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

ROBERT L. VOLOVNIK, Plaintiff/Husband,	)	
vs.	)	DOCKET NO. 13D-1042
DEBRA KAY VOLOVNIK, Defendant/Wife.	)	

FILED
2015 MAR 31 PM 4:30
RICHARD R. ROOS-CLERK
D.C.

FINAL DECREE OF DIVORCE

This cause came to be heard on the 3rd day of February, 2015, before the Honorable Philip E. Smith, Judge of the Fourth Circuit Court for Davidson County, Tennessee for trial upon the original Complaint for Absolute Divorce filed by the Plaintiff/Husband, **ROBERT L. VOLOVNIK,** (hereinafter "Husband") against the Defendant/Wife, **DEBRA KAY VOLOVNIK,** (hereinafter "Wife") in the above styled cause and the Wife's Counter-Complaint at which time the Court took the matter under advisement with the ruling rendered on March 6, 2015 with both parties present in Court.

The Court finds that Husband filed a complaint for absolute divorce on April 5, 2013 alleging separate and apart for more than two years with no minor children and Wife filed an Answer and Counter-Complaint for Divorce on June 17, 2013 also alleging living separate and apart for more than two years with no minor children. On February 3, 2015, this Court heard the proof in this matter and the findings of fact are set forth herein.

The first witness to testify was the Plaintiff/Husband, Robert Volovnik, (hereinafter "Husband"). The Court finds that the Husband testified in a very straight forward manner wherein the Wife's anger at times appeared to cause her to give inappropriate answers to appropriate and relevant questions. To an extent, the Court understands the Wife's anger but at

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the same time, the Court does question the veracity of some of her testimony. Therefore, the Court finds it is going to give much greater weight to the testimony of the Husband. This is in particularly true where the Wife's testimony is inconsistent with the Husband's testimony.

The Court further finds that the testimony of Dawn McCullough, the parties' adult daughter, was very straightforward and very believable. It is of the opinion that Ms. McCullough's testimony was of great assistance to the Court. The Court must first decide which party is entitled to a divorce. Both parties testified that they were separated physically since 2004 and have lived apart since 2004, although they continued a sexual relationship until late May of 2010. As such, the Court will find the relationship ended in May of 2010 and the parties have no minor children. Pursuant to T.C.A. 36-4-129 (b) the Court will find that the parties have lived separate and apart for more than two years. And rather than awarding the divorce to one party on this ground, will simply declare the parties divorced. Both parties are restored to all rights and privileges of unmarried persons. All other grounds for divorce are specifically denied by this Court.

The next issue the Court must decide is the division of marital property. The Court must look to Tennessee Code Annotated Section 36-4-121 for direction in dividing marital property and assets. 36-4-121 (a) (1) requires the Court to make an equitable division of the marital estate without consideration of who was at fault for the demise of the marriage.

While the Court is required to make an equitable division of marital assets and liabilities, the Court is not required to make an equal division, and the Court cites the case of *Robertson vs. Robertson*, which is found at 76 S.W.3d 337. It is a 2002 case out of the Tennessee Supreme Court. The Tennessee Supreme Court has provided guidance in the case of *Kevil vs. Kevil*, which is found at 244 S.W.3d 321, specifically pages 327 through 328 which is a 2007 case out of the Tennessee Supreme Court. The Supreme Court specifically held, "In a proceeding for divorce or

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legal separation, the trial court is authorized prior to determining the support and maintenance of one party by the other, to equitably divide, distribute, or assign the marital property between the parties without regard to fault in proportions as the Court deems just.

The Court is empowered to do what is reasonable under the circumstances and has broad discretion in the equitable division of marital assets. The division of assets is not a mechanical process, and trial courts are afforded considerable discretion". Before the Court can make an equitable division of the marital estate, the Court must classify what is marital versus separate property, and separate property cannot be included in the marital estate.

The separate property of the Wife was to be undisputed. Wife's separate assets are as follows: (1) real property located at Highway 12 South, Unit 77, Ashland City, Tennessee; (2) real property located at 1035 Floyd Lane, Ashland City, Tennessee; (3) the parcel of land, No. 080.00, Ashland City, Tennessee 37015; (4) the real property located at 1085 Split Rail Court, Kingston Springs, Tennessee; (5) CDs inherited from the Wife's aunt, Floyd Burrows; (6) coins in Wife's possession, the value of which is unknown at this point; and (7) the 2006 Chevy Silverado truck that Wife purchased. Husband does not claim any interest in this property, and the Court finds that all of these items and accounts are Wife's separate property. Wife will be awarded her separate property free and clear of any claim from the Husband.

The Court must now look to the specific provisions of T.C.A. 36-4-121 (c), which provides the relevant factors the Court must consider in making a division of marital assets. T.C.A. 36-4-121 (c) sets forth the following considerations: (1) The duration of the marriage. This was a 43-year marriage; (2), The age, physical, mental health, vocational skills, employability, and earning -- earning capacity, estate, financial liabilities, and financial needs of each of the parties. (3), The tangible or intangible contribution by one party to the education, training, or increased earning power of the other party; (4), The relative ability of each party for

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future acquisitions of capital assets and income; (5). The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role; (6) The value of the separate property of each party; (7) The estate of each party at the time of the marriage; (8) The economic circumstances of each party at the time the division of property is to become effective; (9) The tax consequences to each party, costs associated with reasonably foreseeable sale of assets, and other reasonably foreseeable expenses associated with the asset; (10) The amount of Social Security benefits available to each spouse; and (11). Such other factors as are necessary to consider the equities between the parties.

This Court, after reviewing the various exhibits, hearing the testimony of the parties and witnesses, in considering each of the factors set forth in Tennessee Code Annotated Section 36-4-121 (c) makes the following division of marital assets:

To the Husband, the Court awards the real property located at 524 East Trinity Lane, Nashville, Tennessee. Husband will be awarded this real property free and clear of any claim from Wife subject to a judgment of $32,500.00 in favor of the Wife.

The Court has determined the value of this real property to be one hundred and thirty thousand dollars. Husband is receiving 75 percent of the equity or the value of $97,500.00 and Wife will receive 25 percent of the equity or the value of $32,500.00. Wife will retain a lien on the real property until the judgment of $32,500.00 is paid in full. Husband shall pay the judgment at the rate of $275.00 per month beginning on the first month following entry of this final decree of divorce. The Court finds the sum of $275.00 does satisfy the statutory interest rate.

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Husband will be awarded the 1988 Astro Van with a value of $1,000.00 attached to it and Husband will receive the 2009 Chevy Silverado. According to the proof, the value is approximately the same as the payoff, so the Court will assess no value to that asset.

Husband will receive the flat bottom aluminum boat with a value of $100.00 attached to it and the 1949 jukebox that is currently in his possession, and that has a value of $350.00.

Husband will receive all right, title, and interest in the furniture and furnishings currently located at the Trinity Lane home. The parties offered no proof as to the value of those items. The Court cannot therefore establish a value of those items. Husband will also be awarded free and clear of any claim from the Wife his personal clothing, his toiletries, and items of that nature.

The total amount that Husband will be receiving as a result of this division of property is $98,950.

The Wife will receive a judgment in the amount of $32,500.00 for her 25 percent equity in the marital home. Wife will receive all of the property from Bags-N-Boats, whether in Husband's possession or in Wife's possession or in storage. Most of this equipment, according to Husband, is working. The Court will assess a value of $30,000.00 on the property from Bags-N-Boats.

Wife will be awarded the jukebox in her possession with a value of a hundred fifty dollars. Wife will receive the two pinball machines in her possession with a value of $425.00 and all right, title, and interest in the furniture, household furnishings, and personal property in Wife's possession, again, as with Husband, no value was established on the furniture, household furnishings and personal property. Much of this property appeared to be Wife's separate property. Wife will receive all right, title, and interest in her personal clothing, toiletries, and items of that nature. The total awarded to the Wife is $63,075.00.

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The Court finds the division of the value and assets are approximately 61 percent in favor of the Wife and 39 percent in favor of the Husband.

The Court recognizes that Husband's pension is marital property and the monthly net benefit is $778.35 cents per month. Husband's gross monthly benefit is $807.42 per month. The Court finds that Husband will pay the sum of $375.00 per month to the Wife as a division of his pension benefit from Heil Quaker.

The Court with (sic) note that the Wife is receiving approximately 48% of the net benefit. The difference between what Wife receives and what Husband receives is intended to be an adjustment for the taxes paid by the Husband on the entire amount, which includes Wife's share. The Court recognizes that this division is not an equal division.

The Court will note that in reaching its decision, it has considered all of the factors under T.C.A. 36-4-121 (e). However, this Court has relied more heavily on the sections of T.C.A. 36-4-121 (c) (1), (2), (4), (8), and (10).

Husband is 69 years old and is retired. Husband receives Social Security benefits of $1,709.00 per month, plus retirement after the division and carving out the Wife's share of $403.35 cents for a total monthly net income of $2,112 .35 cents of which Husband must pay the Wife $275.00 per month towards the money judgment Husband owes Wife for Wife's share of the equity in the marital home.

Wife, on the other hand, is 59 years of age and is employed by Quality Manufacturing making an annual salary of $38,704.00 or the sum of $3,228.00 per month. Wife has several pieces of real property, which are Wife's separate property. And the Court finds, based on all of the considerations that the Court finds that under the facts and circumstances of this case, that the division is both fair and equitable.

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Wife complained that a large bucket of valuable coins that were put in Husbands care were missing; however, no inventory of these coins that existed before the coins came into the Husband's possession was introduced. The Wife cannot tell the Court what was missing, other than the amount, she believed, was around $2,000.00.

Based on the proof presented, the Court cannot find by a preponderance of the evidence that the Husband removed any of the coins from the bucket thereafter. Wife's request for reimbursement is most respectfully denied.

In regard to the division of the parties' debt, the Court finds that there is little in the way of marital debt. These parties have been living separate and apart since 2004. The debt that existed at that time has been paid, including the second mortgage on the marital home in the amount of $12,424. 49 cents, which was paid by the Husband.

The Court finds that each party should be responsible for the payment of any debt in their own separate name indemnifying and holding the other party harmless thereon. The Court further finds that each party shall be responsible for any debt owed on the respective vehicles awarded to the party.

The Court must now consider whether the Husband is a candidate for alimony in any form. T.C.A. 36-5-121 sets forth four types of alimony, three of which the Court will address. The Court does not believe the fourth form is -- is relevant in any way.

The Court will recognize that transitional alimony would not be appropriate in this case because the Husband does not need the assistance to adjust to the economic consequences of the divorce. The Husband's need extends well beyond the short term. His need for assistance may well be for the rest of his life. The Court also feels that rehabilitative alimony is inappropriate in this case. The Court finds ~~does not believe~~ that the Husband can be rehabilitated within the meaning of T.C.A. 36-5-121.

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As stated earlier, Husband is 69 years of age. Husband testified about his health and the problems he has stands unchallenged and un-rebutted. Husband testified about his inability to seek employment and, again, that testimony stands unchallenged and un-rebutted.

Husband receives Social Security benefits in the amount of $1,709.00 per month and pension benefits, after a reduction from Wife's share, in the amount of $403.35 cents which leaves the Husband with a net income of $2,112.35 cents. Out of this amount, Husband must pay the sum of $275.00 toward the judgment for Wife's interest in the marital home.

The Court finds affirmatively that Husband cannot "achieve, with reasonable effort, an earning capacity that will permit him, the economically disadvantaged spouse," to have the same standard of living or a standard of living comparable to that of the Wife. Bottom line, this Court feels that Husband is not capable of rehabilitation.

The Court must now determine whether Husband is entitled to alimony in futuro. The Court looks to T.C.A. 36-5-121 for guidance and as stated, this Court has already found that Husband cannot be rehabilitated.

The Volovniks have been married for 43 years. Husband is 69 years old compared and Wife is 59 years old. The proof established that Husband's health prevents him from ~~attaining~~ obtaining (PES) employment. Wife is working full time making $3,228.00 per month without consideration of the $375.00 that Wife will receive as her share of Husband's pension or the $275.00 that Wife receives as a payment on the judgment for her share of equity from the marital home place.

Husband will never be able to achieve the same standard of living or even come close to the standard of living that of the Wife will enjoy post-divorce. This is not to say that Wife will have a substantial or a comfortable standard of living. However, Wife's standard of living will be substantially higher than that of the Husband. Husband has a significant need for financial assistance while the Wife has some ability to pay the Husband support.

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The Court finds, after consideration of all the factors that the Court is required to consider in T.C.A. Section 36-5-121, the Court finds that Wife shall pay the Husband the sum of $500.00 per month as alimony in futuro. This will be paid until Husband's death or remarriage or until the death of the Wife. The payment of $500.00 shall be paid beginning on the first of the month following entry of the final decree and continuing every month thereafter until it's terminated or modified. The Court does recognize that this alimony award will have to be modified or terminated upon Wife's retirement assuming her retirement is adjudicated reasonable. (PEB)

Finally, the last decision that the Court must find is who will pay the court costs and the Court does find that the court costs should be divided equally between the parties.

Based on the foregoing, it is

THEREFORE, ORDERED, ADJUDGED AND DECREED that the parties have lived separate and apart for more than two years and the parties are declared divorced and both parties are restored to all rights and privileges of unmarried persons. It is further

ORDERED, ADJUDGED AND DECREED that the parties have been put on notice pursuant to T.C.A. §36-4-134, that this final 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 and that it may be in a party's best interest to cancel, close or freeze any jointly held accounts. It is further

ORDERED, ADJUDGED AND DECREED the Wife is awarded her separate assets consisting of the following: (1) real property located at Highway 12 South, Unit 77, Ashland City, Tennessee; (2) real property located at 1035 Floyd Lane, Ashland City, Tennessee; (3) the parcel of land, No. 080.00, Ashland City, Tennessee 37015; (4) the real property located at 1085 Split Rail Court, Kingston Springs, Tennessee; (5) CDs inherited from the Wife's aunt, Floyd Burrows; (6) coins in Wife's possession; and (7) the 2006 Chevy Silverado truck that Wife purchased, all as Wife's separate property free from the claims of the Husband. It is further

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ORDERED, ADJUDGED AND DECREED that the real property located at 524 East Trinity Lane, Nashville, Tennessee shall be awarded to Husband as his sole and separate property, free and clear of any claim from Wife subject to a judgment in the amount of $32,500.00 in favor of the Wife for Wife's interest in said real property. Wife shall retain a lien on the real property until the judgment of $32,500 is paid in full and Husband shall pay the judgment at the rate of $275.00 per month beginning on the first month following entry of this final decree of divorce. It is further

ORDERED, ADJUDGED AND DECREED that Husband shall be awarded the 1988 Astro van, the 2009 Chevy Silverado, the flat bottom aluminum boat and the 1949 jukebox in Husband's possession. Further, Husband shall receive all right, title, and interest in the furniture and furnishings currently located at the Trinity Lane home and Husband's personal clothing, his toiletries, and items of that nature, all free and clear from any claims of the Wife. It is further

ORDERED, ADJUDGED AND DECREED Wife shall be awarded all of the property from Bags-N-Boats, whether in Husband's possession or in Wife's possession or in storage, the jukebox in her possession, the two pinball machines in her possession and all right, title, and interest in the furniture, household furnishings, and personal property in Wife's possession, as well as all interest in Wife's personal clothing, toiletries, and items of that nature.

ORDERED, ADJUDGED AND DECREED that Wife shall be awarded a portion of Husband's gross monthly pension benefit in the amount of $375.00 per month to be paid by the Husband directly to the Wife beginning the first month after entry of this Final Decree of Divorce and continuing each month thereafter. It is further

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ORDERED, ADJUDGED AND DECREED The Court finds that each party should be responsible for the payment of any debt in their own separate name indemnifying and holding the other party harmless thereon and each party shall be responsible for any debt owed on the respective vehicles awarded to the party. It is further

ORDERED, ADJUDGED AND DECREED that Wife shall pay the Husband the sum of $500.00 per month as alimony in future and said alimony shall be paid until Husband's death or remarriage or until the death of the Wife. The payment of $500.00 shall be paid by the Wife directly to the Husband beginning on the first of the month following entry of the final decree and continuing every month thereafter until said support obligation is terminated or modified. It is further

ORDERED, ADJUDGED AND DECREED that Amanda Raye Thornton, Attorney at Law, is hereby relieved as attorney of record for the Husband upon entry of this Final Decree/Judgment of Divorce. It is further

ORDERED, ADJUDGED AND DECREED that all court costs for this cause are assessed against both parties equally which execution may issue if necessary. For purposes of enforcement of this Final Decree the current mailing addresses of the parties are as follows:

ROBERT L. VOLOVNIK
524 East Trinity Lane
Nashville, TN 37207

DEBRA KAY VOLOVNIK
2121 Highway 12, South- Unit 77
Ashland City, TN 37015

ENTERED this 31st day of March, 2015.

HONORABLE PHILIP E. SMITH
Judge of the Fourth Circuit Court

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APPROVED FOR ENTRY:



AMANDA RAYE THORNTON, BPR#026634
Attorney for Plaintiff/Husband
Roberts, Thornton & Pence
627 Second Avenue South
Nashville, TN 37210
Phone: (615) 244-6438

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Decree of Divorce has been sent via U.S. Mail, postage prepaid to the following on this the 24th day of March, 2015:

ROBERT L. VOLOVNIK
524 East Trinity Lane
Nashville, TN 37207

DEBRA KAY VOLOVNIK
2121 Highway 12, South- Unit 77
Ashland City, TN 37015



AMANDA RAYE THORNTON

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 31 day of MARCH, 2015, in Docket Number 13D1042 between VOLOVNIK, ROBERT L, Plaintiff, and VOLOVNIK, DEBRA KAY, 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 01 day of MAY in the year two thousand fifteen and in the 238th year of American Independence.

RICHARD R. ROOKER, Clerk,

RICHARD R. ROOKER CIRCUIT COURT CLERK

[SEAL]

By: _____

Deputy Clerk