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

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RICHARD R. ROOKER, CLERK
D.C.

DONALD DOUGLAS WRIGHT,	)	
	)	
Plaintiff/Father	)	
	)	
vs.	)	**Docket No. 16D-992**
	)	
ANGEL SIMS WRIGHT,	)	
	)	
Defendant/Mother	)	

Bill Garrett Davidson County
Batch# 86458 **DEEDDIV**
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20180430-0040714

FINAL DECREE OF DIVORCE

This cause came on to be heard on October 18th, November 6th and December 7th, 2017 before the Honorable Phillip Robinson, Judge of the Third Circuit Court for Davidson County, Tennessee, upon the Complaint for Divorce filed by Complainant/Husband, Answer thereto filed by Defendant/Wife, testimony of the parties and witnesses in open court, exhibits submitted to the Court for consideration, and statement of counsel from all of which the Court makes the following findings of fact and conclusions of law:

This is a divorce action associated with a 15-year marriage. The parties separated December 31, 2009. In February of 2011, the Wife filed a divorce action in the Davidson County Circuit Court under docket number 11D-2029. After the Wife's fourth attorney withdrew, her divorce action was dismissed for failure to prosecute by order dated May 5, 2015. The Husband thereafter refiled the divorce action under the above style and docket number on May 18, 2016. The Wife filed a *pro se* answer wherein she requested various relief, including a divorce, custody of the parties' minor children, child support retroactive to the separation of the parties, an equitable division of the parties' marital assets, alimony and court costs. Because the Wife did not allege one of the divorce grounds specified in T.C.A. § 36-4-101, she could not be

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independently granted a divorce. However, her other prayers for relief are properly before the Court in the event a divorce is granted.

The Wife remained self-represented in the above-styled divorce action until shortly before the trial. During the pendency of the action, the Wife failed to timely respond to written discovery, and the Court granted sanctions against her by striking her pleadings and awarding the Husband a default judgment. Upon complying with discovery, the Court granted the Wife's motion to set aside the default, and her pleadings were reinstated. On July 14, 2017, without leave of court, the Wife filed a Counter-Claim to the Complaint for Divorce. She alleged several grounds for divorce and requested the same relief as set forth in her original Answer. Because the Counter-Claim was filed only three months before trial, alleging at least four different grounds for divorce and without leave of court, the Court hereby strikes the Wife's Counter-Claim.

The parties are the parents of two minor children to wit: Faith Alexandria Wright, currently 12 years of age, and Franklin Reed Christian Wright, currently 10 years of age. At the time of the marriage, the Husband was a member of the United States Navy in the submarine service. The Wife never relocated to any of the Husband's duty stations and continued to reside in Nashville, Davidson County, Tennessee with the parties' two minor children throughout the marriage. After a 24-year career in the Navy, the Husband retired with the rank of Chief Petty Officer and established a residence in Warren County, Mississippi. He is employed by Enterty, at the Grand Gulf Nuclear Station there. The Wife as a successful real estate broker in Nashville and owns Suburban and Urban Real Estate Services, LLC.

At the beginning of the trial and during the trial, the parties announced certain stipulations and agreements as follows:

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Pursuant to T.C.A. § 36-4-129, the parties stipulated and agreed that if the Court heard the testimony in this cause, each of the parties would have grounds for divorce against the other. Therefore, the Court declares the parties divorced, one from the other, and each of the parties is hereby restored to all the rights and privileges of an unmarried person.

The parties further stipulated and agreed that the Wife is a fit and proper person to be designated the primary residential parent of the parties' two minor children, and the Husband shall be designated the alternate residential parent. The Husband shall be awarded approximately 80 days of parenting time, and the Wife shall be awarded approximately 285 days of parenting time. All other issues related to the parenting plan in this cause shall be adjudicated by the Court.

The parties further stipulated and agreed that certain voluntary payments made by the Husband for the support and maintenance of the parties' two minor children, being payments for the months of April and August, 2017, were in fact paid on April 10th and August 10th, 2017 in the amount of $1,000 each.

The parties further stipulated and agreed that the Husband shall be awarded his recently-purchased home located at 3323 Drummond Street, Vicksburg, Mississippi. The Wife shall be divested of any right, title or interest in and to said property, and all interest shall vest solely in the Husband. Likewise, the Wife shall be awarded her residence located at 2712 O'Neal Drive, Nashville, Tennessee. The Husband shall be divested of any right, title or interest in and to said property, and all interest shall vest solely in the Wife. In the event the Husband is obligated on any indebtedness associated with the aforesaid property including the mortgage or utilities, the Wife shall indemnify and hold the Husband harmless thereon. The Wife shall immediately transfer all utilities associated with said real estate into her name and shall be responsible for all

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outstanding and future utilities on the property and shall hold the Husband harmless thereon. Further, in the event the Husband is obligated on the mortgage on the aforesaid real estate, the Wife shall, within six months of the entry of this order, refinance the property removing the Husband as an obligated party thereon. If the Wife fails for any reason to refinance the property as ordered, the property shall immediately be placed on the market and sold and the Wife shall be awarded all proceeds therefrom. The Wife shall be responsible for any and all future mortgage payments on the property and shall hold the Husband harmless on same.

The issues remaining for adjudication by the Court are the details of the parties' permanent parenting plan, the determination of child support and any retroactive child support due, the determination of marital property, debt and the division of same, the Wife's request for spousal support, attorney fees, and court costs.

The Court shall first address the permanent parenting plan. As noted, the parties are the parents of two minor children, a daughter 12 years of age and a son 10 years of age. The parties have agreed that the Wife is the primary residential parent and that the Husband shall exercise approximately 80 days of parenting time per year. As noted above, the parties never resided together during the entire 15-year marriage. The Wife and children resided in Davidson County, Tennessee, and the Husband resided at his various duty stations during his military service. Although the Husband faults the Wife for making it difficult for him to exercise parenting time after the parties' separation, he accepts responsibility for not trying harder and not making his children a greater priority in his life. The Court considers it of utmost importance to help re-establish the parent/child relationship between the Husband and his minor children. To do so, however, will necessitate a graduated schedule requiring the Husband to come to Nashville to

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spend time with the children before the children are required to travel to Mississippi for overnight parenting time.

The Husband's first court-ordered parenting time shall commence the third weekend in February, 2018. The Husband shall pick up the children at the mother's residence at 9:00 a.m. on Saturday, February 17 and return the children to the Wife's residence not later than 3:00 p.m. on Sunday, February 18, 2018. The Husband's next parenting time shall be an extended weekend parenting time during the children's 2018 Spring break. The Husband shall pick up the children at 9:00 a.m. on Saturday, March 31, 2018 at the Wife's residence and return the children to the Wife's residence on Wednesday, April 4, 2018 no later than 3:00 p.m. The Mother shall have the remainder of Spring break for 2018. At the conclusion of the 2017/2018 school year, the Husband shall exercise two (2) one-week periods of extended parenting time in Mississippi during the summer months of 2018. The Husband shall make flight arrangements on Saturday, June 2, 2018 for the children to travel to Mississippi for one week of parenting time, with the children returning to Nashville not later than Sunday, June 10 at 6:00 p.m. The Husband shall provide the Wife the date, time, air carrier and flight number of the children's flights from Nashville to Mississippi and the return flight information as well. The Father's second, one-week period of parenting time shall commence Saturday, July 15, 2018. The children shall be returned to Nashville not later than Sunday, July 23, 2018 at 6:00 p.m.

Beginning with the 2018/2019 school year, the Husband shall exercise parenting time every Fall break from the day after school recesses until the evening before school reconvenes. The Wife shall be awarded the Thanksgiving holidays each year. The parties shall alternate the first and second periods of Winter break each year. In even-numbered years, the Husband shall exercise the first period from the day after school is recessed until December 26th, and the Wife

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shall exercise the second period from December 26th until the evening before school reconvenes. This schedule shall alternate in odd-numbered years. The Husband is awarded every Spring break from the day after school lets out for Spring break until the day before school reconvenes. The Husband shall have extended summer parenting time from the second Saturday after school recesses for Summer break until the second Saturday before school reconvenes.

When the children are travelling by air, the Wife shall transport the children to the airport at least two hours prior to boarding and shall pick up the children on the day of the return flight. The Wife shall have the children ready and available for overnight parenting time with the Husband at the dates and times listed above on penalty of contempt of court. The parties shall cooperate with one another in the exchange of the children. Upon reasonable notice, the Wife shall adjust the pickup and/or return time of the children in order to accommodate the Husband's travel schedule.

In addition to the above parenting time, commencing on Monday, January 22, 2018, the Husband shall have twice per week Skype or FaceTime telephone conferencing with the minor children on Monday and Thursday evenings of each week commencing at 7:00 p.m. and not to exceed 20 minutes. The Wife shall make the children available, and both children shall participate. The Wife shall be responsible for having the necessary computer hardware and software or smart phone for the Husband's FaceTime. The Wife shall have the same telecommunication rights with the minor children while they are in the Husband's possession for extended out-of-state parenting time. By agreement, the parties may in writing adjust the weekday or the time of the non-possessory parent's teleconferences with the children to accommodate the children or the parties' schedules. However, repeated conflicts by the non-possessory parent and/or children shall constitute a violation of the Court's order.

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The Wife shall make routine educational decisions. However, the determination as to whether or not the children shall attend private school shall be by agreement of the parties only. Further, the Wife shall make non-emergency healthcare decisions affecting the minor children. While the children are in the Husband's possession for extended parenting time, the Husband may make non-emergency healthcare decisions on behalf of the children after consultation with the Wife. During the school year, and while the children are in the Wife's possession during the summer months, she shall make all extracurricular activities decisions, provided such activities do not interfere with or interrupt the Husband's parenting time. Likewise, while the children are in the possession of the Husband for extended out-of-state parenting time, the Husband shall make extracurricular activity decisions provided such activities do not interfere with the Wife's parenting time.

The Husband shall provide major medical insurance coverage for the parties' minor children and, within 30 days of the entry of this order, he shall provide evidence to the Wife that such insurances are in effect and provide her with an insurance card. The Court finds the Husband's cost for providing major medical insurance for the parties' two (2) minor children is $174.23, per month. Further, uncovered reasonable and necessary medical expenses, which includes deductibles, copayments, eyeglasses, contact lenses, routine annual physicals and counseling which has been agreed upon between the parties in writing, shall be paid *pro rata* in accordance with their incomes as set forth on the child support worksheet. Further, the Husband shall insure his life with a minimum death benefit of $350,000 listing the minor children as beneficiaries and the Wife as the trustee beneficiary for the minor children, so long as he has a child support obligation under the terms of the parenting plan.

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The Wife shall be awarded the federal income tax exemption for the parties' minor children each year. Further, the Wife shall be designated the custodian for the minor children solely for purposes of any other applicable state and/or federal law.

The Court has reviewed the Husband's income and expense statement filed as Trial Exhibit #2, the Husband's 2016 federal income tax return entered as part of collective Trial Exhibit #7 in this cause, and his paystub for the pay period ending September 30, 2017 entered as Trial Exhibit #8. The Court finds the Husband's anticipated W-2 income for 2017 to be approximately $136,974. In addition, the Husband receives $2,662 per month or $31,944 annually from his military retirement as reflected in Trial Exhibit #9. Based on the foregoing, the Court finds the Husband's anticipated income for 2017 to be approximately $168,918 which is consistent with his 2016 income. As a result, the Court finds the Husband's average gross monthly income to be $14,077.

The Wife has provided no income and expense statement. Further, she has not filed a federal income tax return for 2015 or 2016. She has provided no total income for these years or 2017 year-to-date income or provided any business expenses for those years which might enable the Court to determine her true income. She has provided corporate tax returns for her business, Suburban and Urban Real Estate Services, LLC, for tax years 2013 and 2014 and a 2014 individual tax return. Her 2014 individual tax return reflects income for that year of $51,990. The 2013 corporate return reflects a payment $21,000 for compensation of officers and $22,768 for salaries. The Wife's testimony is that she is the sole employee of the Corporation and is its only officer. This results in income to the Wife of $43,768. This is consistent with her testimony that she pays herself a salary of $40,000 per year from the corporation. The 2013 corporate tax return also reflects that after paying the above salaries and other business expenses,

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the corporation showed a profit of $33,489. As an S corporation, these additional profits are taxable to the Wife. Although the Wife testified that she keeps these profits in the business for future expenses, the Court finds that these funds constitute additional income attributable to and available to the Wife as discretionary income and are to be considered as income under the state child support guidelines. Thus, the Court finds the Wife's total income for the tax year 2013 was $77,257 or an average gross monthly income of $6,438. As the Wife has not provided evidence of current income or the means to ascertain it, the Court finds the Wife is capable of earning at least $77,257 per year and will use this figure in determining her income for child support purposes. Therefore, the Court finds the Wife's average gross monthly income to be $6,438. There is no evidence before the Court that the Wife has any work related childcare expenses.

Based on the foregoing stipulations and findings, the Court has prepared a permanent parenting plan and child support worksheet which is attached to this ruling and which the Court finds to be in the best interest of the parties' minor children.

The Court next addresses the Wife's request for retroactive child support from the date of the separation of the parties. In his original complaint for divorce, the Husband alleges that the parties separated December 31, 2009. In her Answer, the Wife disputed that separation date. In her direct testimony, the Wife opined that the parties separated in July, 2011. On cross-examination, she changed her testimony and expressed her belief that the parties had, in fact, separated in December, 2009. After the parties' separation, the Wife filed a prior divorce action on July 14, 2011 under docket number 11D-2029. Under that action and by order dated February 13, 2013, the Court ordered the Husband to pay family support of $2,500 per month plus the monthly mortgage on the parties' 2712 O'Neal Drive property. The Wife testified that the Husband paid the Court-ordered support until that divorce action was dismissed on May 5, 2015

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for failure to prosecute. In the current divorce action, the Wife never requested that the Court set temporary support. The Husband continued to pay support in a reduced amount to the Wife or her mother with whom the parties' minor children were residing. The Husband has filed as Trial Exhibit #17 his bank statements from July, 2011 through November 16, 2017 which reflect various payments to or for the benefit of the Wife and children. Trial Exhibit #16 is a summary of the Husband's support payments to the Wife from December 15, 2011 through November 16, 2017. This exhibit was amended by the parties' stipulation that the Husband is entitled to $2,000 in additional credit for April 10, 2017 and August 10, 2017 payments of $1,000 each. Further, the January 12, 2017 payment of $1,000 payable to the Wife's mother is a duplicate and should be deducted from the amounts listed. From May, 2015 through the date of this order, the above exhibits reflect that the Husband has paid $47,738.25 to the Wife for the benefit of the parties' children for which the Court finds he is entitled to credit. Based on the above child worksheet reflecting the Husband's monthly child support obligation of $1,490, the Court finds he should have paid $46,190. The Court finds that since the dismissal of the Wife's original divorce complaint on May 5, 2015, the Husband owes no back child support.

Pursuant to the state child support guidelines requiring child support to be paid retroactive to the separation of the parties, and using the above date of separation, being December 31, 2009, the Court finds that from January 1, 2010 through the date of this order, the Husband's child support obligation totaled $126,650. Trial Exhibits #16 and #17 evidence that the Husband paid a total of $176,588.25 to the Wife and her mother for the benefit of the parties' minor children or on mortgage payments benefiting the Wife and children during this period for which the Court finds he is entitled to credit. Based on the foregoing, the Court finds the Wife is not entitled to any retroactive child support award.

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The Court will now address the division of assets and debts. Neither party provided the Court with a comprehensive list of assets and liabilities. The Court has deduced that the parties own the following assets and owe the following debts:

The Husband owns his current residence located in Warren County, Mississippi which was recently purchased prior to the trial. The Court was not provided with the address, the purchase price, the down payment, nor the outstanding indebtedness on the property. Depending on the down payment, there is probably very little equity in this property. The parties own the real estate located at 2712 O'Neal Drive, Nashville, Tennessee as tenants by the entirety. The Wife purchased this property prior to the marriage but during the marriage, entered a quitclaim deed transferring the property to the parties jointly. Each of the parties has opined that the fair market value of the property is approximately $100,000 in its current condition. The Wife has estimated that there is equity in the property of approximately $40,000. She further testified that the property is in poor repair. Having no evidence to the contrary, the Court accepts the parties' opinion of its value and the Wife's testimony as to the equity in the property. The Court finds each of these parties constitute marital property. As noted above, the parties have stipulated that the Husband shall be awarded his Mississippi residence, and the Wife shall be awarded the O'Neal Drive property, and each of the parties is divested of any right, title or interest in or to the property awarded to the other.

The Husband has an interest in a Thrift Savings Plan account ending in #6099 with a value of $11,621.64 as of March 31, 2017. The Court finds these funds were accumulated during the marriage and constitute marital property.

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The Husband has an interest in a T. Rowe Price Retirement Plan with an account balance $49,532.96 as of May 4, 2017 which was started during the marriage and which constitutes a marital asset.

The Wife owns a business entity, being Suburban and Urban Real Estate Services, LLC which she started prior to the marriage. There was no evidence presented to the Court as to the value of this entity. It appears to own a leasehold and business equipment, and it generates income. The Court finds that for the fifteen years of the marriage, the Wife has devoted her attention to this entity. Other than the income earned by the Husband and shared with the Wife, it constitutes her primary source of income. The Husband has likewise benefited from this income. The Court finds that the Husband has a marital interest in this business entity.

The Husband has accrued a military pension from which he currently draws $2,662 per month. The Husband entered the United States Navy on October 1, 1988. The parties were married on November 30, 2002. The Husband retired from the Navy in November, 2012. The Court finds that of the Husband's 24 years' service in the military, 14 years were prior to the marriage, and 10 years were during the marriage. Based on the foregoing, the Court finds that 58.33% of the Husband pension constitutes his pre-marital and separate property, and 41.67% constitutes a marital asset. Thus, the Wife has an interest in only $1,109.26 of the Husband's monthly pension benefit.

The Court was not presented with a list of household furniture, furnishings and appliances although each of the parties resides in the residences listed above. The Wife testified to owning five automobiles as follows: a Toyota Avalon, model year unknown, which was wrecked and which the Wife opined had a zero (-0-) value; a 2000 BMW which was not operational but which the Wife opined had a value of $1,500; a 1997 Land Rover, which was

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also not operational but which the Wife opined had a value of $1,000; a 1992 BMW which was not operational but which the Wife opined had a value of $2,500; and a 2004 Cadillac Escalade which the Wife purchased in 2016 for $6,500. The Court finds the value of this vehicle be $5,000. There was no testimony as to any automobile owned by the Husband. The Court finds the total value of the vehicles in the possession of the Wife to be $10,000.

The parties previously owned real estate located at 4608 Setter Court, Nashville, Tennessee. This real estate was titled in the name of the parties jointly although the mortgage on the property was in the Husband's name alone. In the 2011 divorce filing under docket number 11D-2029, the Court ordered the Husband to make "adequate arrangements" with the lender to insure that the Wife and children were not evicted and/or otherwise involuntarily removed from said residence. The mortgage payments on this property were in arrears at the time of the entry of the above-described February 13, 2013 order. The evidence before the Court reflects that at some point, the date of which is unclear, the lender foreclosed on this property, and the Wife and the parties' children were forced to vacate the premises. Whether this occurred during the pendency of that action or after it was dismissed for failure to prosecute on May 5, 2015 is unknown. Irrespective, there remains a deficiency owed to the lender in the amount of approximately $42,000 which the Husband has been paying at the rate of approximate $600 per month. The Court finds that this is a marital debt of the parties.

The Wife testified that she had approximately $6,000 of outstanding debts in her name. There is insufficient evidence for the Court to determine whether or not this indebtedness is a marital debt of the parties or the Wife's separate debt. The Wife testified that in addition to the parties' two children, she has four other children by a prior relationship. It is the Court's understanding that at least some of those additional children have emancipated. Although the

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debt appears to have been accrued during the marriage, whether it is marital or a separate obligation of the Wife is unknown.

To the best of the Court's knowledge, the parties have no other assets or debts.

In making an equitable division of the parties' assets and liabilities, the Court is required to consider the provisions of T.C.A. §36-4-121. The Court makes the following findings as to those statutory considerations:

(1) The duration of the marriage;

The parties were married on November 30, 2002. Although this is a marriage of 15 years, the parties separated on December 31, 2009. They have been separated officially for eight years. It should be noted, however, that during the entirety of the marriage, the parties have lived separate and apart. Although both parties testified that it was their intent at the time of the marriage that they would cohabitate and the Wife and her minor children from her prior relationship would relocate to the Husband's stateside duty stations, that intent was never fulfilled by the Wife.

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

Each of the parties is 50 years of age. There was no evidence that either party suffered any physical or mental health issues that would prevent their maintaining full employment nor was any such impairment observed by the Court.

The Husband, although having only a high school education, had 24 years of service in the United States Navy in the submarine service. He retired with the rating of Chief Petty Officer and had acquired special skills in the maintenance of nuclear reactors. He currently is

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employed at the Grand Gulf Nuclear Station located in Mississippi. His 2016 federal income tax return reflects W-2 earning of approximate $143,967. The Husband's financial estate is relatively meager. He owns only his residence which he recently purchased, a small thrift savings plan valued at approximately $11,621 and a T. Rowe Price Retirement Plan valued at approximately $49,532. His most valuable asset is his military pension which currently pays him $2,662 per month. His income and expense statement reflects that he lives within his means. However, he also owes a deficiency of approximately $42,000 on the parties' Setter Court property which they lost in foreclosure.

The Wife is a licensed real estate broker with 22 years of experience. She owns her own company, to wit: Suburban and Urban Real Estate Services, LLC. As noted above, her 2013 corporate tax return reflects that she was paid as an officer and employee approximately $43,000, and the business showed an additional profit of approximately $33,000 which is attributed to her as additional income. The 2014 federal income tax return reflects earnings of approximately $52,000. The Court takes judicial notice that the Nashville real estate market extremely active at this time. The Court, therefore, struggles to understand why the Wife has produced no evidence of her 2015, 2016 or 2017 earnings. Although this divorce action has been pending since early 2016, the Wife did not file a 2015 or 2016 business or individual tax return. Further, the Wife did not file an income and expense statement. Although she testified that she is paid approximately $40,000 per year as a W-2 employee of her business, her personal returns should also reflect the profits of the business as income to her. That business clearly generated profits over and above any salary that was paid to the Wife. This is evidenced by her 2013 and 2014 business returns reflecting profits each year and her 2014 individual return which reflects her claiming those profits as income in addition to her W-2 salary. The Wife's failure to provide

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documentation on her income in light of the foregoing caused this Court to consider her a non-credible witness on the issue of her income. The Wife testified that she lived within her means and had only approximately $6,000 in personal debt. She further testified that she paid off her three credit cards each month. She should also owe a monthly mortgage payment on the 2712 O'Neal Drive property.

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

The Court finds that this consideration is not applicable to these parties. At the time of the parties' marriage in 2002, the Husband had been in the United States Navy for 14 years. Further, the parties never lived together as husband and wife during the entire marriage. Likewise, at the time of the marriage, the Wife had been a licensed real estate broker for approximately seven years. Just as the Wife had never lived with the Husband at any of his duty stations during the marriage, the Husband never lived in Nashville while the Wife worked as a real estate broker.

(4) The relative ability of each party for future acquisitions of capital assets and income;

Because of the lack of information on the Wife's earnings for the last three years, the Court has no satisfactory evidence on this issue. The Husband's W-2 earnings and his military pension give him a combined income of approximately $169,000. Based on her 2013 corporate return, the Court finds the Wife earned approximately $77,00[illegible] in that year. There is suspiciously no information on her earnings for 2015, 2016 or 2017. Based on the Husband's current earnings and pension, he has the ability for future acquisitions of capital assets and continued satisfactory income. The Wife certainly has substantial experience as a real estate broker and currently resides in a location with a very active real estate market. The Court finds that with

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hard work, the Wife likewise has the ability for future acquisition of capital assets and the ability to increase her earning capacity.

(5)(A) 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;

The Court finds that during the marriage, the Husband made a much greater financial contribution to the marriage then did the Wife. However, the Wife did make a financial contribution to the marriage and further made a substantial contribution as the primary caregiver and parent of the parties' two children. The Court cannot, however, find that the Wife made a contribution as a homemaker to the family. Despite the expressed intent of both parties that the Wife would relocate to the Husband's duty stations, the Wife failed to do so. The Wife was aware at the time she married the Husband that he enjoyed a successful career in the United States Navy. Despite his expectation that she would join him and be supportive of that career and her statements affirming that expectation, the Wife placed unreasonable conditions on her willingness to relocate, such as her refusal to relocate to any duty station where he had previously lived with his prior spouse. Further, while looking for possible homes to purchase at the Husband's duty stations, the Wife excluded from consideration any properties where the prior owners had kept pets or had used tobacco products in the home. While such properties may not be ideal, remedial steps could have been taken to make such properties suitable. Even when the Husband had the opportunity to accept a posting at Millington, Tennessee outside Memphis, the Wife objected because the Husband would no longer be receiving extra pay for sea duty. Despite the Wife's failure to relocate, the Husband continued to make substantial contributions

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to the support of the Wife and their children throughout the marriage. As noted above, even after the parties' separation at the end of 2009, the Husband continued to provide support for the family.

One of the Wife's reasons for her unwillingness to relocate to the Husband's duty station after the marriage was her fear of physical violence from the Husband. The Court heard testimony from various witnesses confirming arguments between the parties and household furnishings in disarray after such arguments. The Wife testified that on one occasion, the Husband choked her. On another occasion, he forced her out of a vehicle at a restaurant, and on a third occasion, he struck her. The Wife admitted to striking the Husband but insisted this was only in self-defense. The Husband denied the restaurant incident, insisting the Wife was confused, and that the incident in question occurred at a furniture store where the parties argued in the vehicle, and the Wife got out of the vehicle and refused to get back in. He acknowledged leaving her there. He further denied that he had ever initiated physical violence against the wife. He testified that Wife had always struck him first, and he responded by defending himself. The Wife has introduced, as Trial Exhibit # 11, an email from the Husband dated July 5, 2007 wherein the Husband apologizes for "allowing myself to get so upset as to place my hands on you." The email is lacking in details as to the circumstances, but in it, he also discusses his anger issues. Further, the Wife testified to having the Husband arrested for domestic violence and the Husband participating in an anger management class. Again, the details and circumstances were vague, but the Husband did not deny the arrest in rebuttal but did testify that he had never initiated physical violence between himself and the Wife. Irrespective of the circumstances, this Court will not condone physical violence by either party against the other. While the exact circumstances remain unclear, this Court finds that the Wife was justified in her concerns about

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the Husband's anger issues and possible domestic violence. However, the solution to such concerns is not a permanent separation which, while separating the parties physically also separates a parent from his children, but to address the issues in counseling with proper safeguards as was requested by the Husband. In the event a safe resolution could not be found, a divorce is preferable to continued separation of the parties with attending resentment and related issues and the ongoing separation of the Husband from his children as has occurred here.

(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.

There is no evidence before the Court of any intentional dissipation by either party.

(6) The value of the separate property of each party;

The Husband came into the marriage with 14 years of military service towards his military pension. The Court finds that 58.33% of his pension constitutes a separate property. On a monthly basis, this would represent approximately $1,552.74 of his gross monthly pension. The Wife brought into the marriage her ownership interest in her business entity, Suburban and Urban Real Estate Services, LLC. During the marriage, the Wife has continued to work in this business as a full-time real estate broker. As a result, the Husband has acquired an interest in the appreciated value of the business entity, assuming that there has been an appreciation. The value of the business at the time of the marriage and at the time of the trial is unknown.

(7) The estate of each party at the time of the marriage;

The Court finds that neither party had any substantial estate at the time of the marriage.

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(8) The economic circumstances of each party at the time the division of property is to become effective;

The Court finds that each of the parties is successful in their own area. The Husband's income was clearly established by the evidence. There is no evidence as to the Wife's current income.

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

The Court finds that this consideration is not applicable.

(10) The amount of social security benefits available to each spouse;

Neither party presented any evidence of any anticipated Social Security benefits. Neither party is currently eligible for such security benefits.

(11) Such other factors as are necessary to consider the equities between the parties.

The Court finds that there are no other factors necessary to be considered to determine the equities between the parties.

Based on all the foregoing considerations on the facts of this case, the court distributes the assets and liabilities of the parties as follows:

Based on the stipulation of the parties, the Husband shall be awarded his current residence free and clear of any claim of the Wife. The Wife is divested of any right, title or interest therein, and all interest vests solely in the Husband. The Husband shall be responsible for any indebtedness on the property and shall indemnify and hold the Wife harmless thereon.

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Based on the stipulation of the parties, the Wife shall be awarded the real property, located at 2712 O'Neal Drive, Nashville, Tennessee, free and clear of any claim of the Husband. The Husband is divested of any right, title or interest therein, and all interest shall vest solely in the Wife. The Wife shall be responsible for any indebtedness on said property and shall indemnify and hold the Husband harmless thereon. In the event the Husband is listed as a responsible party on the mortgage on the aforesaid property, the Wife shall refinance the property within six months of the date of this order. If for any reason the property is not refinanced as provided herein, the property shall be immediately placed on the market for sale, and all resulting proceeds after paying the costs of the sale shall be awarded to the Wife.

The Court orders that the Husband's Thrift Savings Plan ending in account #6099 and his T. Rowe Price Retirement Plan be equally divided between the parties. The Husband shall be responsible for the cost of preparing a qualified domestic relations order to divide the aforementioned retirement benefits. The total value of these accounts is $61,154.60. The Wife's interest is $30,577.30. To minimize the expense of preparing qualified orders, the Court awards the Thrift Savings Plan to the Husband in its entirety. The Wife is awarded 61.73% of the T. Rowe Price account and the remaining balance of said account is awarded to the Husband. The qualified order shall be prepared within 60 days of the entry of this order. The Court finds that except for the military pension discussed below, neither party has any other retirement benefit not listed herein.

Each of the parties is awarded the personal property now in his or her respective possessions, including household furniture, furnishings and appliances, automobiles, bank accounts, clothing, jewelry and other personal items free and clear of any claim of the other party.

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For the reasons discussed above, the Court finds it equitable for the Husband to be awarded his military retirement benefits free and clear of any claim of the Wife and for the Wife to be awarded her real estate brokerage business, being Suburban and Urban Real Estate Services, LLC, free and clear of any claim of the Husband. The Court acknowledges that each party has a marital interest in these two assets; however the Court finds that neither party contributed to the other party's career, and each party shall be awarded the benefits therefrom. The Husband shall be awarded his military retirement benefits, free and clear of any claim of the Wife, and the Wife shall be awarded her business entity, free and clear of any claim of the Husband.

The Husband shall be responsible for the mortgage deficiency related to the Setter Court foreclosure and shall indemnify and hold the Wife harmless thereon. The Court finds that the Husband was in part, responsible for the loss of said property and he has the greater ability to pay the remaining deficiency. Further, the Husband shall be responsible for any and all debts listed in his name alone and shall indemnify and hold the Wife harmless thereon.

The Wife shall be responsible for any and all debts listed in her name alone and shall indemnify and hold the Husband harmless thereon.

The Court finds that there are currently no joint debts except as specifically addressed herein.

The Court shall next address the Wife's request for spousal support. In the Wife's Answer filed June 17, 2016, she specifically requested a minimum of 24 months of rehabilitative alimony. The Court has reviewed the provisions of T.C.A. § 36-5-121(b) which specifically states that in making any order of spousal support, the Court shall consider the financial needs of each spouse and the financial ability of each spouse to meet those needs.

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In the instant case, it is impossible for the Court to do so. Throughout these proceedings, the Court has repeatedly encouraged the Wife to seek the advice of and to retain counsel. In the event she lacked the financial resources to retain counsel, the above statute provided for the award of funds to do so. It appears that the Wife secured counsel immediately before the trial such that it was difficult for even the best attorney to be adequately prepared. There was no motion for continuance and, indeed, in light of the history of this case, the Court would have been disinclined to grant one. The Wife's original divorce action, filed on July 14, 2011 was dismissed for failure to prosecute in May of 2015. The Husband re-filed the divorce on May 18, 2016. During the pendency of this matter, the Court was forced to compel the Wife to respond to written discovery and, upon her failing to do so, the Court imposed sanctions by striking her pleadings and awarding the Husband a default judgment. Upon the Wife eventually complying with the Court's discovery order, the Court granted the Wife's motion to set aside the default and reinstate the Wife's pleadings.

A need for spousal support and the ability of the other spouse to pay same are fundamental to the award of any spousal support. In the instant case, the Wife has completely failed to establish a need for support. She failed to file an income and expense statement evidencing her monthly expenses and, though she is a self-employed real estate broker with 22 years of experience, she failed to provide any supporting evidence of her recent or current income. She did not file federal income tax returns for the 2015 or 2016 tax years and provided no evidence whatsoever of her earnings for those years or her year-to-date earnings for 2017. While the Husband's income was clearly established and it is probable that he had the ability to pay support, a determination for support could not be made without establishing a need.

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Based on the foregoing, the Court respectfully denies the Wife's request for spousal support. A review of the Wife's Answer reflects that she has not requested her reasonable attorney fees. However, even in the event such a request was plead, the Court must deny the request for the same reasons as set forth above.

The parties shall equally divide the court cost in this cause.

It is therefore **ORDERED, ADJUDGED** and **DECREED**, pursuant to T.C.A. § 36-4-129, that the parties hereto are declared divorced, one from the other, and each of the parties is hereby restored to all the rights and privileges of an unmarried person.

It is further **ORDERED** that the attached permanent parenting plan and child support worksheet are hereby approved and made the order of this Court.

It is further **ORDERED** that the Husband is awarded his current residence located at 3323 Drummond Street, Vicksburg, Mississippi, and the Wife is divested of any right, title or interest therein, and all interest shall vest solely in the Husband. The Husband shall be responsible for any indebtedness associated therewith and shall indemnify and hold the Wife harmless thereon.

It is further **ORDERED** that the Wife is awarded the jointly-titled real estate located at 2712 O'Neal Drive, Nashville, Tennessee, and the Husband is divested of any right, title or interest therein, and all interest shall vest solely in the Wife. The Wife shall be responsible for any outstanding and future utilities and shall immediately transfer any utilities in the name of the Husband into her name. Further, in the event the Husband is obligated on the mortgage on the aforesaid property, the Wife shall, within six months of the entry of this order, refinance the property removing the Husband as a responsible party, and shall indemnify and hold the

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Husband harmless thereon. In the event the Wife fails for any reason to refinance the property as ordered, said property shall immediately be placed on the market and sold and all proceeds from the sale shall be awarded to the Wife.

It is further **ORDERED** that the Husband is awarded his Thrift Savings Plan ending in [redacted] free and clear of any claim of the Wife and all interest shall vest solely in the Husband.

It is further **ORDERED** that the Wife is awarded 61.73% of the Husband's T. Rowe Price Retirement Plan and the Husband is awarded the remainder of said plan free and clear of any further claim of the Wife. The Husband shall pay the cost of any necessary qualified domestic relations order to accomplish the foregoing division. The division of this asset shall be accomplished within 60 days of the date of this order.

It is further **ORDERED** that each of the parties is awarded any bank account listed in his or her name individually or associated with any business entity, any and all household furniture, furnishings and appliances now in the parties' possession, any automobiles in either parties' possession or titled in his or her name, and any and all clothing, jewelry, documents and other similar personal items, free and clear of any claim of the other party.

It is further **ORDERED** that the Husband shall be awarded his military retirement pension, in its entirety, free and clear of any claim of the Wife. The Wife is divested of any interest therein, and all interest shall vest solely in the Husband.

It is further **ORDERED** that the Wife shall be awarded her business entity, to wit: Suburban and Urban Real Estate Services, LLC, free and clear of any claim of the Husband. The Husband is divested of any right, title, or interest therein and all interest shall vest solely in the

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Wife. The Wife shall be responsible for any and all indebtedness or liability associated therewith and shall hold the Husband harmless thereon.

It is further **ORDERED** that the Husband shall be solely responsible for the mortgage deficiency on the Setter Court property and the foreclosure associated therewith and shall indemnify and hold the Wife harmless thereon.

It is further **ORDERED** that each of the parties shall be responsible for any indebtedness listed in his or her name individually, and each party shall indemnify and hold the other party harmless thereon.

It is further **ORDERED** that the Wife's request for spousal support is respectfully denied for the aforesaid reasons.

It is further **ORDERED** that each of the parties shall pay his or her attorney fees.

It is further **ORDERED** that the court cost in this cause shall be equally divided between the parties, which execution may issue if necessary.

ENTERED on this, the 17th day of January, 2018.

JUDGE PHILLIP ROBINSON

Copy: Mark T. Freeman, Esq
Carolanne R. King, Esq.
2126 21st Avenue South
Nashville, Tennessee 37212

John R. Manson, Esq.
215 2nd Avenue North, Ste. 300
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 THIRD Circuit Court for Davidson County, Tennessee, on the 17 day of JANUARY, 2018, in Docket Number 16D992 between WRIGHT, DONALD DOUGLAS, Plaintiff, and WRIGHT, ANGEL SIMS, 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 30 day of APRIL in the year two thousand eighteen and in the 241st year of American Independence.

RICHARD R. ROOKER, Clerk,

By: _____
Deputy Clerk

[SEAL]