172A | 616

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

'89 MAY 12 PM 3:29
CIRCUIT & CHANCERY CLERK

ANNA MARLENE WHALEY,

Plaintiff,

vs.

MONTE HENRY WHALEY, SR.,

Defendant.

NO. 89D-238

to be assigned

FINAL DECREE

This cause came on to be heard on the 8th day of May, 1989, before the Honorable ~~Muriel Robinson,~~ Russell Ennis, Special Judge of the Circuit Court for Davidson County, Tennessee, upon the Plaintiff's Complaint for Absolute Divorce, the executed Marital Dissolution Agreement of the parties, which provides for a division of the parties' respective rights and interests in all joint and individual property, and apportionment of responsibility of payment of parties' joint and individual debts, upon the testimony of the Plaintiff, statements of counsel, and the entire record in this cause, from all of which the Court affirmatively finds that the allegations in the Plaintiff's Complaint are sustained by the proof and that there exists such irreconcilable differences between the parties as would entitle Plaintiff to an absolute divorce, that the Marital Dissolution Agreement heretofore executed by the parties is an adequate and sufficient apportionment of the marital property and debts of the parties owing, and should be approved; that the ninety day waiting period, as required by statute, has lapsed; and that the parties hereto presently reside at the following addresses:

Anna Marlene Whaley 401-B Donelson Pike Nashville, TN 37214	Monte Henry Whaley, Sr. 2934 Lakeland Nashville, TN 37214

It is, therefore, ORDERED, ADJUDGED and DECREED that the Plaintiff, ANNA MARLENE WHALEY, be and is hereby ordered an absolute divorce from the Defendant, and that she 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 Marital Dissolution 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. The Marital Dissolution Agreement is in words and figures as follows:

MARITAL DISSOLUTION AGREEMENT

THIS AGREEMENT is entered into by and between ANNA MARLENE WHALEY, hereinafter referred to as "Wife", and MONTE HENRY WHALEY, SR., hereinafter referred to as "Husband", subject to the following premises, terms and conditions:

W I T N E S S E T H:

WHEREAS, certain differences have arisen between the parties which appear to be irreconcilable, and there is now pending in the Circuit Court for Davidson County, Tennessee, a suit for divorce between the parties being Anna Marlene Whaley vs. Monte Henry Whaley, Sr., bearing Docket No. 89D-238; 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, obligations for payment of debts, and any and all matters concerning their respective rights and duties by reason of the marital relationship and to enter into a contract for the settlement of all such rights and obligations, not only for the present, but for the future;

NOW, THEREFORE, in settlement, adjustment and compromise of all property rights, and questions and all matters arising by reason of the marital relationship and in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree and covenant as follows:

1. Children. The parties acknowledge and agree that there are two minor children born to this marriage, to wit: Monte Henry Whaley, Jr., born 6/17/84; and Matt Anthony Whaley, born October 8, 1986.

2. Child Custody. The Wife shall have custody of the parties' minor children during their minority, and the Husband hereby consents to the Wife's exclusive supervision, control and care of said children.

3. Child Support. The parties agree that the Husband shall pay to the Wife the sum of Three Hundred Fifty Dollars ($350.00) per month as support and maintenance for the parties' minor children.

4. Child Visitation. The parties agree that the Husband shall have the following minimal visitation rights with the parties' minor children:

(a) From Friday at 6:00 p.m. until Sunday at 6:00 p.m. every other weekend.

(b) Husband shall be granted two weeks visitation with the parties' minor children during the summer, with the Husband advising the Wife of the specific times said visitation shall be exercised.

(c) In all even numbered years, the Husband shall be allowed visitation with the parties' minor children during the Christmas holidays from 6:00 p.m. on the last day of school before Christmas until 10:00 p.m. on Christmas Eve. In all odd numbered years, the Husband shall have visitation from 10:00 p.m. on Christmas Eve until 6:00 p.m. on New Years Day.

(d) The Husband shall have visitation with the parties' minor children from 4:00 p.m. on Thanksgiving Day until 6:00 p.m. on the Sunday following Thanksgiving in all years in which the Husband would otherwise normally be exercising weekend visitation on the weekend following Thanksgiving Day. On Thanksgivings in which the Husband does not otherwise exercise his normal weekend visitation with the parties' minor children, the Husband shall have visitation with said minor child from 6:00

p.m. on Wednesday, Thanksgiving Eve, until 4:00 p.m. on Thanksgiving Day.

(e) The 4th of July holidays shall be alternated between the parties, with the Wife having the children in all even-numbered years and the Husband having the children in all odd-numbered years.

(f) On all other holidays officially acknowledged by the federal government and which fall on a Monday, the Husband shall have the right of visitation with the parties' minor children on those holidays wherein he is otherwise exercising his normal visitation with the minor children on the weekend of said holiday.

(g) Notwithstanding any provisions to the contrary, the Husband shall have visitation with the parties' minor children from 6:00 p.m. Saturday until 6:00 p.m. Sunday on Father's Day weekend and the Wife shall have visitation with the parties' minor children from 6:00 p.m. Saturday until 6:00 p.m. Sunday on Mother's Day weekend.

(h) The Husband shall further be entitled to liberal visitation at other times not hereinabove mentioned with the prior agreement of the Wife. The parties shall exert every reasonable effort to maintain free access and unhampered contact between the children, and each of the parties are to foster a feeling of affection between the children and the other party.

(i) The Husband hereby acknowledges and agrees that the custody provision of this Agreement does not allow him to have physical possession of the parties' minor children at times other than those hereinabove noted unless he has received prior approval from the Wife.

5. Real Property. The parties acknowledge and agree that they own as tenants-by-the-entirety certain real property located at 2934 Lakeland, in Nashville, Davidson County, Tennessee, which bears the following legal description, as noted in Book 7133, Page 522, of the Davidson County Register's Office:

> LAND In Davidson County, Tennessee, being Lot No. 116 on the Plan of Cloverhill Subdivision, Section 7, recorded in Book 2133, Page 92, Register's Office for Davidson County, Tennessee, to which Plan reference is hereby made for a more complete and accurate legal description.
>
> BEING the same property conveyed to William W. Middleton, Keith M. Middleton and Anna M. Middleton by deed from Barbara J. Easley, Barbara J. Dreher and husband Anton A. Dreher recorded in Book 6164, Page 52, Register's Office for Davidson County, Tennessee.
>
> BEING the same property conveyed to Monte H. Whaley, Sr. and wife, Anna M. Whaley, by deed from William W. Middleton, Keith M. Middleton, Anna M. Middleton and Linda C. Middleton, recorded in Book 7133, page 522, Register's Office for Davidson County, Tennessee.

The parties agree that all right, title and interest in and to said real property shall be divested from the Wife and vested solely in the Husband, with the Husband being solely responsible for any indebtedness thereon. Husband further agrees to hold the Wife harmless from any said indebtedness and to indemnify her for any costs, expenses or losses experienced by her as a result of the Husband's failure to meet the obligations contained herein. Wife agrees to immediately execute a quitclaim deed on said real property over to the Husband. However, upon any default of payments on said property by Husband, Wife reserves the right to immediate possession of said property.

The parties further agree that all right, title and interest in and to the real estate located at 3515 Pinhook Road, in Antioch, Davidson County, Tennessee, in Deed Book 3162, Page 51, which property was previously conveyed to the parties by the Wife's parents, shall be divested out of the parties and back into Clyde and Thelma Spurlock as tenants-by-the-entirety, and both parties hereby agree to execute any and all documents necessary to effect such transfer.

6. Automobiles. The parties agree that all right, title and interest in and to the 1984 Chevrolet Cavalier shall be divested from the Husband and vested solely in the Wife. The

parties further agree that all right, title and interest in and to the 1988 Ford Ranger shall be divested out of the Wife and vested solely in the Husband. The parties further agree that each shall be responsible for that indebtedness owing on the vehicle which is vesting solely in them while holding the other party harmless from any said indebtedness. The parties further agree that they shall indemnify the other party for any costs, expenses or losses experienced as a result of the other party's failure to comply with the terms of this provision. Furthermore, the parties agree that they shall immediately execute whatever documents are necessary to carry out the terms of this provision.

7. Personal Property. The parties agree that each shall keep that property which each party brought into the marriage, such property to include, but not be limited to, clothing, jewelry and similar items of personalty, and they acknowledge that they have made a satisfactory settlement and distribution of such personal property. The parties further agree that each is know possessed of all property, marital or otherwise, to which he or she is entitled.

8. Debts. The parties acknowlege and agree that there are certain joint debts arising out of the marriage. The parties agree that Wife shall be responsible for the following joint indebtedness of the parties:

1. Bank loan at Dominion Bank with an approximate balance of $2,013.08.

2. Personal loan to Denny Basmajain in the amount of $2,000.00.

The parties acknowledge and agree that the Husband shall be responsible for any indebtedness on a student loan in the amount of $2,000.00.

The parties further agree that each shall be responsible for his or her own indebtedness and further agree to hold the other harmless for such debts. The parties further agree that they shall indemnify the other party for any costs, expenses, or losses experienced as a result of the other party's failure to comply with the terms of this provision. The parties further agree that neither of them shall incur a debt after the execution of this Agreement on an account for which the other party may be held responsible or which would otherwise be binding on the other party or be considered an encumbrance to said party.

9. Monetary Funds and Accounts. The parties acknowledge and agree that they do not have any joint checking, savings or other similar financial accounts.

10. Income Tax. The parties agree that they will be filing a joint income tax return for the year 1988, with the proceeds realized from said return being divided equally between the parties.

11. Court Costs. The parties agree that the Wife shall be responsible for payment of all court costs incurred in this cause, so long as the divorce proceeds on the grounds of irreconcilable differences.

12. Attorney Fees. The parties agree that the Wife shall be responsible for the payment of attorney fees incurred in this cause, so long as the divorce proceeds on the grounds of irreconcilable differences.

13. Miscellaneous Provisions. 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 for any liability therefor, such obligations shall be deemed to be a support obligation under 11 U.S.C., Section 523(5), said obligation not being dischargeable in bankruptcy as to the other party.

It is further understood and agreed between the parties that this Agreement is intended to be a final settlement of all property rights, 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 may have or hereafter acquire under the law of any jurisdiction with respect to the other's property including, but not limited to, dower, curtesy, statutory allowance, homestead rights, right to take against the will of the

other, inheritance, descent and distribution, or the 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 the Wife and Husband, individually and jointly, or any property that either of them may acquire in the future.

It is further understood and agreed by and between the parties that this Agreement is entered into without any undue influence, coercion or misrepresentation or for any reason not herein stated.

14. Breach of this Agreement. The parties acknowledge that the failure of either party to abide by the terms of this Agreement shall vest in the other party the right to pursue whatever legal actions are appropriate in order to remedy the particular breach. The parties agree that the party in breach of this contract shall be responsible to the non-breaching party for all reasonable attorney fees incurred by the non-breaching party as a result of his or her efforts to enforce the terms of this Agreement subsequent to its execution.

15. Content of this Agreement. The parties acknowledge and agree that this Agreement is entered into by each of them with full knowledge on the part of each of them of the extent and probable value of all property and estate of the parties, jointly and personally, and each of the parties hereby forever releases and surrenders all of his or her right, title and interest, marital or otherwise, in and to all of the estate, whether real, personal, intangible or mixed, now owned or hereinafter acquired of or by the other party, except as he or she may be bound by the promises and covenants contained in this Agreement.

The parties further acknowledge that they have read the entire terms of this Agreement and that they understand all the terms and conditions contained therein. The parties further acknowledge and agree that this Agreement constitutes a full and complete understanding of the parties hereto relative to all matters of the division of the marital property. The parties further acknowledge and agree that this Agreement adequately and sufficiently provides for the division of all of the marital estate.

/s/ Anna Marlene Whaley
ANNA MARLENE WHALEY

/s/ Monte Henry Whaley, Sr.
MONTE HENRY WHALEY, SR.

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned authority, a Notary Public in the State and County aforesaid, the aforenamed ANNA MARLENE WHALEY, known personally to me, who upon her oath, stated she has read the foregoing Marital Dissolution Agreement, knows the contents thereof, and has executed the same for the purposes contained therein this the 9th day of December, 1988.

/s/ Rebecca S. Fishburn
NOTARY PUBLIC

My Commission Expires: 7-10-90

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned authority, a Notary Public in the State and County aforesaid, the aforenamed MONTE HENRY WHALEY, SR., known personally to me, who upon his oath, stated he has read the foregoing Marital Dissolution Agreement, knows the contents thereof, and has executed the same for the purposes contained therein this the 30th day of December, 1988.

/s/ Rebecca S. Fishburn
NOTARY PUBLIC

My Commission Expires: 7-10-90

* * * * *

It is further ORDERED, ADJUDGED and DECREED that the Husband has indicated an unwillingness to pay child support since the Court ordered, on March 31, pendente lite support to begin April 5, and no payment was made from the time of said Order until May 7, thus it was over 30 days past due and any further child support payments shall be made by wage assignment at the Husband's employer who is:

Shoney's Inn
400 Interstate Drive
Nashville, TN 37206
(615) 255-3021

It is further ORDERED that the Husband's employer shall immediately commence deducting the sum of $325.00 per month as current child support on the 5th day of each month until further orders of this Court, and the additional sum of the Clerk's 5% lawful commission (or $16.25) per month from any wages, salary, commissions or other compensation of Monte Henry Whaley, Sr. The total amount being $341.25 per month.

It is further ORDERED that the Husband's employer disburse said sums to:

George Rooker
Circuit Court Clerk
Room 506
Metropolitan Courthouse
Nashville, Tennessee 37201

It is further ORDERED that the Clerk shall deduct his 5% commission and disburse said payments to:

Anna Marlene Whaley
401-B Donelson Pike
Nashville, TN 37214

It is further ORDERED that Monte Henry Whaley, Sr., or his new employer shall timely notify this Court of any change of employment and the name of the new employer.

It is also ORDERED that this wage assignment shall not be used as a basis for discharge or disciplinary action against Monte Henry Whaley, Sr. and that the employer's failure to comply with this Order shall result in a judgment against said employer and successer employers fifteen (15) days after receipt and until further orders of this Court.

It is further ORDERED, ADJUDGED and DECREED that the court costs in this cause are taxed to the Plaintiff.

It is further ORDERED, ADJUDGED and DECREED that the child support provisions of this decree are not subject to change without further orders of this Court.

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

ENTER this 12th day of May, 1989.

Russell B. Swan, Special Judge
JUDGE

APPROVED FOR ENTRY:

Sophia Brown Crawford
SOPHIA BROWN CRAWFORD #13201
Attorney for Plaintiff
Suite 2016, Parkway Towers
Nashville, Tennessee 37219
(615) 242-8107

mail

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Decree has been mailed to Mr. Monte Henry Whaley, Sr., 2934 Lakeland, Nashville, TN 37214, on this the 8th day of May, 1989.

Sophia Brown Crawford
SOPHIA BROWN CRAWFORD

3307 10/05 0101 03CHECK 24.00

BOOK 7955 PAGE 339

7 1 8 8 5

IDENTIFICATION REFERENCE

OCT 5 [illegible]

DAVIDSON COUNTY

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* Fourth *Circuit Court for Davidson County, Tennessee, on the* Twelfth *day of* May, *19* 89, *in Case Number* 89D-238 *between* Anna Marlene Whaley *Plaintiff, and* Monte Henry Whaley, Sr. *Defendant, as same remains of record in Book* 178A, *Page* 616 *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* 5 *day of* October *in the year one thousand nine hundred and* Eighty-Nine *and in the* 214 *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By Barbara Eddings *D.C.*

Form #GR-117