File #1

33A/17

IN THE PROBATE COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED
1986 FEB 26 PM 3:39
GEORGE L. ROCHELLE, CLERK
D.C.

RUTH B. PATE)
)
vs.) No. 85D-578
)
JOHN EDWARD PATE)

FINAL DECREE BOOK 5793 PAGE 120

This cause came on to be heard on February 26, 1986 before the Honorable James R. Everette, Judge, upon defendant's Counterclaim for absolute divorce; upon the Property Settlement Agreement, which provides for support of Mrs. Pate, a division of the parties' respective rights and interests in all joint and individual property, and apportionment of responsibility for payment of the parties' joint and individual debts; upon all of the pleadings; and upon the testimony of defendant and the statements of counsel, from all of which the Court affirmatively found that the allegations of defendant's Counterclaim are sustained by the proof in that there exist such irreconcilable differences between the parties as would entitle defendant to an absolute divorce; that the parties, by written agreement, made adequate and sufficient provision for the equitable settlement of property rights between themselves; that this Property Settlement Agreement should be approved; that the Complaint heretofore filed by Mrs. Pate has been dismissed; that the Answer of Mrs. Pate to Dr. Pate's Counterclaim has been withdrawn; that the address of Mrs. Pate is Route 2, Cub Creek Road, Nashville, Tennessee, 37209; that the address of Dr. Pate is 3000 Hillsboro Road, #124, Nashville, Tennessee, 37215; and that the sixty-day waiting period, as required by statute, has elapsed.

It is therefore ORDERED, ADJUDGED AND DECREED that the Property Settlement Agreement heretofore executed by the parties is hereby approved by the Court, and each and every provision of said Agreement is hereby made a specific order and decree of the Court, which Agreement is in words and figures as follows:

PROPERTY SETTLEMENT AND SUPPORT AGREEMENT

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SECRETARY CLERK
D.C.

THIS AGREEMENT is entered into by and between JOHN EDWARD PATE and RUTH B. PATE, subject to the following premises, terms, and conditions:

W I T N E S S E T H : BOOK 6793 PAGE 121

WHEREAS, the parties have experienced marital difficulties in the past, with the result that RUTH B. PATE instituted divorce proceedings against JOHN EDWARD PATE on March 4, 1985, same being Civil Action No. 85D-578 in the Probate Court for Davidson County, Tennessee; and

WHEREAS, it is the decision of the parties, insofar as they are able without the concurrence of the Court, to amicably settle their differences with respect to all property rights, support obligations, child custody rights, and obligations for payment of debts, and to enter into a contract for the settlement of such rights and obligations, not only for the present, but for the future, it being their intention that such contract will be effected with respect to all of their property and other matters of concern.

NOW, THEREFORE, for and in consideration of the foregoing premises, and in consideration of the mutual covenants and agreements hereinafter contained, the parties do hereby agree as follows:

1. The parties are the parents of three sons, all of whom have attained the age of majority. As a consequence, this Agreement makes no provision for child custody or child support.

2. As alimony in futuro, Dr. Pate shall pay Mrs. Pate the sum of $800.00 a month through March, 1988 and $600.00 a month thereafter until her death or remarriage. The first payment shall be made on or as of March 1, 1986. Subsequent payments shall be made on the first day of each and every month thereafter. Dr. Pate's obligation to make alimony in futuro payments to Mrs. Pate pursuant to the terms of this Agreement, or the decree of any court of competent jurisdiction, shall automatically terminate in the event of Mrs. Pate's death or remarriage. Further, the parties acknowledge and agree that

the alimony in futuro payments made by Dr. Pate to Mrs. Pate will be deductible by him and taxable to her for purposes of calculating their respective federal income tax liabilities. In the event Dr. Pate should predecease Mrs. Pate, his alimony obligation to her shall be fully satisfied by the insurance and other provisions provisions of Paragraph 3 below, and shall not constitute a claim against his estate.

3. The parties acknowledge that Dr. Pate receives certain insurance on his life as a benefit of his employment through Vanderbilt University. To secure his alimony obligation to Mrs. Pate, Dr. Pate shall cause Mrs. Pate to be named beneficiary of $48,000 of said coverage for so long as said coverage is available to him through Vanderbilt, which the parties understand will be until Dr. Pate attains age 70. Upon his attaining age 70, in the event he is still obligated to pay alimony to Mrs. Pate, Dr. Pate shall name Mrs. Pate beneficiary of the first $600 of the monthly survivor benefits under his retirement program through TIAA/CREF. Dr. Pate's obligation to continue to name Mrs. Pate as beneficiary of the life insurance or to name Mrs. Pate as beneficiary of a portion of the survivor benefits shall automatically terminate in the event of Mrs. Pate's death or remarriage.

4. The parties acknowledge that they are the owners of real property consisting of a house and 52.7 acres +/- which is situated at Route 2, Cub Creek Road, Nashville, Davidson County, Tennessee 37209. Dr. Pate shall execute a quitclaim deed conveying his interest in said property to Mrs. Pate. Dr. Pate shall continue to pay the monthly mortgage payments through May 31, 1986. Effective June 1, 1986, Mrs. Pate shall assume sole and separate responsibility for making the monthly payments on the indebtedness secured by a lien on said property and shall hold Dr. Pate harmless from any liability therefor. Mrs. Pate shall assume sole and separate responsibility for paying the utilities and the real property taxes associated with said property and shall hold Dr. Pate harmless from any

liability therefor. In the event Mrs. Pate should ever sell the Cub Creek Road property, Dr. Pate shall receive 40% of the "net proceeds" of sale. "Net Proceeds" is defined to equal the gross sales price less the then outstanding balance on the first mortgage, any real estate commission, and expenses of sale. In the event Mrs. Pate does not sell the Cub Creek Road property prior to her death, the property shall then be sold and Dr. Pate shall receive 40% of the "net proceeds" of sale. In the event Dr. Pate should die prior to the sale of the Cub Creek Road property or in the event he should pre-decease Mrs. Pate, Dr. Pate's right to receive 40% of the "Net Proceeds" from the sale of the Cub Creek Road property shall be automatically forfeited upon his death. Such right shall not pass to his estate. Dr. Pate shall insure the payment of all mortgage payments due prior to June 1, 1986.

5. The parties acknowledge that Mrs. Pate has incurred approximately $2,860 in charges on a Master Charge account in the name of Dr. Pate and that she has incurred charges at Vanderbilt University Hospital for medical treatment in the approximate amount of $550.00. To assist Mrs. Pate in paying these debts, Dr. Pate agrees to pay Mrs. Pate $1,705 in installments of $200 per month commencing March, 1986 and continuing through October, 1986 with the last installment of $305 due in October, 1986. Mrs. Pate shall assume sole and separate responsibility for paying the Master Charge and Vanderbilt University Hospital debts and shall hold Dr. Pate harmless for any liability therefor. The Master Charge account shall be closed or transferred to Mrs. Pate's individual name immediately upon execution of this agreement and no further charges shall be made by either party on the account from and after January 13, 1986. Mrs. Pate shall, immediately upon execution of this Agreement, send to Dr. Pate the charge cards on the Master Card account.

6. All right, title and interest of Dr. Pate in and to the household furnishings and personal property situated at the Cub Creek Road home shall be, and is hereby, divested out of him and vested absolutely in Mrs. Pate.

7. All right, title and interest of Dr. Pate in and to the funds on deposit in the First American National Bank checking account styled in the parties joint names shall be, and is hereby, divested out of him and vested absolutely in Mrs. Pate.

8. All right, title and interest of Dr. Pate in and to the Fidelity Federal Account Number 05-0-504-931 and the Fidelity Federal Account Number 02-00-213807 shall be, and is hereby, divested out of him and vested absolutely in Mrs. Pate.

9. All right, title and interest of Dr. Pate in and to the 1980 Oldsmobile, the 1966 International Scout, and the 1971 Chevrolet Vega, shall be, and is hereby, divested out of him and vested absolutely in Mrs. Pate.

10. All right, title and interest of Dr. Pate in and to the assets stored in the lockbox number 400 at Ashland City Bank & Trust Company shall be, and is hereby, divested out of him and vested absolutely in Mrs. Pate.

11. All right, title and interest of Mrs. Pate in and to the household furnishings and personal property situated at Dr. Pate's place of residence, or otherwise in his possession, shall be, and is hereby, divested out of her and vested absolutely in Dr. Pate.

12. The parties agree to file a joint federal income tax return for the calendar year 1985. Each party shall pay one-half of any taxes due and owing. In the event of a refund, the refund shall be divided equally between the parties.

13. All right, title and interest of Mrs. Pate in and to Dr. Pate's interest in his retirement plan through Vanderbilt University (TIAA/CREF) shall be, and is hereby, divested out of her and vested absolutely in Dr. Pate. Further, any right, title or interest of Mrs. Pate in and to Dr. Pate's disability

benefits through Vanderbilt University shall be, and is hereby, divested out of her and vested absolutely in Dr. Pate.

14. All right, title and interest of Mrs. Pate in and to Dr. Pate's rights to receive royalties on any publications and/or tests authored by him shall be, and is hereby, divested out of her and vested absolutely in Dr. Pate.

15. Dr. Pate shall pay the firm Trabue, Sturdivant & DeWitt $1,000 toward Mrs. Pate's attorney fees and expenses incurred by her in connection with the divorce proceedings now pending and in connection with the negotiation of this Agreement. Payment shall be made in installments of $200 per month commencing November, 1986 and continuing through March, 1987. Mrs. Pate shall be responsible for paying the balance of her attorney fees and expenses and shall hold Dr. Pate harmless from any liability therefor.

16. Dr. Pate shall pay all court costs associated with the divorce proceedings now pending. Those proceedings shall be concluded as soon as possible based on the allegation of irreconcilable differences as set forth in the Complaint of Mrs. Pate or the Counterclaim of Dr. Pate.

17. Except as otherwise provided herein, each party agrees that he or she shall be solely and separately responsible for paying all debts heretofore contracted for or incurred by him or her and further agrees to hold the other party harmless from any liability for such debts. Additionally, the parties agree that neither shall contract any indebtedness on the credit of the other from and after the date of execution of this Agreement.

18. Whenever one party is required by the terms of this Agreement to assume responsibility for paying certain debts and/or indemnify and hold the other party harmless from any liability therefor, such obligation shall be deemed to be a support obligation under 11 U.S.C. §523(5) which is not dischargeable in bankruptcy as to the other party.

19. In the event a creditor of either party seeks to compel the other party to pay any debt for which that party is not responsible, either by contract or pursuant to the terms of this Agreement, the party against whom such claim is made shall be entitled to recover for the other party the amount of any payment he or she makes, including interest, and any expenses incurred in defending the creditor's claim, including reasonable attorney's fees.

20. In the event it becomes reasonably necessary for either party to institute legal proceedings to procure the enforcement of any provision of this Agreement, he or she shall also be entitled to a judgment for reasonable expenses, including attorney's fees, incurred in prosecuting the action.

21. It is understood and agreed between the parties that this Agreement shall be introduced in the proceedings now pending in the Probate Court for Davidson County, Tennessee and submitted to the Court for ratification and incorporation into the Final Decree of divorce between the parties.

22. It is understood and agreed between the parties that this Agreement is intended to be a final settlement of all property rights and support rights and obligations of the respective parties hereto and shall constitute a discharge from all claims arising out of their marital relationship except as provided herein. Each party hereby waives and relinquishes to the other all rights or claims which each may have or hereafter acquire under the law of any jurisdiction with respect to the other's property, including without limitation, dower, courtesy, statutory allowance, homestead rights, right to take against the will of the other, inheritance, descent or distribution, or right to act as administrator or executor of the other's estate except as provided by the terms of this Agreement. This Agreement applies to all property now owned by Mrs. Pate and Mr. Pate, individually or jointly, or any property that either of them may acquire in the future.

23. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their personal representatives, heirs and assigns.

24. The parties acknowledge that there are no assets owned by them, either jointly or individually, and that they have no interests in any assets, which are not reflected by the terms of this Agreement. The parties warrant and represent that they have made full disclosure to each other of their respective incomes, anticipated incomes, and all assets in which they have interests.

25. It is understood and agreed between the parties that this Agreement is entered into without undue influence, fraud, coercion, or misrepresentation, or for any reason not herein stated. The provisions in this Agreement and their legal effect are fully known by each of the parties, and each party acknowledges that the Agreement is fair and equitable and that it is being entered into voluntarily and with advice of counsel.

26. This Agreement contains the entire understanding of the parties. There are no representations, warranties or promises other than those expressly set forth herein.

27. In the event any provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such individual provision shall not affect the other provisions of this Agreement, said provisions being severable.

28. It is understood and agreed between the parties that, as part of the consideration for the execution of this Agreement, each party shall willingly execute and deliver any and all instruments necessary or required in order to implement the terms of this Agreement.

29. This Agreement may be altered, amended or cancelled only by instrument in writing signed by each of the parties, and this requirement cannot be waived by oral agreement.

THIS AGREEMENT is executed in triplicate and a copy of same is being retained by each party. The third copy will be tendered to the Court as part of the Final Decree of divorce between the parties.

Ruth B. Pate
RUTH B. PATE

John E. Pate
JOHN EDWARD PATE

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Koni S. Laning, a Notary Public in and for the aforesaid State and County, RUTH B. PATE, the within named bargainor, with whom I am personally acquainted, and who, after being duly sworn, acknowledged that she executed the foregoing Agreement for the purposes contained therein.

Sworn to and subscribed before me this 24th day of February, 1986.

Koni S. Laning
Notary Public

My commission expires: 1-19-88

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Lydia J. Butler, a Notary Public in and for the aforesaid State and County, JOHN EDWARD PATE, the within named bargainor, with whom I am personally acquainted, and who, after being duly sworn, acknowledged that he executed the foregoing Agreement for the purposes contained therein.

Sworn to and subscribed before me this 13th day of February, 1986.

Lydia J. Butler
Notary Public

My commission expires: April 17, 1988

0314M/1-14-86

It is further ORDERED, ADJUDGED AND DECREED that defendant, John Edward Pate, be, and is hereby, awarded an absolute divorce from Ruth B. Pate, that he be restored to all the rights and privileges of an unmarried person, and that the bonds of matrimony heretofore existing between the parties are hereby perpetually dissolved.

It is further ORDERED, ADJUDGED AND DECREED that the alimony required by the terms of this Order shall not be reduced or prorated unless specifically ordered by the Court.

It is further ORDERED, ADJUDGED AND DECREED that the costs of this cause shall be, and are hereby, taxed against Dr. Pate.

It is finally ORDERED, ADJUDGED AND DECREED that execution may issue to enforce any of the provisions of this Decree.

This the 26 day of Feb, 1986.

JAMES R. EVERETT, Judge

APPROVED FOR ENTRY:

FARRIS, WARFIELD & KANADAY

By: James G. Martin III,
Attorney for John Edward Pate
17th Floor, Third National Bank Bldg.
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(615) 244-5200

TRABUE, STURDIVANT & DEWITT

By: Thomas C. Binkley
Attorney for Ruth B. Pate
26th Floor, Life & Casualty Tower
Nashville, TN 37219
(615)244-9270

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7.9406

IDENTIFICATION REFERENCE

FEB 28 3 59 PM '86

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

STATE OF TENNESSEE

I, **GEORGE L. ROOKER,** *Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the* Probate *Circuit Court for Davidson County, Tennessee, on the* 26th. *day of* February, *19* 86, *in Case Number* 85D-578 *between* Ruth B. Pate *Plaintiff, and* John Edward Pate *Defendant, as same remains of record in Book* 33A, *Page* 17 *of the Minutes of said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 27th. *day of* February *in the year one thousand nine hundred and* Eighty-Six *and in the* 210th. *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By D Rooker, *D.C.*

Form #GR-117