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FILED

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

2009 MAY -5 AM 10: 05

RICHARD R. ROOKER, CLERK

D.C.

SUZANNE BUCHANAN,

Plaintiff/Wife,

v.

WAYNE BUCHANAN,

Defendant/Husband.

Docket No. 07D-3063

FINAL DECREE OF DIVORCE

Came on to be heard the Complaint for Divorce filed by Suzanne Buchanan and the Counterclaim for Divorce filed by Wayne Buchanan, as well as the Amended Petition for Contempt filed by Suzanne Buchanan, and the Court having heard two days of trial on April 1 and 2, 2009 and closing arguments of counsel on April 7, 2009, finds the following Order shall be entered consistent with the Court's Memorandum Opinion entered April 8, 2009, a copy of which is attached hereto as **Exhibit 1**:

IT IS ORDERED AND ADJUDGED that Suzanne Buchanan is granted a divorce from Wayne Buchanan on grounds of inappropriate marital conduct.

IT IS ORDERED AND ADJUDGED that the respective cross-claims for monthly alimony by the parties against each other are denied, as both parties are in need of monthly support and neither has the ability to pay the other.

IT IS ORDERED AND ADJUDGED that Mr. Buchanan is technically in Contempt of Court, but the Court has incorporated Ms. Buchanan's requests for fees and for a return of the dissipated assets therein in its decision below.

With reference to the following issues taken under advisement at trial, it is further ordered and adjudged:

BILL GARRETT, Davidson County
Trans:T20090031229 DEEDDIV
Recvd: 05/11/09 16:15 17 pgs
Fees:87.00 Taxes:0.00

20090511-0043458

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I. DISSIPATION OF ASSETS

The Court finds as per T.C.A. § 36.4-121(c)(v) that Mr. Buchanan has not only failed to preserve, but he has also dissipated marital property as follows:

A. $10,000 withdrawn from Ms. Buchanan's business account and given to the stripper Layla;

B. Unaccounted for $22,500 withdrawal from Ms. Buchanan's Business Men's Assurance Company of America (BMA) annuity;

C. Unaccounted for $12,700 cash withdrawal from Ms. Buchanan's business account;

D. Unaccounted for $25,545 withdrawal from Ms. Buchanan's IRA;

E. Unaccounted for $10,350 withdrawal from Ms. Buchanan's Business Men's Assurance Company of America (BMA) annuity;

F. Unaccounted for insurance policy dividend withdrawals totaling $30,000 in September of 2007;

G. Unaccounted for insurance policy dividend withdrawal of $8,000 in June of 2007;

H. Unaccounted for $1,755.02 cash withdrawal from the parties' joint bank account in October of 2007;

I. Unaccounted for $10,000 withdrawal from Mr. Buchanan's IRA;

J. Unaccounted for $4,038.15 cash withdrawal from Ms. Buchanan's business account;

K. Unaccounted for $7,500 in checks written from Ms. Buchanan's business account to "Cash" and to "Wayne Buchanan" from December of 2006 through June of 2007;

L. Gambling losses in the amount of $8,000 admitted by Mr. Buchanan;

Copy

M. Unaccounted for $2,000 withdrawal from the parties' joint savings account in February of 2008;

N. Unauthorized expenditures of $89,655.76 from the Bank of America checking account from February of 2008 through early January of 2009.

Total of Dissipated Assets: $242,043.93

It is further ordered an adjudged that since Mr. Buchanan dissipated marital assets in the amount of $242,043.93, one half of that amount is $121,021.97 and is hereby awarded to Ms. Buchanan as alimony *in solido* which represents an additional non-taxable division of marital property.

II. DIVISION OF MARITAL PROPERTY

A. Marital property awarded to Ms. Buchanan shall be as follows:

(1) Marital residence located at 6545 Brownlee Drive, Nashville, TN, valued at $330,000. (This award includes the previously referenced alimony *in solido* as a result of Mr. Buchanan's dissipation of marital assets.) Wayne Buchanan is hereby divested of any interest in this residence and counsel for Ms. Buchanan shall record a copy of this Final Decree with the Davidson County Register of Deeds to effectuate sole ownership in the name of Suzanne Buchanan.

(2) IRA in the name of Ms. Buchanan in the amount of $88,837.

(3) GreenBank account [redacted] in the amount of $843.00.

(4) GreenBank account [redacted] in the amount of $984.00.

(5) Ms. Buchanan's 15 artistic compositions as listed in Trial Exhibit Number 48, value unknown.

(6) Ms. Buchanan's vehicle, a Toyota Avalon, value unknown.

Total Known Value Awarded to Ms. Buchanan $420,664.00

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B. Marital property awarded to Mr. Buchanan shall be as follows:

(1) General American life insurance policy #2105578, CSV $34,109.

(2) General American life insurance policy #2107919, CSV $10,435.

(3) General American life insurance policy # 1711654, CSV $11,290.

(4) General American life insurance policy # 1845211, CSV $67,388.

(5) General American life insurance policy # 1870844, CSV $42,194.45.

(6) Prudential life insurance policy # 27104512, CSV $1,000.

(7) Prudential life insurance policy #392017858, CSV $189.

(8) GreenBank checking account # [redacted] in the amount of $7,222.

(9) Mr. Buchanan's vehicle, a 1997 Mercury Sable, value unknown.

(10) All known items of personal property listed in an April 7, 2009 correspondence from Attorney Lisa Binder to Attorney Scott Parsley attached hereto as **Exhibit 2**.

Total Known Value Awarded to Mr. Buchanan $173,827.45

Counsel for Ms. Buchanan shall deliver to counsel for Mr. Buchanan all original life insurance policies in her possession which are awarded to Mr. Buchanan.

All items listed on **Exhibit 2** which are currently located at the marital residence shall be removed by a representative of Mr. Buchanan no later than thirty (30) days from the date of entry of this Final Decree. In the event said property is not removed by that date, all of said property can be disposed of as Ms. Buchanan sees fit.

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III. MARITAL DEBTS

Mr. Buchanan shall be responsible for payment of the following marital debts:

A. The full amounts of unpaid income taxes, penalties, interest, etc. as determined by the Internal Revenue Service and the parties' CPA as a result of filing joint federal income tax returns for the years 2002-2007.

B. Past and future fees due to the CPA firm of Rayburn, Bates, & Fitzgerald, P.C. as a result of the determination of the parties' indebtedness to the Internal Revenue Service from the filing of joint income tax returns for the years of 2002-2007.

(1) CPA fees past due and immediately payable by Mr. Buchanan in the sum of $4,411.76.

(2) Future fees are unknown at this time.

The parties shall each cooperate fully with the accountant and the Tax Advocate to conclude all income tax-related matters for the indicated years, and Mr. Buchanan shall immediately sign the 2007 return so it can be filed with the IRS.

C. Mr. Buchanan shall hold Ms. Buchanan harmless for the above specified marital debts.

Ms. Buchanan shall be responsible for payment of the following marital debts:

D. All loans from Kay Creech and Gloria Gaither, and she shall hold Mr. Buchanan harmless for these marital debts.

IV. ATTORNEYS' FEES

Ms. Buchanan shall be responsible for the payment of her attorney's fees, and her attorney Lisa Paige Binder shall have a lien on Ms. Buchanan's distributed marital assets to secure the payment of those attorney's fees.

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Mr. Buchanan shall be responsible for the payment of his attorney's fees, and his attorney Scott Parsley shall have a lien on Mr. Buchanan's distributed marital assets to secure the payment of those attorney's fees.

V. SEPARATE PROPERTY

Ms. Buchanan's inherited 1/3 interest in the Florida condominium shall remain as her separate property, value unknown.

VI. COURT COSTS

Costs are taxed to the Defendant Mr. Buchanan.

VII. MISCELLANEOUS

The addresses of the parties at the time of the Final Decree of Divorce are as follows:

Wife	Husband
Suzanne Buchanan 6545 Brownlee Drive Nashville, TN 37205	Wayne Buchanan 812 Erin Lane Nashville, TN 37221

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Counsel for the parties are relieved of further representation of their respective clients upon the expiration of thirty (30) days following the entry of the Final Decree.

ENTERED this the _____ day of _____, 2009.

HONORABLE JOE P. BINKLEY, JR.

APPROVED FOR ENTRY:

NEAL & HARWELL, PLC

By: _____
Lisa Paige Binder, #24052
150 Fourth Avenue, North, Suite 2000
Nashville, TN 37219-2498
Telephone: 615-244-1713
Counsel for Plaintiff

BARRETT, JOHNSTON & PARSLEY

By: _____
D. Scott Parsley, #13606
271 Second Avenue North
Nashville, TN 37201
Telephone: 615-244-2202
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served herein by U.S. Mail to D. Scott Parsley, 217 Second Avenue North, Nashville, TN 37201, on this the 15 day of April, 2009.

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RICHARD R. ROOKER, CLERK
D.C.

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2009 APR -8 PM 2:45
RICHARD R. ROOKER, CLERK
D.C.

IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

SUZANNE BUCHANAN,

Original Plaintiff/
Counter Defendant,

vs.

WAYNE BUCHANAN,

Original Defendant/
Counter Plaintiff.

CASE NO. 07D-3063

MEMORANDUM OPINION

This contested divorce case was heard on April 1st and April 2nd and final arguments were heard on April 7th, 2009. The Court ruled orally on several issues including the granting of the divorce, the periodic alimony issue, the contempt issue as well as the joint income tax return filing issue at the end of closing arguments on April 7th, and notes were taken on those rulings by counsel for the parties.

The Court took the following issues under advisement and enters the following ruling:

I. DISSIPATION OF ASSETS

The Court finds as per T.C.A. § 36-4-121(c)(v) that Mr. Buchanan has not only failed to preserve, but he has also dissipated marital property as follows:

A. $10,000 withdrawn from Ms. Buchanan's business account and given to the stripper Layla;

B. Unaccounted for $22,500 withdrawal from Ms. Buchanan's Business Men's Assurance Company of America (BMA) annuity;

C. Unaccounted for $12,700 cash withdrawal from Ms. Buchanan's business account;

EXHIBIT
tabbies
/

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D. Unaccounted for $25,545 withdrawal from Ms. Buchanan's IRA;

E. Unaccounted for $10,350 withdrawal from Ms. Buchanan's Business Men's Assurance Company of America (BMA) annuity;

F. Unaccounted for insurance policy dividend withdrawals totaling $30,000 in September of 2007;

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K. Unaccounted for $7,500 in checks written from Ms. Buchanan's business account to "Cash" and to "Wayne Buchanan" from December of 2006 through June of 2007;

L. Gambling losses in the amount of $8,000 admitted by Mr. Buchanan;

M. Unaccounted for $2,000 withdrawal from the parties' joint savings account in February of 2008;

N. Unauthorized expenditures of $89,655.76 from the Bank of America checking account from February of 2008 through early January of 2009.

Total of Dissipated Assets: $242,043.93

"Among the factors that courts may consider when fashioning an equitable division of a marital estate is a party's dissipation of the marital or separate property. Tenn. Code Ann. § 36-4-121(c)(5). Even though no statutory definition of "dissipation" exists, the term has a common meaning in the context of divorce. The concept of dissipation is based on waste. Ward v. Ward,

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No. W2001-01078-COA-R3-CV, 2002 WL 31845229, at *3 (Tenn.Ct. App. Dec. 19, 2002) (No Tenn. R. App. P. 11 application filed). Dissipation of marital property occurs when one spouse uses marital property, frivolously and without justification, for a purpose unrelated to the marriage and at a time when the marriage is breaking down. *See, e.g., In re Marriage of Cerven*, 317 Ill. App.3d 895, 252 Ill. Dec. 93, 742 N.E.2d 343, 348 (2000); *Goodman v. Goodman*, 753 N.E.2d 595, 598 (Ind. Ct. App. 2001); *Allison v. Allison*, 160 Md. App. 331, 864 A.2d 191, 195 (2004); *Kittredge v. Kittredge*, 441 Mass. 28, 803 N.E.2d 306, 317 (2004); *Budnick v. Budnick*, 42 Va. App. 823, 595 S.E.2d 50, 58 (2004). Dissipation involves intentional or purposeful conduct, *Stock v. Stock*, 693 So.2d 1080, 1084 (Fla. Dist. Ct. App. 1997); *K. v. B.*, 13 A.D.3d 12, 784 N.Y.S.2d 76, 90 (2004), that has the effect of reducing the funds available for equitable distribution. *See In re Marriage of Miller*, 342 Ill.App.3d 988, 277 Ill. Dec. 420, 796 N.E.2d 135, 141 (2003); *Goodman v. Goodman*, 754 N.E.2d at 598; *Jeffcoat v. Jeffcoat*, 102 Md.App. 301, 649 A.2d 1137, 1142 (1994)." *Altman v. Altman*, 181 S.W.3rd 676 (Tenn.Ct. App. 2005).

The Court notes that the Court of Appeals has recognized that some credit should be given to the dissipating spouse for the interest he had in those assets: "Initially, we note that Wife argues that she is entitled to **credit for the full amount of the dissipated assets**, which essentially ignores the fact that Husband also had an interest in these assets." *Odom v. Odom*, Slip Copy, 2008 WL 4415429 at *8 (Tenn. Ct. App. Sept. 30, 2008).

Since the Court has previously found that Mr. Buchanan dissipated marital assets in the amount of $242,043.93, one half of that amount is $121,021.97. This amount shall be awarded to Ms. Buchanan as alimony in solido which represents an additional non-taxable division of marital property. See *Robinson v. Robinson*, Not Reported in S.W.3d, 2005 WL 1105188 (Tenn. Ct. App. May 9, 2005).

Copy

II. DIVISION OF MARITAL PROPERTY

A. Marital property awarded to Ms. Buchanan shall be as follows:

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(10) All known items of personal property listed in an April 7, 2009 correspondence from Attorney Lisa Binder to Attorney Scott Parsley.

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III. MARITAL DEBTS

Mr. Buchanan shall be responsible for payment of the following marital debts:

A. The full amounts of unpaid income taxes, penalties, interest, etc. as determined by the Internal Revenue Service and the parties' C.P.A. as a result of filing joint federal income tax returns for the years 2002-2007.

B. Past and future fees due to the C.P.A. firm of Rayburn, Bates, & Fitzgerald, P.C. as a result of the determination of the parties' indebtedness to the Internal Revenue Service from the filing of joint income tax returns for the years of 2002-2007.

(1) C.P.A. fees past due and immediately payable by Mr. Buchanan: $4,411.76.

(2) Future fees are unknown at this time.

C. Mr. Buchanan shall hold Ms. Buchanan harmless for the above specified marital debts.

Ms. Buchanan shall be responsible for payment of the following marital debts:

D. All loans from Kay Creech and Gloria Gaither, and she shall hold Mr. Buchanan harmless for these marital debts.

IV. ATTORNEYS' FEES

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A. Ms. Buchanan shall be responsible for the payment of her attorney's fees and her attorney Lisa Paige Binder shall have a lien on Ms. Buchanan's distributed marital assets to secure the payment of those attorney's fees.

B. Mr. Buchanan shall be responsible for the payment of his attorney's fees and his attorney Scott Parsley shall have a lien on Mr. Buchanan's distributed marital assets to secure the payment of those attorney's fees.

V. SEPARATE PROPERTY

A. Ms. Buchanan's inherited 1/3 interest in the Florida condominium shall remain as her separate property, value unknown.

VI. COURT COSTS

Costs are taxed to the Defendant Mr. Buchanan.

Attorney Lisa Paige Binder will please prepare the final decree of divorce and submit it to Attorney D. Scott Parsley for his approval and signature.

It is so **ORDERED**.

Entered this _____ day of _____, 2009.

JOE P. BINKLEY, JR., JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been mailed to Lisa Paige Binder, NEAL & HARWELL, PLC, 150 Fourth Ave. North, Suite 2000, Nashville, TN 37219; D. Scott Parsley, BARRETT, JOHNSTON & PARSLEY, 217 Second Ave. North, Nashville, TN 37201 this 8th day of April, 2009.

Deputy clerk

Copy

NEAL & HARWELL, PLC
LAW OFFICES
150 FOURTH AVENUE, NORTH
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NASHVILLE, TENNESSEE 37219-2498
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D.C.

JAMES F. NEAL
AUBREY B. HARWELL, JR.
JON D. ROSS
JAMES F. SANDERS
THOMAS H. DUNDON
RONALD G. HARRIS
ALBERT F. MOORE
PHILIP N. ELBERT
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PHILIP D. IRWIN
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AUBREY B. HARWELL, III
W. DAVID BRIDGERS
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LISA PAIGE BINDER

CYNTHIA S. PARSON
ELIZABETH S. TIPPING
CHANDRA N.T. FLINT
JONATHAN H. WARDLE
JOSHUA J. PHILLIPS
STEPHEN M. MONTGOMERY
JEFF H. GIBSON
LEON H. WOLF

STAFF ATTORNEY
KRISTEN VANDERKOOI

OF COUNSEL
LARRY W. LINDEEN
ALAN MARK TURK

April 7, 2009

Hand Delivered

D. Scott Parsley, Esq.
217 Second Avenue North
Nashville, TN 37201

Re: Buchanan v. Buchanan

Dear Scott:

In furtherance of our discussion in court last week, Mrs. Buchanan has given me the following response to Mr. Buchanan's List of Separate Personal Property.

Dining Room

Mother's Dishes – The parties promised those dishes to their daughter, Mindy, years ago. Mindy intends to get those dishes once she is settled (she is currently in transition)

Two pieces on wall from Greece – The VanderBeeken painting is ready for pick-up. Mrs. Buchanan does not recall that there were two pieces.

Living Room

Corner Cabinet – The corner cabinet belonged to Mrs. Buchanan's mother – not Mr. Buchanan's mother.

Silver Goblets – The silver goblets belonged to Mrs. Buchanan's father and were given to her by him. They have since been given to Mindy.

Antique candy dishes from his mother – Mrs. Buchanan gave the parties' daughter, Dana, the sideboard with the slate top. Perhaps Mr. Buchanan's mother's dishes were in there, as well. Mrs. Buchanan is not in possession of any dishes she recognizes as having belonged to Mr. Buchanan's mother.

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Judy Garland mug from his childhood – Mrs. Buchanan is not familiar with this item.

Bedroom

His father's gold watch – Ready for pick-up.

Downstairs Hall

One-half of Anna Ray painting – Ready for pick-up.

Den

His great-grandmother's antique mirror – Ready for pick-up.

Books and videos in bookcase and end tables – These items have been boxed and ready for pick-up for months.

Extra Bedroom

Items in corner cabinet (various photos and trinkets) – Ready for pick-up

Hall closet

Coats, etc. – These items are either already boxed and are waiting for Mr. Buchanan to retrieve them, or they were included in the first load of belongings delivered to him. Mrs. Buchanan believes they were in the first load.

Garage

Music on Shelf – There is no music on the shelf. Much of the music was hers, and belonged to her aunt Ginny, and she believes that all went to Kay Creech.

File Folders on Shelf – There are no file folders on the shelf.

Fiesta Ware – Both sets of fiesta ware was given to Dana long ago.

Tool Box – Ready for pick-up.

Electric Drill – There are plastic bin of tools. Mrs. Buchanan has not gone through these boxes, but they are in the same condition as Mr. Buchanan left them.

Big Coveralls – Mrs. Buchanan believes these were delivered with the first load of belongings.

Big Shoes – Mrs. Buchanan believes these were delivered with the first load of belongings.

All stuff on shelves – Ready for pick-up.

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Shelf unit – Mrs. Buchanan does not know what Mr. Buchanan is asking here. Is he asking for the shelves which are built into the wall? Removal would destroy the wall and unless the damage is repaired by Mr. Buchanan simultaneously with the shelves' removal (including drywall and paint repair), she will not agree to remove them.

Karen's computer and scanner – Everything from the office went on the first truckload. If it was not in that truckload, it could be inside one of the many boxes which are packed and waiting for Mr. Buchanan's retrieval.

Antique Mirror – If Mr. Buchanan is referring to a corroded broken-down oak mirror that went with his dresser, it was hanging in the garage and fell and shattered many years ago.

Garage Office

Antique Radio – Replica radio ready for pick-up.

Back Yard

Pot of Mother's Lilies of the Valley – These flowers died and may were thrown out. Mr. Buchanan is welcome to have them if they grow again.

We will need to set a date-certain for Mr. Buchanan's retrieval of these items.

Sincerely,

Lisa Paige Binder

cc: Sue Buchanan

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 FIFTH Circuit Court for Davidson County, Tennessee, on the 05 day of MAY , 2009 , in the Case Number 07D3063 between BUCHANAN, SUZANNE Plaintiff, and BUCHANAN, WAYNE 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 08 day of MAY in the year two thousand nine and in the 232nd year of American Independence.

RICHARD R. ROOKER, Clerk,

By L Thomas
Deputy Clerk

SEAL

