

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY 22 MAY -4 PM 4:11)

MICHAEL BAUER,)

vs.)

LORI G. BAUER,)

Defendant.)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2018-DR-08-2100

LEAN GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FINAL ORDER

RECEIVED

JUL 12 2022

SC Court of Appeals

DATE OF HEARING: March 28 & 29, 2022
PRESIDING JUDGE: Jack A. Landis
ATTORNEYS FOR PLAINTIFF: Alan D. Toporek and Matthew Halverstadt
ATTORNEY FOR DEFENDANT: Bryan Haskins
COURT REPORTER: Bonnie Britt

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY:
Lean Guerry Dupree
DATE 5/4/22 MGH
CLERK OF COURT
FAMILY COURT
BERKELEY COUNTY, SC

THIS MATTER CAME TO BE HEARD BEFORE ME on March 28 and 29, 2022, for a Final Hearing.

PRESENT AND APPEARING BEFORE THE COURT this day were counsel for the Plaintiff, Alan D. Toporek, and Matthew Halverstadt, the Plaintiff, counsel for the Defendant, Bryan Haskins, and the Defendant.

This action was instituted by the filing of a Summons and Complaint on November 9, 2018. Defendant filed an Answer on March 29, 2019. Plaintiff filed a Motion to Amend his Complaint on October 10, 2019. By Order, filed on January 23, 2020, the Plaintiff was granted leave to amend his Complaint. An Amended Summons and Complaint was filed on February 20, 2020. The amendment merely added a request that Defendant be required to satisfy Plaintiff's attorney's fees and court costs. In his pleadings, Plaintiff seeks a divorce, *a vinculo matrimonii*, of and from Defendant, on the statutory grounds of Adultery and the statutory grounds of Habitual Use of Alcohol. He also seeks an equitable division of property and a finding that neither party is entitled to alimony and/or separate support and maintenance from the other. Defendant counterclaimed seeking an equitable division of marital property and a divorce on the grounds of Adultery.

AT THE CALL OF THE CASE counsel for the Defendant orally moved to be relieved as counsel. The Court inquired of the Defendant whether she consented to her counsel being relieved.

Defendant objected to her counsel being removed, and insofar as counsel had not filed a Motion, giving the Defendant ten (10) days within which to respond to the Motion, his Motion was denied. The case proceeded to trial.

Plaintiff, Defendant, and Tamara Bauer, Plaintiff's former wife testified.

BASED UPON THE testimony of the parties, Tamara Bauer, and the exhibits that were introduced into evidence, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has subject matter and personal jurisdiction in this matter.

2. The parties are husband and wife, having been married on December 20, 2014.

3. That the parties initially separated in the late Winter of 2016. An action was filed in Charleston County and an Order evolved from that action. The parties never obtained a divorce and reconciled in the Spring of 2017. While this action was filed in November 2018, the parties separated on February 1, 2019.

4. I find that Plaintiff is 64 years of age, and Defendant is 62 years of age. Both parties are in reasonably good health. While Defendant, in the recent past, has had a couple of different surgeries, overall, she is in relatively good health.

5. That during the marriage and up to, including the present time, the Plaintiff has been employed as a Medical Sales Representative. He was an independent contractor and is now an employee of Crosslink Orthopedics. I find that there was evidence submitted indicating that, at one time in the past, Plaintiff earned approximately \$500,000.00 a year; however, currently he earns between \$300,000 and \$400,000.00 annually. The change in Plaintiff's status from an independent contractor to an employee was a change that the employer made and not Plaintiff.

6. I find that Defendant was employed as a hairstylist when the parties married and continues to work in that capacity. She is currently working out of her home. Defendant's primary income over the last couple of years has been from three Airbnb units located at her home at 506 Live Oak Drive, Mt. Pleasant, South Carolina. I find that in the calendar year 2018, Defendant grossed approximately \$78,000.00 on her Airbnb units.

7. Defendant acquired the property located at 506 Live Oak Drive, Mt. Pleasant, South Carolina, as a result of a former divorce settlement. Upon commencement of the marriage in December 2014, Plaintiff began making the mortgage payments on the Live Oak property and would routinely pay substantially more monies that were due to assist Defendant in having the



principal reduced on the property. I find that Plaintiff was primarily responsible for satisfying the mortgage payments on the 506 Live Oak Drive property while the parties resided together as husband and wife during the months of December 2014 through February 2016 and from June 2017 through January 2019. During that time, in addition to making the ongoing mortgage payments, Plaintiff caused the mortgage indebtedness to be reduced by \$46,000.00.

8. During the period from December 2014 through February 2016, the parties resided at 506 Live Oak Drive, Mt. Pleasant, South Carolina. During this time, the parties did extensive remodeling on the Live Oak property and created a fashionable hair salon, consisting of two (2) chairs, a massage table, and pedicure and manicure seating. However, during that time, Plaintiff's daughter from his former marriage came and resided with the parties for a period of time and the salon was converted into a large master bedroom.

9. Upon the last separation of the parties in February 2019, Defendant returned to the 506 Live Oak Drive property to reside. As a result, she has lost the benefit of a portion of her income, as she is living in what was formerly an Airbnb unit.

10. After the parties' first separation in 2016, Plaintiff purchased a condominium on Daniel Island, in September 2016. Plaintiff put \$200,000.00 down on that condominium. He testified that this was monies earned while employed as a subcontractor, that it was prior to the marriage, that he had monies in an account, and therefore, it was not marital. Plaintiff has failed to satisfy this Court that all the monies utilized for that down payment were earned before the marriage.

11. During the period of the initial separation, Plaintiff's mother passed away and he inherited a substantial sum of money that was utilized to satisfy the mortgage on the Daniel Island condominium, therefore, leaving it lien-free.

12. According to appraisals, which were entered into evidence without objection the Daniel Island condominium has a value of \$540,000.00, and the Live Oak Drive property has a value of \$850,000.00.

13. Upon the parties' reconciliation in 2017, Defendant moved into the Daniel Island condominium and the parties utilized it as their marital residence. The property was fully paid for at that time; however, some improvements were made to the property. While Defendant did reside in the condominium, Plaintiff never put her name on the title to the property.

14. Defendant claimed to be responsible for substantial improvements to both the Live



Oak property and the Daniel Island property. Defendant attempted to persuade the Court that these improvements were accomplished by her and paid for by her. However, as the testimony and facts ultimately revealed, although Defendant may have signed some checks, the monies were provided by Plaintiff. With the reduction in principle, Defendant currently has a mortgage balance on the Live Oak property of \$197,000.00. The other properties that the parties came into the marriage having consisted of the Defendant's Jeep and her retirement, which she claimed at the time, was worth \$439.00. The Court will not consider the additional monies that were utilized from Defendant's retirement, as it was dissipated during the time the parties were married. Plaintiff, on the other hand, has several assets, including the Daniel Island property. Plaintiff has a life insurance policy worth a cash value of \$80,000.00, combined voluntary retirement accounts, one of which is comprised of \$75,000.00, and the other is comprised of \$37,000.00. Plaintiff also owns stocks, which have a value of \$112,000.00. The Plaintiff also has a TD Ameritrade account with a balance of \$10,500. Defendant's Jeep has a value of \$12,000.00.

15. I find that the parties' separation was brought about as a result of the misconduct on the part of Defendant. Although there was testimony that Plaintiff went to reside with his former wife and daughter during periods of separation, his former wife was subpoenaed to testify, and I found her to be extremely credible. Although the opportunity to commit adultery existed, I find there was no inclination to do so. I find that Defendant acknowledged that during the period of the marriage, after the initial separation, she engaged in an adulterous relationship with an individual identified as Mr. Bill Harvey. I do not; however, find that the affair contributed to the separation of the parties, as it did occur after the separation. I do find; however, that what brought about the separation was Defendant's abusive behavior. She was verbally abusive, intoxicated on more than one occasion, and threatened to kill Plaintiff with a knife on at least one occasion. I find, at that point in the relationship, the parties had little choice but to separate. I further find that while neither party testified as to a desire to seek a divorce in their testimony, although it was originally plead, neither party is entitled to a divorce; however, they are entitled to reside separate and apart without cohabitation. I find that this is not an alimony case. I find there was no testimony presented by either party indicating that the requirements necessary for a determination of alimony was appropriate. I further find that Defendant's subsequent adulterous conduct would act as a bar to alimony.

16. I find that the Live Oak property was transmuted into marital property. Although



it was purchased before the marriage, testimony demonstrated that the Plaintiff made the majority of, if not all of the mortgage payments while the parties resided together, or at least the payments were made out of his account and the checks were signed by the Defendant. Moreover, there were substantial improvements and reconstruction on the Live Oak property, which were funded by Plaintiff. While not concluding that Defendant contributed nothing to the property, I do find that Plaintiff contributed a substantial amount to increasing the value of that property. Plaintiff helped reduce the principal balance, lower than it would have been, had only the ongoing mortgage payments been made. Defendant indicated an interest to transmute the property when she deeded a one-half interest to Plaintiff. However, the Court is cognizant of the Separation Agreement that was approved before the parties reconciled in 2017, which required Plaintiff to remove his name from the property, and in fact, he did remove his name. However, it may not have been until the parties had reconciled and subsequently separated the last time.

17. I find that Plaintiff made all the mortgage payments on the Daniel Island condominium. I do not find that the Daniel Island property has been transmuted, although, there were numerous modifications for upgrades made to the condominium, such as new lighting fixtures, and electricity run to various areas of the home. However, again, these monies were paid by Plaintiff. However, the Court cannot conclude the source of the \$200,000.00 that was used as a down payment on the home. The Plaintiff testified that these monies came from the former company that he operated as an independent contractor and because that business was in operation during the pendency of the marriage, I find that the Defendant has a special interest of equity in the Daniel Island property, at least as to the \$200,000.00 down payment. Plaintiff paid the balance of the mortgage, and ultimately satisfied the mortgage, before the parties' reconciliation, with monies he inherited from his late mother's estate. I find that in adding Plaintiff's retirement accounts and using \$200,000.00 as the value of the marital value of the Daniel Island property, I find that Plaintiff has marital assets of \$479,500.00.

18. Defendant's home appraised for \$850,000.00 and there is a payoff of \$197,000.00 on its mortgage, leaving an equity of \$653,000.00. Defendant also has her Jeep valued at \$12,000.00, leaving a marital estate in her column of \$665,000.00. I find that in order to balance the equities in this matter, Defendant shall contribute the sum of \$92,750.00 to Plaintiff as his marital interest in her property.



19. I find that Defendant shall be entitled to the exclusive use, possession, and ownership of all those items listed in Plaintiff's Exhibit 13 if they can be located. Many of those items are currently in her possession. Defendant shall have leave to obtain those items. Defendant must grant Plaintiff a minimum of one (1) week's notice of her desire to walk through the condominium and must be accompanied by law enforcement. Plaintiff shall be allowed to have a third-party witness during this time.

20. I find that both parties have incurred substantial attorney's fees and costs; however, both parties have substantial assets. While Plaintiff enjoys a substantial income and although Defendant does not have the same level of income, she does possess sufficient assets to provide her with monies to satisfy her legal fees. Therefore, the Court finds that both parties have the ability to pay their own fees and costs.

Based on the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

A. Defendant's abusive behavior, including threatening to kill the Plaintiff with a knife, led to the parties' separation; therefore, Plaintiff is granted an Order of Separate Support and Maintenance, allowing him to continue living separate and apart from the Defendant;

B. Defendant shall have the exclusive use, possession, and ownership of the property located at 506 Live Oak Drive, Mt. Pleasant, South Carolina, her Jeep, and any additional property and/or assets in her individual name. Defendant shall be solely responsible for all costs associated with her respective property and shall hold Plaintiff harmless, as well as indemnify him on any financial indebtedness thereon;

C. Defendant shall also be entitled to the exclusive use, possession, and ownership of the items listed in Plaintiff's Exhibit 13, if they can be located. Defendant shall have leave to obtain those items and must grant Plaintiff a minimum of one (1) week's notice, of her desire to walk through the condominium, and Defendant must be accompanied by law enforcement. Plaintiff shall be allowed to have a third-party witness during this time;

D. Plaintiff shall have the exclusive use, possession, and ownership of the property located at 200 River Landing Dr. 110F, Daniel Island, South Carolina, his vehicle, and any additional property and/or assets in his individual name. Plaintiff shall be solely responsible for all costs associated with his respective property and shall hold Defendant harmless, as well as indemnify her on any financial indebtedness thereon;



E. Each party shall be exclusively responsible for any and all debts listed in his or her respective names;

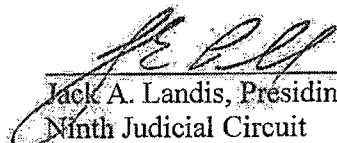
F. During the marriage, the 506 Live Oak Drive, Mt. Pleasant, SC property was transmuted into marital property; therefore, in order to balance the equities in this matter, the Defendant shall pay the sum of \$92,750.00, directly to Plaintiff, as his marital interest in said property and that the Plaintiff shall have a Judgment against the Defendant in the amount of \$92,750;

G. The Clerk of this Court shall enter Judgment, in the foregoing amount, \$92,750.00, together with annual interest at the statutory rate, in the Judgment Rolls of Berkeley County, South Carolina;

H. Neither party is entitled to alimony/spousal support of whatever kind. Furthermore, Defendant's adulterous conduct would act as a bar to her receiving any alimony;

I. Each party shall be solely responsible for any and all of his or her own attorney's fees and costs incurred during the pendency of this action.

AND IT IS SO ORDERED!



Jack A. Landis, Presiding Judge
Ninth Judicial Circuit

This 4th day of May, 2022
Moncks Corner, South Carolina

PENALTY FOR CONTEMPT

Failure to comply with the terms of this Order may constitute contempt of Court and may be punishable by a fine, a public work sentence, and/or by imprisonment in a local correctional facility or any combination thereof, in the discretion of the Court, but not to exceed imprisonment for one (1) year, a fine of One Thousand Five Hundred (\$1,500.00) Dollars, a public work sentence not to exceed three hundred (300) hours, and/or any combination thereof, as provided by S.C. Code Ann. 20-7-1350 (1976) (as amended).

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