contingent on societal, cultural, or regional regulations. They are independent of the outcomes of what they produce, “. . .let the consequence be what it may” (pg. 34). Categorical imperatives are universal laws that must be followed even in conflict with inclination. Because of this, they provide insight that is free from the corruption of personal preference. He places these commands into three different categories: technical imperatives, pragmatic imperatives, and moral imperatives. Technical commands

reference art, pragmatic alludes to general welfare, and moral concerns the free will. For someone to will something to happen, they must also will the actions required (within their means) to meet the end. For example, to will helping another individual, one must also will the sacrifice, of any sort such as time or money, to do so. While there could be an infinite number of categorical imperatives, Kant simplifies the process. He establishes *one* categorical imperative rather than addressing every single action that is morally acceptable. This is known as the universal maxim.

One of the most significant attributes he adds to deontological ethics is the universal maxim he presents. He concludes that someone should act only by that maxim by which you can, at the same time, will that it be a universal law. Understanding what Kant means by maxim is necessary for interpretation. It is a specific action that annotates a general rule. There are multiple actions that could have the same underlying principle. In other words, a maxim could state the following: I ask my friend to borrow his car and tell him I will return it the next day. However, I know that I will not return it the next day because I am fleeing the country with his car. The underlying principle is lying. Additionally, the maxim that states “I will tell my mother I am going to spend the night at a friend’s house when I’m actually going to a party” represents lying. To determine if these actions are morally acceptable, they should be universalized. The universal maxim simplifies deontology and is a significant reason Kant’s moral philosophy is so popular. It allows us to formulate what is morally right and wrong. Because any maxim must be generalized by asking if it is acceptable for every moral agent to live by that particular maxim. If an individual is questioning whether it is morally acceptable to lie, for example, this equation can be utilized to formulate the answer. If a person lies, and

therefore everyone would be able to lie in any situation, we would have no basis for honest relationships. A contradiction occurs when trying to generalize it. Statements without factual evidence would become meaningless. Therefore, humanity cannot maintain communication while everyone lies. This constitutes lying as an action that is morally wrong. This is a simple example as to how Kant's formula is meant to be applied. The same principle applies to stealing. If everyone could steal, the idea of ownership would be inconsequential and therefore stealing wouldn't actually exist. People who act on such principles that are unable to be universalized are making exceptions for themselves. This is problematic because of the rationality that is stripped from them when doing so. If everyone made exceptions, there would no longer be a moral code. Therefore, making an exception in and of itself is a contradiction that cannot be rationally achieved.

Kant places great importance on rationality because, in his view, that is what makes us worthy of respect. Acting on such principles that cannot be universalized due to conflict goes against our status as rational beings. As rational beings, we are obligated to act morally. Kant explains that an action that is rationally willed is morally right. Therefore, if lying is considered irrational, and a person lies, they are betraying their own rationality and moral agency. They are treating themselves as a means to an end instead of an end. Because we are not entirely rational and have personal inclinations, we must set forth a moral code by which to act. Furthermore, persons who do such things betray themselves and their existence. They diminish themselves to merely the same level of an animal. This exemplifies Kant's Supreme Principle of Morality. What distinguishes us from animals is our free will and ability to deliberate and act upon something that is not

pure instinct. Having the capacity to reason sets us apart, and when our actions are not guided by reason and rationality, we devalue our existence. Because of this ability to reason, we have the moral obligation to act in such a way that reflects it. This ability also calls us to treat others as ends rather than means. Doing so appreciates their value instead of reducing them to that of an animal, much as acting immorally diminishes oneself. It is important to note that actions are not considered wrong because of the undesirable state in which our world would be in, but because everyone can't live by that rule due to contradiction. Contradictions betray the moral agents that are exempting themselves from the moral code. If they act on an immoral basis, they are subjecting their rationality to an end rather than the means which it should be. Thus, our morality is centered around making decisions that are motivated by duty and universalized so that any and all people can live by the law and have it be free from contradiction.

2 | TENNESSEE FAMILY LAWS

While there are hundreds of Tennessee statutes regarding family law, the ones examined in this paper are at the foundation of constituting permanent parenting plans. Using statutes that are broad in interpretation will better assist one in understanding how similar Kantian ethics are to the foundation of such laws. In other words, if an initial law is seen to have a deontological foundation, then other statutes that derive from that initial law would too. Understanding why we follow the laws we do is important. It should be understood that the legal consequences of not following the above-mentioned laws are not the only thing keeping the majority of citizens from doing so. The acknowledgement of responsibility and duty to do what is expected of them drives actions as well. In regard to this research, doing so will further justify why statutes regarding families, such as those examined below, are in place. While it is most common for parents to fulfill their responsibilities, that is sadly not always the case. Analyzing these laws will allow one to better understand what is legally expected of parents and why. Such statutes go into great detail of what the court aims to accomplish by setting forth these laws in the statute below.

2.1 Statute §36-6-401

The following statute is the most up-to-date version available (2019) and is free from further amendments. It is in regard to the court's findings.

“(a) Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children. In any proceeding between parents under this chapter... The general assembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature,

means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The general assembly finds the need for stability and consistency in children's lives. The general assembly also has an interest in educating parents concerning the impact of divorce on children. The general assembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

(b) The general assembly finds that mothers and fathers in families are the backbone of this state and this nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. Most children do best when they receive the emotional and financial support of both parents. The general assembly finds that a different approach to dispute resolution in child custody and visitation matters is useful.”

Effective January 1, 2001, §36-6-401 introduces the start of parenting plans and examines the responsibilities of the parents. This law not only explains that the following statutes are based on the duties of the parents, but why they are. It is one of the foundational rulings upon which the more specific laws are based. It is significant to note that while the parenting plan, mentioned at the end of paragraph (a), is made to keep the best interests of the child in mind, the law is based around what duties the parent can or cannot perform in order to make the plan. The law goes on to explain that the parents of children have the responsibility to raise them in such a way that they grow up to be suitable members of society.

In the case of *Jacob Daniel Drucker v. Colleen Erin Daley*, case No. M2019-01264-COA-R3-JV, we see the desire a father has to raise his daughter suitably. Jacob Drucker and Collen Daley had their daughter in March of 2008. Almost a year later, the couple went to court and received a permanent parenting plan allocating the mother primary custody. At the time, she lived in Selmer county, approximately three hours from

where the father resided. She has since moved back to Rutherford County. In March of 2019, Mr. Drucker filed to modify the custody of their daughter, Danica, and be given joint custody. This was in result of his daughter and her mother moving back. He felt that, since she is now closer, and he has the ability to see her more, that he should be awarded joint custody. Additionally, he believes that the needs of a fourteen-month-old, emotionally and mentally, are different from a ten-year-old, which is how old their daughter was at the time of this modification trial. Mr. Drucker states the following at the trial:

... “as a daughter gets older, she needs to understand what a good man is, how a father loves a child, how a father loves a daughter, how a man treats his wife.”

He followed by explaining that he wanted to play a much larger role in his daughter’s life than what the allocated 99 days a year would allow him to do. This is a prime example of how divorce can be detrimental to a child. If a child does not have both parents in their life a substantial amount of time, confusion about what is right or wrong can occur. Note that her mother went on to have four other children, all with different fathers. Mr.

Drucker believed this was harmful to his daughter’s understanding of how relationships should be. Nonetheless, the father still maintained a civil relationship with his child’s mother. He did this because he felt it was his responsibility. The court opinion stated that

“Father described the warm relationship he shared with Danica and acknowledged that Mother generally promoted a good relationship between him and the child.

He further acknowledged the importance of encouraging a good relationship between Danica and Mother. ...”

Each parent encouraging a healthy relationship with the other not only minimizes the detrimental effect divorce can have but is something that parents have the responsibility

to do. Not only is it legally referenced, but socially expected as well. Laura Tucker-Huggins, a mental health therapist practicing in Bedford and Rutherford counties, attests that it is damaging for a child to be placed in the middle of splitting parents. She has counseled many children going through the process. On most occasions, the parents are in need of education regarding the effect divorce can have on their children. She provides them with an illustration that visibly shows what their responsibilities are. It is included below.

Figure 1:



This illustration encompasses many of the things parents have the responsibility to do to decrease the harmful effect of a splitting family. Because they have the duty to put the child first, the child will experience what is best for them. Mr. Drucker exemplifies this when he asked the court to appoint him joint custody. The father in this case has done

exactly what the court expects of parents: to spend time and support their children in a variety of ways. Because of this, the presiding judge stated the following:

“In all candor, it’s rare to see a case, frankly, that’s more suited to equal parenting time. Largely, due to the stature of parents, the -- the child’s being so well-adjusted and being so high-functioning and the distance between the parties, in the Court’s judgment, this case is well-suited for a designation of equal parenting time. Therefore, the Court does adopt the father’s parenting plan as admitted into evidence as Exhibit Two, finding that plan to be in the child’s best interest, finding that there was, in fact, a material change of circumstance based on the previously announced factors.”

The court states that not only are they making the decision based on mitigating circumstances, but because of duties that both parents have shown capable of fulfilling.

2.2 Statute §36-6-402

The following statute is the most up-to-date version available (2019) and is free from further amendments. It is regarding part definitions.

“As used in this part, unless the context requires otherwise:

...(2) “Parenting responsibilities” means those aspects of the parent-child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. “Parenting responsibilities,” the establishment of which is the objective of a permanent parenting plan, include:

(A) Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development;

(B) Providing for the child's physical care, including attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(C) Providing encouragement and protection of the child's intellectual and moral development, including attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(D) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(E) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(F) Providing any financial security and support of the child in addition to child support obligations; ... ”

In the first parts of the statute, the term “Parenting Responsibilities” is defined.

This allows for there to be little confusion because of the in-depth definition that is provided. More specifically, it references these actions as the *duties* that a parent has to their child. This statute is a foundational and descriptive law that other laws derive from. Not only does the verbiage of other laws derive from §36-6-402, but the understanding of what these terms mean also originates here. The permanent parenting plan that is mentioned is an arrangement made between both parents to better assist in their duties to the child being met. It is significant to note that the court goes into various aspects of the duties that should be performed by the parent. They first referenced the emotional care that should be provided. Expectations of emotional support is explained in paragraph (A). The court recognizes that these children grow up to be members of society. They, in turn, will have expectations to fulfill. If the responsibilities aren't taught to them from a young age, it could impact the course of their life and their ability to adhere to societal rules. The court not only expects parents to care emotionally for a child, but physically as well. The explicit detail the statute offers allows for there to be no confusion on the physical necessities a parent is obligated to give a child. While society expects these things of parents anyway, making it law allows for there to be consequences if responsibilities aren't satisfied.

In the court case, *Jessica V., et al*, case No. W2019-01700-COA-R3-PT, one can see the effects of neglecting parental duties. Jessica V. and Julianna V. were children born to Daniel V. and Lana V. Custody of the twin sisters was awarded to their maternal aunt and uncle, Ronnie D. and Kimberly D. because of a series of events that took place. From the young age of four months old, their parents were incarcerated numerous times. Even when free, the parents rarely supported the twins in any way. The father disputed the court's decision to terminate his rights in the Court of Appeals of Tennessee. A summary from the decision he tried to appeal is as follows:

“The trial court terminated a father’s parental rights to his children on the grounds of (1) abandonment by willful failure to visit, (2) abandonment by willful failure to support, (3) abandonment by engaging in conduct prior to incarceration that exhibits a wanton disregard for the children’s welfare, and (4) failure to manifest an ability and willingness to personally assume custody of or financial responsibility of the children.”

Because the mother of these children is not contending the court’s decision, it’s best to focus on the father and his actions as such. The first lack of duties the court addresses of Daniel V.’s is in direct connection with section (A) of §36-6-402. He failed to maintain any relationship with the children at all, let alone a relationship that is of a nurturing spirit. The attorney on this case rightfully petitioned this, and the other discrepancies, as abandonment. The summary goes on to acknowledge Daniel V.’s failure to support the children. This correlates with multiple sections of §36-6-402. Subsection (F) speaks of the financial support that parents must provide. While in most cases, monetary support is of importance, there is a lack of emotional, mental and educational support as well. In other words, no assistance has been given from the father of the children. Next, the court evaluates Daniel V.’s behavior previous to incarceration. He and his wife’s involvement with domestic violence in front of the children is a prime

example. Subsection (E) explicitly references the welfare of the child and the duty a parent has to maintain it. While paragraphs (A) and (B) do not call it welfare, the wellbeing of the children is referenced as well. Lastly, the court recognizes the financial, emotional and custodial aspects that Daniel V. lacked in parenting. The duties he was obligated to fulfill as a parent were neglected. This caused him to lose his rights to being their legal parent. While he tried to appeal the decision, the court maintained its original verdict. In essence, Daniel V. lost his parental rights because the duties he had, on both a societal and legal level, were not met. The legal system determined that because of his lack to do all the responsibilities listed in §36-6-402, he was not fit to parent. Therefore, parental rights are, or the revocation thereof, is based on the duties one completes.

2.3 Statute §36-6-404

The following statute is the most up-to-date version available (2019) and is free from further amendments. It is about permanent parenting plans.

“(a) Any final decree or decree of modification in an action for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child shall incorporate a permanent parenting plan; provided, however, that this part shall be inapplicable to parties who were divorced prior to July 1, 1997, and thereafter return to court to enter an agreed order modifying terms of the previous court order. A permanent parenting plan shall:

- (1) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;
- (2) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in this part;
- (3) Minimize the child's exposure to harmful parental conflict; ...
- (5) Allocate decision-making authority to one (1) or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the

criteria in this part. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child;

(6) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent;

(7) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject to the exception set forth in subdivision (a)(4)(F); ...

(9) Specify that if the driver license of a parent is currently expired, canceled, suspended or revoked or if the parent does not possess a valid driver license for any other reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety and welfare of the child when such child is in the custody of such parent.

(b) Any permanent parenting plan shall include a residential schedule as defined in § 36-6-402. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)–(15). ... ”

Using knowledge gained from the foundational laws, such as §36-6-401 and §36-6-402, one can now understand parenting plans and most of what they are used for. In essence, the court is allocating time to each parent based upon the parental responsibilities (or duties) they can adequately fulfill. Therefore, a parent’s duties are at the focal point of examination within these laws. A permanent parenting plan (PPP) is a very detailed worksheet that outlines many of the decisions regarding a child’s life. This form indicates when each parent will receive time with the child. It includes time for every seasonal vacation, holiday, birthday, and the regular week to week schedule. Permanent parenting plans are specific down to the time that the child should be exchanged between parents and what transportation methods will be used. Additionally, the PPP has a section dedicated to decision making. This is comprised of day-to day

decisions and major decisions concerning education, medical treatment, extracurricular activities, and religion. Financially, the parenting plan states the amount of child support, if any, that should be exchanged as well as which parent will get to claim the child on their taxes. One of the last qualifications to be completed on the PPP is the completion of

Figure 2: Permanent Parenting Plan Worksheet

| | | |
|--|---|---|
| STATE OF TENNESSEE | COURT <i>(Must be completed)</i> | COUNTY <i>(Must be completed)</i> |
| PERMANENT PARENTING PLAN ORDER | | FILE No. _____ <i>(Must be completed)</i> |
| <input type="checkbox"/> PROPOSED <input type="checkbox"/> AGREED <input type="checkbox"/> ORDERED BY THE COURT | | DIVISION _____ |
| PLAINTIFF <i>(Name: First, Middle, Last)</i> | | DEFENDANT <i>(Name: First, Middle, Last)</i> |
| _____ | | _____ |
| <input type="checkbox"/> Mother <input type="checkbox"/> Father | | <input type="checkbox"/> Mother <input type="checkbox"/> Father |

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This plan is a new plan.
 modifies an existing Parenting Plan dated _____.
 modifies an existing Order dated _____.

| Child's Name | Date of Birth |
|--------------|---------------|
| | |
| | |
| | |
| | |
| | |
| | |

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Parenting Plan must designate the parent with whom the child is scheduled to reside a majority of the time as the Primary Residential Parent of the child(ren). The designation shall not affect either parent's rights and responsibilities under the Parenting Plan.

The Primary Residential Parent is

- Mother
- Father
- Joint Primary Residential Parents (only if by agreement)
Child must reside an equal amount of time with both parents.
- Waived by Mother and Father (only if by agreement)
Child must reside an equal amount of time with both parents.

Under the schedule set forth below, each parent will spend the following number of days with the children:

Mother _____ days Father _____ days

B. DAY-TO-DAY SCHEDULE

The mother father shall have responsibility for the care of the child or children except at the following times when the other parent shall have responsibility:

From _____ to _____
Day and Time Day and Time

every week every other week other: _____.

The other parent shall also have responsibility for the care of the child or children at the additional parenting times specified below:

From _____ to _____
Day and Time Day and Time

every week every other week other: _____.

This parenting schedule begins _____ **or** date of the Court's Order.
Day and Time

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Indicate if child or children will be with parent in ODD or EVEN numbered years or EVERY year:

| | MOTHER | FATHER |
|---|--------|--------|
| New Year's Day | _____ | _____ |
| Martin Luther King Day | _____ | _____ |
| Presidents' Day | _____ | _____ |
| Easter Day (unless otherwise coinciding with Spring Vacation) | _____ | _____ |
| Passover Day (unless otherwise coinciding with Spring Vacation) | _____ | _____ |
| Mother's Day | _____ | _____ |
| Memorial Day (if no school) | _____ | _____ |
| Father's Day | _____ | _____ |
| July 4 th | _____ | _____ |
| Labor Day | _____ | _____ |
| Halloween | _____ | _____ |
| Thanksgiving Day & Friday | _____ | _____ |
| Children's Birthdays | _____ | _____ |
| Other School-Free Days | _____ | _____ |
| Mother's Birthday | _____ | _____ |
| Father's Birthday | _____ | _____ |
| Other: | _____ | _____ |

A holiday shall begin at 6:00 p.m. on the night preceding the holiday and end at 6:00 p.m. the night of the holiday, unless otherwise noted here _____.

This holiday schedule and other school free days shall supersede the Day-To-Day Schedule.

D. FALL VACATION *(If applicable)*

The day to day schedule shall apply except as follows: _____
_____ beginning _____.

E. WINTER (CHRISTMAS) VACATION

The mother father shall have the child or children for the first period from the day and time school is dismissed until December _____ at _____ a.m./p.m. in odd-numbered years in even-numbered years every year. The other parent will have the child or children for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. The parties shall alternate the first and second periods each year.

Other agreement of the parents: _____

F. SPRING VACATION *(If applicable)*

The day-to-day schedule shall apply except as follows: _____
_____ beginning _____.

G. SUMMER VACATION

The day-to-day schedule shall apply except as follows: _____
_____ beginning _____.

Is written notice required? Yes No. If so, _____ number of days.

H. TRANSPORTATION ARRANGEMENTS

The place of meeting for the exchange of the child or children shall be: _____

Payment of long distance transportation costs *(if applicable)*: mother father both equally.

Other arrangements: _____

If a parent does not possess a valid driver's license, he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

I. SUPERVISION OF PARENTING TIME *(If applicable)*

Check if applicable

Supervised parenting time shall apply during the day-to-day schedule as follows:

Place: _____

Person or organization supervising: _____

Responsibility for cost, if any: mother father both equally.

J. OTHER

The following special provisions apply:

II. DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

- | | | | |
|----------------------------|---------------------------------|---------------------------------|--------------------------------|
| Educational decisions | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Non-emergency health care | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Religious upbringing | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Extracurricular activities | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| _____ | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |

III. FINANCIAL SUPPORT

A. CHILD SUPPORT

Father's gross monthly income is \$ _____

Mother's gross monthly income is \$ _____

1. The final child support order is as follows:
 - a. The mother father shall pay to the other parent as regular child support the sum of \$ _____ weekly monthly twice per month every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.***

If this is a deviation from the Child Support Guidelines, explain all of the following:

The reason for the deviation: _____

The presumptive amount of the child support (without the deviation): _____

How is the application of the Guidelines unjust or inappropriate?

How is the best interest of the child served?

Does the child support obligation after the deviation provide for all of the child(ren)'s needs, taking into consideration both parents' income? _____

- (4) Statement that absent agreement between the parents or an objection by the non-relocating parent within thirty (30) days of the date notice is sent by registered or certified mail in accordance with subsection (a), the relocating parent will be permitted to do so by law.
- (b) Absent agreement by the parents on a new visitation schedule within thirty (30) days of the notice or upon a timely objection in response to the notice, the relocating parent shall file a petition seeking approval of the relocation. The non-relocating parent has thirty (30) days to file a response in opposition to the petition. In the event no response in opposition is filed within thirty (30) days, the parent proposing to relocate with the child shall be permitted to do so.
- (c) (1) If a petition in opposition to relocation is filed, the court shall determine whether relocation is in the best interest of the minor child.

VIII. PARENT EDUCATION CLASS

This requirement has been fulfilled by both parents mother father neither.
 Failure to attend the parent education class within 60 days of this order is punishable by contempt.

Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct. (A notary public is required if this is a proposed plan by one parent. A notary public is required if this is an agreed plan by both parents.)

 Mother Date and Place Signed

Sworn to and subscribed before me this _____ day of _____, 20_____.

My commission expires: _____
Notary Public

 Father Date and Place Signed

Sworn to and subscribed before me this _____ day of _____, 20_____.

My commission expires: _____
Notary Public

APPROVED FOR ENTRY:

Attorney for Mother

Attorney for Father

Address

Address

Address

Address

Phone and BPR Number

Phone and BPR Number

Note: The judge or chancellor may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan.

The court goes so far as to address the driver's license status of parents in subsection (9) of statute 36-6-404. If a parent is unable to legally drive, they are responsible for making suitable arrangements for the child. A case where permanent parenting plans were made due to a parent's driving habits, among other things, is the case of *Michael Lee Brown v. Jennifer Karen Brown*, case No. M2019-00693-COA-R3-CV. The couple were married from 2005 until 2015 when they separated, and the father moved to Colorado where he served in the military. That same year, Jennifer K. Brown, the mother, was caught driving under the influence with their child in the car. She drove to a local Red Lobster to pick up food and left the three-year-old in the car when she went in. Upon arriving, she walked in and sat at the bar and proceeded to order an alcoholic beverage. She didn't drink it; however, she told the bartender that she already felt "tipsy" (due to consuming alcohol at home) and need to get to her house. She called her neighbor to come pick her up, nonetheless, a bystander noticed a child in a car and called 911. Subsequently, Jennifer K. Brown was charged with an array of charges including DUI, endangerment, neglect, and child abuse. The father, who was serving in Afghanistan at the time, took urgent leave and flew home to get their child. He provided testimony that is astonishing. It references one of the many video calls he had with his daughter and the event that ensued. It states the following:

“[Mother] would pass out unconscious, and [Child] would try to wake her up, you know, saying, “Mommy, Mommy.” And I’d end up having to put [Child] to sleep via Skype. Tell her, “Baby, go get your pillow and your blanket and curl up on the couch right there in front of me.” And I would sit there on Skype until one of the two of us ran out of battery, and then hope beyond that point that nothing happened.”

Once the child was in the father's custody, they went to Colorado. She was there for approximately 6 months until Ms. Brown came and took her back to Tennessee. Mr. Brown did not take any legal action for custody at that point. Custody was shared for almost two years when the mother was arrested once again for public intoxication while having her other child in her care. Because the father was in Afghanistan at the time, their child was placed in the custody of the state. Father flew back once again and took custody of the child. Two months later, in October of 2017, DCS filed a suit against Jennifer Brown. In the year following other events, mirroring her past discretions, continued. This even included a Class D felony for false reporting. In March of 2019, Michael Lee Brown, father of the child, was awarded primary residential parent. This was after he was transferred to a "nondeployable position" to be able to care for his daughter with no worries of being sent off. Ms. Brown has appealed the decision of primary residential parent, yet the court of appeals maintained the decision of the Circuit Court for Montgomery County. The application of statute §36-6-404 is seen within this case. In the case of *Michael Lee Brown v. Jennifer Karen Brown*, Mrs. Brown was initially given primary custody because of the duties the father failed to complete due to his deployable status. However, the court later ruled that because of Ms. Brown's actions and the lack of responsibilities she satisfied, that Mr. Brown could now fulfill, he should be the primary parent in the child's life.

3 | Kantian Deontology and Tennessee Family Laws

Law in general is centered around ethics and the moral standards that we should uphold. The connection between Kant's deontological ethics and Tennessee family laws goes deeper than surface level. At the heart of these statutes is the duty parents have to their children. Researching which moral theory best applies is something that will aid understanding the relationship between the rules we are obligated to follow and morality. What is considered right and wrong, outside of the law, is one thing, incorporating it into mandatory rules for a society to follow is another. Kant's ethical approach to determining what is right and wrong is rooted in the rationality we encompass as humans. We are set apart from all other creatures because of the ability to reason rather than acting on inclination or instinct. In doing so, we have the moral responsibility to utilize this rather than diminishing oneself to that of an animal. He pursues the notion of duty to explain upon what we should base our moral decisions.

Because we originally have this sense of responsibility embedded within us, outside forces do not determine what we base our ethical values upon. Kant then uses his universal maxim to allow one to formulate whether an action is moral or not. The universal maxim, stated by Kant, is as follows: "Act only on that maxim whereby thou canst at the same time will that it should become a universal law" (pg. 38). Providing us with this formulation allows to understand which principles are moral and which are not. Moreover, he elaborates that one that acts against this command is betraying themselves by devaluing their existence. Treating others in a way that cannot become universal law is diminishing their existence. When rationality is left out of decision making, Kant makes it very clear that it strips us of what makes us human. One does not expect a

giraffe to have a moral compass because they do not have the capacity to formulate right and wrong. In essence, Kant believes that when we do not use our abilities, we are reducing who and what we are to an animal. He urges us to act in such a way that we are laying the moral laws for all of humanity. In doing so, we will act rationally because we evaluate the effects of actions.

Tennessee family laws share a foundation with Kantian deontological ethics in a variety of ways. First, the statutes are based on the responsibilities of the parents. One can see this through the terminology that is used when formulating such laws. Specifically, statute §36-6-401 states “Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children.” This law is one that other laws are derived from. The more specific laws are based on the courts “findings” as to what is expected of parents. Therefore, all statutes are based on the duties parents have.

In order to support this claim, one must examine more than just one law. Two of the most predominate statutes that are used in custody cases are statute §36-6-402 and §36-6-404. Both concern parenting plans and how to allocate time to each parent. As stated in statute §36-6-402, the court shall make determinations based on which parent can better fulfill their duties. They appeal this statute in order to define all the responsibilities or duties a parent has. These duties are those that are necessary for the proper growth of a child. The duties described by these laws are morally expected of parents. Not completing these actions is considered morally wrong and thus irrational. Therefore, the law is promoting morally rational behavior. Statute §36-6-402 states that it is the duty of the parent to feed, clothe, and provide health care for their child. Plugging

this into Kant's universal maxim would go as follows: I ought to feed, clothe and provide healthcare for my child because it can be universally willed that all parents feed, clothe and provide healthcare for their child. However, if one approaches it from an opposite stance and states the following: I do not have to feed, clothe or provide healthcare for my child, and therefore, no parent has to feed, clothe or provide healthcare for their child, it could not be universally applied.

When neglecting such duties, one subjects themselves to contradiction. If no parent were to act on such duties, children would die from starvation, and humanity would cease to exist. This shows that statute §36-6-402 has an identical application as Kant's ethics. Additionally, Kant described how we should treat other moral agents. Treating them in such a way that cannot be universally willed diminishes their humanity. Considering them as a means instead of an end goes against all guidelines of both the law and Kantian deontology. Furthermore, the court determined the amount of time a child has with such a parent based upon their ability to fulfill such duties. This further illustrates that the court's main concern is the parents and the consequences their actions produce. If they allowed everyone to do as they wish with their children, there would be many that would be subject to very harmful ways of life.

As far as allocating time, the court again centers it around the parental duties upon which each parent can act. In figure 2, one can see a specific schedule that is laid out based on these factors. If a father works night shift, for example, he cannot provide any care during that time. It would be irrational to leave a child by themselves for eight hours at the least. The court understands this on a moral level and would divide the time up based on this fact. In connection to Kantian deontology, the ethical approach would deem

the same outcome. Because anything could happen, and the child would have no understanding about what to do in serious situations, they would be left defenseless. Can it be universalized that all parents leave their children alone for eight hours at the least? No, it cannot. The care that infants need cannot be left neglected for eight hours. If all parents did that, more children would die at any early age due to the events that could occur while unattended. Actions such as this could cause a parent to be ordered supervised visitation only. This is referenced on the third page of the parenting plan. Supervised visitation is when parents are only allowed to see their children while in the company of another adult who is found acceptable by the court. This occurs when parents have demonstrated actions that are opposed to what they are legally bound to, but their rights haven't been completely revoked. If a parent does not fulfill their duty, they are only allowed to see the child in the presence of another adult. This can be willed universally without contradiction; therefore, it is morally right. At the essence of Kant's theories is the notion that duty is already embedded within us. This is exemplified when we look back at times where laws, such as the ones examined, were not in place. Rational people knew and understood that not feeding your children is morally wrong without the law telling them so or without Kant's universal maxim. Laws themselves are only in place because of immoral individuals.

While it is important to examine these laws for their foundation, the application of such is just as significant. For what good are laws if they are not executed as they are meant to be? In the case of *Jessica V., et al*, case No. W2019-01700-COA-R3-PT, a father's rights were taken away because of the situations he subjected his children to, among many other factors. In turn, the court found he lacked the responsibility of

providing a loving a stable environment. Universalizing it, if every parent were to subject their children to domestic violence, such as Daniel V. did, children would be raised to believe it is permissible to act in such a way. This would cause extreme disarray in our society. People would be treating others as a means instead of an end, therefore diminishing their existence by acting in such a way that cannot be universally applied. In another case, a father who once was unable to play a significant role in his child's life due to the distance between them, now lives less than 500 feet from his daughter. Due to the evolving circumstances, the father was awarded joint custody because of the increase in responsibilities he could now fulfill. These were the circumstances surrounding the case of *Jacob Daniel Drucker v. Colleen Erin Daley*, case No. M2019-01264-COA-R3-JV. The court finds that the duty of "Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development; ..." While Mr. Drucker could not do as such when the child was fourteen months old, by the age of ten, when she was in close proximity, he could. All parents who once could not take on the responsibility of a child, that now can, should be able to spend equal time with them. No contradictions can be found in making the statement; therefore, it is morally acceptable. Tennessee family laws and Kantian deontology can be seen to have an identical application of morality in this situation. The universal maxim can be further simplified to fit a variety of circumstances. All people that once acted out of personal inclination, now act of duty, can take on the roles that come with such. The application of statute §36-6-404 is seen when Jennifer Brown status of primary residential parent is revoked due to her irrational action. In this particular case,

the mother decided to drive while intoxicated on many occasions, endangering the life of her and her child. Because of this, she proved to the court she does not have the rationality or sense of responsibility for her decisions as a mother. Simply put, all parents can endanger the life of their child. This cannot be universally willed because of the contradictions that follow. One, at the forefront, is the concept of all children of said parents losing their lives because of their parent's decision. Treating them as a means instead of an end diminishes their rationality as well. Once more, applying Kant's universal maxim to determine morality proves to imitate Tennessee family laws.

3.1 Arguments against this Conclusion

Many may wonder why Kant's Deontology is the ethical theory in examination. In this section, I will explain why other theories do not exemplify Tennessee family laws as well as deontology, and more specifically, Kant's views. Ethical egoism, Virtue Ethics, the Divine Command Theory, and utilitarianism are some of the most recognized ethical theories to date. Ethical egoism is the theory that moral agents should act in such a way that promotes their wellbeing. Morally, their own self-interest is at the foundation of all decisions. Virtue ethics presents the notion that an individual's character is at the focal point of ethics. The Divine Command theory asserts that whatever God commands is morally right. Belief in God is essential to this theory. Lastly, utilitarianism places importance on the majority of people and the benefit that actions provide them. Morally acceptable decisions will profit the majority in any situation. These ethical theories have their own place in what they influence, however, Tennessee family statutes is not their area of application.

Ethical egoism promotes one to act in such a way that promotes only what they desire. The laws that have been examined are quite the opposite of that. They require parents to fulfill their duties despite their inclinations. One could assert that parents follow such laws to keep from bearing the consequences, yet that is not why the law is implemented in the first place. If laws were to have an egotistical foundation, they would say something to the effect of “parents should only perform actions that benefit themselves or promote their wellbeing in some way.” It is easy to see the lack of egoism that Tennessee family statutes encompass.

When actions or consequences are of no ethical concern, and character is, the application of virtue ethics is being deployed. Virtue ethics is centered around the qualities moral agents possess. This also includes the lack or excess of a virtue being morally corrupt. However, a typical virtue ethics is assumed by a very uniform and standardized society and does not leave room for variation. A person is deemed moral if they possess specific virtues. This in turn creates a problem when trying to apply it to a state full of very individualized and unique people. For virtue ethics to be applied, society would have to come to an agreement on what deems a person ethical. Because there is a lack of consensus on what constitutes a good person in society, there can be no correlation between virtue ethics and Tennessee family law or any American law for that matter.

The Divine Command Theory asserts that people should only act in accordance with the commands God gives us. If one acts in accordance with what God commands, they are morally right, however, if not, they are evil. Because of the separation between church and state, laws cannot have a religious bearing. Not all people believe in a higher

power, let alone the same supreme being. No Tennessee family statute bases its rationality in religion. They don't mention God at all. Therefore, the Divine Command Theory has no foundational ties to Tennessee family laws.

Lastly, utilitarianism proclaims that actions should be made in consideration of who will benefit. When faced with a decision, one should choose the action that benefits the most people. This theory may seem to be a better fit. This is due to the law being applied to everyone and to the fact that society as a whole benefits from the assertions laws make. However, the benefit of society is not in examination with Tennessee family laws. The court does not lay out all the duties and responsibilities that must be fulfilled to benefit the majority. It is intended to explain parents' roles and hold them accountable to remind them of their duties and what is expected of them. Additionally, they are put in place not for society's benefit, but for the children whose parents do not uphold such standards.

However, Kantian deontology places great importance on the duty we have to society. He formulates a universal maximum to which one's actions must conform in order for them to be morally right. There is not one assertion made in the statutes regarding Tennessee families that violates this universal maxim. Moreover, the terms "duty" and "responsibility" are used over and over in the statutes examined above. This allows one to make the connection on a surface level. Explaining other ethical theories shows the limitations they have in terms of laws being founded in them. However, this provides insight as to why Kant's deontological ethics is the most suitable ethical theory in comparing foundational similarities to Tennessee family laws and further strengthens the conclusions of this research.

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