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20210406-0045320

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 29 day of JANUARY, 2020, in Docket Number 16D1356 between MONTGOMERY, LESLEY BURNETT, Plaintiff, and MONTGOMERY, GARY ALAN, 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 18 day of MARCH in the year two thousand twenty-one and in the 244th year of American Independence.

RICHARD R. ROOKER, Clerk,

By: J. Johnson
Deputy Clerk

[SEAL]

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

LESLEY B. MONTGOMERY **Plaintiff/Wife,** **vs.** **GARY A. MONTGOMERY** **Defendant/Husband**	**Docket No.: 16D-1356**

FINAL DECREE OF DIVORCE

This cause came to be heard on March 25th and June 4th, and October 31, 2019, upon the Plaintiff's Complaint for Absolute Divorce filed on July 12th, 2016, her Amended Complaint filed on December 12, 2016 and the Defendant, Gary Montgomery's Answer to the Amended Complaint filed July 3, 2017. The Court announced the Ruling on October 31, 2019 after several continuances due to a conflict with Defendant's Criminal Court case, and the Defendant's subsequent hospitalization.

At the call of the docket, Lesley Montgomery appeared in person, and by counsel, and the Defendant appeared in person *Pro Se.* The Court after two days of trial testimony and reviewing the record as a whole the Court finds that the Husband Gary Montgomery asserted his Fifth Amendment right against self-incrimination in response to the Plaintiff's allegations in her original Complaint and in the Amended Complaint. Additionally, Mr. Montgomery did not make any request for relief, not even request for general relief, or assert any affirmative defenses. (PES) Mr. Montgomery's Answer was filed by his former counsel, Dock McDowell.

The first witness to testify was Lesley Burnett Montgomery, the Plaintiff. She testified that she is originally from Scotland and was born on August 10, 1966. She was trained as a nurse before leaving Scotland. She testified that she met Mr. Montgomery online, in May of 2000. Mr.

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Montgomery was working at the Public Defenders office in San Jose California. He started either shortly before, or shortly after the marriage. Mrs. Montgomery was in California when the two began dating. Ms. Montgomery testified that prior to working at the Public Defenders' office Mr. Montgomery did Y2K compliance work. She further testified that the parties have never had a legal separation, nor have they ever entered a separation agreement.

Mrs. Montgomery testified that Mr. Montgomery later informed her that he had been married previously, and had two children from the prior marriage, but he has no relationship with said children. Ms. Montgomery testified that there was a home in California that was eventually foreclosed on. Ms. Montgomery testified that Mr. Montgomery was fired from the Public Defender's office. She testified that the home that they had in California was refinanced twice to pay off credit cards. Ms. Montgomery testified that Mr. Montgomery became a broker for Exit Realty. Ms. Montgomery testified that she had a base salary working as a nurse in California at the time of $120,000 and Mr. Montgomery had a salary of $70,000 at the Public Defender's office. She testified that the last two years she was in California, she made over $160,000. Ms. Montgomery testified that she was not aware of any money that Mr. Montgomery had at the time of the marriage.

Ms. Montgomery testified that, earlier in the marriage that things were good, and they did things together. She testified that Mr. Montgomery was somewhat domineering. She testified that he spent a year or two in California without a job. Ms. Montgomery testified that at one point during the marriage, he was in and out of California, while he tried to start a real estate business in Tennessee. However, he was not successful. Ms. Montgomery testified she was coming to Tennessee regularly and, they acquired some real property in Mt. Juliet, Tennessee, which was treated as a vacation home. Ms. Montgomery testified that there was really no money put down

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first on the Mt. Juliet home and later she testified that Mr. Montgomery signed the paperwork regarding her retirement account, that she had in the state of California and that she had put $208,000 into the home. The Purchase price of the home was $360,000.

Exhibit 1 was the Request for the Transfer of the Retirement Plan Funds. The Court will note that documentation was introduced regarding Bzbzbzboy, Inc. 401k Plan, and it was formed with the proceeds from Ms. Montgomery's 401k. Exhibit 2 is the Warranty Deed on the Mt. Juliet Property. Bzbzbzboy was, Mr. Montgomery's email address. Ms. Montgomery testified that at that time Mr. Montgomery was not working and that he was planning a homemaker role. Ms. Montgomery testified that later in the marriage, Mr. Montgomery began going to the Philippines. Ms. Montgomery testified that they were moving into a new place in Donelson, actually moving into the basement of the duplex in Donelson. She testified that she and his sister were setting up the home while he was in the Philippines. Ms. Montgomery testified that during this time, she was very depressed, and Mr. Montgomery was not acting normal. She testified that she and Mr. Montgomery met for lunch. Mr. Montgomery informed her that his son had recently passed away. He told her that he was going to Indiana, but in reality, Ms. Montgomery said he went to Hong Kong. Ms. Montgomery testified that she found a rucksack in the home in the duplex and she found the documentation that references some purchases in the Philippines.

Exhibit 4 and 5 are marked for i.d. only. This Court has not reviewed them. Exhibit 6 was the former Final Decree of Divorce of Mr. Montgomery's previous marriage. Ms. Montgomery testified that the T.B.I. informed her that Mr. Montgomery had been planning to kill her. She also found documentation that the defendant had purchased a condo in the Philippines. Exhibit 7 were the documents purported to show the purchase of the condo in the Philippines. Ms. Montgomery did not believe the T.B.I. (R25) that Mr. Montgomery was going to try to kill her. That concluded the

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testimony for the first day of trial. The Court resumed the testimony on June 4, 2019. A witness was taken out of order at that point. His name was Joe Weyant and he was called by Ms. Montgomery's Counsel. Mr. Weyant testified that he is an attorney in Clarksville and practices there, as well as in other areas of middle Tennessee. Mr. Weyant testified that he does handle tax matters before the Internal Revue Service and that he is recognized as an expert in tax law. The Court after hearing this, and offering Mr. Montgomery an opportunity to *voir dire* Mr. Weyant, the Court did accept Mr. Weyant as an expert. Mr. Weyant testified that Mr. Montgomery came to him and had a question about a tax bill of about $40,000.

Exhibit 8 was the Notice from the Internal Revenue Service. Exhibit 9 was the Notice of Levy, and Exhibit 10 was the Letter of Levy from Vanderbilt regarding deductions from her payroll account. Mr. Weyant, after reviewing the information, and conducting an investigation, determined that the taxes had apparently accrued on a securities account controlled by Mr. Montgomery. Ms. Montgomery then was called back to the stand to conclude her testimony. Ms. Montgomery identified a certified copy of the Lakeview Circle deed. This property was purchased sometime around 2006 and 2009 and the deed actually listed Mr. Montgomery as unmarried. The January 2007 Quit Claim deed was introduced as Exhibit 12. The June 2011 Quit Claim Deed was introduced as Exhibit 13, and the June 2012 Quit Claim Deed was introduced as Exhibit 14.

Exhibit 15 and 16 was the appraisal to the 382 Lakeview Circle property. Exhibit 17 was the appraisal of the 2718 Donna Hill property, the property that they purchased in Donelson. Ms. Montgomery testified that the parties never legally separated. They physically separated while Mr. Montgomery was in the Philippines and on occasions after that. Ms. Montgomery testified that there are currently renters in the Mt. Juliet property. Ms. Montgomery testified regarding the inventory of personal property that was located in the Donna Hill property and, Lakeview Circle

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and they were introduced as Exhibits 18 and 19 respectively. Ms. Montgomery testified that the Donna Hill property is encumbered by a mortgage debt. The most recent statement or a recent statement was introduced as Exhibit 20, and that was a mortgage statement from Caliber Home Loans, which shows a balance of $175,451.74 owed at that time on the Donna Hill property.

Exhibit 21 was an Installment Contract for the A/C unit and loan - for the A/C unit loan, for replacing the A/C unit in the Lakeview Circle property. Ms. Montgomery denies signing the installment contract. Exhibit 22 was a copy of her driver's license that revealed her signature and Exhibit 23 was the payment for the total payoff for the installment loan for the Lakeview Circle A/C unit. Ms. Montgomery testified that she has found a credit card in her name that she did not obtain. She testified that she never had a credit card in her possession. Exhibit 24 were various credit card transactions, which Mr. Montgomery testified were all of Mr. Montgomery's transactions. Exhibit 25 was an accounting of the rents of both properties.

Ms. Montgomery testified that Mr. Montgomery had a Nissan Altima. She came home one day, and that the Altima was in the driveway. Ms. Montgomery testified that the Altima has since been repossessed and that she is not on the note. On cross-examination, Ms. Montgomery testified she does not believe that it's reasonable to throw someone else's property in the trash. She testified that she had never purchased gold. She did testify that she takes Ativan and she took it today. She admitted that she and Mr. Montgomery first met when she was a travel nurse. She admitted that Mr. Montgomery did help her update her résumé. Ms. Montgomery testified that Mr. Montgomery did have some secondhand furniture at the time of the marriage, and some more was still in storage. Ms. Montgomery testified that she currently works at Vanderbilt and that the Donna Hill property was actually purchased in 2015. Ms. Montgomery testified that both she and Mr. Montgomery are on the Donna Hill note. Ms. Montgomery thinks that she is the primary on

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the mortgage for the Donna Hill property. Ms. Montgomery testified that she does not believe there was anything put down originally for the purchase of that property. Ms. Montgomery testified that she objected to Mr. Montgomery going to the Philippines. Ms. Montgomery admitted she received a call when the parties lived California that Mr. Montgomery was involved with another woman. Ms. Montgomery admitted that she did hit Mr. Montgomery on the head in California and she was arrested, but she was never charged. That concluded the testimony of Ms. Montgomery.

The next witness, which was called as an adverse witness, was Mr. Gary Montgomery. His testimony established the comingling of funds he alleged were his and those of Ms. Montgomery in the Bzbzbzboy 401k. Mr. Montgomery ended his testimony at this point and Ms. Montgomery closed her proof and Mr. Montgomery chose not to put on any proof.

As for findings as to credibility; the first witness that testified was Ms. Montgomery. Ms. Montgomery's testimony was at time a bit rambling. It is clear to this Court that from a financial standpoint, she left many of the financial responsibilities, as far as controlling those responsibilities, to Mr. Montgomery. Ms. Montgomery's testimony appeared to be truthful, and at times compelling. Ms. Montgomery admits that she still loves Mr. Montgomery despite the criminal allegations that the State of Tennessee has brought against Mr. Montgomery. The Court will give great weight to the testimony of Ms. Montgomery.

The next witness was Joe Weyant. Mr. Weyant' s testimony was helpful. Mr. Weyant' s testimony clarified for the Court that the $40,000 in tax debt was as a result of unpaid taxes on a securities account managed by Mr. Montgomery. The Court will give Mr. White's testimony great weight. The next witness was Gary A. Montgomery. His testimony was brief. Mr. Montgomery took the stand after being advised of the right against self-incrimination. His criminal lawyer was

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present and allowed to instruct Mr. Montgomery as to his right against self-incrimination. Mr. Montgomery acknowledged his understanding of his Fifth Amendment privilege. However, he willingly took the stand as he was called as an adverse witness and was again advised that he could invoke his Fifth Amendment right against self-incrimination. Mr. Montgomery's testimony was limited due to the short examination of Ms. Montgomery's Counsel. Mr. Montgomery declined to put on any proof during his case in chief. The Court will acknowledge that Mr. Montgomery's testimony was limited. The Court has observed Mr. Montgomery's demeanor during questioning of other witnesses, as well as statements he has made to the Court. The Court does believe that Ms. Montgomery was a much better witness.

The Court will give Ms. Montgomery's testimony much greater weight than Mr. Montgomery's. The Court will accept her testimony where it conflicts with Mr. Montgomery's. The issues the Court must decide today are the issues of grounds, division of marital property, Ms. Montgomery's request for alimony, a division of debt, wife's request for attorney's fees, court costs, and Ms. Montgomery is asking to be restored to her maiden name of Wright. In the Amended Complaint, Ms. Montgomery has alleged the contested grounds of inappropriate marital conduct and adultery. The testimony of Ms. Montgomery reflects that Mr. Montgomery sought to take her life in what the Court would describe as a contract killing.

Ms. Montgomery was made aware of this by the Tennessee Bureau of Investigation. Ms. Montgomery did not believe this allegation at first. However, she has come to believe the allegation is true. She testified about the T.B.I. investigation that resulted into the charge of solicitation of her murder. Ms. Montgomery testified to all of the nefarious financial transactions involving marital money by Mr. Montgomery. She testified that she had found documentation regarding the purchase of a condominium in the Philippines by Mr. Montgomery. She testified that

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she was unaware of the purchase. She testified to some of the many lies that Mr. Montgomery told her, one of which involved the then recent death of his son. Mr. Montgomery told her he was going to Indiana but in reality, he went to Hong Kong.

Ms. Montgomery's testimony stands unrebutted. Mr. Montgomery did not rebut these allegations. He failed to deny these allegations, even in his pleadings. He, instead, asserted in his pleadings his Fifth Amendment privilege against self-incrimination. This, Mr. Montgomery can do. Under certain circumstances, the Court is free to draw an inference from his assertion of his Fifth Amendment privilege in civil proceedings. However, the Court chooses not to draw any inference from ~~this denial~~ his claim of privilege. (PES) Ms. Montgomery's testimony simply stands undisputed and unrebutted. The Court finds that there is no greater proof of inappropriate marital conduct than solicitation of someone to kill your spouse. Mr. Montgomery has failed to deny this allegation. The proof is established by preponderance of the evidence that Mr. Montgomery did attempt to hire someone to kill Ms. Montgomery.

Ms. Montgomery is awarded an Absolute Divorce from Mr. Montgomery on ground of inappropriate marital conduct. She will be restored to all rights and privileges of an unmarried person. Ms. Montgomery's request for divorce on ground of adultery is denied, as the proof simply did not establish adultery by a preponderance of the evidence. As Mr. Montgomery has (PES) ~~Mr. Montgomery has~~ not filed a counterclaim alleging any grounds for divorce, contested or otherwise, and he has failed to assert an affirmative defense alleging that he was justified by the ill conduct of Ms. Montgomery and the complete lack of proof to any misconduct on her part, the Court was deprived of the opportunity to weigh marital fault pursuant to **TCA §36-4-129(b).**

The Court must now discuss the division of property and divide the property. The Court's first requirement is to classify the assets and liabilities of the ~~martial~~ marital assets. The division of assets

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and liabilities is a multi-step process. According to the language from ***Batson v. Batson*, 769 SW2d 849 (1988)** case out of the Tennessee Court of Appeals. The Court of Appeals has directed and stated that Tennessee is a "dual property" jurisdiction because it's - divorce statutes draw a distinction between marital and separate property. **T.C.A. § 36-4-121** provides only for the division of marital property. The proper classification of a couple's property is essential. Thus, it's the first order of business and it is incumbent upon the trial court to classify the property, to give each party their separate property, and then, divide the marital property.

The proof in this case established that Ms. Montgomery's 401k money acquired during the marriage was used to purchase the home at 382 Lakeview Circle. Exhibit 1 establishes that her 401k money was deposited into Bzbzbzboy 401k plan of which Mr. Montgomery was the trustee. The property was originally purchased by Gary Montgomery, unmarried, as evidenced by the deed on the 5th day of December 2006. On the 4th day of January 2010, Mr. Montgomery, unmarried, Quit Claimed the property to "Our M&M Nest, LLC" for zero consideration. On January 9th, 2011, Our M&M Nest, LLC, conveyed the property Larry Hartman. Then, on June 15, 2012, the same property located at 382 Lakeview Circle, Mt. Juliet, Tennessee, was conveyed back to Bzbzbzboy by Larry Hartman with the execution of the Quit Claim deed.

According to the testimony of Ms. Montgomery, the money she put into Bzbzbzboy 401k, was used to purchase the Lakeview Circle property. According to Mr. Montgomery, he put some of his separate money into Bzbzbzboy. The money from Ms. Montgomery's 401k was admittedly marital money. If Mr. Montgomery put any of his separate money into the 401k with Ms. Montgomery's money, then his separate money would've become inextricably mixed. This would result in the comingling of the separate property. It would result in Mr. Montgomery's money being converted to marital money. It would be incumbent at that point for Mr. Montgomery to

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attempt to trace the money he contributed back to his separate property or to convince the Court that there was an intent, somehow, to keep this money separate. Mr. Montgomery failed to do this.

The Court finds that the real property located at 382 Lakeview Circle is marital. The Court finds that the real property located at 2718 Donna Hill Drive is titled in both of the party's names. There was no proof introduced that would support a finding other than that the Donna Hill property is, in fact, ~~martial~~ marital. Therefore, the Court finds that 2718 Donna Hill Drive is marital property. The Court finds that based on the testimony the real property located at 382 Lakeview Circle in Mt. Juliet, is unencumbered by a mortgage. According to the appraisal in Exhibit 15, it has a fair market valuc of $365,000. The real property located at 2718 Donna Hill Drive, according to the appraisal, which was introduced as Exhibit 16 has a fair market value of $240,000 and according to Exhibit 20, there is a mortgage on the Donna Hill property of $175,451.74 currently owed on that property. This leaves an equity of $64,548.~~86~~ 26 (PES)

According to Ms. Montgomery's proposed division, she has a 2009 Hyundai Sonata, which she values at $7500. Ms. Montgomery testified that Mr. Montgomery had an Altima automobile that he allowed to be repossessed. However, she's not on the note. She also testified that the parties have a 1992 Ford Truck, which she values at $750. Mr. Montgomery has listed the value of personal property at Donna Hill that she is requesting at a value of approximately $3,155. The Court does find that there was no dispute raised about any of this personal property being marital property. The Court will find that these items are, in fact, the ~~martial~~ marital property.

In regard to the debts, Ms. Montgomery testified, and Exhibit 21 establishes, that she and Mr. Montgomery are on an installment contract they both signed for an HVAC system on the Lakeview Circle property in Mt. Juliet. She also established that the IRS levy on Ms. Montgomery's paycheck for $40,000 for unpaid taxes is, in fact, a ~~martial~~ marital debt. The levy was a

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result of unpaid taxes on a security account that Mr. Montgomery controlled. The Court finds both of these debts to be marital. TCA §36-4-121(c) requires the Court to consider the following factors regarding a division of marital property:

> (1) The duration of the marriage.
> (2) The age, physical and mental health, vocation skills, employability, earning capacity, estate, financial liabilities and financial needs of the parties.
> (3) The tangible or an intangible contribution by one party to the education, training or increased earning power of the other party.
> (4) Relative ability of each party for future acquisitions of capital assets of income.
> (5a) The contribution of each party to the acquisition of capital assets and income.
> (5b) for the purposes of this subdivision,
> (5c), dissipation of assets by wasteful expenditure, which reduced marital property available for equitable distribution, and which is made for the purpose contrary to the marriage, either before or after a complaint for divorce or legal separation has been filed.
> (6), the value of 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 properties become effective.
> (9) The tax consequences of each party, costs associated with reasonably foreseeable sale and assets and other reasonably foreseeable expenses associated with the asset.
> (10) The amount of Social Security benefits available to each party. And finally,
> (11) such other factors of the court - such other factors that are necessary to consider the parties by the Court.

The Court will find in regard to Factor (1), the parties have been married for 17 years. The parties have been separated since May 5th of 2016. During this three-year separation period, Ms. Montgomery has had to provide all of the financial support, to preserve the marital assets and service the ~~martial~~ marital debt. She's had to manage the rental properties and no doubt, the income from the rental properties have assisted her some in the payment of marital debts. Factor (2), requires the Court to look at several considerations. The Court finds that Mr. Montgomery is 58 years of age. Ms. Montgomery is 53 years of age. The Court finds that neither party has any significant physical or mental health issues, at least according to the proof heard by the Court. The Court has not heard any proof about the vocational skills of either party. Ms. Montgomery is employed at

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Vanderbilt Hospital as a nurse. Ms. Montgomery does have a significant earning capacity. Based on the testimony of Ms. Montgomery, at one point during the marriage, Mr. Montgomery was employed as a paralegal at the Public Defender's office in California.

Ms. Montgomery testified that Mr. Montgomery made $70,000 per year. This stands unrebutted. Currently, Mr. Montgomery is not employed because he is incarcerated in the Metro-Davidson County Jail. According to Exhibit 18, Ms. Montgomery shows a deficit of $4,853.43, the cost associated with the rental property, i.e. Mt. Juliet property, from January 1st, 2016 to March 31st, 2019. Ms. Montgomery is paying the tax debt of $40,000. She has paid the HVAC installment note that had to be installed in the Mt. Juliet property, and she is paying her monthly living expenses. Mr. Montgomery did not testify, so the Court has no proof as to his expenses or anticipated expenses. This Court has already discussed the ~~martial~~ marital estate of the parties. The Court really heard no proof that would be appropriate for consideration of Factor (3).

Under Factor (4), the Court finds that Ms. Montgomery has a superior ability to that of Mr. Montgomery at this time for future acquisitions, of capital assets, and income. Again, Mr. Montgomery is incarcerated at the present time. It's clear to this Court that Ms. Montgomery has made far superior contributions to the acquisition of capital assets and income. She's had a superior income to that of Mr. Montgomery throughout the marriage. She has worked the entirety of the marriage. There ~~is~~ has been significant periods of time where Mr. Montgomery did not work or had little or no income. The Court has heard little in the way of proof that Mr. Montgomery has ~~participated to~~ contributed to the marital estate. He has clearly spent money unwisely, however the elements for dissipation were simply not established by a preponderance of the evidence.

In regard to Factor (6), after classifying the assets of the parties, the Court finds that there is little, if any, in the way of separate property of either party. Factor (7) requires the Court to look

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at the estate of each party at the time of the marriage. The testimony of Ms. Montgomery reflected that Mr. Montgomery had very little at the time of the marriage. Mr. Montgomery testified that there were some retirement funds that he did have Ms. Montgomery testified herself that she had little at the time of the marriage, other than a small amount of retirement.

Factor (8) requires the Court to look at the economic circumstances of each party at the time of the division of properties become effective. It is anticipated that Ms. Montgomery will be employed, and Mr. Montgomery will be incarcerated. It is anticipated that Ms. Montgomery will still be servicing the ~~martial~~ marital debt until the Mt. Juliet property can be sold. There was no proof that would show what the tax consequences on the sale of Mt. Juliet property would be. The Court is concerned that it will be significant. The real property is owned by Bzbzbzboy, which was ~~2~~ originally set up as a 401k. The Court suspects that there will be significant taxes if the proceeds of the sale are not put back into a 401k. However, this Court has to make its decision on proof, not on its own speculation. There was no proof of any other costs needed to list the property for sale. There was no proof of what either party will or may receive in Social Security benefits.

The Court will simply not consider this for Factor (10). The Court finds the marital estate consists of assets that include the Mt. Juliet real property valued at $365,000; the equity in the 2718 Donna Hill property of $64,548. Ms. Montgomery's 2009 Hyundai automobile valued at $7500. ~~Ms.~~ Mr. Montgomery's 1992 Ford truck valued at $750 and the value of the personal property, that Ms. Montgomery is requesting, which is valued at $3,155. The total value of the marital estate is $440,953. The marital debts include the $40,000 unpaid taxes and the $5,500 loan on the HVAC unit that was installed at the Mt. Juliet property. Deducting these liabilities from the marital estate, the Court finds that the marital estate is worth $395,453. The Court does find that the taxes in the amount of $40,000 and the remaining amount owed on the HVAC unit for the

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real property in Mt. Juliet, shall be paid from the proceeds of the sale of the Mt. Juliet property. The payment of this debt will satisfy the need for the levy on Ms. Montgomery's payroll check and should give her more money, to take home on a weekly or monthly basis.

Ms. Montgomery is directed to sell the real property at 382 Lakeview Circle. Ms. Montgomery is vested the sole authority to select the real estate listing agent. After discussing with the agent, Ms. Montgomery will choose the listing price. Ms. Montgomery will direct renters, assuming they're still residing at the home at the time of the listing, to maintain the home in a showable condition at all times. Ms. Montgomery shall forward any serious offers to her Counsel, who (PES) then will forward those offers to Mr. Montgomery. If there's a serious offer that Mr. Montgomery objects to, the Court will schedule a hearing, at which time Mr. Montgomery will be transferred, if he is still held locally. Ms. Montgomery will appear with the real estate agent and the Court will hear Mr. Montgomery's objection to determine whether the sales contract should be accepted. If Mr. Montgomery is in the custody of the Tennessee Department of Corrections at that time, then he will make his objection in writing. At (PES) closing of the sale of the real property at Mt. Juliet, the Court orders that the taxes of approximately $40,000 or the current balance, shall be paid from the proceeds of the sale.

Additionally, the balance of the HVAC loan will be paid at the closing of the sale. The remaining balance of the sale proceeds will be divided equally after deduction of the payment of those two loans. Ms. Montgomery will receive her proceeds at the closing. Mr. Montgomery's proceeds from the sale will be held and deposited into an interest-bearing escrow account with the clerk at the circuit court until such time as this Final Decree becomes final. Upon this decree becoming final, Mr. Montgomery may withdraw the funds or have them transferred to a bank.

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Ms. Montgomery will be awarded the real property located at 2718 Donna Hill Drive free and clear of any claim from Mr. Montgomery. Mr. Montgomery will be divested of all right, title and interest in said property and Ms. Montgomery becomes solely responsible for all payments associated with said property, including the mortgage, taxes, and insurance. Ms. Montgomery will be awarded the 2009 Hyundai Sonata, she will be responsible for all costs associated with the automobile. Ms. Montgomery will be awarded all personal property, furniture and furnishings she is requesting, free and clear of any claim from Mr. Montgomery.

Mr. Montgomery will be awarded the 1992 Ford pickup truck and he will be responsible for all costs associated with the truck. Mr. Montgomery will be awarded all personal property, furniture, and furnishings Ms. Montgomery is holding for him that she testified to, free and clear of any claim from her. All other items of furniture shall be sold, and the sale proceeds are split equally between the parties. This is not an equal division. The Statute requires a fair and equitable division. The Court cannot consider fault for the demise of the marriage when dividing marital property.

The Court has followed the statutory directive. The Court has considered all of the factors in **T.C.A. § 36-4-121(c)** in awarding the division of the marital property. Many reasons are set forth in the above findings, however this court recognizes that Ms. Montgomery has been the main financial contributor for the parties' acquisition and preservation of the parties' assets for the last three years. She has been responsible for these debts without any contribution from Mr. Montgomery. Ms. Montgomery is receiving 59.41 percent of the marital assets; Mr. Montgomery is receiving 40.58 percent of the marital assets. That will constitute the division of property.

Ms. Montgomery has requested alimony in this case and the Court must address her concerns. **T.C.A. § 36-5-121** sets forth four different types of alimony. **T.C.A. § 36-5-121(d)2**

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specifically addresses rehabilitative alimony. To be rehabilitated means to achieve with reasonable effort the earning capacity that would've met the economically disadvantaged spouse's, standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living to be available to the other spouse considering all relevant statutory factors. Alimony *in futuro*, which is known as periodic alimony, is the payment of alimony on an indefinite long-term basis or until the death or remarriage of the recipient. Specifically, **T.C.A. § 36-5-121(f)1** states:

> Such alimony may be awarded if the Court finds there is a relative economic disadvantage and the rehabilitation is not feasible meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity to have met the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse considering the relevant statutory factors.

Finally, the third form of alimony that may be applicable in this case is transitional alimony. It's found in TCA §36-5-121(g) and it states that:

> Transitional alimony is appropriate upon finding that rehabilitation is not necessary with the economically disadvantaged spouse that needs assistance to adjust to the economic consequences of the divorce, legal separation, or other proceedings where spousal support may be awarded, such as a petition for orders of protection.

The fourth form of ~~alimony~~ alimony is alimony *in solido*. Alimony *in solido* is a lump sum amount that is paid out in one installment or multiple installments over time. Alimony *in solido* is nonmodifiable. The Court finds that alimony *in solido* is simply not appropriate in this case. The Court is required to consider all of the factors set forth in **T.C.A. § ~~36-5-121~~ 36-5-121(i)** (pet.) to determine whether an award of alimony is appropriate. There are 12 statutory factors and the Court is not going to go over each and every one of those. The Court will state that it has considered all of those factors set forth in **T.C.A. § 36-5-121(i)**. The Court recognizes that Factors (3), (4), and (11) mitigate the

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favor of an alimony award, however Factors (1), (2), and (8), mitigate against an alimony award for Ms. Montgomery.

Ms. Montgomery makes a comfortable living as a registered nurse. She has always been the primary wage earner in this family. With the marital debt being paid off and the levy soon to be lifted, it will free up her earnings that had been taken to pay towards the unpaid taxes. The Court simply cannot find that Ms. Montgomery has a need for alimony in any form at this point. Additionally, Mr. Montgomery is incarcerated. It can hardly be argued that Mr. Montgomery has any ability to pay alimony. He's been incarcerated for three years. The Court finds that Mr. Montgomery has no ability to pay alimony in any form. The Court's findings regarding the first two factors set forth in the statute predominates any further consideration of the award of alimony for Ms. Montgomery. Ms. Montgomery's request for alimony is most respectfully denied.

Ms. Montgomery has requested that she be awarded her reasonable attorney's fees in this matter and certainly attorney's fees can be awarded as alimony *in solido* to an economically disadvantaged spouse. The Court recognizes this from ***Yount v. Yount*, 91 S.W.3d 777 (Tenn. Ct. App. 2002).** However, the Court will note, the award of attorney's fees have been viewed by the Appellate Courts to be largely discretionary and the Court. ***Coja vs. Coja*, 42 Sw3d. 94 (Tenn. Ct. App. 2000).** The Court has reviewed the affidavit of attorney's fees submitted by Ms. Montgomery's Counsel and the Court will recognize that Mr. Stover has done an excellent job in representing Ms. Montgomery in this difficult case.

Ms. Montgomery is lucky to have found Mr. Stover. The Court finds that Mr. Stover's hourly rate is certainly reasonable and probably needs to be higher, and every minute he's spent on this case was both necessary and justified. Unfortunately, the Court's ruling on alimony prevents this case from awarding attorney's fees. Attorney's fees can only be awarded to an

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economically disadvantaged spouse. The Court cannot find, for the same reasons set forth above, that Ms. Montgomery is the economically disadvantaged spouse. Ms. Montgomery's request for attorney's fees is most respectfully denied.

Mr. Montgomery has filed several motions that he failed to pursue or put on the docket. The Court must respectfully deny those motions at this time. In addition, Mr. Montgomery filed a proposed division for settlement of the parties' property. The Court cannot consider the proposal, as most of it is outside of the proof that the Court heard. Mr. Montgomery chose not to put on any proof that would justify his request in the proposal. Mr. Montgomery has failed to file any request for relief, no request for alimony, not even a request for general and/or specific relief. By his failing to plead for any relief and by not putting on any proof that would justify his position, the Court must deny any consideration of his proposal outside of the proof. The cost of this proceeding shall be taxed to Mr. Montgomery, for which execution may issue, if it becomes necessary. The Court will also restore Ms. Montgomery to her previous name of Wright.

It is Therefore **ORDERD, ADJUDGED, AND DECREED** that: The Plaintiff/Wife Lesley Montgomery is hereby granted an absolute divorce from Gary Montgomery on the ground of Inappropriate Marital Conduct, and is further restored to all rights, and privileges of a un-married person.

It is further **ORDERED, ADJUDGED AND DECREED** that: The Plaintiff/Wife Lesley Montgomery is hereby ordered to sell the real property at 382 Lakeview Circle. Ms. Montgomery is further vested the sole authority to select the real estate listing agent. Said property is located in Wilson County, Tennessee and is more particularly described as follows:

> Land in the Civil District of Wilson County, Tennessee, being all of Lot No. 97 of the Plan of Trails' Subdivision, Section 2, as shown by the plat appearing of record in Plat Book 3, page 106, Register's Office for Wilson County, Tennessee, to which plat reference is hereby made for a more complete and accurate legal description.

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It is further **ORDERED, ADJUDGED AND DECREED** that: The Plaintiff/Wife Lesley Montgomery is hereby ordered to forward any serious offers to her Counsel, who will then forward those offers to Mr. Montgomery.

It is further **ORDERED, ADJUDGED AND DECREED** that: The Plaintiff/Wife Lesley Montgomery is hereby ordered to direct the closing agent after the sale of the property in Mt. Juliet, pay directly therefrom the IRS debt of approximately $40,000 or balance at that time to be paid from the proceeds of the sale.

It is further **ORDERED, ADJUDGED AND DECREED** that: The Plaintiff/Wife Lesley Montgomery is hereby ordered to direct the closing agent after the sale of the property in Mt. Juliet, pay directly therefrom the balance of the HVAC loan from the proceeds of the sale. (PES)

It is further **ORDERED, ADJUDGED AND DECREED** that: The balance of ~~his~~ the sale of proceeds of the Mt. Juliet Property will be divided equally after deduction of the payment of the IRS debt, and the HVAC loan. Ms. Montgomery will receive her proceeds at the closing. Mr. Montgomery's proceeds from the sale will be held and deposited into an interest-bearing escrow account with the clerk at the circuit court until such time as this Final Decree becomes final.

It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Montgomery is hereby awarded the real property located at 2718 Donna Hill Drive free and clear of any claim from Mr. Montgomery. Mr. Montgomery is hereby divested of all right, title and interest in said property and Ms. Montgomery is solely responsible for all payments associated with said property, including the mortgage, taxes, and insurance. Said property is located in Davidson County, Tennessee and is more particularly described as follows:

> Land in Davidson County, Tennessee, being lot no. 348 on the plan of section six, sunset view, of record in plat book 2900, pages 54 and 55, in the register's office for Davidson county, Tennessee, to which plan reference is hereby made for a more complete description of the property. Said lot no. 348 fronts 105 feet on the

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Westerly side of Donna Hill Drive and runs back 253.1 feet on the Southerly line and 251.3 feet on the Northerly line to a dead line in the rear measuring 166.55 feet thereon.

It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Montgomery is hereby awarded all right, title, and interest in the 2009 Hyundai Sonata. Mr. Gary Montgomery is hereby divested of any right, title and interest in said vehicle. Ms. Montgomery is solely responsible for any indebtedness on said vehicle, and shall indemnify, and hold Mr. Montgomery harmless therefrom.

It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Montgomery is hereby awarded all personal property, furniture and furnishings she requested in her proposed division of marital assets, free and clear of any claim from Mr. Montgomery.

It is further **ORDERED, ADJUDGED AND DECREED** that: Mr. Montgomery is hereby awarded all right, title, and interest in the 1992 Ford pickup truck and he will be responsible for all costs associated with the truck and shall indemnify, and hold Ms. Montgomery harmless therefrom. Ms. Montgomery is hereby divested of any right, title, or interest ins said vehicle.

It is further **ORDERED, ADJUDGED AND DECREED** that: Mr. Montgomery is hereby awarded all personal property, furniture, and furnishings Ms. Montgomery is holding for him that she testified to, free and clear of any claim from her.

It is further **ORDERED, ADJUDGED AND DECREED** that: All other items of furniture shall be sold, and the sale proceeds are split equally between the parties.

It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Montgomery's request for alimony is hereby respectfully denied.

It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Montgomery's request for attorney's fees is hereby most respectfully denied.

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It is further **ORDERED, ADJUDGED AND DECREED** that: Ms. Lesley Burnette Montgomery is hereby restored to her previous name of "Wright".

It is further **ORDERED, ADJUDGED AND DECREED** that: **Court** costs for this action are hereby taxed against Mr. Gary Montgomery for which execution may issue if necessary.

It is further **ORDERED, ADJUDGED AND DECREED** that: **the parties are hereby NOTICED AS REQUIRED BY 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 the 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 29th day of January, 2020.

JUDGE PHILIP E. SMITH

APPROVED FOR ENTRY:

s/WILLIAM H. STOVER
STOVER LAW GROUP
WILLIAM H. STOVER, BPR NO.: 020537
222 2ND Avenue, North, Suite 326
Nashville, TN 37210
615.613.0541
Attorney for Plaintiff/Wife

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CERTIFICATE OF SERVICE

The undersigned Attorney for Wife certifies that on the 14TH day of January, 2020 service of a true and complete copy of the above and foregoing Final Decree and Exhibit was made via U.S.. Mail postage prepaid.

Gary Montgomery
Inmate No. 548597
Davidson County Sheriff
P.O. Box 196383
Nashville, TN 37219

s/WILLIAM H. STOVER
WILLIAM H. STOVER

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CERTIFICATE OF SERVICE

I hereby certify a copy of this Final Decree of Divorce has been mailed to William H. Stover, Attorney for Plaintiff, 222 2nd Avenue North, Suite 326, Nashville, TN 37210; and to Gary Montgomery, Defendant, No. 548597, P.O. Box 196383, Nashville, TN 37219 on this 29th day of January, 2020.

Brenda Parks
Clerk, Fourth Circuit Court