4-18-77

IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

46-37
46-39
46-40

GLENN D. KIRBY,
Plaintiff

VS.

NO. 86019

DOCIA ANN HAYES KIRBY,
Defendant

BOOK 5226 PAGE 967

46-2

FINAL JUDGMENT AND DECREE

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This cause came on for hearing and trial before the Honorable James M. Swiggart, Judge, on April 11, 1977, upon the issues of absolute divorce and property settlement. During the trial a property settlement agreement entered into by the parties on April 1, 1977, was presented to the Court for the Court's approval. This property settlement agreement is set forth as follows:

PROPERTY SETTLEMENT

This agreement made and entered into on this the 1st day of April, 1977, by and between GLENN D. KIRBY, hereinafter referred to as MR. KIRBY, and DOCIA ANN HAYES KIRBY, hereinafter referred to as MRS. KIRBY, both of whom are residents of Davidson County, Tennessee;

W I T N E S S E T H :

WHEREAS, the parties hereto are husband and wife and they have encountered marital difficulties which are apparently irreconcilable; and,

WHEREAS, there is now pending an action for absolute divorce between the parties in the Courts of Davidson County, Tennessee; and

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

NOW, THEREFORE, for good and sufficient consideration, the parties hereto mutually agree as follows:

1. MR. & MRS. KIRBY own as tenants by the entirety a home located at Route 3, Bull Run Road, Ashland City, Tennessee, said property being known as the "Lunny Barnes Property" and being more particularly described in deed of record in Book 5104, page 616, of the Register's Office for Davidson County, Tennessee. As part of this property settlement, MR. KIRBY agrees that upon the termination of this marriage by divorce, said property will become the property of MRS. KIRBY alone in fee simple absolute and MRS. KIRBY agrees to assume and pay all indebtedness on said property, including installment deed indebtedness and all other indebtedness, and further MRS. KIRBY agrees to forever protect and hold free and harmless MR. KIRBY from any and all claims resulting from any and all indebtedness on said property.

2. MR. & MRS. KIRBY have an interest in certain property consisting of 7.7 acres north of Bull Run Road and west of Old Hickory Boulevard described as "Field Book No. 14D-50300, Tax Map No. 45, Parcel No. 16" said property being more particularly described in deed of record in Book 4882, page 235, of the Register's Office for Davidson County, Tennessee. As part of this property settlement, MR. KIRBY agrees that upon the termination of this marriage by divorce, all of his right, title and interest in said property shall be divested out of him and vested in MRS. KIRBY alone and MRS. KIRBY agrees to assume and pay any and all indebtedness on said property and MRS. KIRBY further agrees to forever protect and

hold free and harmless MR. KIRBY from any and all claims resulting from any and all indebtedness on said property.

3. MR. & MRS. KIRBY own as tenants by the entirety certain properties located on Bull Run Road, Ashland City, Tennessee, said properties being more particularly described in deeds of record in Book 4886, page 693 and in Book 5087, page 57, of the Register's Office for Davidson County, Tennessee. As part of this property settlement, MRS. KIRBY agrees that upon the termination of this marriage by divorce, said properties will become the properties of MR. KIRBY alone in fee simple absolute and MR. KIRBY agrees to assume and pay all indebtedness on said properties, including installment deed indebtedness and all other indebtedness, and MR. KIRBY further agrees to forever protect and hold free and harmless MRS. KIRBY from any and all claims resulting from any and all indebtedness on said properties.

4. MR. KRIBY has an interest in certain property consisting of 58.4 acres north of Bull Run Road and west of Old Hickory Boulevard described as "Field Book No. 13D-35265-42510, Tax Map No. 46, Parcel No. 2," said property being more particularly described in deed of record in Book 4880, page 202, of the Register's Office for Davidson County, Tennessee. As part of this property settlement, MRS. KIRBY agrees that upon the termination of this marriage by divorce, all of her marital right, title and interest in said property shall be divested out of her and vested in MR. KIRBY alone and MR. KIRBY agrees to pay any and all indebtedness on said property and MR. KIRBY further agrees to forever protect and hold free and harmless MRS. KIRBY from any and all claims resulting from any and all indebtedness on said property.

5. MRS. KIRBY owns a mobile home trailer described as 1968 model, 3 bedroom, mobile home trailer, 60' x 10' in size. MR. KIRBY agrees that upon the termination of this marriage by divorce the ownership of this mobile home trailer shall continue in MRS. KIRBY alone and MR. KIRBY agrees to relinquish and transfer to MRS. KIRBY any possible marital interest which he may have in said mobile home trailer.

6. As part of this property settlement agreement, MR. KIRBY agrees to transfer to MRS. KIRBY alone a 1971 Volkswagon automobile and the sum of One Thousand Dollars ($1,000.00) and MRS. KIRBY acknowledges the receipt of said automobile and said money.

7. As a further part of this property settlement, MR. KIRBY agrees upon the termination of this marriage by divorce to relinquish and transfer to MRS. KIRBY all of his right, title and interest in the Magnovox color television set and one Hygain citizen's band radio presently located in the automobile of MRS. KIRBY, and also all of the furniture, fixtures and appliances presently located in the 1968 mobile home trailer referred to above, provided, however, that the Admiral Stereo, the Early American wood bookcase, the gun collection, the two portable television sets, the sewing machine, the pie safe, the cherry wardrobe, all carpenter tools, and all other citizen's band radios shall become the exclusive property of MR. KIRBY and MRS. KIRBY agrees to relinquish and transfer to MR. KIRBY all of her right, title and interest in said items of personal property.

8. MRS. KIRBY agrees that MR. KIRBY shall continue to have the sole ownership of a RD-4 Caterpillar Bulldozier, a 1974 Ford truck, a 19-foot fishing boat with outboard motor and trailer, an antique tractor, some domestic animals which include domestic farm animals, and a business known as Import Repair Service and all inventory of automobiles, equipment, and other assets of said business, all of said assets being currently owned by MR. KIRBY alone.

9. MR. KIRBY agrees to hold MRS. KIRBY free and harmless from the hospital bill of David Kirby at Baptist Hospital and the hospital bill of MRS. KIRBY at Park View Hospital.

10. MR. KIRBY agrees to pay all of the court costs of this case.

It is understood and agreed that these presents contain the entire agreement between the parties hereto and that the parties intend that this agreement be incorporated in the final decree of divorce should the court see fit to decree a divorce between the parties and approve this property settlement agreement. It is intended and mutually agreed by the parties that this agreement be substituted in the place of the agreement executed by the parties on January 13, 1977, which was filed as Exhibit "A" to the divorce complaint and that the January 13, 1977, agreement be of no further force and effect.

Nothing herein is intended nor shall it be construed as infringing upon the perogative of the court having jurisdiction of this cause; the sole and only purpose of this agreement being the mutual desire of the parties to make an advantageous disposition of their jointly owned property.

IN WITNESS WHEREOF, the parties have hereto set their hands on the day and date first above written, each retaining a signed copy hereof, the receipt of which is hereby acknowledged.

RUTHERFORD, CROCKETT & GUENTHER

BY:/s/ Stephen M. Trautman	/s/ Glenn D. Kirby
STEPHEN M. TRAUTMAN	GLENN D. KIRBY
Attorney for the Plaintiff	Plaintiff
/s/ Sam J. McAllester	/s/ Docia Ann Hayes Kirby
SAM J. McALLESTER	DOCIA ANN HAYES KIRBY
Attorney for the Defendant	Defendant

The Court, having heard the testimony of the plaintiff, and his witnesses and further having heard the arguments of respective counsel for the parties, is of the opinion that the defendant is guilty of cruel and inhuman treatment towards the plaintiff within the statutory requirements and accordingly that the plaintiff is entitled to an absolute divorce from the defendant. The Court further is of the opinion that the terms of the Property Settlement Agreement entered into by the parties on April 1, 1977, should be approved by the Court and incorporated into the Final Decree in this case.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. The Plaintiff, GLENN D. KIRBY, is granted an absolute divorce from the defendant, DOCIA ANN HAYES KIRBY, on the statutory grounds of cruel and inhuman treatment and the plaintiff is restored to all of the rights and privileges of an unmarried person.

2. The cross-petition of the defendant is dismissed.

3. The Property Settlement Agreement entered into by the parties on April 1, 1977, the terms of which are set out above, is approved by the Court and the terms of said Property Settlement

Agreement in its entirety are made a part of this Final Judgment and Decree of the Court and the matters therein are ordered by the Court.

4. All of the right, title and interest of the respective individual parties in and to their property, real, personal or mixed, is divested out of the respective individual party and vested in the other respective individual party in fee simple absolute according to the divisions of the property of the parties made in the April 1, 1977, Property Settlement Agreement, the terms of which are incorporated above into this decree.

(a) Accordingly, pursuant to this decree, all of the right, title and interest of the plaintiff in and to the real property of the parties known as the "Lunny Barnes Property", hereinafter more specifically described, is divested out of the plaintiff, Glenn D. Kirby, and vested into the defendant, Docia Ann Hayes Kirby, in fee simple absolute. This real property is specifically described in Book 5104, page 616, of the Register's Office for Davidson County, Tennessee, as follows:

> Land in the 13th Civil District of Davidson County, Tennessee, being part of Lot No. 15 of the Dr. F. E. Brown Farm, not of record and described as follows:
>
> Beginning at a spike in the center of Bull Run Road, said spike being 90 feet southeasterly from the southeast corner of the property conveyed by deed of record in Book 2448, page 165, Register's Office for said County; thence North 42 degrees 49 minutes East 248.1 feet to a point; thence South 30 degrees 37 minutes East 90.5 feet to a point; thence South 41 degrees East 45 minutes West 225 feet to a point in the center of Bull Run Road; thence with the center of said road North 47 degrees 07 minutes West 90 feet to the point of beginning.
>
> Being the same property conveyed to Glenn D. Kirby and wife, Docia Ann Kirby, by deed of record in Book 5104, page 616, Register's Office for Davidson County, Tennessee.

(b) Accordingly, pursuant to this decree, all of the right, title and interest of the plaintiff in and to the 7.7 acres of real property described in deed of record in Book 4882, page 235, of the Register of Deeds Office for Davidson County, Tennessee, is divested out of the plaintiff, Glenn D. Kirby, and vested into the defendant, Docia Ann Hayes Kirby. This real property is specifically described as follows:

> A certain tract or parcel of land in the old 13th (formerly 25th) Civil District of Davidson County, Tennessee, described as follows, to wit:
>
> 7.7 acres north of Bull Run Road and west of Old Hickory Boulevard described as "Field Book No. 14 D 50300, Map and Parcel No. 45 16"; bounded on the north by lands of Anna Noland described at page 121 of Book 1972 in the Davidson County Register's office; bounded on the east and south by lands of B. E. Anthony, described at page 537 of Book 3431 in the said Register's office; and bounded on the

west by lands of E. M. Culver and others, described at page 534 of Book 4745 in the said Register's office;

Being the same real property conveyed to Glenn Kirby and wife, Docia Ann Kirby, by deed of record in Book 4832, page 235, in the Register of Deeds Office for Davidson County, Tennessee.

(c) Accordingly, pursuant to this decree all of the right, title and interest of the defendant in and to the real property of the parties described in deeds of record in Book 4886, page 693, and in Book 5087, page 57, both of record in the Register of Deeds Office for Davidson County, Tennessee, is divested out of the defendant, Docia Ann Hayes Kirby, and vested into the plaintiff, Glenn D. Kirby, in fee simple absolute. These parcels of real property are specifically described as follows:

PARCEL I

Land in the 13th Civil District of Davidson County, Tennessee, described as:

BEGINNING at a spike located in the center line of the existing pavement of Bull Run Road said spike marking the southeasterly corner of the tract and being located 464.8 feet in a northwesterly direction from the center line of 32 feet of 24 in. CMP noted by Davidson County Highway Department as Station 239/00; thence N 43° 53' E 321.4 ft. to an oak stake with tack; then N 15° 15' E 94.5 ft. to an stake with tack; thence along the same line 86.1 ft. to an iron pin marking the northeast corner of the tract, total calls for N 15° 15' E being 180.6 ft.; thence N 70 20'W 295.9 ft. to an iron pin; thence along the same line 270.4 ft. to an iron pin; thence along the same line 62.5 ft. to an iron pin; total calls for N 70° 20'W being 628.8 ft.; thence N 69° 33' W 88.7 ft. to an iron pin; thence N 65° 00' W 219.1 ft. to an iron pin marking the northwest corner of the tract and placed on the property line between Joe T. McCary and Rufus Gallaher, Jr. thence S 3° 22' W 127.8 ft. to an iron pin; thence along the same line 134.4 ft. to a spike located in the center of the existing pavement of Bull Run Road, said spike marking the southwest corner of the tract and being on the line dividing the property of Joe T. McCary and Rufus Gallaher, Jr. total calls S 3° 22' W being 262.2 ft.; thence along the road south 43° 05' E 188.5 ft. to a tack in existing pavement; thenc along the road S 55° 02' E 597.3 ft. to the point of beginning, the whole containing 7.46 acres, more or less. Included in above described, but excluded therefrom is a tract of 0.36 of an acre, more or less, as described in instrument of record in book 2489, page 95, Register's Office for said County.

Being the same property conveyed to Glenn D. Kirby and wife, Docia Ann Kirby, of record in Book 4886, page 693, Register's Office for Davidson County, Tennessee.

PARCEL II

Land in Davidson County, Tennessee, being in the 13th Civil District of said County and State and described according to a copy of a survey made by Ralph W. C. Lambert, dated March 24, 1956, as follows:

Beginning at a stake in the center of Bull Run Road, said stake or spike being the southeast corner of the property conveyed to Walter D. Whittemore and wife, by deed from Rufus Gallaher, Jr., and wife, as of record in Book 2448, page 165, Register's Office for said County; thence North 43 degrees 53 minutes East 275 feet to a point; thence South 30 degrees 37 minutes East 90.5 feet to a point; thence South 42 degrees 49 minutes West 248.1 feet to a point or spike in the center of Bull Run Road; thence North 47 degrees 07 minutes West 90 feet to the point of beginning.

Being the same property conveyed to Glenn D. Kirby and wife, Docia Ann Kirby, by deed of record in Book 5087, page 57, Register's Office for Davidson County, Tennessee.

(d) Accordingly, pursuant to this decree, all of the right, title and interest of the defendant in and to the 58.4 acres of real property described in deed of record in Book 4880, page 202, of the Register of Deeds Office for Davidson County, Tennessee, is divested out of the defendant, Docia Ann Hayes Kirby, and vested into the plaintiff, Glenn D. Kirby. This real property is specifically described as follows:

A certain tract or parcel of land in the old 13th (formerly 25th) Civil District of Davidson County, Tennessee, described as follows, to wit:

58.4 acres north of Bull Run Road and west of Old Hickory Boulevard described as "Field Book No. 13 D-35265-42510, map and parcel No. 46-2"; bounded on the north by lands of Gilbert Harris described at page 868 of Book 4199 in the Davidson County Register's Office; bounded on the east and south by lands of Claude R. Howard and Kerney Ramsbey described by deeds of record at page 547 of Book 4371 and at page 107 of Book 3433 in the said Register's Office; and on the west by lands of Anna Green Noland described at page 121 of Book 1972 in the said Register's Office, and by lands of Arnold L. Loudermilk and wife, described at page 408 of Book 4561 in the said Register's Office;

Being the same real property conveyed in deed of record in Book 4880, page 202, Register of Deeds Office for Davidson County, Tennessee.

NOTE: GLENN KIRBY AND GLENN D. KIRBY IS ONE AND THE SAME PERSON.

NOTE: DOCIA ANN KIRBY AND DOCIA ANN HAYES KIRBY IS ONE AND THE SAME PERSON.

5. The plaintiff, Glenn D. Kirby, is ordered to assume and pay any and all indebtedness on the real properties which are being transferred to him alone as set forth in the April 1, 1977, property settlement and the plaintiff is further ordered to forever protect and hold the defendant, Docia Ann Hayes Kirby, free and harmless from any and all claims resulting from all indebtedness on said properties.

6. The defendant, Docia Ann Hayes Kirby, is ordered to assume and pay any and all indebtedness on the real properties which are being transferred to her alone as set forth in the April 1, 1977, property settlement and the defendant is further ordered to forever protect and hold the plaintiff, Glenn D. Kirby, free and harmless from any and all claims resulting from all indebtedness on said properties.

7. The plaintiff, Glenn D. Kirby, is ordered to hold the defendant, Docial Ann Hayes Kirby, free and harmless from any and all claims for the presently existing hospital bill of David Kirby at

Baptist Hospital in Nashville, Tennessee and the presently existing hospital bill of the defendant at Park View Hospital in Nashville, Tennessee.

8. All costs of this cause are assessed against the plaintiff, Glenn D. Kirby, for which let execution issue if necessary.

Enter on this the 18th day of April, 1977.

JAMES M. SWIGGART, JUDGE

APPROVED FOR ENTRY:

RUTHERFORD, CROCKETT & GUENTHER

BY: Stephen M. Trautman
Stephen M. Trautman
Attorneys for the Plaintiff

IDENTIF. REFERENCE
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FELIX Z WILSON II REGISTER
DAVIDSON COUNTY, TENN.
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CERTIFICATE OF SERVICE

I, Stephen M. Trautman, hereby certify that a true and correct copy of the foregoing Final Judgment and Decree has been served upon the Honorable Sam McAllester, III, attorney for the defendant, by placing a true and correct copy of said Final Judgment and Decree in the U. S. Mail addressed to Sam McAllester, III, with sufficient postage thereon to carry it to its destination on this the 18 day of April, 1977.

STEPHEN M. TRAUTMAN

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* GLENN D. KIRBY *Plaintiff, and* VS DOCIA ANN HAYES KIRBY *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* 28th. *day of* November *in the year one thousand nine hundred and* seventy-seven *and in the* 201st. *year of American Independence.*

GEORGE L. ROOKER, *Clerk.*

By Jane Smith, *D. C.*

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