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IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

FILED
2003 SEP 30 AM 11:45
RICHARD R. ROOKER, CLERK
B. Rawls D.C.

VIVIAN DENISE DILLINGHAM, Plaintiff,	)	
VS.	)	Docket No.: 01D-2242
GARY LEE DILLINGHAM, Defendant.	)	NOTICE OF ENTRY REQUESTED

AMENDMENT
TO
FINAL DECREE OF DIVORCE

This cause came to be heard on September 12, 2003, before the Honorable Muriel Robinson, Judge of the Fourth Circuit Court for Davidson County, Tennessee, upon the Wife's Motion to Confirm the Report of the Special Master and to Award Reasonable Attorney Fees, and upon Husband's Objections to the Special Master's Report, and upon the entire record in this cause. From all of which, the Court granted Wife's Motion and approved the Report of the Special Master, and awarded attorney's fees.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Report of the Special Master is approved and incorporated into this Amendment to the Final Decree of Divorce by copying verbatim as follows:

FILED
2003 AUG -6 PM 3:39
RICHARD R. ROOKER, CLERK

IN THE FOURTH CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE

VIVIAN DENISE DILLINGHAM
Plaintiff,

vs.

GARY LEE DILLINGHAM
Defendant.

Docket No. ~~2242~~ 01D2242 D.C.

REPORT OF SPECIAL MASTER

This case was referred by the Court to Special Master, Jack Norman, Jr., on August 5, 2003, with the instruction that the Special Master hear proof offered by the parties and make findings and recommendations as to the following:

1. The award of divorce.
2. The division of marital assets.
3. Whether or not consideration should be given to the award of retroactive child support pursuant to T.C.A. §34-11-102.

Prior to the proof offered by either party, the parties stipulated as follows:

1. That the wife should be awarded an absolute divorce pursuant to T.C.A. § 36-4-129 upon the stipulation that husband has been guilty of inappropriate marital conduct.
2. That husband should be awarded personal property located in the marital home as listed starting on page 2 of Exhibit 10, and that wife should be awarded the remaining personal property at the home. No value was placed on any of this property.
3. That each party should be awarded the automobile in his or her possession. No value was placed on either vehicle.
4. That the total equity value of the marital home is $45,832.00. The home was

appraised by Donald Turner at $84,500.00. The mortgage is $38,668.00. Equity = $45,832.00

5. That the parties had a joint MasterCard credit card debt of approximately $8,100.00 at the time of their separation in April of 1998, and that the current balance of that credit card debt is still approximately $8,100.00.

The wife testified that the husband left the marital home at 6325 Columbia Avenue, Nashville, Tennessee 37209, on April 28, 1998. At that time, the parties son was 14 years old (d/o/b, 8-11-84), and was a student at David Lipscomb School where he had attended since the 2nd grade. The wife testified that she paid the son's tuition of approximately $5,000.00 per year after husband left, and for 4 years. From April 28, 1998, until the entry of an Agreed order filed December 12, 2001, wife testified, and the parties agreed, that husband sent wife a total of $9,197.00, which she attributed as child support contribution. This would equate to an average of approximately $229.93 per month. The wife introduced husband's 2000 tax return (Exhibit 1), which showed adjusted gross income of $29,521.00. Husband testified that he made approximately $28,000.00 in 1998, and $24,000.00-25,000.00 in 1999. No proof was offered as to husband's income in 2001, 2002, or to date in 2003. Wife testified that her current income is approximately $25,000.00. per year.

According to wife's direct and cross-examination, she worked for BellSouth for approximately 17 years, and at age 62, she will be entitled to $525.00 per month as pension benefits. No proof was offered as to present day value. Wife presently works at Vanderbilt University and has accumulated 401k benefits of $11,000.00, most of which was accumulated after husband left in 1998. Wife had cashed BellSouth stock worth $1,900.00 after she filed for divorce in September,

2001. There was no testimony offered as to any retirement assets of husband.

Husband admitted that he left the marital home in April of 1998, and that he never saw the parties' son, Matthew, thereafter until the son's graduation in May, 2003. He further admitted that his total contribution toward the support of the wife or the son from April, 1998, until the entry of the Agreed Order on December 12, 2001, was approximately $9,197.00. Husband testified that he made no payment toward the home mortgage since he left in April, 1998. He stated that when he left the son was a student at David Lipscomb and that he (the husband) hoped that the son would continue at Lipscomb, although, he made no tuition payment for son.

The Special Master concludes as follows:

(1) The net value of the marital estate is approximately $50,632.00

Home equity	$ 45,832.00
BellSouth stock	1,900.00
401k	11,000.00
	$ 58,732.00
Credit card debt	(8,100.00)
	$ 50,632.00

However, the uncontradicted proof is that most of wife's 401k was accumulated after husband left the home in 1998, and that husband made no contribution to the home mortgage payment after he left in April, 1998. In addition, husband's average income in 1998, 1999 and 2000 was approximately $28,000.00 per year for a guideline obligation of about $412.00 per month or $16,480.00 between April, 1998,and December, 2001, when the agreed support order was entered. During this time, husband contributed only $9,197.00 At a minimum, this was a deficiency of $7,643.00, not counting any obligation for the son's medical expenses, dental expenses or tuition expenses totaling in excess of $25,000.00.

About the only contribution that the husband made to the total value of the marital estate was whatever he may have contributed to the equity in the home prior to April of 1998. Had it not been for the efforts of the wife, the parties may have had little or no marital estate. In addition, the proof clearly showed that a substantial portion of the $8,100.00 credit card debt owed by the parties prior to separation were credit card charges of the husband.

As an equitable distribution of the marital estate, and to offset approximately $20,000.00 for unpaid child support, medical/dental expenses and tuition, it is recommended that wife be awarded the equity in the parties' home, subject to the mortgage debt; her 401k, and the $1,900.00 she got for her BellSouth stock; but with the further provision that wife assume any pay the $8,100.00 MasterCard debt.

Although th wife will receive practically all of the meager marital estate, she will also have the credit card debt of $8,100.00, and the home mortgage debt. The husband will be debt free with an annual income of approximately $4,000.00-5,000.00 more that the wife.

The husband shall pay the Court costs, and wife's attorney may submit an affidavit as to attorney fee request.

RESPECTFULLY SUBMITTED,

JACK NORMAN, JR., SPECIAL MASTER

CERTIFICATE OF SERVICE

I certify that a copy of this Report has been hand-delivered to the Honorable Muriel Robinson, Judge, on this 7th day of August, 2003, and that a copy of this report has been mailed to Mr. Lawrence Simons, Attorney for Wife, P.O. Box 198288, Nashville, Tennessee 37219-8288, and to Mr. Nathaniel Koenig, Attorney for Husband, 303 Church Street, Suite 102, Nashville, TN 37201-1786, all on August 7, 2003.

JACK NORMAN, JR., SPECIAL MASTER

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court hereby affirms the Special Master's decision to give consideration to the award of retroactive child support, pursuant to Tennessee Code Annotated, § 34-11-102, in the determination of an equitable distribution of the marital estate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as an equitable distribution of the marital estate, and to offset approximately $20,000.00 for unpaid child support, medical/dental expenses and tuition, the marital estate shall be distributed as follows:

1. The Wife is hereby awarded all right, title and interest in and to the marital residence, and the equity in the marital residence, with the Husband being divested of any interest therein and the same being reinvested in the Wife. The said marital residence is located at and commonly known as 6325 Columbia Avenue, Nashville, Davidson County, Tennessee, more particularly described as follows:

> **BEING LOT No. 11 of Block H on the Map of Crolywood Subdivision Section 2 as of record in Book 1130, Page 100, Register's Office for Davidson County, Tennessee.**
>
> **SAID LOT No. 11 fronts 59.9 feet on the southerly margin of Columbia Avenue and runs back between lines measuring 177.5 feet on the easterly line and 186.6 feet on the westerly line to a dead line in the rear measuring 72.4 feet thereon.**
>
> **BEING THE SAME property conveyed to Gary L. Dillingham and wife, Vivian D. Dillingham by deed from Julius M. Fulton and wife, Patsy Fulton as recorded in Book 6636, Page 193, Register's Office for Davidson County, Tennessee to which reference is here made for a more particular description thereof.**
>
> **This conveyance is made pursuant to the Final Decree of Divorce and Amendment to the Final Decree of Divorce entered in cause number 01D-2242, in the Fourth Circuit Court for Davidson County, Tennessee.**

The Wife shall be responsible for any and all outstanding indebtedness owed thereon, and she shall indemnify and hold the Husband harmless from repayment thereof. The Husband shall execute and deliver to the Wife a Quitclaim Deed conveying his interest in and to said marital residence, however, the recording of this Amendment to the Final Decree of Divorce with the Davidson County Register of Deeds shall establish chain of title in conveyance of this real property as ordered herein.

2. The Wife is hereby awarded her 401k Retirement Account.

3. The Wife is hereby awarded the $1,900.00 she received for the sale of her BellSouth stock.

4. The Wife shall be responsible for paying the $8,100.00 MasterCard debt.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Husband shall pay directly to Wife's Attorney Lawrence A. Simons, attorney fees in the amount of $3,000.00. Lawrence A. Simons is hereby awarded a judgment against the Husband, GARY LEE DILLINGHAM, in the amount of $3,000.00, for which execution may issue.

IT IS FURTHER ORDERED that the costs of this cause shall be taxed to the Husband, for which execution may issue.

ENTER this the 30th **day of** September, **2003.**

JUDGE MURIEL ROBINSON

APPROVED FOR ENTRY:

RUTHERFORD, DeMARCO, WHITE & SIMONS

BY: _____

LAWRENCE A. SIMONS, #13053
Counsel for Wife
Suite 400, Washington Square
214 Second Avenue North
Nashville, TN 37201
(615) 256-0260

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded, via United States Mail, postage prepaid, on Sept. 23 **, 2003 to the following:**

Nathaniel H. Koenig
Attorney at Law
303 Church Street, Suite 102
Nashville, TN 37201-1786

_____
LAWRENCE A. SIMONS

CERTIFICATE OF SERVICE

DOCKET NO. 01D-2242

Pursuant to Rule 58(3) of the Tennessee Rules of Civil Procedure, I hereby certify that I have mailed a copy of the foregoing Judgment to the parties/counsel listed below, on this 1st day of October, 2003.

RICHARD R. ROOKER, Circuit Court Clerk

By: B. Rawls
Deputy Clerk

Lawrence A. Simons, Attorney
Suite 400, Washington Square
214 Second Avenue North
Nashville, TN 37201

Nathaniel H. Koenig, Attorney
303 Church Street, Suite 102
Nashville, TN 37201-1786

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 FOURTH Circuit Court for Davidson County, Tennessee, on the 30 day of SEPTEMBER , 2003 , in the Case Number 01D2242 between DILLINGHAM, VIVIAN DENISE Plaintiff, and DILLINGHAM, GARY LEE Defendant, as same remains of record in Vol. 5504 , Page 1265361 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 22 day of OCTOBER in the year two thousand three and in the 227th year of American Independence.

SEAL

RICHARD R. ROOKER, Clerk,

By _____ Deputy Clerk