IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED
2004 AUG -2 PM 3:58
RICHARD R. ROOKER, CLERK

DERRICK CHRISTOPHER PAUL DUERR,

Plaintiff,

vs.

TERESA KAYE DUERR,

Defendant.

NO. 02D-1578 B. Rawls D.C.

Davidson County DEEDDIV
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Fees:52.00 Taxes:0.00
20050217-0018125

FINAL DECREE OF DIVORCE

This matter came on to be heard on June 29, 2004 and June 30, 2004, before the Honorable Jack Norman, Jr., Substitute Judge for the Fourth Circuit Court for Davidson County, Tennessee. After hearing argument of counsel and testimony of the Plaintiff and Defendant, Judge Jack Norman, Jr., took this matter under advisement and issued his Memorandum Opinion which is attached hereto and incorporated herein by reference. It is therefore,

ORDERED, ADJUDGED AND DECREED that the Wife is awarded an absolute divorce from the Husband on the ground of adultery.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be required to provide Wife with a continuation of medical, dental and orthodontia insurance coverage comparable to that now in effect. This obligation to provide insurance coverage shall continue until the death or remarriage of the Wife or until the Wife reaches her 65th birthday and is eligible for medicare, whichever occurs first.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be required to pay additional alimony in futuro in the amount of $650.00 per month payable on or before the 5th day of each month. Said payments shall begin on August 5, 2004 and shall be payable monthly

thereafter until the death or remarriage of Wife or until the Wife is eligible for Social Security Benefits at age 62, whichever occurs first.

It is further ORDERED, ADJUDGED AND DECREED that when the Wife reaches her 62nd birthday, husband's monthly alimony obligation to the Wife shall be reduced to $400.00 per month until Wife's death or remarriage.

It is further ORDERED, ADJUDGED AND DECREED that the retirement of the husband shall not be considered as a change of circumstance for a reduction of the Wife's alimony award.

It is further ORDERED, ADJUDGED AND DECREED that the Wife shall be awarded the equity in the marital home located at 1443 Ocoee Trial in Madison, Davidson County, Tennessee. Said property is more particularly described as follows:

> LAND in Davidson County, Tennessee being Lot 174 on the unrecorded map or plan of Nawakwa Hills, Powwow Addition, Section No. 6, described as follows:
>
> BEGINNING at a point in the easterly margin of Ocoee Trail, said point being 1058.82 feet southeast from an iron pin marking the intersection of the southerly right of way of Nawakwa Trail and the easterly right of way of Ocoee Trail; thence North 67 deg. 01' 36" East 149.66 feet to a point; thence South 22 deg. 58' 24" West 50.40 feet to a point; thence South 67 deg. 01' 36" West 149.66 feet to a point; thence with the easterly margin of Ocoee Trail, North 22 deg. 58' 24" East 50.40 feet to the point of beginning.
>
> BEING the same property conveyed to Derrick C. Duerr and wife, Teresa Kay Duerr by deed from Bob Slate Construction Company, Inc., of record in Book 7931, Page 959, Register's Office, Davidson County, Tennessee.

The Wife shall indemnify the Husband and hold him harmless from the debt owed upon the marital residence.

It is further ORDERED, ADJUDGED AND DECREED that the Wife shall be awarded the Diocese retirement account and $1,024.25 which represents the proceeds of the home damage insurance which is presently being held at the U.S. Courthouse Credit Union.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be awarded his 401(k) plan, the former U.S. Courthouse Credit Union checking account and the savings bonds.

It is further ORDERED, ADJUDGED AND DECREED that the Husband is awarded 65% of his Federal Pension Plan and the Wife is awarded 35% of the Husband's Federal Pension Plan

It is further ORDERED, ADJUDGED AND DECREED that a Qualified Domestic Relations Order shall issue to effectuate the division of the Federal Pension Plan.

It is further ORDERED, ADJUDGED AND DECREED that all remaining household furnishings, automobiles and other personal property shall be awarded to the person who is currently in possession of said property.

It is further ORDERED, ADJUDGED AND DECREED that each party shall keep the automobile presently in their possession, subject to any indebtedness and holding the other party harmless concerning the debt.

It is further ORDERED, ADJUDGED AND DECREED that the Wife shall be awarded all furnishings and effects located in or at the residence located at 1443 Ocoee Trail in Madison, Tennessee.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be awarded all furnishings and effects in his possession.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be required to maintain a life insurance upon his life with a maximum death benefit of $50,000.00 with the wife named as the beneficiary if the same was in effect prior to the separation of the parties. The Husband

shall make sure that coverage is in effect until the Husband is 60 years of age, the Wife dies or remarries, whichever occurs first. If there was no existing policy of life insurance prior to the separation of the parties, this provision shall not apply.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be responsible for the following listed credit card debt:

Wal-Mart Master Card	Approximately	8,056.43
AT&T Universal	Approximately	8,276.56
American Express	Approximately	4,669.63
Mail Handlers	Approximately	2,822.36

It is further ORDERED, ADJUDGED AND DECREED that the Wife shall be responsible for the following listed credit card debt:

Citibank	Approximately	9,000.00

It is further ORDERED, ADJUDGED AND DECREED that the provisions of the pendente lite Order in this case issued on or about September 3, 2002, shall remain in full effect until August 1, 2004. The Husband shall be responsible for and shall hold Wife harmless from the payment of all of Wife's medical expenses as provided in the pendente lite Order. The Husband shall make arrangements, as may be necessary with the health care providers, to prevent the Wife from being billed for said charges.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be responsible for paying the house payment for the residence located at 1443 Ocoee Trial in Madison, Tennessee through August of 2004.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be responsible for paying all utility bills set forth in the pendente lite Order through August of 2004.

It is further ORDERED, ADJUDGED AND DECREED that the Wife shall be entitled to a judgment against the Husband is the amount of $4,000.00 for attorney fees. Said judgment is awarded in the form of a support obligation and shall not be dischargeable in Bankruptcy. Said judgment shall be paid as follows: $2,000.00 shall be paid within 30 days from the entry of the Final Decree. The remaining $2,000.00 may be paid at the rate of $200.00 per month on or before the 5th day of each month starting on October 5, 2004. Said judgment shall be non-interest bearing if it is paid in a timely manner. If payments are not made in a timely manner, interest will accrue at the legal rate of interest for which execution may issue.

It is further ORDERED, ADJUDGED AND DECREED that the Husband shall be required to pay the court costs in this matter for which execution may issue, if necessary.

ENTERED this 2 day of August, 2004.

JACK NORMAN, JR., Substitute Judge

APPROVED FOR ENTRY:

JOE HARSH, NO. 16130
Attorney for Wife
123 Public Square
Gallatin, TN 37066
(615) 452-4611

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by U.S. Mail, postage prepaid, to Ms. Cherie L. Cash, Attorney at Law, 116 Third Avenue South, Nashville, TN 37201 on this 22 day of July, 2004.

JOE HARSH

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RICHARD R. ROOKER, CLERK
D.C.

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RICHARD R. ROOKER, CLERK
D.C.

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

DERRICK CHRISTOPHER PAUL DUERR)
)
)
vs.) **NO. 02D-1578**
)
TERESA KAYE DUERR)

MEMORANDUM OPINION

This case was heard upon all issues pending on June 29, 2004 and June 30, 2004. At the conclusion, the case was taken under advisement pending receipt of an Affidavit of Attorney Fees to be submitted by wife's attorney. This Affidavit was received on July 2, 2004. The Court now makes the following findings and conclusions:

A.). **Award of Divorce** - Husband failed to prove any misconduct on the part of the wife that would arise to the gravity of "inappropriate marital conduct". Therefore, husband's original complaint is dismissed. Husband admitted that in about April of 2001, he began an adulterous affair with another woman and that the affair has continued on an off/on basis. There was no proof that wife has ever condoned this affair. For this reason, wife is awarded an absolute divorce on the ground of adultery.

B.) **Alimony** - This is a marriage of 26 years that was terminated in large by husband's marital misconduct.

The husband is employed by the Internal Revenue Service earning the annual income of approximately $54,000.00 total. As a federal employer he is afforded medical insurance and accumulated pension benefits. Wife has worked as a secretary, but is currently unemployed. Because of the skills she possesses, it is contemplated that wife will be able to obtain re-employment

as a secretary even though she has some medical problems. Wife's income as a secretary has averaged approximately $23,000.00 per year ($10,000.00 in 2002, $21,000.00 in 2001 and $35,000.00 in 2000). Wife's medical problems include diabetes, deafness in one ear, a prior bout with cancer and the inability to lift over 10 pounds. Notwithstanding this, wife testified that she is able to work as a secretary.

The husband testified, and the proof indicated that these parties have been able to enjoy a "middle class lifestyle" throughout their marriage. Taking this into consideration along with all of the factors to be considered pursuant to T.C.A. §36-5-101-(d)(1) in making a determination as to the award of spousal support and the recent case of Bratton v. Bratton, Tennessee Supreme Court, April 30, 2004, the Court is of the opinion that wife is a candidate for long time spousal support and that her ability to earn income in the future will be approximately one-half that of husband. The alimony by husband to wife shall be divided into two categories, health insurance premiums and monthly payments, both of which shall be considered as alimony in futuro and taxable as income to wife.

As the divorced wife of a federal employee the testimony was to the effect that wife can continue to be covered under husband's medical insurance at a cost of approximately $376.00 per month. Husband shall take all steps as may be necessary to provide wife with a continuation of medical/dental and orthodontia insurance coverage comparable to that now in effect. This obligation on the part of husband shall continue until the death or remarriage of wife or until wife reaches her 65th birthday and is eligible for medicare, whichever event occurs first. Payments by husband for this coverage shall be considered as income taxable to wife unless tax exempted.

As additional alimony in futuro husband shall pay to wife $650.00 per month payable on or before the 5th day of each month beginning August 5, 2004 and payable monthly thereafter until the death or remarriage of wife, or until wife is eligible for social security benefits at age 62 and

whichever event occurs first. After wife reaches her 62nd birthday, husband's monthly alimony obligation to wife shall be reduced to $400.00 per month until wife's death or remarriage. All alimony in futuro payments by husband to wife shall be considered income to wife and deductible to husband. In making this alimony award, the Court has considered the assets of the parties and their respective anticipated retirement income. For this reason the retirement of the husband shall not be considered as a change of circumstances for a reduction of wife's alimony award.

C.) **The Division of Marital Assets** - The parties during their marriage have accumulated a modest marital estate consisting of the following assets.

1.)	Equity in Home Allows 7% for commission and closing costs.	$32,704.00
2.)	Husband's 401k	$35,273.96
3.)	Wife's Diocese Account	$10,000.00 (Estimated)
4.)	Husband's Former U.S. Courthouse Credit Union	$3,221.99
5.)	Husband's U.S. Courthouse Checking Account	$1,000.00
6.)	U.S. Savings Bonds	$2,921.24
7.)	Insurance Payment	$1,024.25
8.)	Husband's Pension	Value Undetermined

As a partial division of the martial estate wife shall be awarded the equity in the marital home, subject to the mortgage debt for which she shall hold husband harmless, her diocese account and the total $1,024.25 of the home damage insurance for a total value of approximately $43, 728.25. Husband shall be awarded his 401k, the former Courthouse Credit Union checking account and the savings bonds for an approximate total of $42, 417.19.

As an additional division of the marital estate husband shall be awarded 65% of his Federal Pension and wife is awarded 35% thereof. The attorneys for both parties shall cooperate and coordinate with the preparation of a QDRO and/or whatever other documents as may be necessary to effectuate this division and the Court retains jurisdiction of this provision in the event further adjudication of this issue is necessary.

All remaining household furnishings, automobiles and other personal property shall be awarded to the person who currently has possession thereof. Each party shall keep their respective automobile subject to mortgage debt. Wife shall have all furnishings and effects at 1443 Ocoee Trail and husband shall have all such effects at his apartment or in his possession.

Although there was no proof as to the existence of any life insurance, the Court takes judicial notice that the same is usually available to government employees at low cost. In the event that a life insurance policy on husband's life with wife as beneficiary was in effect prior to separation the same shall continue with a maximum death benefit of $50,000.00 with wife as beneficiary and to continue until husband is 60 years of age or wife dies or remarries, whichever is first to occur. If there was no existing policy, this provision shall not apply.

D.) **Assignment of Debt Responsibility** - During the trial of this case each party testified that either he or she had accumulated credit card debt for which he or she would be responsible for re-payment. Husband testified that he would pay the following.

1.) Wal-Mart MasterCard	Approximately	$8,056.43
2.) AT&T Universal	Approximately	$8,276.56
3.) American Express	Approximately	$4,669.63
4.) Mail Handlers	Approximately	$2,822.36

Wife testified that she would pay the following:

1.) Citibank	Approximately	$9,000.00

Each party shall pay those credit card accounts for which each assumed responsibility as set out above. Any additional debt incurred by either party and not addressed in this opinion shall be paid by the party incurring the debt.

E.) **Pendente Lite Order** - The provisions of the pendente lite Order in this case issued on or about September 3, 2002 shall remain in effect until August 1, 2004. Husband shall be responsible for and shall hold wife harmless from the payment of all of wife's medical expenses as provided for in the pendente lite Order and shall make such arrangements as may be necessary with the health care provider for payment, and to prevent wife from being billed thereof. Husband shall pay the Ocoee house note through August as well as those utility bills set out in the pendente lite Order.

F.) **Attorney Fees and Court Cost** - The Court is presented with a difficult decision in this case as to the award of attorney fees. At the close of the proof in this case, the Court complimented each attorney for their preparation and presentation of the case. The attorney fee requested by wife's attorney appears to be very reasonable but, unfortunately, the parties already have substantial debt and limited means and/or assets. Taking this into consideration, along with the asset division made in this opinion and the parties ability to earn income, the Court is of the opinion that husband shall pay $4,000.00 of wife's attorney fee. $2,000.00 of this fee shall be paid within 30 days from the entry of Final Decree from assets allocated to husband and the remaining $2,000.00 may be paid at the rate of $200.00 per month on or before the 5th day of each month starting October 5, 2004 and non-interest bearing if paid on a timely basis. If payments are not made on a timely basis, interest will accrue at the legal rate of interest.

The husband shall pay the Court costs. Wife's attorney shall prepare the Final Decree and submit the same to husband's attorney for approval.

ENTERED this the 7 July, 2004.

JACK NORMAN, JR.
Substitute Judge

cc: Honorable Cherie L. Cash
Attorney-at-Law
116 Third Avenue, South
Nashville, Tennessee 37201

Honorable Joe D. Harsh
Attorney-at-Law
116 Third Avenue, South
Nashville, Tennessee 37201

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 02 day of AUGUST , 2004 , in the Case Number 02D1578 between DUERR, DERRICK CHRISTOPHER PAUL Plaintiff, and DUERR, TERESA KAYE Defendant, as same remains of record in Vol. 5669 , Page 1591472 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 13 day of SEPTEMBER in the year two thousand four and in the 228th year of American Independence.

RICHARD R. ROOKER, Clerk,

By _____ Deputy Clerk

SEAL

