11-15-74
52/2/828

IN THE FOURTH CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

11-15
294 pw

RITA SANDERS O'DWYER	]	
	]	
Plaintiff	]	
	]	
vs.	]	NO. 72911
	]	
JAMES PATRICK O'DWYER	]	
	]	
Defendant	]	

FINAL DECREE

This cause came on to be heard on the first day of November, 1974, before the Honorable Morris Levine, Special Judge for the Fourth Circuit Court of Davidson County, Tennessee, upon the original complaint, answer, testimony of plaintiff and two witnesses in open Court, statements of attorneys, and the entire record in this cause. The Court finds that the plaintiff has sustained her allegations and that the defendant is guilty of such cruel and inhuman treatment against her as renders further cohabitation unsafe and improper. The Court further finds that the property settlement agreement and the related trust agreement are proper and should be approved in every respect, including the granting of custody of the minor child, James Jo-eph O'Dwyer to the plaintiff, Rita Sanders O'Dwyer, with visitation privileges to the defendant. From the statements of both counsel, and considering all the circumstances of the case, the Court finds that the plaintiff's attorney is entitled to a fee from the defendant in the amount hereafter stated.

It is therefore, ORDERED, ADJUDGED and DECREED that Rita Sanders O'Dwyer be granted an absolute divorce from the defendant, James Patrick O'Dwyer upon the grounds that the defendant has been guilty of such cruel and inhuman treatment as renders further cohabitation unsafe and improper. It is

further ORDERED that Rita Sanders O'Dwyer have the exclusive care, custody, and control of the minor child of the parties, James Joseph O'Dwyer, and that the defendant may visit with the child by picking him up at his home every other Friday at 7:00 p.m., and may keep the child until the following Sunday at 7:00 p.m., when he shall deliver the child to his mother's home.

It is further ORDERED that the property settlement agreement and the related trust agreement be made a part of this decree, and the parties are hereby ORDERED to carry out the provisions of these agreements in every respect. These agreements, in words and figures, are as follows:

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JAN 9 10 02 AM '75

This agreement made and entered into on this 1st day of October, 1974, by and between RITA SANDERS O'DWYER, hereinafter referred to as Wife, and JAMES PATRICK O'DWYER, hereinafter referred to as Husband:

WITNESSETH, whereas the parties hereto have encountered marital difficulties which are apparently irreconcilable; and

Whereas, Wife has filed a complaint for divorce in the Fourth Circuit Court of Davidson County, Tennessee, Docket No. 72911, against Husband; and

Whereas, the parties hereto are mutually desirous of adjusting certain property rights between themselves;

Now, therefore, for good and sufficient consideration, the parties hereinto mutually agree as follows:

1. Wife shall have the exclusive care, custody and control of the minor child of the parties, JAMES JOSEPH O'DWYER, and Husband shall have reasonable visitation privileges. (See addendum)

2. Husband shall pay to Wife the amount of Six Hundred ($600.00) Dollars per month. In the event a divorce is granted to Wife, it is agreed that Three Hundred ($300.00) Dollars per month shall be allocated as child support and Three Hundred ($300.00) Dollars per month shall be allocated as alimony. The alimony provision herein shall be definite and shall continue until the death or remarriage of the Wife. In addition, Husband is entitled to claim the child as a dependent.

3. Husband agrees to cooperate in the renewal of a Fifty Thousand ($50,000.00) Dollar term life insurance policy on his life, which is now owned and paid for by Wife.

4. Husband will provide and pay for health and hospitalization insurance on Wife and the minor child.

5. Husband and Wife agree that the present division of furniture and household goods shall remain in effect, and each shall own as his own personal property those household goods now in the

6. Husband and Wife agree that the automobiles now titled in their separate names shall remain their separate personal property.

7. Husband and Wife agree to establish a Trust for the benefit of their minor son, which Trust will provide funds for the college and graduate education of said son. Husband and Wife agree to convey to this Trust rental property they now own in East Nashville. The Trust agreement, signed by both parties, is attached hereto and made a part of this agreement.

8. Wife agrees to convey to Husband all of her interest in the former residence of the parties and all of her interest in the lot the parties now own in Bellevue.

9. Husband and Wife agree that if a divorce is granted by the Fourth Circuit Court of Davidson County, Tennessee, the parties will request that this agreement be established as the final settlement between the parties and be made a part of the divorce decree.

10. Husband agrees to pay an attorney's fee to wife's attorney, John W. Wagster. His fee shall be set by the Court at the final hearing.

James P. O'Dwyer
JAMES PATRICK O'DWYER

Rita Sanders O'Dwyer
RITA SANDERS O'DWYER

Addendum: Reasonable visitation rights shall include specific visitation rights of the husband as follows:- Husband shall pick up child at wifes home every other Friday at 7 P.M and may keep the said child until the next Sunday at 7 P.M when he shall deliver the said child to the wifes home.- James P. O'Dwyer Oct 1 1974

RECORDER'S MEMO:
Legibility of Writing, Typing or Printing in this Document Unsatisfactory When Received.

BOOK 4880 PAGE 322

TRUST AGREEMENT

This agreement made and entered into on this 1st day of October, 1974, by and between RITA SANDERS O'DWYER and JAMES PATRICK O'DWYER:

WHEREAS JAMES PATRICK O'DWYER and RITA SANDERS O'DWYER have encountered irreconcilable marital difficulties; and

WHEREAS both parties desire to provide for the security of their minor son, JAMES JOSEPH O'DWYER; and

WHEREAS the parties own as tenants by the entireties certain real estate on or near Dickerson Road in Davidson County, Tennessee, which is income producing rental property, having thereon a duplex building; and

WHEREAS this agreement is part of a larger property settlement agreement arrived at between the parties;

Now therefore, in consideration of the premises, and for other good and valuable consideration the parties hereto enter into the following trust agreement;

1. JAMES PATRICK O'DWYER and RITA SANDERS O'DWYER hereby establish the JAMES JOSEPH O'DWYER trust.

2. JAMES PATRICK O'DWYER and RITA SANDERS O'DWYER agree to convey to the trust all of their interest in that certain rental real property herein before mentioned, to be held and used by the trust for the purposes stated in this agreement. Conveyance may be made by warranty deed, quit-claim deed, or by decree of a Court of competent jurisdiction.

3. The Trustee of the JAMES JOSEPH O'DWYER trust shall be RITA SANDERS O'DWYER. The Trustee may hold the trust property in her name as Trustee, but shall in no way use the trust property for any purposes other than those stated in this

agreement. In the event RITA SANDERS O'DWYER dies before the termination of this trust, or should she fail or refuse to serve, the successor Trustee shall be JAMES PATRICK O'DWYER. Neither the Trustee nor successor Trustee herein named shall be required to give bond for the faithful performance of the duties of Trustee.

4. The purpose of this trust is to provide for the college and graduate school education of JAMES JOSEPH O'DWYER. The Trustee may draw upon the funds of the trust for any expenses reasonably incurred by JAMES JOSEPH O'DWYER in pursuit of his college and graduate education, including tuition, board, books, transportation, and all incidental expenses. In making disbursements on the trust, the Trustee may, in her discretion, invade the corpus of the trust to any extent necessary to carry out the purposes of the trust.

5. The Trustee shall accumulate all income received by the trust, shall pay all expenses incurred by the trust, including taxes and maintenance of the income producing property, and shall keep accurate books of account for the monies held by the trust. All net income received by the trust shall be kept in an interest bearing account in the name of the Trustee as Trustee.

6. The Trustee shall have the power, in her discretion, to convert the assets of the trust to cash, which cash shall be kept on interest or certificates of deposit. Upon the written request of JAMES PATRICK O'DWYER, the Trustee shall be obligated to sell any real property or other asset of the trust and convert the same to cash. The Trustee shall be satisfied, through appraisal or otherwise, that any property sold brings a fair market value.

7. JAMES PATRICK O'DWYER shall have the right to borrow from the trust in the amount held by the trust, including

corpus and accumulated income. All sums borrowed shall be at a reasonable rate of interest, but may be less than the prime rate in effect at the time. At the time of borrowing, JAMES PATRICK O'DWYER shall give a mortgage, deed of trust, or other security equal to the amount borrowed. Any amount borrowed shall be repaid in installments and the Trustee shall calculate the installments so that sufficient funds shall be available in the trust at the time the beneficiary of the trust enters college. The deed of trust or security taken for any loan made by the trust shall clearly state that the loan is in default if regular payments are not made, and shall give the Trustee right to foreclose against the security in the event of such default.

8. This trust shall terminate at the time JAMES JOSEPH O'DWYER completes his college and graduate school education, or at the time all of the funds of the trust have been expended for the stated purposes of the trust. If there are assets remaining in the trust at the time JAMES JOSEPH O'DWYER completes his college and graduate education, all such funds shall be paid immediately to JAMES JOSEPH O'DWYER and the trust shall terminate. If JAMES JOSEPH O'DWYER dies before the termination of this trust, all funds remaining in the trust shall be paid equally to JAMES PATRICK O'DWYER and RITA SANDERS O'DWYER, or to the survivor of them.

9. JAMES JOSEPH O'DWYER shall have no right to anticipate or alienate the assets of this trust, nor shall they be subject to his debts, nor to attachment by his creditors.

10. This trust shall be irrevocable.

In witness whereof we have hereunto set our hands on the day and date above written.

James P. O'Dwyer
JAMES PATRICK O'DWYER

Rita Sanders O'Dwyer
RITA SANDERS O'DWYER

It is further ORDERED that all right, title, and interest of James P. O'Dwyer and Rita S. O'Dwyer in the following described property be divested out of them and be vested in Rita S. O'Dwyer, Trustee, as Trustee for the James Joseph O'Dwyer Trust, to be used pursuant to the terms of the Trust agreement herein decreed. The property herein transferred to the Rita S. O'Dwyer, Trustee, is described as follows:

> Being Lot No. 36 in Sharpe and Horn's Second Addition to Northeast Nashville, as of record in Book 161, page 53, Register's Office for Davidson County.
>
> Said Lot No. 36 fronts 58 feet on the westerly side of Joseph Street, now Avenue, and runs back between parallel lines 145 feet, more or less, to an alley.
>
> Being the same property conveyed to James P. O'Dwyer and wife, Rita S. O'Dwyer from C. B. Birdwell and wife, Jeanette Birdwell, as of record in Book 4245, page 307, Register's Office for Davidson County, Tennessee.

It is further ORDERED that all right, title, and interest of Rita S. O'Dwyer in the following described property be divested out of her and vested solely in James P. O'Dwyer:

> Being Lot No. 109 on the Plan of West Meade Highlands, Section 2, as of record in Book 3700, page 125.
>
> Said Lot No. 109 fronts 114.99 feet on the northerly side of Highland Crest Drive and extends back 146.0 feet on the easterly line and 139.3 feet on the westerly line, to a dead line, measuring 100.88 feet thereon.
>
> Being the same property conveyed to James P. O'Dwyer and wife, Rita S. O'Dwyer from Edmond G. Akins and wife, Marie W. Akins, as of record in Book 4635, page 160, Register's Office for Davidson County, Tennessee.

It is further ORDERED that all right, title, and interest of Rita S. O'Dwyer in the following described property be divested out of her and vested solely in James P. O'Dwyer:

> An unimproved Lot in the Bellevue area of Davidson County, Tennessee. Mrs. O'Dwyer will execute a Deed of Conveyance when it is presented to her.

It is further ORDERED that James P. O'Dwyer pay to Rita S. O'Dwyer the sum of Six Hundred Dollars ($600.00) per month, Three Hundred Dollars ($300.00) of which shall be child support and Three Hundred Dollars ($300.00) of which shall be alimony. The alimony shall continue until the death or remarriage of Rita S. O'Dwyer.

It is further ORDERED that James P. O'Dwyer pay to John W. Wagster, attorney for the plaintiff, a fee in the amount of $ 1600.00, and that James P. O'Dwyer pay the costs of this cause, for both of which execution may issue if necessary.

s/ Morris Levine
JUDGE

Special

APPROVED FOR ENTRY:

BY: John W. Wagster

John W. Wagster, Attorney for Plaintiff
WILLIS, KNIGHT & BARR
700 Union Street
Nashville, Tennessee 37219

I CERTIFY THAT A COPY THE ABOVE PLEADING HAS BEEN FURNISHED TO COUNSEL FOR ALL INTERESTED PARTIES BY DELIVERY OR BY PLACING SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID. THIS 2nd DAY OF March, 1974.

WILLIS, KNIGHT & BARR

By John W. Wagster

#12911 - 92B/820 - 11-15-74

STATE OF TENNESSEE

I, GEORGE L. ROOKER, *Clerk of the Circuit Court for the County of Davidson, in the State aforesaid, do certify that the foregoing is a correct transcript of the record and proceedings had in said Court in the case heretofore prosecuted and determined therein, between* Rita Landers O'Dwyer *Plaintiff, and* James Patrick O'Dwyer *Defendant, as same remain of record in said Court.*

DAVIDSON COUNTY

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 9 *day of* January *in the year one thousand nine hundred and* 75 *and in the* 199 *year of American Independence.*

GEORGE L. ROOKER, *Clerk.*

By _____, *D. C.*

Mail

Mrs Rita S. O'Dwyer.
865 - Bellevue Rd U-8
Nashville, Tenn 37221