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

2007 SEP 28 PM 1:51

RICHARD R. ROOKER, CLERK

D.C.

THOMAS E. LAWWELL, JR.,	)	
	)	
Plaintiff/Husband,	)	
	)	
V.	)	**No. 06D3268**
	)	**NOTICE OF ENTRY REQUESTED**
KIMBERLY ANN LAWWELL,	)	
	)	
Defendant/Wife.	)	

Davidson County DEEDDIV
Recvd: 02/27/09 15:46 10 pgs
Fees:52.00 Taxes:0.00
20090227-0017575

FINAL DECREE OF DIVORCE

This cause came on to be heard on the 31st day of July, 2007, before the Honorable Jack Norman, Jr., Substitute Judge of the Fourth Circuit Court for Davidson County, Tennessee. Upon the Complaint for Divorce, Counter-Complaint for Divorce, statements of counsel and testimony of the parties, the Court finds that both parties have been guilty of inappropriate marital conduct. However the Court finds that the Wife was less at fault than Husband and pursuant to T.C.A. 36-4-129(b) , the Court grants the Wife a divorce for the Husband's inappropriate marital conduct.

The Memorandum Opinion of the Court is made the Judgment of the Court and is incorporated herein as follows:

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RICHARD R. ROOKER, CLERK
D.C.

THOMAS E. LAWWELL, JR.,

Plaintiff/Husband,

vs.

KIMBERLY ANN LAWWELL,

Defendant/Wife.

No. 06D-3268

MEMORANDUM OPINION

This case was heard on the Court's contested docket on July 31, 2007, and upon all pleadings previously filed by both parties. The proof showed that the parties had met "on line" and were married on May 6, 2006. They finally separated on or about December 10, 2006. At the time of marriage wife owned real property in the Bellevue area of Nashville and Husband owned real property in LaVergne, Tennessee. Both of these properties were subsequently sold. No claim was made by either party that these properties, or any part thereof, were marital properties.

The Issue of Divorce

This was Husband's fifth marriage and Wife's second marriage. The parties only lived together for approximately seven months and finally separated on or about December 10, 2006, following an altercation at their home at 2956 Glenway Drive, Nashville, TN 37221. Prior to that there had been discord in the marriage due to conflicting work schedules, inappropriate e-mails or text messages sent by one party to the other and husband's purchase of pornographic materials over the internet. This Courts finds that these parties are not going to live together as Husband and Wife and that they have both been guilty of inappropriate marital conduct. However, the court finds that

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Wife was less at fault than Husband and pursuant to T.C.A. § 36-4-129(b), the Court grants Wife a divorce for Husband's inappropriate marital conduct.

Alimony

This marriage was of extremely short duration. Husband is 38 years old and Wife is37 years old. Both parties are currently employed and there is no evidence to the effect that either party suffers any debilitating medical condition. This is not a case for alimony and none is awarded to either party.

Division of Property

Both parties owned real and personal property prior to their marriage. These properties include a condo owned by each party, both of which were sold, furnishings, motor vehicles and a boat. All of these properties shall remain the property of the owner party.

During the marriage the parties together purchased real property at 2956 Glenway Drive, Nashville, Tennessee 37221. This property is currently occupied by Wife as Husband moved out of the property after the altercation on December 10, 2006. The property was recently appraised at $295,300.00 (Exhibit 1). There is a first mortgage debt of $234,927.00 and a second mortgage debt of $58,917.00 (Exhibit 27). The total mortgage debt is $293,844.00. The monthly payment on the first mortgage is $1,828.92 and $451.33 on the second mortgage. The total monthly mortgage payment is $2,280.25

There is little or no equity value in this property, especially if real estate commission and closing costs are considered. In trying to make a finding as to the contribution each party has made to any equity value the Court has considered Exhibit 29 (Wife's). From this exhibit it appears that Wife paid both mortgages totaling $2,280.25 for August, October and December of 2006, and

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January, February, March and April 2007. Husband paid the total for September and November of 2006. Pursuant to Court Order, each party paid one-half of the mortgage payments for May, June and July 2007, in the amount of $1,140.13 each. According to the Court's calculations this means that Wife paid a total of $19,382.12 and Husband paid a total of $7,980.87. Therefore, Wife paid 71% of the mortgage debt and Husband paid 29% of the debt. Exhibit 29 also shows that Wife paid all of the utilities and upkeep with the exception of September 2006, when these were paid by Husband and November 2006 when Husband made partial payments. The Court accepts Wife's calculations in Exhibit 29 as Husband testified that he made some payments in cash, but had no record as to when made or in what amount paid.

On or before September 15, 2007, Wife shall elect to sell this property or be awarded the property. If Wife elects to sell the property, it shall be immediately placed on the market. Wife may remain in the property, but she shall pay the utilities and maintain the property in orderly condition. When the property is sold Wife shall receive 65% of the net proceeds and Husband shall receive 35%. If there is a deficit, Husband shall pay 65% thereof and Wife shall pay 35% . Should Wife elect to retain the property, which she must do on or before September 15, 2007, Husband shall immediately quitclaim his interest in the property to Wife and shall at all times execute any and all documents necessary to convey said property to Wife or to enable Wife to refinance the property. If Wife retains the property, she shall assume and hold Husband harmless from both mortgage obligations beginning with the month of October 2007. Wife shall then have until September 30, 2008 within which to refinance the property and remove Husband's name from the mortgage obligations. Should Wife fail to refinance the property by September 30, 2008, Husband may apply to the Court for relief including the sale of the property.

Both parties shall continue to pay one-half of the first and second mortgage notes for August and September 2007. If Wife elects that the property be sold, each party shall continue to pay one-half of the first and second mortgage until the property is sold. If the property has not sold by January 1, 2008, either party may motion the Court for relief.

Household furnishings were purchased during the marriage as set out in Exhibit 3. These are marital properties: The gas grill and the patio set are awarded to Wife. The Bose surround system shall remain in the homeplace to enhance the value thereof and shall become the property of the Wife if she elects to retain the home. The remaining listed property is awarded Husband.

Husband purchased a Dodge truck during the marriage. This shall become his property subject to all debt and for which he shall hold Wife harmless.

Each party shall pay his or her attorney fees and each party shall pay one-half of the balance of the court costs.

Entered this 7 day of August, 2007.

JACK NORMAN, JR.
Substitute Judge

cc: **Honorable Rose Palermo**
Attorney for Husband
Post Office Box 121857
Nashville, TN 37212

Honorable Cynthia J. Bohn
Attorney for Wife
545 Mainstream Drive, Suite 320
Nashville, TN 37228

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Wife is awarded a divorce on grounds pursuant to T.C.A. 36-4-129(b) in that the Husband is guilty of inappropriate marital conduct towards the Wife.

2. Neither party is entitled to alimony.

3. The Husband and Wife shall equally divide the first (1st) and second (2nd) mortgages on the real property located at 2956 Glenway Drive, Nashville, Tennessee 37221 for August 2007 and September 2007. The Wife shall elect to sell or retain as her sole property the real property listed herein on or before September 15, 2007. In the event the Wife elects to retain the real property, the Husband shall immediately execute a quitclaim deed transferring any interest he may have in said real property to the Wife and the Wife shall assume full responsibility for the mortgage thereon beginning October, 2007. Further, the Wife shall have until September 30, 2008 to refinance the property and remove the Husband's name from the mortgage obligations. Should the Wife fail to refinance the property by September 30, 2008 and remove the Husband's name, the Husband may apply to the Court for relief including the sale of the property.

In the event the Wife elects to sell the real property, same shall be listed immediately and Wife shall be allowed to remain in said property until same is sold, but she shall maintain the utilities and keep the property in orderly condition. Both parties shall be responsible for one-half (½) of the first (1st) and second (2nd) mortgage payments until the property is sold. When the property is sold, the Wife shall receive sixty five percent (65%) of any net proceeds and the Husband shall receive thirty five percent (35%). If there is a deficit, the Husband shall be responsible for sixty five percent (65%) thereof and Wife shall be responsible for thirty five percent (35%). If the property has not sold by January 1, 2008, either party may file a motion with the Court for relief.

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4. The Husband is awarded his 2006 Dodge truck free and clear of any interest or claim of the Wife.

5. The Wife is awarded the gas grill and patio set. Any interest of the Husband is hereby divested from him and reinvested in the Wife.

6. The Husband is awarded the dining room table with eight (8) chairs and matching buffet, the four (4) stadium seating recliners, his digital camera, UT framed items and family framed items. Any interest of the Wife is hereby divested from her and reinvested in the Husband.

7. The Bose surround sound system shall remain in the marital residence of the parties to enhance the value thereof and shall become the property of the Wife if she elects to retain the home.

8. Each party shall be responsible for his or her own attorneys fees.

9. The costs of this cause shall be taxed equally to the parties, for which execution may issue.

The parties are currently residing at:

Kimberly Lawwell, 2956 Glenway Drive, Nashville, Tennessee 37221;

Thomas E. Lawwell, Jr. c/o Rose Palermo, Attorney for Husband, P.O. Box 121857, Nashville, Tennessee 37212.

IT IS SO ORDERED.

ENTERED this the 27 day of September, 2007.

SUBSTITUTE JUDGE JACK NORMAN, JR.

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APPROVED FOR ENTRY:

Cynthia J. Bohn, #16592
CYNTHIA J. BOHN & ASSOCIATES
Attorney for Wife
545 Mainstream Drive
Nashville, Tennessee 37228
(615) 252-8866

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document has been sent to the following by (X) U. S. Mail, postage prepaid; ( ) hand delivery; ( ) facsimile transmission to _____, hard copy to follow via regular U. S. Mail:

Rose Palermo
Attorney at Law
P.O. Box 121857
Nashville, Tennessee 37212

This the 20 day of September, 2007.

CYNTHIA J. BOHN

Copy

CERTIFICATE OF SERVICE

DOCKET NO. 06D3268

Pursuant to Rule 58(3) of the Tennessee rules of Civil Procedure, I hereby certify I have mailed a copy of the foregoing Judgment to the parties/counsel listed below, on this 1ST day of OCTOBER, 2007.

RICHARD R. ROOKER, Circuit Court Clerk

BY: _____

Deputy Clerk

CYNTHIA J. BOHN, ATTORNEY
545 MAINSTREAM DR.
NASHVILLE, TN 37228

ROSE PALERMO, ATTORNEY
P.O. BOX 121857
NASHVILLE, TN 37212

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 28 day of SEPTEMBER , 2007 , in the Case Number 06D3268 between LAWWELL, THOMAS E JR Plaintiff, and LAWWELL, KIMBERLY ANN Defendant, as same remains of record in 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 27 day of FEBRUARY in the year two thousand nine and in the 232nd year of American Independence.

RICHARD R. ROOKER, Clerk,

By _____
Deputy Clerk

SEAL

