Davidson County DEEDDIV
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20150223-0015112

DP 599111dd6-2854669

IN THE THIRD CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

JANE F. HERSHEY

Plaintiff,

vs. NO. 13D1892

RICHARD HERSHEY

Defendant.

FILED
2015 JAN -8 PM 2:30
RICHARD R. ROBINSON CLERK
MDuncan DC

FINAL DECREE OF DIVORCE

This cause came to be heard on the 29th day of October, 2014, and continuing until the 4th day of November, 2014, before the Honorable Phillip Robinson, Judge of the 3rd Circuit Court for Davidson County, Tennessee, on the Complaint and Amended Complaint filed by the Plaintiff, Answer and Counter-Complaint filed by the Defendant, Answer to the Counter-Complaint filed by the Counter-Defendant, and on stipulations presented to the Court, testimony of witnesses in open court, exhibits, and on the record as a whole, the Court makes the following findings of fact and conclusions of law:

FINDINGS:

1. The parties have stipulated, pursuant to T.C.A. 36-4-129, that the Plaintiff (hereinafter "Wife" or "Mother") has grounds for divorce against the Defendant (hereinafter "Husband" or "Father"), on the ground of inappropriate marital conduct, and the Court hereby grants an absolute divorce to the Wife on said ground.

2. The parties have entered into a stipulation regarding division of marital assets and liabilities, and have submitted a list of assets and division of assets and liabilities, as Exhibit "1" and Exhibit "3" to the hearing. Said Exhibit "1" and Exhibit "3" are adopted by the Court as the division of

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marital assets and liabilities, and are attached hereto and incorporated by reference, and made a part of this Final Decree. Pursuant to the stipulation, the Husband is responsible for payment of his share of medical bills not paid by insurance in the amount of $2,862.60 as of October 29, 2014. Included in the stipulation are the award to the Wife of the 2007 Toyota Sienna and the son's 2001 GMC Sonoma. Pursuant to the stipulation, the Husband shall be awarded all right, title and interest in his retirement accounts.

3. The parties have stipulated that the Mother shall be the primary residential parent of the parties' two children, ages 17 and 15. The parties further stipulated that the parties shall share equally, 50/50, in paying medical expenses of the children which are not covered by medical insurance, including vision and dental treatment.

4. The parties did not stipulate, and it is the duty of the Court to determine the Father's parenting time, the child support arrears, if any, spousal support, if any; decision making authorities in the parenting plan, the refinance of the marital residence and attorney fees.

5. The Court finds that the Mother's income is $5,978.00 per month, and the Father's income is $2,755.00 per month. The Court considered that the Father is currently making $8.25 per hour, however, the Court considers a parent's willful behavior in determining whether or not that parent is voluntarily underemployed. The Court is compelled to find that the Father's egregious behavior toward his son, which was the result of an intentional act, reduced his income as a result of the Order of Protection that was issued. The Court must find that the Father currently is voluntarily underemployed and the Court has imputed his income at $2,755.00 per month, using an average of his incomes from 2011, 2012, and 2013.

6. The Court determines that under the circumstances, the Father shall have no parenting time

with the parties' son, and for purposes of the Parenting Plan, the Father's parenting time will be 0 days, and the Mother's parenting time will be 365 days. As to the parties' daughter, the Court sets parenting time at 280 days for the Mother and 85 days for the Father. The Court finds that the cost of major medical insurance for the two children is $290.06 per month and there is no work-related childcare. The Court has prepared a child support worksheet setting child support for the two children until September, 2015, at which time the older child will reach his majority. Under that worksheet, the Father shall pay child support of $579 per month. The Court has further prepared a child support worksheet representing child support for one child, to begin in October, 2015. The child support at that time will be reduced to $386.00. Both child support worksheets are attached to the Permanent Parenting Plan and are referenced in that Order, attached to this Final Decree and incorporated hereto by reference.

7. The Court finds that the Mother will make all major decisions with the exception of education, which will be a joint decision. The Mother shall claim the tax exemption for both children. Both parties shall keep at least $50,000.00 in life insurance with Robert B. Young, Esq. as Trustee for the benefit of the minor children. Each parent shall provide evidence of the insurance and the death benefit within 30 days of the entry of the Final Decree, and thereafter on the anniversary date of the entry of the Final Decree until the parents no longer have a child support obligation.

8. The Court finds that a family support order was entered in December, 2013, and because of that prior family support order, no child support arrears exist at this time.

9. The Court finds that under the circumstances of this case, the Court will appoint Dr. David McMillan to counsel with the Father and the parties' daughter. The Father shall meet with Dr. McMillan as many times as Dr. McMillan suggests before the daughter is introduced to sessions with

Dr. McMillan. The daughter will then attend sessions with Dr. McMillan as he determines is appropriate, up to but no more than 5 times. Dr. McMillan will determine when and if sessions with the Father and daughter will begin. The Father will pay 100% of the cost of any session he has by himself with Dr. McMillan. The Mother and Father will divide the cost of the sessions involving the daughter on a pro rata basis, and, at the review of this cause, the Court will apportion the entirety of those costs between the parties in the manner in which the Court finds equitable. Once the counseling process is completed, counsel for the Mother shall file a motion to reset the matter of parenting time between the Father and daughter, to be heard on the Court's Thursday docket. The Mother shall be ENJOINED AND RESTRAINED from discussing the parenting time between the daughter and Father with the daughter, and from discussing the daughter's counseling with the daughter, and from allowing any third parties to do so.

10. The Court finds that the Wife is 47 years of age and has a BS degree. She is in good health with the exception of high blood pressure which is controlled by medication, diet and exercise. The Court finds that the Husband is 53 years of age, has a high school education, and some coursework towards a college degree but never finished college. The Husband has diabetes which has not prevented him from employment although it has adversely affected him, can create problems for him, and must be considered by the Court.

Considering the Husband's request for spousal support, the Court reviewed the provisions of T.C.A. § 36-5-121 related to spousal support. The Court first considered the relative earning capacities of the parties, obligations, needs and financial resources of each party, and the Court finds these favor the Husband. The Wife, because of her education and the history of this case, has earned more money than the Husband for a number of years.

Next, the Court considered the relative education and training of each party and the ability and opportunity of each party to secure additional education and training, all of which favors the Husband's request. The Wife has a better education and, based on the history of the marriage, has more work experience at a higher paying job. The proof showed that earlier in the marriage, the Husband was laid off of his employment, apparently through no fault of his own, and then went into security work. The Court recognizes that during the marriage the Husband had opportunities to increase his education, but the Court also noted that the Wife testified that the parties were satisfied with their level of income so there was little incentive for the Husband to seek further training.

The Court has further considered the duration of the marriage, which was 19 years, which again favors the Husband's request because of the length of the marriage. The Court considered the age and mental condition of each party. The Husband is the older of the two. The Court did not find any issues regarding mental condition of the parties, with the exception that the Husband's diabetes affects his behavior depending on his blood sugar levels. When his blood sugar is low, the Husband can be irritable and argumentative. The Court believes this contributed to the original Order of Protection.

The Court further considered the physical condition of each party and while each party has some health issues, they do not prevent either party from working at this time. However, each party has potential health issues which could interfere with their ability to earn income in the future. There are no small children which would prevent either party from working outside the home. The Court has considered the separate property of each party under consideration number 7. The division of marital property favors the Wife as it appears that the Husband received a greater share of the marital estate.

The Court further considered the standard of living established by the parties during the marriage. It appeared that the parties lived very comfortably and there was really no pressure on either party to earn significantly more than what each one was earning. The Court considers this a neutral consideration.

Under consideration number 10, the extent to which each party contributed to the marriage, the Court finds that both of the parties contributed significantly. Each party worked, generated income and contributed to the accumulation of the marital estate. The Court finds this a neutral consideration.

The Court considered the relative fault of the parties which favors the Wife. The Wife is being awarded the divorce on the ground of inappropriate marital conduct.

The Court considered any other circumstances including tax consequences, and gave them the weight deemed appropriate.

The Court considers this an alimony case. Even when imputing the Husband's income to the level he was earning prior to the Order of Protection, the Court would still have considered this an alimony case. The Court finds that this is not an appropriate case for rehabilitative alimony nor *in futuro* alimony, but shall set transitional alimony.

Based on the foregoing, the Wife shall pay to the Husband transitional alimony in the amount of $350 per month, commencing December 1, 2014, for a period of thirty-six (36) months, or until the death of either party, the remarriage of the Husband, or his cohabitation pursuant to the statute. Although the Husband is currently sharing a residence with a male friend, the Court does not consider this to be cohabitation within the meaning of the statute under these circumstances.

11. The Wife shall secure her alimony obligation by maintaining life insurance on her life in an amount not less than $12,600.00, which represents her total alimony obligation, and she shall list the Husband as beneficiary thereon so long as she has a support obligation. The Wife shall provide proof of insurance to the Husband within 30 days of the entry of the Final Decree. At the end of each year, the amount of insurance may be reduced to match the amount of alimony to be paid until the alimony is paid in full.

12. The Court finds that the parties have stipulated that the marital residence shall be awarded to the Wife, specifically, 7435 Stacy Drive, Nashville, TN 37221. The real property at 7435 Stacy Drive, Nashville, TN 37221, shall be divested out of Richard Edward Hershey and vested solely in Jane Farringer Hershey. The parties' stipulation left the Court to decide the issue of refinancing the home mortgage. The Court finds that it is appropriate to order the home mortgage to be refinanced by the Wife into her name alone within six months of the entry of the Final Decree of Divorce. In the event that the Wife fails for any reason to refinance, the property shall be sold and all proceeds awarded to the Wife.

13. The Court finds that both parties have sufficient assets to pay their own attorney fees and an award of attorney fees is not appropriate.

14. The Husband shall pay the court costs in this cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

15. Pursuant to T.C.A. 36-4-128, by stipulation, the Wife is granted an absolute divorce from the Husband on the ground of inappropriate marital conduct, and both parties are hereby restored to all the rights and privileges of an unmarried person.

16. Exhibit "1" and Exhibit "3" are adopted by the Court as the division of marital assets and

liabilities, and are attached hereto, made an Order of the Court, and incorporated herein by reference.

17. The marital residence located at 7435 Stacy Drive, Nashville, TN 37221 shall be awarded to the Wife, and is more particularly described as follows:

Map and Parcel : 14202006600

Land in the County of Davidson in the State of Tennessee

Land in Davidson County, Tennessee, being lot 83 on the plan of Cross Timbers subdivision, of record in Book 3700, Page 92, Register's Office for Davidson County, Tennessee, to which plan reference is here made for description.

Being the same property conveyed to Richard Edward Hershey and Jane Farringer Hershey, husband and wife, by deed dated October 6, 1997, of record in Deed Book 10636, Page 707, in the Register of Deeds office for Davidson County, Tennessee

Being Commonly known as: 7435 Stacy Drive, Nashville TN 37221

The real property at 7435 Stacy Drive, Nashville, TN 37221, shall be divested out of Richard Hershey and vested in Jane Farringer Hershey. The Wife shall refinance said property within six months of the entry of the Final Decree of Divorce. In the event that the Wife fails for any reason to refinance, the property shall be sold and all proceeds awarded to the Wife.

18. The Wife, Jane Farringer Hershey is awarded all right title and interest to the 2007 Toyota Sienna VIN 5TDZK22C19S269784, and the son's 2001 GMC Sonoma, VIN 1GTCS19W618236062

19. The Husband is awarded all right, title and interest in his retirement accounts.

20. The attached Permanent Parenting Plan and Child Support Worksheet incorporates the stipulations of the parties and the findings and rulings of the Court, and are approved and made an Order of the Court, and incorporated by reference into this Final Decree.

21. Dr. David McMillan is hereby appointed to counsel with the Father and the parties' daughter. The Father shall meet with Dr. McMillan as many times as Dr. McMillan suggests before the parties'

daughter is introduced to sessions with Dr. McMillan. The daughter shall then attend sessions with Dr. McMillan as he determines is appropriate, up to but no more than 5 times. Dr. McMillan shall determine when and if sessions with the Father and daughter will begin. The Father shall pay 100% of the cost of any session he has by himself with Dr. McMillan. The Mother and Father shall divide the cost of the sessions involving the daughter on a pro rata basis as per the child support worksheet, and, at the review of this cause, the Court will apportion the entirety of those costs between the parties as the Court finds equitable. Once the counseling process is completed, counsel for the Mother will file a motion to reset the matter of parenting time between the Father and daughter, to be heard on the Court's Thursday docket. The Mother is hereby ENJOINED AND RESTRAINED from discussing the parenting time between the daughter and Father with the daughter, and from discussing the daughter's counseling with the daughter, and from allowing any third parties to do so.

22. The Wife shall pay to the Husband transitional alimony in the amount of $350.00 per month for 36 months, to begin December 1, 2014, and terminate 36 months later, or until the death of either party, remarriage of the Husband, or the cohabitation of the Husband pursuant to statute.

23. The Wife shall maintain life insurance in an amount not less than $12,600.00 listing the Husband as beneficiary for so long as she has an alimony obligation, and she shall provide proof of same to the Husband within 30 days of the entry of the Final Decree. The amount of insurance may be reduced to match the remaining amount of alimony to be paid until the alimony is paid in full.

24. Each party shall pay his or her own attorney fees.

25. The Court having made findings and rulings on all issues before it, considers this a final order for appeal purposes.

26. In the event a transcript of the testimony is ordered for any purpose, the Court orders that the transcript of the parties' daughter's testimony be prepared separately as an additional volume to the original, and be submitted under seal.

27. Costs are taxed to Husband for which execution shall issue if necessary.

28. The Order of Protection previously entered in this cause shall be dismissed by separate Order.

Notice pursuant to T.C.A. §36-4-134: This decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of this decree for an account, any debt associated with an account or any debt. It may be in a party's best interest to cancel, close or freeze any jointly held accounts.

ENTERED THIS 8 DAY OF January, 2015.

PHILLIP ROBINSON, JUDGE

cc: Thomas J. Drake, Jr., Esq.
405 ½ 31st Ave N. Suite B
Nashville TN 37209

J. Ryan Johnson, Esq.
Turner Law Offices, P.C.
208 Third Ave N, Suite 100
Nashville, TN 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 THIRD Circuit Court for Davidson County, Tennessee, on the 08 day of JANUARY, 2015, in Docket Number 13D1892 between HERSHEY, JANE ANN, Plaintiff, and HERSHEY, RICHARD EDWARD, 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 09 day of FEBRUARY in the year two thousand fifteen and in the 238th year of American Independence.

RICHARD R. ROOKER, Clerk,

By: _____
Deputy Clerk

[SEAL]



EXHIBIT A - LEGAL DESCRIPTION

Tax Id Number(s): 142 02 0 066.00

Land Situated in the County of Davidson in the State of TN

LAND IN DAVIDSON COUNTY, TENNESSEE, BEING LOT NO. 83 ON THE PLAN OF CROSS TIMBERS, SECTION 2, AS OF RECORD IN BOOK 3700, PAGE 92, REGISTER'S OFFICE FOR SAID COUNTY, TO WHICH PLAN REFERENCE IS HERE MADE FOR DESCRIPTION.

Being the same property conveyed to Richard Edward Hershey and wife Jane Farringer Hershey , by deed dated October 6, 1997 of record in Deed Book 10636, Page 707 Instrument/Case No. 356271, in the County Clerk's Office.

Commonly known as: 7435 Stacy Dr , Nashville, TN 37221

True Copy Certification

I, LeShonda Manuel, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Signature

State of MICHIGAN

County of WAYNE

Personally appeared before me, A. Linsangan, a notary public for this county and state, LeShonda Manuel who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

Notary's Signature

My Commission Expires: Oct. 16, 2018
Notary' Seal (if on paper)

A. LINSANGAN
Notary Public, State of Michigan
County of Wayne
My Commission Expires Oct. 16, 2018
Acting in the County of WAYNE