IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

FILED
1999 FEB 19 AM 7:40
RICHARD R. ROOKER, CLERK
D.C.

LUZ NEREIDA DIAZ)
)
v.) No: 97D-3082
)
JOSEPH MICHAEL DIAZ)

AMENDED FINAL DECREE OF DIVORCE

This cause came on to be heard on the 12th day of February, 1999, upon Ms. Diaz's motion to alter or amend and Mr. Diaz's Rule 60 motion to correct the following language in the Court's Memorandum Opinion which constitutes the Court's Final Decree of divorce int his matter and the related responses thereto. The Court, after hearing no testimony in this matter, **ORDERS** as follows:

It is **ORDERED** that the Memorandum Opinion which constitutes the Clerk's Final Decree of divorce entered December 23, 1998, in this matter as concerns Kathy Bishop is amended to reflect that Mr. Diaz admitted that she was a girlfriend, whatever that means. Further, the Court does not believe it made a finding as to whether they had "committed adultery".

It is further **ORDERED** that Ms. Diaz's motion to alter or amend as a result of the proposed refinancing of the marital residence and Ms. Diaz's requests for additional alimony is denied.

It is, therefore, **ORDERED** that the Memorandum Opinion constituting the Final Decree of divorce issued on December 23, 1998, is amended as follows:

This cause came on to be heard on November 23, 1998, on the Wife's Complaint for Separate Maintenance and the Husband's Counter-Complaint for Absolute Divorce, from all of which the Court finds:

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Divorce and Separate Maintenance.

Ms. Diaz filed for Separate Maintenance. Mr. Diaz wishes an absolute divorce. The parties have been married for 33 years. Ms' Diaz' reasons for the Separate Maintenance are that although the parties have been separated for about two years that Mr. Diaz will come to his senses and return to her. Although this is not likely, Ms. Diaz holds onto this belief. She believes that marriage is til death do us part. In these days of rampant and public infidelity, that is an admirable thought, but may only bring further heartache to the Diaz'. Ms. Diaz clearly has grounds for separate maintenance or absolute divorce based upon Mr. Diaz' admission of an affair with several women, notably Kathy Bishop. Ms. Kathy Bishop denied the affair.

Mr. Diaz amended his counter-complaint to allege separation for two years with no minor

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children. The Court allowed the amendment, so that the Court could determine whether such a ground was viable. There was some dispute over whether the Diaz' had slept together during those two years. Mr. Diaz denied this and Ms. Diaz stated they had been together after a funeral.[1] In addition, Mr. Diaz had alleged inappropriate marital conduct. His most egregious complaint was that Ms. Diaz, for some unknown reason, practically prevented him from seeing his own family. During their separation, she failed to give him a message that his mother was very ill in Florida. In fact, she pulled the phone out of the wall during a dispute over the message from Florida. Although it was not entirely clear, she apparently often argued with Mr. Diaz.

The Court is not comfortable granting a divorce on separation for over two years, as it certainly does not follow the spirit of the statute, if it does follow the letter of the law, as the amendment was filed two weeks before the contested divorce hearing. The Court would prefer to follow the reasoning in Hazelhurst v. Hazelhurst, Ct. App., Middle Section, April 16, 1993, wherein this Court granted a divorce in the face of the husband having an affair, which was affirmed by the Court of Appeals. The Court will grant a divorce pursuant to T.C.A. §36-4-129(b):

> The court may, upon such stipulations or upon proof, grant a divorce to the party who was less at fault, or **if either or both parties are entitled to a divorce, declare the parties to be divorced, rather than awarding a divorce to either party alone.**

Marital Assets:

The Court finds from the testimony and from Exhibits #2 and #5 that the parties have the following marital assets and divides them as follows:

	Husband	Wife
Marital Residence		$ 41,553.00 equity
Jeep		4,000.00
Retirement Pension		450.00 per month
401K Plan Northern Telecom		12,000.00

[1] The court could not determine who was being truthful. Ms. Diaz also alleged that Mr. Diaz had withdrawn $4000 from a checking account, 009208357, and $2000 from a savings account 0027410898. Late-filed exhibits showed that Mr. Diaz may have withdrawn $400 from the checking account that was a bit out of the ordinary, but there are no sums of money transferred to another account. It appears that Ms. Diaz' check was not deposited automatically and Mr. Diaz made no further deposits to that account, after November, 1996. Thus, for whatever it is worth, Mr. Diaz seems somewhat more credible.

Tandy Retirement Fund	$ 9,530.00	
Furniture, etc. in wife's home		4,300.00
Christmas Club Account		300.00
Money withdrawn from Retirement Funds during separation	$ 5,000.00	
Money withdrawn from FANB Account No. 62-0854774[2]	5,000.00	
Furniture in Husband's apartment	1,960.00	
TOTAL	$ 21,490.00	$ 62,153.00

Although this is not an equal distribution, it is important that Ms. Diaz retain the home, as it will also generate income to her to help with her expenses. Mr. Diaz has no real objection to her retaining the home She will be able to rent out the downstairs of the house, when she feels more comfortable renting the house out to strangers. Recently, her son and daughter-in-law lived in the house. With a few more security measures, she will be able to rent out the house and get at least $400.00-$500.00 per month rent to supplement her income. All interest of Mr. Diaz in the house at 3921 Plantation Drive is divested out of Mr. Diaz and is reinvested solely in Ms. Diaz.

> Being Lot No. 561 on the Plan of Hermitage Hills, Section 5, of record in Plat Book 3300 at page 1 and 2, Register's Office for Davidson County, Tennessee, to which reference is hereby made for a more complete description.
>
> Being the same property conveyed to Joseph M. Diaz and wife, Luz N. Diaz, by deed from Donald Wayne Williams and wife, Pierrette Elaine Williams, dated November 22, 1985, and of record in Book 6717, Page 295, Register's Office for Davidson County, Tennessee.

During the separation, Mr. Diaz was ordered to keep up the mortgage payments, which he did not do. He then filed Chapter XIII and tried unsuccessfully to refinance the house. Late filed Exhibits showed that the house either is or is about to be refinanced so that Ms. Diaz will have stable and lower payments. Although the interest payment is 13.5%, the court assumes that is due to the Chapter XIII and the failure to make payments. Perhaps with a better payment history, Ms. Diaz

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[2] This account is not referenced anywhere else in the exhibits or testimony. It is unclear tot he court if this is the same account that was referred to in the testimony [See Footnote 1] or if this is a separate account. The court will consider it to be a separate account for the present time. This may be referring to the stock options he received every year in the amount of approximately $5000.00, which he used in 1997 and 1998 to pay off bills, take a trip to Florida and use for monies for himself to pay rent, etc.

will be able to later refinance and obtain a more favorable interest rate.

Although the marital assets show that Mr. Diaz owns no car, he certainly has use of an automobile purchased by his girlfriend, Kathy Bishop, which is a Buick which she purchased for about $3,900.00. There as also a lot of testimony about any possible interest he may have had in K & J Computer, with his girlfriend Kathy Bishop. Although there was an intent to have a partnership, the court believes that this never happened and she is the sole owner and beneficiary of any monies that come into the business. If she wrote Mr. Diaz checks, it was for parts he purchased for a job that she had.

Alimony:

Mr. Diaz states that he brings home about $1,700.00 per month. Ms. Diaz's expense and income sheet shows she brings home $1,463.00 per month with a $1,500.00 deficit. As stated above, Ms. Diaz could use her house to generate additional funds to help with her expenses. Thus the Court will award her $200.00 per month as alimony in futuro til death or remarriage.

Debts:

Mr. Diaz will be responsible for the marital debts, Bank One, Household Bank, NBC Bank and Sears. Presently he is handling these bills under his Chapter XIII. If he wishes to totally bankrupt on these bills, he will be allowed to do so, as Ms. Diaz is not on those accounts. It is unclear whether these are primarily debts of Mr. Diaz, but Ms. Diaz testified that she had not used those accounts. Mr. Diaz used them primarily for cash advances.

Attorney Fees:

The original complaint requested attorney fees. If the Plaintiff desires to request a fee, an affidavit shall be filed within 10 days of the date of this order. If no affidavit is filed, there is a final order. If an affidavit is filed, defendant's counsel will have 10 days to respond.

Costs are adjudged equally between the parties.

This cause came on to be further heard on the 12th day of February, 1999, upon Wife's motion to alter or amend, to submit additional evidence concerning the ramifications of the refinancing, her request for additional alimony and Husband's Rule 60 motion regarding Kathy Bishop. The Court, after hearing all of the testimony **ORDERS** as follows:

It is **ORDERED, ADJUDGED AND DECREED** that Mr. Diaz shall pay to Ms. Diaz, as

additional alimony necessary for her support, the amount of $5,000.00, representing the diminution in value of the marital residence as a result of Husband's failure to make the Court ordered house payments, the Court specifically finding that Wife did not impair the refinancing of the marital residence. It is, therefore, **ORDERED, ADJUDGED AND DECREED** that Luz Diaz is awarded a judgment against Joseph Michael Diaz in the amount of $5,000.00, which is awarded as additional alimony necessary for her support. The Court **ORDERS** that Mr. Diaz shall repay this at the rate of $1,000.00 per year due April 1 of each and every year, beginning April 1, 1999. The Court further clarifies its Order of Final Decree of Divorce as filed on December 23, 1999, to state that the alimony payments by Mr. Diaz to Ms. Diaz are to start January 1, 1999, and the 1st of each and every month thereafter.

The Court further shall allow counsel for Wife to submit an amended request for fees to include time up until the hearing this date, February 12, 1999. Thereafter, counsel for Husband shall have ten (10) days within which to file a response thereto.

All pending matters having been decided, this constitutes the Final Decree of Divorce as not other matters are pending before this Court other than counsel for Wife's Amended Request for Attorney's Fees.

It is further **ORDERED, ADJUDGED AND DECREED** that the costs of this cause are assessed against Joseph Michael Diaz for which let execution issue if necessary.

Enter this 19 day of February, 1999.

MARIETTA SHIPLEY, JUDGE

APPROVED FOR ENTRY:

D. SCOTT PARSLEY, #13606
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, TN 37201
(615) 244-2202

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served on the Honorable Mary Arline Evans, 214 Third Avenue North, Nashville, TN 37201, by placing same in the U. S. Mail, postage prepaid, on this the 18 day of February, 1999.

D. SCOTT PARSLEY

BOOK 11372 PG. 585

STATE OF TENNESSEE

I, RICHARD R. 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 SECOND Circuit Court for Davidson County, Tennessee, on the 19 day of FEBRUARY , 19 99 , in the Case Number 97D3082 between DIAZ, LUZ NEREIDA Plaintiff, and DIAZ,JOSEPH MICHAEL Defendant,

as same remains of record in Vol. 509 , Page 93383 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 08 day of MARCH in the year one thousand nine hundred and ninety-nine and in the 223rd year of American Independence.

SEAL

RICHARD R. ROOKER, Clerk,

By B. Rawls
Deputy Clerk

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PAT L. CARR REGISTER
DAVIDSON COUNTY, TN.

IDENTIF. & REFERENCE

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