BOOK 8498 PAGE 569 62A/545

IN THE PROBATE COURT OF DAVIDSON COUNTY, TENNESSEE

GEORGE L.

LINDA LEE DICIAULA,
Plaintiff,

vs

DARRICK A. DICIAULA,
Defendant.

No. 91D-1539

FINAL DECREE OF DIVORCE

This cause came to be heard on the 24th day of June, 1991, before the Honorable James R. Everett, Jr., Judge of the Probate Court of Davidson County, Tennessee, upon the Complaint For Absolute Divorce heretofore filed by the Plaintiff, LINDA LEE DICIAULA, no answer having been filed the Defendant, however, the parties having entered into a written Marital Dissolution Agreement satisfactory to this Honorable Court; testimony from the Plaintiff heard in open Court; statements from counsel for the Plaintiff and the record in its entirety from all of which the Court finds that the parties have suffered irreconcilable differences during the course of their marriage.

It is, therefore, **ORDERED** that the bonds of matrimony heretofore subsisting between the parties be, and the same are, hereby forever perpetually dissolved and each party shall be restored to all the rights and privileges of an unmarried person.

It is, further, **ORDERED** and the Court affirmatively finds that the Marital Dissolution Agreement heretofore signed by the parties makes adequate and sufficient provision for the division of the marital estate and that there were no minor children born of this marriage. It is therefore, **ORDERED** that the Marital Dissolution Agreement shall be incorporated herein verbatim as follows:

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IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

LINDA LEE DICIAULA, Plaintiff,	)	
vs	)	No. 91D-1539
DARRICK A. DICIAULA, Defendant.	)	

MARITAL DISSOLUTION AGREEMENT

This agreement entered into by and between LINDA LEE DICIAULA, hereinafter called, "Wife", and DARRICK A. DICIAULA, hereinafter called, "Husband", subject to the foregoing premises, terms and conditions:

WITNESSED:

WHEREAS, the parties have experienced marital difficulties in the past with the result that the Wife instituted divorce proceedings against the Husband on the 23rd day of April, 1991, Civil Action number 91D-1539, in the Circuit Court of 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 settlement their differences with respect to all property rights, support obligations, child support rights 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 effective with respect to all their property and other matters of concern irrespective of whether a divorce is finally concluded between the parties.

NOW, THEREFORE, for and in consideration of the foregoing premises and in consideration of the mutual convenances and agreements herein contained, the parties agree as follows:

1. **WAIVER OF PROCESS AND JURISDICTION** - The Husband agrees that pursuant to Tennessee Code Annotated, Section 36-4-103(a)(2) in lieu of service of process, the Husband will hereinafter enter into a written notarized marital dissolution agreement with the Wife which makes specific reference to the pending divorce in the Circuit Court of Davidson County, Tennessee, docket number 91D-1539, and that the Husband specifically waives further service and waives filing an answer to the Complaint for the purpose of making a general appearance before the Circuit Court of Davidson County, Tennessee and to give this Honorable Court personal jurisdiction over him which shall constitute a default judgement for the purpose of granting a divorce on the grounds of irreconcilable differences pursuant to the terms of this marital dissolution agreement.

2. **CUSTODY, CHILD SUPPORT AND VISITATION** - There were no minor children born of this marriage.

3. **REAL PROPERTY** - It is agreed and acknowledged between the parties that they own as tenants by the entireties their homeplace located at 65 Benzing Road, City of Antioch, County of Davidson, State of Tennessee, 37013, said real property being more particularly described as follows:

> Land in DavidsonCounty, Tennessee, being Lot No. 37 on the Plan of Antioch Park, Section I, as of record in Book 3600, page 96, Register's Office for said County.
>
> Said Lot No. 37 fronts 75.0 feet on the southerly margin of Benzing Road and extends back between parallel lines 140.0 feet to a dead line in the rear.
>
> Being the same property conveyed to Marshall S. Willis and wife, Sheila B. Willis by deed from Mark Alan Lee, Sr. and wife, Cheryl Lynn Lee, of record in Book 4945, page 630, Register's Office for said County.
>
> Being the same property conveyed to Darrick A. DiCiaula and wife, Linda Lee DiCiaula by deed from Marshall S. Willis and wife, Sheila B. Willis of record in Book 5847, page 527, Register's Office of Davidson County, Tennessee.

The above described real property shall be divested from the parties as tenants by the entireties and reinvested fee simple absolute into the Wife, Linda Lee DiCiaula, being the same person as Linda Lee Wilgosz, to be hers in absolute fee simple free and clear of any claims from the Husband, Darrick A. DiCiaula. The Wife shall be responsible for the payment of the mortgage, taxes, insurance and maintenance thereon, therein agreeing to indemnify and hold the Husband harmless from payment of same.

There is no other real property to be divided by this agreement.

4. **PERSONAL PROPERTY** - The Wife shall be entitled to sole and exclusive possession of her 1976 Chevrolet Vega. The Husband shall be entitled to sole and exclusive possession of his 1974 Dodge Charger and his 1972 Honda motorcycle.

The parties have hereto divided all their items of household furniture, furnishings and personal property with each party acknowledging and ratifying this division. The said household furniture, furnishings and personal property in the possession of either party as of the entry of the Final Decree of Divorce shall remain the sole and exclusive property of the party possessing it, free and clear from any claims from the other.

5. **DEBTS** - Each party acknowledges that they are currently paying pursuant to the terms of a Chapter 13 Bankruptcy Plan. Each party shall continue to make payments pursuant to the terms of this plan, to wit: wage assignment/payroll deduction, through the natural termination of the Chapter 13 Plan.

Each party shall be individually responsible for any indebtedness incurred by them subsequent to the date of separation, to wit: June 13, 1990.

Each party shall be permanently **ENJOINED AND RESTRAINED** from incurring any new or additional indebtedness which the other party may be responsible for payment of.

The assumption of the abovestated indebtedness and all other indebtedness outlined in this marital dissolution agreement by each party shall be considered a duty directly related to rehabilitative alimony and shall not be considered dischargeable in any bankruptcy by one party against the nonbankrupt spouse so as to allow a third party creditor to claim against the nonbankrupt spouse. The parties specifically acknowledge that the abovestated indebtedness was taken into consideration when negotiating the level of rehabilitative alimony in relation to their indebtedness and their current income levels. With respect to each parties' responsibility for the payment of the abovestated indebtedness and liabilities and their obligations to hold the other harmless from payment thereof, the parties understand and agree that their obligation is in the nature of the payment of rehabilitative alimony and is a nondischargeable debt under Chapter 11 U.S.C. Section 523(5) of the Bankruptcy Code, this obligation being part of the final Court settlement of both parties regarding rehabilitative alimony and is not a part of the division of the personal property of the marital estate.

To the extent of the abovestated outstanding debts, securities, collateral requirements and mortgage for any all the property retained by the Husband and/or Wife pursuant to the terms of this agreement, except as otherwise provided herein, the parties retaining those property items listed above shall pay said debts, securities, collateral or mortgages and be responsible for said debts or obligations and assume and be solely responsible for paying said debts or obligations this being considered in the nature of rehabilitative alimony and each party agrees to indemnify and hold the other party free and harmless from the payment of all claims, demands, liabilities and expenses with respect thereto, including, but not limited to, reasonable attorney's fees, cost of collection and Court cost.

6. **TAX EXEMPT STATUS** - This agreement is in the transfer of appreciated property between the spouses in connection with a divorce and is not a sale or exchange or other disposition of property but is an equal division of property by co-owners.

7. **NO INTERFERENCE** - Each party shall be free from interference, authority or control, direct or indirect, by the other, as fully as if he or she were single and unmarried. Neither shall molest the other, nor compel or endeavor to compel the

other to cohabitate or dwell with him or her. Each party shall be permanently **ENJOINED AND RESTRAINED** from coming about the other for the purpose of physically abusing, threatening, harassing, or intimidating in any manner the other at their residence or at any place they might be.

8. **TRIAL** - It is agreed between the parties that the Wife shall proceed to Court to obtain an absolute divorce upon the grounds of irreconcilable differences and the Husband shall waive service of process and allow this matter to proceed as uncontested cause.

9. **RESTORATION OF MAIDEN NAME** - Upon a Final Hearing of this cause the Wife shall be restored to the use and benefit of her maiden, "Linda Lee Wilgosz".

10. **SEPARATE MAINTENANCE/ALIMONY** - The Husband shall pay directly to the Wife the sum of four hundred dollars ($400.00) per month beginning February 1, 1992 with his final payment to be made on January 1, 1996. Said payments to be due on the first (1st) day of each month as rehabilitative alimony.

11. **ATTORNEY'S FEES** - Each party shall be responsible for his/her own attorney's fees and the Court cost incurred in connection with this matter shall be paid by the Wife.

12. **ENFORCEMENT PROVISIONS** - In the event that either party has to petition the Court to enforce any of the provisions of this agreement, then the party at fault shall be responsible for the reasonable attorney's fees, expenses and Court cost of enforcement of same.

13. **PENSION BENEFITS** - Each party shall be entitled to sole and exclusive possession of their own pension benefit plans, annuities, IRAs or other retirement plans, free and clear of any claims from the other.

14. **HUSBAND TO MAINTAIN LIFE INSURANCE** - The Husband shall provide and maintain a life insurance policy upon his life in the face value of sixty thousand dollars ($60,000.00), making the Wife irrevocable beneficiary through December 31, 1995; this provision being considered in the nature of rehabilitative alimony.

15. **ADDITIONAL INSTRUMENTS** - Both parties agree to sign any and all deeds, titles, documents or other instruments necessary to carry out the full intent of this agreement.

16. **COMPLETE UNDERSTANDING** - It is further understood that this agreement is intended to be the final settlement of all property rights of the respective parties and is a discharge of all rights arising out of their mutual relationship as husband and wife. Each party hereby waives and relinquishes to the other all rights of claim which he/she may have or hereinafter acquire under the law of any jurisdiction on

the other's property, including, without limitation, dower, courtesy, statutory allowance, homestead rights, the right to take against the other's estate, inheritance, dissent or distribution, or the right to act as administrator or executor of the other's estate, and this agreement applies to all property now owned by the Husband and/or Wife or to any property that either of them might acquire in the future.

This agreement shall be binding upon and incur to the benefit to the parties hereto, their personal representatives, heirs and assigns.

It is further understood and agreed between the parties that this agreement is being entered into without undue influence, fraud, coercion, misrepresentation or for any reason not herein stated. The provisions of this agreement and its legal effect are fully known by each of the parties and party acknowledges that it is a fair and equitable agreement and that it is being entered into voluntarily upon advice of their respective counsel. This agreement contains the entire understanding of the parties and there are no representations, warranties, covenances, or undertakings other than those which are expressly set forth herein.

The parties acknowledge and understand that they have sough independent tax advice regarding the tax ramifications of this marital dissolution agreement and that neither of their respect attorneys has indicated any expertise in the tax area, nor has either attorney advised their client regarding any tax consequences arising out of this marital dissolution agreement.

The parties agree that this agreement, subject to Court approval, shall be incorporated in and made part of any Final Decree of Divorce which may be entered into hereafter.

IN WITNESS WHEREOF, the parties have executed this instrument on the 23 day of April, 1991, at Nashville, Tennessee.

Linda Lee DiCiaula
LINDA LEE DICIAULA

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

On this the 23rd day of April, 1991, before me, Linda G. Jones, a notary public in and for said county and state appeared the said LINDA LEE DICIAULA, with whom I am personally acquainted, stating that she has read the aforestated marital dissolution agreement and is signing same for the purposes contained therein.

Sworn to and subscribed before me on
this the 23rd day of April, 1991.

Linda G. Jones
NOTARY PUBLIC

DARRICK A. DICIAULA

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

On this the 30th day of April, 1991, before me, Connie E. Calvert, a notary public in and for said county and state appeared the within named DARRICK A. DICIAULA, with whom I am personally acquainted, stating that he has read the aforestated marital dissolution agreement and is signing same for the purposes contained therein.

Sworn to and subscribed before me on
this the 30th day of April, 1991.

Connie E. Calvert
NOTARY PUBLIC

My commission expires: 3/8/92
30-16

DARRICK A. DICIAULA

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

On this the 30th day of April, 1991, before me, Connie E. Calvert, a notary public in and for said county and state appeared the within named DARRICK A. DICIAULA, with whom I am personally acquainted, stating that he has read the aforestated marital dissolution agreement and is signing same for the purposes contained therein.

Sworn to and subscribed before me on
this the 30th day of April, 1991.

Connie E. Calvert
NOTARY PUBLIC

My commission expires: 3/8/92
30-16

It is, further, **ORDERED** that the Marital Dissolution Agreement shall be made an Order of this Court.

It is, further, **ORDERED** that the Wife shall be restore to the use and benefit of her maiden name, "LINDA LEE WILGOSZ".

It is, further, **ORDERED** that the cost incurred in connection with this cause shall be paid by the Plaintiff/Wife, LINDA LEE DICIAULA, for which execution may issue if necessary.

ENTERED this the 24 day of June, 1991.

JAMES R. EVERETT, JR., JUDGE

APPROVED FOR ENTRY:

W. ALLEN BARRETT
Attorney for Plaintiff
Supreme Court Registration No. 10894
ROBERT L. JACKSON & ASSOCIATES
214 Second Avenue, North
One Washington Square, Suite 103
Nashville, Tennessee 37201
(615) 256-2602

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Decree of Divorce has been forwarded by first class U.S. mail, postage prepaid, to Ted F. Walker, 2108 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee, 37219 on this the 24th day of June, 1991.

W. ALLEN BARRETT

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Mail
Linda Wiggins
65 Benzing Rd.
Antioch 37013

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* 24th *day of* June, *19* 91, *in Case Number* 91D-1539 *between* Linda Lee Diciaula *Plaintiff, and* Darrick A. Diciaula *Defendant, as same remains of record in Book* 62A, *Page* 545 *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* ~~2nd~~ *day of* December *in the year one thousand nine hundred and* Ninety One *and in the* 216th *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By Bill Riggs *D.C.*

Form #GR-117