

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Court Judge
Case No. 2008-CP-10-000324
Court of Appeals
Opinion No.: 2011-UP-264

David A. Hauge.....Respondent,

vs.

Adrienne Curran.....Petitioner.

MOTION FOR DISMISSAL OF APPEAL AND
MOTION TO VACATE OPINION UNDER REVIEW

Pursuant to Rules 260 and 261 of the *South Carolina Appellate Court Rules*, the Petitioner prays for an Order of the Court dismissing the appeal¹ and vacating the Opinion of the Court of Appeals under review. The motion is based on the following grounds:

This case began when Dr. Hauge sued his then wife, Dr. Curran, alleging torts arising out of what he contended were his wife's mismanagement of marital assets. After Judge Roger Young dismissed the case without prejudice on June 29, 2009, on the ground that the same parties were litigating the same issues in the Florida matrimonial court, Dr. Hauge appealed Judge Young's dismissal. On June 7, 2011, the Court of Appeals reversed in part, finding that the actions pending in South Carolina and Florida were not identical. On August 12, 2013, the Florida matrimonial court dissolved the marriage of the parties and approved a settlement agreement between them, which provided in part that all the South Carolina litigation be ended

¹ This appeal is scheduled for oral argument on Tuesday, September 17th at 9:30.

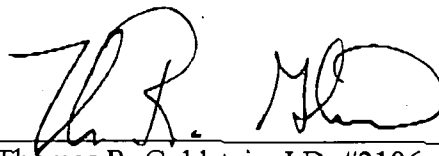
with prejudice. (The Florida divorce decree and the parties' agreement are attached to this motion and incorporated by this reference.) Thus, the circuit court's decision that the issues and the parties were identical proved to be correct as Dr. Hauge and Dr. Curran resolved all the issues raised in the South Carolina litigation through their matrimonial litigation. The agreement between the parties, as approved by the Florida court, proves that the actions pending in Florida and South Carolina were, in fact, identical because the Florida matrimonial court distributed the same assets that were the basis of the South Carolina litigation. As a result of the parties' Florida settlement agreement, the only issue left remaining is the Court of Appeals' reasoning in the Opinion under review. We now know as a result of the Florida settlement that Judge Young was correct. Based upon the foregoing and upon the authority of Rule 261(d) to vacate prior Opinions, the petitioner moves for an Order of the Court:

1. Dismissing the appeal as moot, and
2. Vacating the Court of Appeals Opinion under review.

Prior to filing this motion, the undersigned consulted with opposing counsel who consents to a dismissal of the appeal as being moot, but does not consent to vacating the Opinion currently under review.

Respectfully submitted,

September 3, 2013



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IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT COURT IN AND FOR
MONROE COUNTY, FLORIDA

FAMILY DIVISION

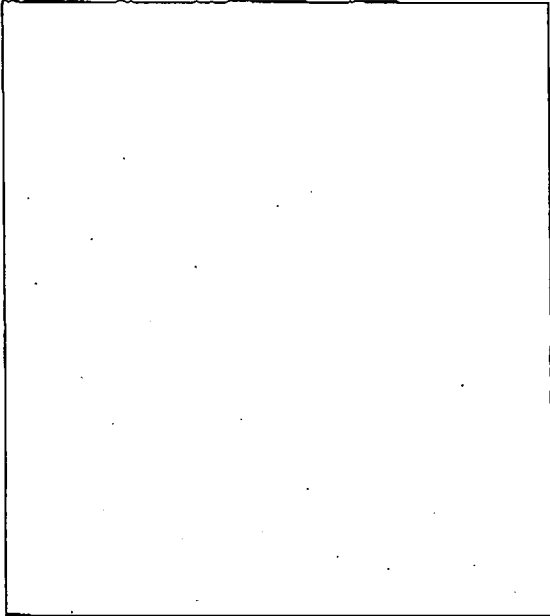
CASE NO.: 2007-DR-1641-K

IN RE: THE MARRIAGE OF

DAVID ARTHUR HAUGE,
Petitioner/Husband,

and

ADRIENNE MARGARET CURRAN,
Respondent/Wife.



FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE came on before me, the undersigned Judge, for an Uncontested Final Hearing on Monday, August 12, 2013 at 10:00 A.M. The Court having heard the testimony of the Petitioner and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction over the subject matter and the parties.

B. Both parties have been residents of the State of Florida for more than six months next before the filing of this action and last maintained a marital domicile in Monroe County, Florida.

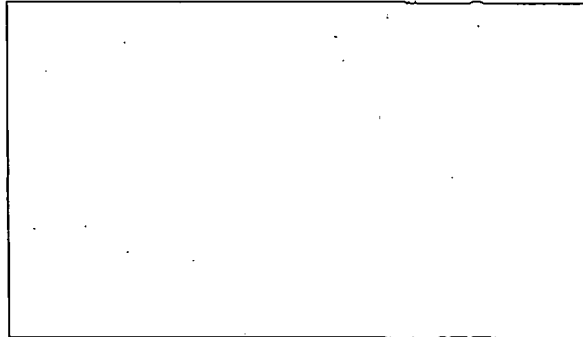
C. On July 30, 2013, the parties entered into a Settlement Agreement which has been marked ~~in evidence~~ ^{for identification} as Petitioner's Composite Exhibit "1." The Court adopts and ratifies said Agreement. It resolves all claims between the parties.

D. The marriage between the parties is irretrievably broken.

E. At the request of the parties and their counsel, the Settlement Agreement is being released to the custody of the parties' counsel.

After due consideration to the aforesaid findings of fact and conclusions of law, it is hereby

CURRAN and CURRAN
CASE NO.: 2007-DR-1641-K



ORDERED AND ADJUDGED as follows:

1. The marriage between the parties is dissolved.
2. The Settlement Agreement, which has been marked in evidence as Exhibit "1" in this suit, is hereby ratified and incorporated into this judgment, but not merged. The parties are directed to comply with all of its provisions as they each have the ability to do so.
3. This Court retains jurisdiction over the parties and the subject matter to enforce the parties' Settlement Agreement, to enter any orders required to effectuate the terms of the Settlement Agreement and for all other purposes as provided by law.
4. The Settlement Agreement is released to the custody of the parties' counsel.

DONE AND ORDERED in Open Court at Monroe County, Florida this 12 day of August, 2013.

MARK H JONES

CIRCUIT JUDGE

Copies furnished to:

FOGEL RUBIN & FOGEL
DAVID MANZ

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Subject: Re:
From: Scott Rubin (srubin@fogelrubinfogel.com)
To: dlm@gmpalaw.com;
Cc: tfogel@fogelrubinfogel.com;
Date: Monday, July 29, 2013 8:41 PM

Dave,

We have the specific authority from Dr. Curran to convey her acceptance of the agreement set forth in your below email of July 29, 2013 at 8:28 PM. Please commence drafting a Marital Settlement Agreement.

Please advise whether you will be appearing at tomorrow's depositions commencing at 9:00.

Scott

Sent from my iPad

On Jul 29, 2013, at 8:28 PM, David Manz <dlm@gmpalaw.com> wrote:

Scott

We have an agreement. I made your changes. Please confirm. My client has accepted the agreement as follows.

1. Each party would maintain sole ownership of all assets in his or her name free and clear of any claim by the other, including real estate, business interests including, but not limited to Chidna, Slodarus Bunker Hill, Island Time Unlimited, CW Marine, Panamanana, Coastal Empire, Isla Parida Phoenix, Mosstree, King Street Antique Mall, Low Country Emergency Physicians, Ayredog, Inc., Tricksy, LLC, and Doctors Spa of KW, all corporate and personal bank accounts and retirement accounts. Particularly, each would release all claims against the other's retirement accounts;

2. Each party shall maintain sole ownership of all assets in his or her possession, including personal property:

3. The money under the control of Robert Stone shall be divided equally as and for equitable distribution. The parties shall equally bear the burden of any and all penalties assessed in early termination of certificates of deposits and each will pay the income tax due on one half the interest earned this year, meaning 2013. Mr. Stone shall be jointly requested to calculate the amount. If there is a way to avoid the penalties on the certificates of deposit by having the bank transfer ownership of them, that option would be available to the parties. The income tax due on the interest should be shared equally, not just for 2013, but for 2011 and 2012 as well. To be clear, I will work on the releases as soon as possible

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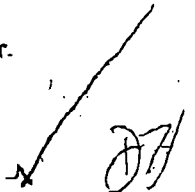
and recognize you will not be back into the office for several days and will not be able to work on them as quickly as I. In any event you for see no problem having the releases signed by your client well prior to the August 12 hearing. The accounts/CD's held by Mr. Stone would be distributed contemporaneous with rendition of a Final Judgment of Dissolution of Marriage, or as soon as possible thereafter intended to be set for hearing on August 12th. In all events, though, the monies from the account will be divided between the parties only after exchange of mutual releases between the parties, and releases by your client to Chris and Jeff, and releases from Chris and Jeff to your client. I would work on the releases today, direct them to my client, Chris and Jeff, and get back the releases from all three of them, get them to you, and you would do the same from her to my client and her to Chris and Jeff with the predicate that the releases are exchanged, the one half share will be directed to each party, and the \$157,500 as contemplated in paragraph 7 would be released by Mr. Stone to my trust account at the time of entry of the judgment or contemporaneous as possible thereto;

4. Each party shall bear his or her own attorneys fees, suit money and costs;

5. Each party shall waive and release all claims, rights, duties, obligations, and causes of action, including tort claims, against the other, whether brought in this section, brought in any other action or which could have been brought in this or any other action. Each party further shall waive and release from any claims all disclosed entities in which either party owns an interest, including specifically, but not limited to Chidna, Slodarus Bunker Hill, Island Time Unlimited, CW Marine, Panamanana, Coastal Empire, Isla Parida Phoenix, Mossfree, King Street Antique Mall, Low Country Emergency Physicians, Ayredog, Inc., Tricksy, LLC, and Doctors Spa of K.W. Both parties agree not to make any claims against each other to other agencies or entities or insurance companies, whether DOA, DEA, DPR, the IRS, my client's disability insurance company, or any other entities whatsoever, however, if served with appropriate legal process, each party shall respond appropriately and testify truthfully if their testimony is required. Additionally, releases shall be signed in favor of each party on behalf of all Chidna entities, Slodarus entities and all other entities either party deems necessary. Additionally, Mr. Hamilton and Mr. Bassett shall execute releases in favor of Dr. Curran, as noted in paragraph 3, and she will execute releases in favor of my client, and Mr. Hamilton and Mr. Bassett. Neither party will file a defamation action against the other for acts occurring prior to this date, nor will either party make any defamatory statements against the other. There is no waiver of defamation actions for defamatory statements made after this date;

6. The South Carolina litigation will be dismissed with prejudice with each party to bear his, her or its own attorneys fees and costs;

7. In full and final settlement of all disputed claims that each party has against the other and with no admission of liability by either party and solely in consideration of the costs of further discovery and continued litigation, Mr. Stone will direct to my trust account \$157,500 from your client's one half share of the monies in his possession, to be paid by Mr. Stone contemporaneous with rendition of the final judgment or as contemporaneous as possible thereto, and predicated upon your receipt of the releases by my client and Mr.



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Hamilton and Mr. Bassett to your client;

8. The specifics of the parties settlement shall be confidential. Neither party shall disclose the contents of the settlement to any third person other than attorneys or accounting professionals. Since there will be no executory provisions of the parties settlement, excepting the exchange of releases hereto, the settlement shall not be filed in the public records. Both parties shall request Judge Jones to allow the agreement to be marked but released to counsel;

9. We shall attempt to put together a formal marital settlement agreement embodying these terms and other customary boilerplate language; however, if we are unable to agree upon the language of the formal marital settlement agreement, the terms of this e-mail, if accepted by return e-mail, shall be fully enforceable and binding upon the parties;

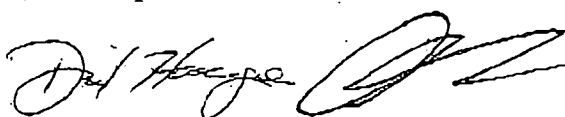

10. My client will give your client an assignment of rights to pursue a full accounting of all antiques which the parties entrusted or sold to Palmer and Davis to determine precisely what has been sold, given away, consigned or otherwise disposed of by Palmer and Davis, to determine precisely what has been sold, given away, consigned or otherwise disposed of by Palmer and Davis. Once that is determined, all claims to proceeds or damages or conversion due to the parties other than the prior approximate \$4,000 payment and the new \$5,381.47 received by Dr. Hauge, will belong to Dr. Curran. Your client shall have the right to deal with Duck and Dolphin and be entitled to any antiques and proceeds they may have.

11. To give Dr. Curran appropriate time to consult with a tax professional, but to obtain closure, by the 12th of August she either tells him she will pay the tax consequences on her receipt of the proceeds or inform him that she will pay the gains for her half of the Slodarus sales under her own return. Thus she shall notify Dr. Hauge by the 12th through counsel whether she will reimburse my client for one-half the taxes due on Slodarus proceeds with him reporting all the proceeds on his 2012 tax return, or alternatively, whether she will report one half and on her return pay the tax due thereon; that decision shall be at her sole option. In any event, Dr. Hauge shall make available to Dr. Curran or her tax professional all information necessary to properly make the determination and calculate the tax due. If Dr. Curran decides to pay Dr. Hauge one half the total taxes due on the Slodarus money, it is to be paid no later than August 12, 2013

12. Both parties waive all alimony claims in all forms against the other party, and further waive the right to modify the waiver.

13. Both parties waive all further discovery except for the fact that Dr. Curran intends to proceed with the depositions of Palmer and Davis on August 30. All other scheduled depositions are hereby canceled and all other pending discovery motions, motions to compel, motion for protective order, or other motions are hereby canceled.

14. The parties intend to proceed to final hearing on August 12, 2013

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-324
Court of Appeals Opinion No.: 2011-UP-264

David A. Hauge, Appellant,

vs.

Adrienne Curran, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served one copy of the Petitioner's Motion to Dismiss Appeal and Vacate Opinion Under Review by depositing a copy in the United States Mail, postage prepaid, on September 3, 2013, addressed to Mary L. Arnold, Esq. 749 Johnnie Dodds Blvd., Suite B, Mt. Pleasant, S. C. 29464.



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