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BOOK 4948 PAGE 34

CHARLINE SMITH PEMBERTON] IN THE FOURTH CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

VS.]

NO. 72138

JAMES BARTLETT PEMBERTON]

D E C R E E

This cause came on to be heard on this the 25th day of April, 1974, before the Honorable Benson Trimble, Judge, Division IV of the Circuit Court of Davidson County, Tennessee, upon the original petition filed by the plaintiff, Charline Smith Pemberton, and the answer of the defendant, James Bartlett Pemberton, and the matter having been placed upon the uncontested docket by previous order. From the testimony of the plaintiff, her corroborating witnesses, statement of counsel, and from the entire record of this cause, the Court is of the opinion that the plaintiff did successfully sustain her grounds for divorce, that is, that the defendant has been guilty of such cruel and inhuman treatment towards her as renders further cohabitation unsafe and improper.

It is, therefore, ORDERED, ADJUDGED and DECREED that the plaintiff, Charline Smith Pemberton, is awarded an absolute divorce from the defendant, James Bartlett Pemberton, and the bonds of matrimony heretofore existing between the parties are forever and perpetually dissolved. Plaintiff is restored to all the rights and privileges of an unmarried person.

It further appearing to the Court that the parties have entered into a separation and property settlement agreement, and that the same was presented to the Court at the hearing of this cause for ratification by the Court, and that the Court did ratify and approve of said settlement, it is, therefore, ORDERED, ADJUDGED and DECREED that the agreement as aforementioned be attached and made a part of this the final decree. All of the terms and conditions set forth in said aforementioned property settlement agreement are approved by the Court, and are adjudged a part of this decree. Said agreement is as follows:

SEPARATION AND
PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into on this the 25th day of April, 1974, by and between JAMES BARTLETT PEMBERTON (hereinafter referred to as "Husband") and CHARLINE SMITH PEMBERTON (hereinafter referred to as "Wife"), both of Nashville, Davidson County, Tennessee;

W I T N E S S E T H:

WHEREAS, the parties hereto are husband and wife, having been married on August 28, 1959, and there are two (2) minor children, issue of the marriage, to-wit: James Bartlett Pemberton, Jr., and Bradley Smith Pemberton; and

WHEREAS, in consequence of disputes and unhappy differences, the parties have separated; and

WHEREAS, on the 28th day of November, 1973, the Wife filed in the Circuit Court of Davidson County, Tennessee, in Cause Number 72138, a petition seeking a divorce from the Husband; and

WHEREAS, the parties have made certain agreements as to the custody of the minor children, the support and maintenance of the Wife and children, and other rights and obligations growing out of the marriage relation; and

WHEREAS, the parties desire to set forth in writing their agreements concerning such matters;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements herein contained, and other good and valuable considerations, the receipt and sufficiency of which are by each party hereby acknowledged, it is agreed by the parties as follows:

1. Separation. It shall be lawful for Husband and Wife at all times hereafter to live separate and apart from each other, and each party shall hereafter be entirely free from

any marital control of the other party as if each were unmarried; neither shall molest the other, nor interfere with the peace and comfort of the other, nor compel or seek to compel the other to associate, cohabit or deal with him or her.

2. Custody of minor children. From and after the date hereof, Wife shall be entitled to the exclusive custody of the minor children of the parties, James Bartlett Pemberton, Jr., and Bradley Smith Pemberton, subject to the right of Husband to visit and be visited by said children at all reasonable times, places and intervals, with full right and authority in Wife to determine the residence of said children.

Notwithstanding, it is agreed by Husband and Wife that Husband shall be entitled to be with said children every other Friday and Saturday beginning at 6:30 P. M. on Friday night and for all day Saturday until 6:00 P. M., unless Husband is out of the city or otherwise unable to be with the children, in which event Husband shall give Wife reasonable notice of his unavailability at that time.

It is also understood and agreed that Husband shall have the right to see said children on all holidays for at least one-half (1/2) day.

3. Transfer of real property. The parties presently own, as tenants by the entirety, the house and lot in Nashville, Davidson County, Tennessee, known municipally as 5341 Overton Road, and more particularly described in Exhibit A attached hereto, which was the former home of the parties, and in which the Wife and children now reside. The Husband agrees to execute and deliver to the Wife a warranty deed for the purpose of transferring the title to said real property to Wife, subject to the outstanding mortgage thereon, and subject to all covenants and restrictions of record. All mortgage payments with respect to the mortgage on said house

shall, from and after the date of this agreement, be made by the Wife, who hereby agrees to indemnify and hold harmless the Husband against any claim of the mortgage holder for payment of the remaining outstanding principal and interest owed upon said mortgage indebtedness.

4. Division of tangible personal property. The parties have divided between them, to their mutual satisfaction, the personal effects, household furniture and furnishings, and all other articles of personal property which have heretofore been used by them in common, and neither party will make any claim to such items as are now in the possession or under the control of the other. Husband agrees to transfer his title to the 1972 Dodge Dart automobile to the Wife.

5. Support and maintenance. During the joint lives of the Husband and Wife, except as hereinafter provided, the Husband shall pay to the Wife, for her support and maintenance, as alimony, the sum of Four Hundred Fifty ($450.00) Dollars per month, commencing on the 1st day of May, 1974, and on the 1st day of each month thereafter.

6. Child support. Husband shall pay to Wife the sum of One Hundred Twenty-five ($125.00) Dollars per month each for the minor children of the parties, which sum shall be payable commencing on the 1st day of May, 1974, and on the 1st day of each month thereafter.

Husband shall be entitled to claim said children as exemptions on his federal income tax return, and Wife agrees that she will not claim said children on her return.

Husband shall be entitled, from time to time as necessary or appropriate, to discuss with Wife matters relating to the education, health and welfare of said children, and each shall consult with the other as often as may be necessary

regarding all such matters. Neither shall do anything which may estrange the children from the other, or hamper the natural development of their love for both parties. Neither party shall take said children beyond the boundaries of the United States without the consent of the other party.

Matters relating to the college education of said children or relative to other education prior to college education, which is outside the customary course of pre-college education, shall be decided jointly by the parties.

Said child support payments shall cease for each child upon his death, marriage or attainment of age eighteen (18) years.

7. College education of children. The Husband shall pay the reasonable expenses, actually incurred, for the college education of the children of the marriage of Husband and Wife, such expenses to include only tuition fees, cost of necessary books and supplies, laboratory fees, student assessments, room and board, and transportation. Such payments shall cease upon the death of the Husband, completion by said children of their college education, such child's marriage, or the cessation of attendance at college as a full-time student (i.e., in attendance of at least nine months of a consecutive twelve-month period), whichever of said events shall first occur. The child support payments provided in Paragraph 6 shall be a part of such expenses paid for said children.

8. Re-negotiation upon change in tax liability. This agreement has been negotiated and executed on the assumption that all payments herein provided for to be made by the Husband to the Wife (except such as are made for the minor children) will be fully deductible by the Husband upon his federal income tax return, and fully taxable to the Wife. If, as the result of a final and binding judicial determination to the contrary, because of some subsequent change in the governing law or its authoritative interpretation (includ-

ing, without limitation, the issuance of any ruling by the Internal Revenue Service, or otherwise), all of the payments required to be made by the Husband to the Wife will no longer be taxable in full to the Wife or deductible in full by the Husband, then, and in such event, the parties shall make an acceptable adjustment of the amounts to be paid by the Husband to the Wife.

9. Termination of support and maintenance provisions. The obligation of the Husband for support and maintenance of the Wife, as hereinbefore set out, shall, in all events, terminate upon the occurrence of the first of the following events:

(a) The death of the Husband;

(b) The remarriage of the Wife; or

(c) The death of the Wife.

10. Settlement. The Wife hereby accepts the foregoing provision as reasonable and sufficient for her support and maintenance, and for the support, maintenance and education of the minor children of the parties, and in full satisfaction of the obligation of the Husband during the joint lives of the Husband and Wife, or until the Wife's remarriage, and, except as herein provided, the Wife hereby waives any right to support and maintenance by the Husband, and any right in the property of the Husband.

11. Mutual release of estate rights. Each party hereby releases any right which he or she might hereafter acquire in any capacity in the estate of the other, or to act as Administrator or Executor of the estate of the other, or to participate in any manner in the administration of the estate of the other, and each waives any right of election to take against the will of the other.

12. Debts of Wife. The Wife represents that she has not contracted any debt or liability for which the Husband or

his estate might or could become liable, and that she will not hereafter incur any liabilities whatsoever upon the credit of the Husband. Husband shall assume and continue to pay off the liability to Associates Capital Company, Nashville, Tennessee, in the approximate amount of Four Thousand Five Hundred ($4,500.00) Dollars, BankAmericard of approximately Six Hundred ($600.00) Dollars, and Master-Charge of approximately Five Hundred ($500.00) Dollars.

13. Medical and dental expenses. Husband shall be responsible for all extraordinary and unusual medical and dental expenses of the minor children of the parties, until such time as each child is emancipated, and to such end will carry such children as insureds on his medical insurance program at Talon Company.

14. Insurance. Husband shall assign the decreasing term insurance policy on his life in the approximate amount of Thirty Thousand ($30,000.00) Dollars to Wife, and Wife shall continue to pay the premiums thereon. In addition, Husband agrees to designate his estate as beneficiary of his group life and accidental death coverage with Talon Company.

15. Attorneys' fees. Husband shall bear the expense of Wife's attorneys' fees in the amount of Three Hundred ($300.00) Dollars and the Court costs in connection with the divorce proceedings.

16. Incorporation of agreement in decree. If a decree of divorce is granted by the Circuit Court of Davidson County, Tennessee, or by any other court in any location, the provisions of this agreement, or the substance thereof, shall be incorporated in such decree and shall become a part thereof.

17. Miscellaneous.

(a) Husband shall bear the expense of transferring the real estate to Wife as provided in this agreement.

(b) This agreement shall not be modified or annulled by the parties hereto except by written instrument, executed in the same manner as this instrument. The failure of either party to insist upon a strict performance of any provision of this agreement shall not be deemed a waiver of the right to insist upon a strict performance of such provision or of any other provision of this agreement at any time.

(c) Each party hereto acknowledges that no representations of any kind have been made to him or her as an inducement to enter into this agreement other than the representations set forth herein, and that this agreement contains all of the terms of the contract between the parties.

(d) Each party shall, at the request of the other, execute, acknowledge and deliver any documents which may be reasonably necessary to give full effect to this agreement.

(e) Wife agrees to join in the filing of a joint income tax return with Husband for the calendar year 1973.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

JAMES BARTLETT PEMBERTON
Husband

CHARLINE SMITH PEMBERTON
Wife

It is, therefore, ORDERED, ADJUDGED and DECREED that all of defendant's right, title and interest in and to the real property referred to in the aforementioned property settlement agreement, together with the household furnishings located therein, as is now vested in the defendant is divested from the defendant, and awarded to the plaintiff in fee simple title. Said property is more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 201 on the Plan of Harleywood Estates, Section 8-F, as of record in Book 3842, page 116, Register's Office, Davidson County, Tennessee.
>
> Said Lot No. 201 fronts 112.3 feet on the westerly side of Overton Road and extends back 338.2 feet on the northerly line and 413.9 feet on the southerly line to a dead line in the rear, measuring 135.43 feet thereon.
>
> Being the same property conveyed to James B. Pemberton and wife, Charline S. Pemberton, by deed from Handley and Whiteside Builders, Inc., of record in Book 4156, page 769, R.O.D.C.

It is further ORDERED, ADJUDGED and DECREED that the defendant shall execute such documents as may be necessary, in order to transfer title to the 1972 Dodge Dart automobile into the name of the plaintiff.

The defendant will pay the costs of this cause, for which execution may issue, if necessary.

Entered this _____ day of _____, 1974.

S/ _____
JUDGE

APPROVED FOR ENTRY:

S/ _____
Jack Norman, Jr., Attorney for Plaintiff

S/ _____
Donald W. Pemberton, Attorney for Defendant

I certify that I have mailed a copy of this Decree to Mr. Donald W. Pemberton, attorney for defendant, 1910 First National Bank Building, Memphis, Tennessee, this 26th day of April, 1974.

S/ _____
Attorney

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BOOK 4948 PAGE 43

IDENTIF. REFERENCE

SEP 4 11 57 AM '75

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TENN.

SEP-4M MISC A* 20.00 * 20.00

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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* CHARLINE SMITH PEMBERTON *Plaintiff, and* JAMES BARTLETT PEMBERTON *Defendant, as same remain of record in said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 4th *day of* SEPTEMBER *in the year one thousand nine hundred and* SEVENTY FIVE *and in the* 200 *year of American Independence.*

GEORGE L. ROOKER, *Clerk.*

By D. Coker, *D. C.*