STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Lexington County
Family Court
Richard W. Chewning, III, Family Court Judge

Case No. 2007-DR-32-2207
Appellate Case No. 2013-000436

Leann Marie Coghlan,

Appellant,

v.

Philip Anthony Coghlan,

Respondent

MOTION TO DISMISS

Appellant, Leann Marie Coghlan, and Respondent, Philip Anthony Coghlan, respectfully move this Court, pursuant to Rules 240 and 260(b) of the South Carolina Appellate Court Rules, to dismiss the matter now before the Supreme Court, and in support of this motion state as follows:

The Court of Appeals filed an opinion in this case on November 14, 2012. Respondent filed a petition for rehearing, which the Court of Appeals granted in part and

denied in part by order dated January 30, 2013. The Court of Appeals withdrew its original opinion and filed a substituted opinion on January 30, 2013.

The initial deadline for the filing of a petition for writ of certiorari was March 1, 2013. Respondent sought and this Court granted two extensions of that deadline.

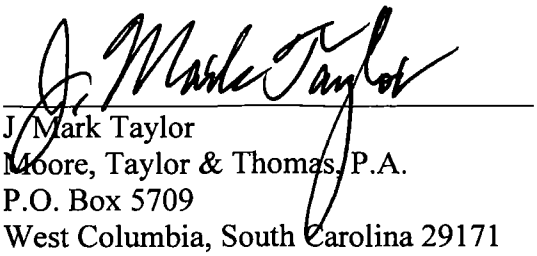
During this period, the parties negotiated an agreement to settle certain of the outstanding issues and to submit the remaining issues to binding arbitration. A consent order confirming the agreement was entered in the family court, and respondent informed the Supreme Court that he would not be filing a petition for writ of certiorari.

By order dated May 1, 2013, the Supreme Court held that the family court was without jurisdiction to enter the consent order confirming the parties' agreement. The Court vacated the consent order, held this matter in abeyance, and remanded the case to the family court for consideration of the parties' settlement agreement. Pursuant to the remand, the family court entered a consent order on May 6, 2013, confirming the parties' agreement. (See consent order attached hereto as Exhibit "A".)

The arbitration is scheduled to occur on Saturday, May 11, 2013. The parties are in agreement to have the matter before the Supreme Court dismissed and to allow the arbitration to proceed as scheduled. Accordingly, pursuant to Rule 260(b), the parties jointly move for dismissal of this matter.

Respectfully submitted,

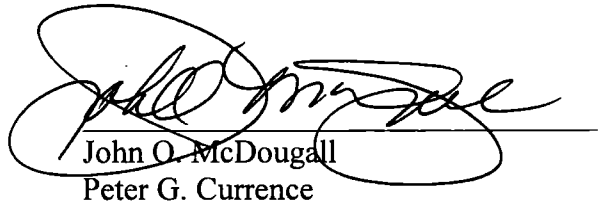
SIGNATURES ON FOLLOWING PAGE



J. Mark Taylor
Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
Telephone: 803-796-9160

Katherine Carruth Goode
229 South Congress Street
Winnsboro, South Carolina 29180
Telephone: 803-799-4440

Attorneys for Respondent



John O. McDougall
Peter G. Currence
McDougall & Self, LLP
791 Greenlawn Drive, Suite 4
P.O. Box 90860
Columbia, South Carolina 29290
Telephone: 803-776-3130

Attorneys for Appellant

ATTACHMENT "A"

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE FAMILY COURT OF THE FIFTH JUDICIAL CIRCUIT
Leann Marie Coghlan, Plaintiff, vs. Philip Anthony Coghlan, Defendant.	)	**CONSENT ORDER APPROVING AGREEMENT AND CONSENT ORDER TO ARBITRATE** Docket No. 13-DR-40-1147 13-DR-40-1195

Leann Marie Coghlan is represented by John O. McDougall. Philip Anthony Coghlan is represented by J. Mark Taylor. A FINAL ORDER AND DECREE OF DIVORCE was filed between the parties on July 20, 2010. This FINAL ORDER AND DECREE OF DIVORCE was appealed and an unpublished Opinion No. 2012-UP-609 was filed in the Court of Appeals on November 14, 2012, Withdrawn, Substituted, and Refiled January 30, 2013 (**Exhibit 1**).

On March 19, 2013, a CONSENT ORDER TO CHANGE VENUE was issued in regard to the matter entitled *Leann Marie Coghlan, Plaintiff, vs. Philip Anthony Coghlan, Defendant*, Docket No. 07-DR-32-2207 and filed in the Family Court of the Eleventh Judicial Circuit, Lexington County, on March 20, 2013, transferring venue of that matter to Richland County (**Exhibit 2**).

On March 21, 2013, a CONSENT ORDER TO CHANGE VENUE was issued in regard to the matter entitled *Leann Marie Coghlan, Plaintiff, vs. Philip Anthony Coghlan, Defendant*, Docket No. 07-DR-32-02557 and filed in the Family Court of the Eleventh

Judicial Circuit, Lexington County, on March 26, 2013, transferring venue of that matter to Richland County (**Exhibit 3**).

Philip Anthony Coghlan, hereafter Petitioner, requested an extension of time to file for certiorari to the Supreme Court and an Order granting an extension of time was entered on March 6, 2013 (**Exhibit 4**). Petitioner requested and received a second extension of time to file a petition for writ of certiorari and an Order granting an extension of time was entered on April 1, 2013 (**Exhibit 5**).

While the second extension of time to file a petition for writ of certiorari was pending the parties entered into an agreement to arbitrate all issues to be resolved by the courts and an AGREEMENT AND CONSENT ORDER TO ARBITRATE was filed on April 10, 2013 (**Exhibit 6**).

After the AGREEMENT AND CONSENT ORDER TO ARBITRATE was filed on April 10, 2013, counsel for Petitioner advised the Supreme Court that the parties had reached an agreement and a Consent Order had been entered confirming the agreement, therefore, the Petitioner would not be filing a petition for writ of certiorari.

On May 1, 2013, the Supreme Court issued an Order in which it, *inter alia*, provided that the Family Court did not have jurisdiction to enter a Consent Order in this matter, the Consent Order issued by the Family Court was vacated, the Supreme Court held this matter in abeyance and remanded the case to the Family Court for consideration of the parties' settlement agreement providing that upon the issuance of a proper Order by the Family Court on remand, the parties may seek, pursuant to Rule 260(b), *SCACR*, to have the matter before the Supreme Court dismissed (**Exhibit 7**).

The parties move before this Court, through their counsel, for their AGREEMENT AND CONSENT ORDER TO ARBITRATE filed April 10, 2013 (**Exhibit 6**) to be reviewed and approved by this Court and made an Order of this Court in each and every particular.

NOW, THEREFORE, based upon the foregoing, it is

ORDERED that the AGREEMENT AND CONSENT ORDER TO ARBITRATE filed with this Court on April 10, 2013, be, and hereby is, approved by this Court and made an Order of this Court in each and every particular.

AND IT IS SO ORDERED.

DOROTHY MOBLEY JONES
CHIEF ADMINISTRATIVE JUDGE
FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

May 6, 2013

WE SO MOVE:

JOHN O. McDOUGALL
ATTORNEY FOR LEANN MARIE COGHLAN

J. MARK TAYLOR
ATTORNEY FOR PHILIP ANTHONY COGHLAN

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Leeann Marie Coghlan, Appellant,

v.

Phillip Anthony Coghlan, Respondent.

Appellate Case No. 2010-173766

Appeal From Lexington County
Richard W. Chewning, III, Family Court Judge

Unpublished Opinion No. 2012-UP-609
Heard September 11, 2012 – Filed November 14, 2012
Withdrawn, Substituted, and Refiled January 30, 2013

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

John O. McDougall and Peter George Currence, of McDougall & Self LLP, of Columbia, for Appellant.

J. Mark Taylor, of Moore Taylor & Thomas PA, of West Columbia; and Katherine Carruth Goode, of Winnsboro, for Respondent.

PER CURIAM: Leeann Marie Coghlan (Mother) appeals the family court's order granting her and Philip Anthony Coghlan (Father) a divorce. Mother argues the family court erred in (1) granting Father sole custody of their children and setting the terms of visitation; (2) denying Mother's request for permanent periodic alimony; (3) valuing and apportioning the marital estate; and (4) denying her costs and attorney's fees. We affirm in part, reverse in part, and remand.

In appeals from the family court, an appellate court's standard of review is de novo. *Crossland v. Crossland*, 397 S.C. 406, 412, 725 S.E.2d 509, 513 (Ct. App. 2012). We may find facts in accordance with our own view of the preponderance of the evidence. *Lewis v. Lewis*, 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011). Yet we are not required to ignore the fact that the trial court was in a better position to evaluate the witnesses' credibility and assign comparative weight to their testimony. *Sanders v. Sanders*, 396 S.C. 410, 415, 722 S.E.2d 15, 17 (Ct. App. 2011). Thus, we will affirm the family court's factual findings unless the appellant satisfies this court that the preponderance of the evidence is against the finding of the family court. *Chisholm v. Chisholm*, 396 S.C. 507, 510, 722 S.E.2d 222, 223 (2012).

1. As to whether the family court erred in granting Father sole custody of the children and setting the terms of visitation, we affirm. The controlling consideration in setting child custody and visitation is the child's welfare and best interest. *High v. High*, 389 S.C. 226, 244, 697 S.E.2d 690, 699 (2010); *Smith v. Smith*, 386 S.C. 251, 272, 687 S.E.2d 720, 731 (Ct. App. 2009). In determining the best interest of the child, the family court considers who has been the primary caretaker; the conduct, character, attributes, and fitness of the parents as they impact the child; the opinion of the guardian ad litem (the GAL); and the age, health, and sex of the children. *Patel v. Patel,* 347 S.C. 281, 285, 555 S.E.2d 386, 388 (2001); *Reed v. Pieper*, 393 S.C. 424, 430, 713 S.E.2d 309, 312 (Ct. App. 2011). The court must also "consider the child's reasonable preference for custody," giving weight to "the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference." S.C. Code Ann. § 63-15-30 (2010).

Mother failed to prove by a preponderance of the evidence that the family court erred in determining custody and visitation. The parents' conduct, character, and fitness supports Father receiving sole custody. The evidence shows Father has maintained a consistent approach to parenting the children. Although Father's nonverbal conduct may have played some role in the girls' perception of Mother,

Mother's volatile conduct seems to be the proximate reason for the strain on the girls, despite her attempt to downplay its detrimental effect on them. Further, third party opinions indicated the girls were sometimes scared of Mother and relied on Father for stability. The GAL in particular was wary of the risk that Mother's character and conduct would hinder her ability to parent the children as they grow up. Lastly, the girls consistently and clearly expressed a preference that Father receive sole custody, and we see no reason to contradict the family court's finding that each child was of sufficient age, maturity, judgment, and ability to express that preference.

In addition, joint custody is not appropriate at this time. Mother testified joint custody was not in the girls' best interests, and her relationships with the girls are not guaranteed to improve simply by awarding her more time with them. All of the evidence in the record indicates the level of cooperation between Mother and Father necessary for joint custody is currently unlikely. *See Scott v. Scott*, 354 S.C. 118, 125-26, 579 S.E.2d 620, 624 (2003) (explaining that joint custody should be ordered "only under exceptional circumstances" because it "is usually harmful to and not conducive to the best interest and welfare of the children," especially "between estranged and quarrelsome" parents).

Lastly, we agree with the visitation set by the family court. The court granted Mother more visitation than the *pendente lite* order despite the children's wishes. The conditions in the final order further indicate that Mother has a remedy if the activities scheduled by Father for the girls become incommensurate with their needs or serve merely as a tool to deprive Mother of visitation.

2. As to whether the family court erred in establishing alimony, we reverse and remand. "An award of alimony . . . will not be disturbed absent an abuse of discretion. Generally, alimony should place the supported spouse, as nearly as is practical, in the same position he or she enjoyed during the marriage." *Myers v. Myers*, 391 S.C. 308, 313, 705 S.E.2d 86, 89 (Ct. App. 2011) (citation omitted). However, alimony should not "serve as a disincentive for spouses to improve their employment potential or to dissuade them from providing, to the extent possible, for their own support." *Id.* The family court must weigh thirteen factors "as it finds appropriate" in determining whether to award alimony. S.C. Code Ann. § 20-3-130(C) (Supp. 2011).

We disagree with the family court's finding that none of the applicable factors weighed in favor of granting permanent periodic alimony. While Mother may

have been intentionally under-employed during the summer, she did not do so based upon a desire to gain a "litigation advantage." She did so out of a desire to take care of the children during their summer vacation, while Father was at work. Further, the parties were married for thirteen years, with a high standard of living, and Father made four times as much as Mother. Although the family court reduced Mother's child support obligation and Mother may have opportunities to gain promotion, the record contains no competent evidence to determine the effect of the child support and alimony obligations on her ability to maintain a lifestyle near the party's pre-divorce standard of living. Lastly, the family court held it awarded Mother "rehabilitative alimony," described as Mother's absolved child support obligations that were previously held in abeyance and the temporary alimony she received from the *pendente lite* hearing. These items are not "rehabilitative alimony." *See Herring v. Herring*, 286 S.C. 447, 450, 335 S.E.2d 366, 368 (1985) (defining rehabilitative alimony as "alimony payable for a short, but specific and terminable period of time, which will cease when the recipient is, in the exercise of reasonable efforts, in a position of self support"). As a result, we remand for a finding of whether and how much alimony Mother should receive. *See Brandi v. Brandi*, 302 S.C. 353, 358, 396 S.E.2d 124, 127 (Ct. App. 1990) (remanding for reconsideration of alimony because of changes to equitable distributions and concerns with the family court's original alimony findings).

3. As to whether the family court erred in valuing and apportioning the marital estate, we remand.[1] Mother specifically argues the family court erred in calculating the marital estate because it adopted a miscalculation of the equity in the marital residence admitted to by Father's forensic accountant. We disagree.

Family courts have broad discretion in valuing and apportioning marital property. *Lewis*, 392 S.C. at 393, 709 S.E.2d at 656; *Deidun v. Deidun*, 362 S.C. 47, 58, 606 S.E.2d 489, 495 (Ct. App. 2004). Apportionment should reflect each spouse's contribution to the marital property's acquisition, giving weight to fifteen factors as

---

[1] We agree with the family court that Mr. Burkett's marital asset valuation was more credible than that provided by Mother's experts. Furthermore, the record contains only an incomplete transcript of Ms. Amos's testimony, and without more evidence, we cannot determine whether the court erred in rejecting Ms. Amos's suggestion to split Father's pension benefits using a percentage ratio. The family court may reconsider the method of apportioning Father's pension to the extent it would help provide an equitable apportionment of marital assets.

the court finds appropriate. S.C. Code Ann. § 20-3-620(B) (Supp. 2011); *Crossland*, 397 S.C. at 415-16, 725 S.E.2d at 514-15.

Mother has failed to prove by a preponderance of the evidence that the family court erred in calculating the marital equity. The family court adjusted the marital equity by adding the lien on the marital residence agreed to be taken by Father's parents. Mother simultaneously received an increase in equity in the marital estate by receiving the interests of Father and Father's parents in the Delaware property. This resulted in the 60–40 split approved by the family court.

At oral argument, Mother contended the family court erred in considering the lien taken by Father's parents and the equity received by Mother in the Delaware property because the lien and equity were non-marital. However, we cannot consider this issue. The record on appeal does not reveal a trial argument or motion to amend raising that issue, nor did Mother include such an argument in her appellant's brief. *Cf. Barrow v. Barrow*, 394 S.C. 603, 615, 716 S.E.2d 302, 309 (Ct. App. 2011) (holding an argument not raised to the family court either at trial or in a motion to amend is not preserved for review); *Smith v. Smith*, 308 S.C. 372, 374, 418 S.E.2d 314, 316 (Ct. App. 1991) (same); *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) (holding a motion raising an argument should be in the record on appeal to preserve the argument for review); *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) (holding an appellant may not use oral argument as a vehicle to make arguments not made in the appellant's brief).

In light of the need to reconsider alimony, however, we remand for the family court to reconsider whether the 60-40 split was fair and equitable. Mother provided the vast majority of the indirect contributions to the marriage as the primary caretaker of the children until the *pendente lite* order, and this factor must be considered. *See Peirson v. Calhoun*, 308 S.C. 246, 251, 417 S.E.2d 604, 607 (Ct. App. 1992) ("[W]here the parties agree the husband would be the income producer and the wife would be a homemaker and companion and give up her career, such an arrangement may be considered to be an equal partnership of the spouses.").

4. As to whether the family court erred in denying Mother costs and attorney's fees, we decline to address this issue in light of our other rulings. The family court must reconsider whether to award costs and attorney's fees on remand. *See Peirson*, 308 S.C. at 255, 417 S.E.2d at 609 (remanding attorney's fees issue for

reconsideration because the family court's decision on other remanded issues may affect the beneficial results factor in awarding attorney's fees).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF, THOMAS, and GEATHERS, J.J., concur.

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
LEANN MARIE COGHLAN, PLAINTIFF, v. PHILIP ANTHONY COGHLAN, DEFENDANT.	)	**CONSENT ORDER TO CHANGE VENUE** CIVIL ACTION NO: 07-DR-32-2207

FILED
2013 MAR 20 P 3:1
CLERK OF COURT
LEXINGTON, SC

This action was commenced by Plaintiff in Lexington County on September 26, 2007.

The Honorable Richard W. Chewning, III, issued the Final Order and Decree of Divorce on July 22, 2010.

Plaintiff's Motion to Alter Amend pursuant to Rules 52, 59 and 60 SCRCP, and Rule 2(a) SCRFC, was denied by Order dated August 24, 2010.

Plaintiff appealed and Plaintiff's Appeal was decided by the Court of Appeals by unpublished opinion dated November 24, 2012. Defendant filed a Motion for Rehearing with the Appellate Court and the Appellant Court granted Defendant's Motion for Rehearing in part and reissued an unpublished opinion January 30, 2013, which affirmed in part, reversed in part, and remanded the case to the Family Court.

Due to unrelated conflicts of interest, the Chief Administrative Judge, Judge Kellum W. Allen and Judge Robert E. Newton are recused from hearing this matter.

As a result of these conflicts and upon consent of counsel, I find that venue is proper in the adjoining circuit of Richland County by consent and under jurisdictional authority in accordance with Supreme Court Order 2012-11-21-06.

Authority has been set forth pursuant to S. C. Code §15-7-30, 15-7-50 and 15-7-100 that all further proceedings in this action be held in the Richland County Family Court.

Therefore, I find that for good cause shown, this matter shall be transferred from Lexington County, South Carolina to Richland County, South Carolina.

IT IS ORDERED that the above-captioned action is transferred to Richland County, South Carolina. The Richland County Clerk of Court's office shall assign a new docket number reflecting the County Code.

IT IS SO ORDERED.

CHIEF ADMINISTRATIVE JUDGE
FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

March 19, 2013

We Consent:

JOHN O McDOUGALL
ATTORNEY FOR PLAINTIFF

J. MARK TAYLOR
ATTORNEY FOR DEFENDANT

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
LEANN MARIE COGHLAN, PLAINTIFF, v. PHILIP ANTHONY COGHLAN, DEFENDANT.	)	**CONSENT ORDER TO CHANGE VENUE**
	)	CIVIL ACTION NO: 12-DR-32-02557

The Honorable Richard W. Chewning, III, issued the Final Order and Decree of Divorce on July 22, 2010.

Plaintiff's Motion to Alter Amend pursuant to Rules 52, 59 and 60 SCRCP, and Rule 2(a) SCRFC, was denied by Order dated August 24, 2010.

Plaintiff appealed and Plaintiff's Appeal was decided by the Court of Appeals by unpublished opinion dated November 24, 2012. Defendant filed a Motion for Rehearing with the Appellate Court and the Appellant Court granted Defendant's Motion for Rehearing in part and reissued an unpublished opinion January 30, 2013, which affirmed in part, reversed in part, and remanded the case to the Family Court.

The instant action was commenced by Plaintiff in Lexington County on November 6, 2012, wherein she filed a Complaint for modification of her child support obligation.

Defendant filed an Answer and Counterclaim on December 14, 2012, and an Answer and Amended Counterclaim on March 1, 2013.

Due to unrelated conflicts of interest, the Chief Administrative Judge, Judge Kellum W. Allen and Judge Robert E. Newton are recused from hearing this matter.

As a result of these conflicts and upon consent of counsel, I find that venue is proper in the adjoining circuit of Richland County by consent and under jurisdictional authority in accordance with Supreme Court Order 2012-11-21-06.

Authority has been set forth pursuant to S. C. Code §15-7-30, 15-7-50 and 15-7-100 that all further proceedings in this action be held in the Richland County Family Court.

Therefore, I find that for good cause shown, this matter shall be transferred from Lexington County, South Carolina to Richland County, South Carolina.

IT IS ORDERED that the above-captioned action is transferred to Richland County, South Carolina. The Richland County Clerk of Court's office shall assign a new docket number reflecting the County Code.

IT IS SO ORDERED.

CHIEF ADMINISTRATIVE JUDGE
FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

March 21, 2013

We Consent:

JOHN O McDOUGALL
ATTORNEY FOR PLAINTIFF

J. MARK TAYLOR
ATTORNEY FOR DEFENDANT

The Supreme Court of South Carolina

Leann Marie Coghlan, Respondent,

v.

Phillip Anthony Coghlan, Petitioner.

Appellate Case No. 2013-000436

The Honorable Richard W. Chewning, III
Lexington County
Trial Court Case No. 2007DR3202207

ORDER

Petitioner seeks an extension of time to serve and file the petition for a writ of certiorari and appendix. Respondent opposes the motion. The motion is granted and petitioner shall serve and filed the petition and appendix on or before April 1, 2013.

C.J
FOR THE COURT

Columbia, South Carolina
March 6, 2013

cc: John O. McDougall, Esquire
Peter George Currence, Esquire
J. Mark Taylor, Esquire
Katherine Carruth Goode, Esquire
George W. Branstiter, Esquire
The Honorable Jenny Kitchings

The Supreme Court of South Carolina

Leann Marie Coghlan, Respondent,

v.

Phillip Anthony Coghlan, Petitioner.

Appellate Case No. 2013-000436

ORDER

The time for serving and filing the Petition for Writ of Certiorari and Appendix is hereby extended until April 16, 2013.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

April 1, 2013

cc:
John O. McDougall, Esquire
Peter George Currence, Esquire
J. Mark Taylor, Esquire
Katherine Carruth Goode, Esquire
George W. Branstiter, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE FAMILY COURT OF THE FIFTH JUDICIAL CIRCUIT
LEANN MARIE COGHLAN, PLAINTIFF, v. PHILIP ANTHONY COGHLAN, DEFENDANT.	)	**AGREEMENT AND CONSENT ORDER TO ARBITRATE** CIVIL ACTION NO. 13-DR-40- 1147 13-DR-40- 1195

2013 APR 10 AM 9:38
JEANETTE W. GRIDE
CC,CP,GS & FAMILY COURT
RICHLAND COUNTY

PURSUANT TO § 15-48-10, ET. SEQ. NOTICE THAT THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

THE PARTIES to this action come before the Court requesting that an Order be issued confirming and stating in detail their agreement to submit the outstanding issues in the above referenced matter to binding Arbitration.

The parties represent by their signatures affixed hereto that they fully understand this Agreement and freely and voluntarily submit to binding Arbitration.

WHEREFORE, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND AGREEMENT

1. Defendant and the minor children, Christy Coghlan (born 4/29/1997); Kayla Coghlan (born 8/7/1998); and Kelly Coghlan (born 8/10/2000) shall be allowed to relocate from Chapin, South Carolina to Virginia effective June 1, 2013.

2. Any outstanding visitation issues shall be resolved either by agreement or Arbitration prior to the relocation.

3. The parties have agreed that Defendant shall advance cash in the amount of $52,524 to Plaintiff in lieu of this payment being made as an equitable distribution from his 401(k) account as ordered by the Final Order and Decree of Divorce filed on July 10, 2010. Defendant has borrowed and advanced Plaintiff the sum of $10,000 towards the $52,524 on March 28, 2013.

4. Plaintiff has executed a Quit Claim Deed transferring ownership of the former martial residence located at 604 Wisteria Key Place, Chapin, South Carolina to Defendant which shall be exchanged simultaneously with the $10,000 advancement from Defendant.

5. Defendant shall promptly list the Wisteria Key residence for sale. Defendant's employer, the Federal Bureau of Investigation (FBI), has the election to exercise a buyout of the residence located at Wisteria Key if a third-party sale cannot be effected.

6. Upon the sale of the residence located at Wisteria Key, or a buyout of the residence by the FBI, Defendant shall pay Plaintiff $42,524 from the proceeds of the sale/buyout as the balance of the $52,524 payment in lieu of the 401(k) account as ordered by the Final Order and Decree of Divorce.

7. The parties have agreed that Defendant (and Plaintiff) will not be an impediment to or knowingly delay the sale/FBI buyout of the Wisteria Key

property. There are acts or events which may be beyond Defendant's control, but otherwise the parties acknowledge it is in both of their interests for the house to be sold. Further, Defendant shall provide Plaintiff with copies of any listing agreements, contract(s) of sale or buyout and closing documentation.

8. Neither party shall be prejudiced by or from the monetary and deed transactions set forth in Paragraphs 3 – 7 above. Specifically, neither party shall be foreclosed from making any legal argument as contemplated in Paragraph ~~11~~ 12 of the Agreement.

9. Defendant shall pay Plaintiff's counsel $4,000 in attorney's fees on March 28, 2013, pursuant to the Order (Granting Temporary Relief) filed on March 6, 2013, in Civil Action No.: 12-DR-32-02557.

10. The Green Dolphin property located at 39577 Bay Road, North Bethany, Delaware 19930, shall continue to be listed for rent with the Long & Foster Real Estate, Inc. Agency. No time shall be reserved by owners for use of this rental unit during 2013 pending a decision by the Arbitrator as to the disposition of this property. Any rent proceeds derived from the rental of this unit shall be retained by the real estate agency pending the Arbitrator's decision as to the manner in which these proceeds should be distributed to the parties.

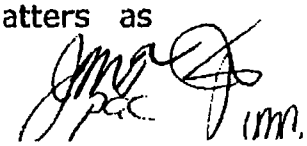
11. The parties have agreed that upon the execution and filing of this Agreement and Consent Order to Arbitrate with the Clerk of Court, Defendant shall waive his right to file a Petition for Writ of Certiorari before

the South Carolina Supreme Court stemming from the Appellate Case No.: 2012-173766.

12. The parties have agreed to submit all outstanding issues filed in this action pertaining to the matters previously designated as *Leann Marie Coghlan v. Philip Anthony Coghlan*, Case No.: 07-DR-32-2207, as decided in *Leann Marie Coghlan, Appellant v. Philip Anthony Coghlan, Respondent,* Appellate Case No.: 2010-173766, and *Leann Marie Coghlan v. Philip Anthony Coghlan*, 12-DR-32-02557, and any such other issues as might hereafter be stipulated by the parties, to binding Arbitration subject to the following terms:

a) The parties agree that the Arbitrator in this matter shall be Karl A. Folkens, Esquire. The parties agree that they shall submit all outstanding issues filed in this action, pertaining to the matters previously designated as *Leann Marie Coghlan v. Philip Anthony Coghlan*, Case No.: 07-DR-32-2207, as decided in *Leann Marie Coghlan, Appellant v. Philip Anthony Coghlan, Respondent,* Appellate Case No.: 2010-173766, and *Leann Marie Coghlan v. Philip Anthony Coghlan*, 12-DR-32-02557, and any such other issues as might hereafter be stipulated by the parties, to binding Arbitration.

b) The parties agree that any outstanding discovery and/or matters of an interim nature, as may arise prior to the Arbitration of this matter, shall be submitted to the Arbitration process. Karl A. Folkens, Esquire, has consented to arbitrate these matters as



evidenced by his signature hereafter. Neither the Arbitrator nor the scope of the arbitration shall be modified without written consent of both parties or further Order of this Court.

c) The parties agree to each give the Arbitrator in this matter immunity equal to that of judicial immunity for all acts of the Arbitrator during the course of this Arbitration. The granting of immunity is intended to be absolute and not qualified and is intended by the parties to be equal in all respects to the immunity given to Family Court Judiciary in the State of South Carolina.

d) The parties agree to permanently waive all rights to any and all claims of civil liability on the part of the Arbitrator that may arise during the course of the Arbitration, or allegedly resulting from the Arbitration. **This waiver and release is complete to all claims, present, and prospective.**

e) The parties acknowledge that the Arbitrator in this matter is an attorney licensed by the State of South Carolina; the parties also acknowledge that the Arbitrator during this Arbitration will be acting not as an attorney, but as an Arbitrator.

f) The parties shall equally share in the Arbitrator's fees and costs at the rate of $300.00 per hour, subject to allocation; however, the parties agree that the Defendant shall advance the Arbitrator's fees and Defendant shall be reimbursed by Plaintiff for her share of the

fees out of the proceeds received by her by way of the Final Arbitration Award.

g) The parties fully understand that the decision of the Arbitrator is final and binding upon them and that they do not have the right to apply to this Court or to any other Court for relief if either is unsatisfied with the Arbitrator's decision. The parties' decision to refer this case for final, binding Arbitration is made pursuant to the South Carolina Uniform Arbitration Act, § 15-48-10, et. seq. It is the intent of the parties and the Order of this Court that beyond a request to the Arbitrator to reconsider issues which he/she had decided, the decision of the Arbitrator shall be final and binding except to the limited extent provided in the statutory procedure. The parties agree that the construction of the grounds for review of an evident miscalculation of figures is limited to an obvious mistake, in the nature of "2+2=5."

h) The decision as to the conduct of the hearing, including but not limited to the introduction of evidence, location, and the conduct of the hearing, shall in the first instance be determined by the parties, through counsel, but any disagreement between them shall be decided by the Arbitrator as part of the Arbitration. The parties agree not to be bound by the rules of evidence of the State of South Carolina as to the issues submitted for Arbitration unless stated at the inception of Arbitration. The parties agree that the Arbitrator should conduct a fair proceeding and decide the case based on reliable evidence and South

Carolina law. There will not be a tape recording or recorded transcript made of the proceedings.

i) The parties also understand that the decision of the Arbitrator shall become the Order of the Family Court pursuant to the South Carolina Uniform Arbitration Act § 15-48-120, and shall be enforceable by the Family Court, just as any final order. The parties have agreed that they shall abide by and perform any and all aspects of the award rendered under Arbitration and that a judgment shall be entered on each and every aspect of the award, as would otherwise be allowed with any order of this Court.

j) Upon completion of the hearing, the Arbitrator will issue an Arbitration Award in writing, and deliver a copy of the Award to each party or his/her respective attorney by hand delivery or certified mail within 30 days, with the Award being final and binding upon both parties. There are limited rights to change, modify, correct or appeal an Arbitration Award, and those rights are governed by this Order. If either party appeals or requests the Family Court to change or modify the award, contrary to the terms hereof, or if either party contends that the Arbitrator could not arbitrate the issues of this matter, the challenging party shall pay the non-challenging party $10,000.00 in legal fees immediately. The Family Court shall enforce this provision immediately. The non-challenging party shall have the sole right to ratify or affirm the award in its entirety, or vacate the award in its

entirety or any portion thereof and allowing the Family Court to decide such issues as the non-challenging party designates.

k) The parties fully understand that the decision of the Arbitrator is equal to a judgment or decree. The parties understand they do not have the right to apply to the Family Court for relief if either is unsatisfied with the Arbitrator's decision.

l) Counsel for the parties shall present a Consent Order Confirming Arbitration Award to the Family Court for execution and filing upon receipt of the Arbitration Award. The Family Court does not need to take any approval testimony or make any approval findings or conduct any hearing prior to the execution and filing of the Consent Order Confirming Arbitration Award. (See *Swentor v. Swentor).*

13. The parties acknowledge that they are represented by competent counsel and each is well satisfied with his or her respective attorneys. Each acknowledges that all of his or her questions have been answered and each fully and completely understands the terms and conditions of this Agreement to Arbitrate.

14. Each has freely and voluntarily entered into the Agreement as set forth in paragraphs 1 through 12(a – l) above, understanding all of its terms and conditions. Neither has been forced or coerced into entering into this Agreement to Arbitrate.

15. The parties represent that neither is under the influence of alcohol, drugs or stress which would limit their ability to understand the terms of their Agreement to Arbitrate.

16. Both the Plaintiff and the Defendant represent that they believe that the Agreement to Arbitrate is fair and equitable, both to themselves and to each other.

WHEREFORE, BASED UPON THE FOREGOING, the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the matters presented.

2. The Agreement to Arbitrate between the parties as set forth above in Paragraphs 1 through ~~11~~ 12 (a – l) is fair and equitable and shall be adopted as the enforceable Order of the Court according to the Uniform Arbitration Act, South Carolina Code Ann. § 15-48-10, et. seq.

NOW, THEREFORE, based upon the above, it is hereby

ORDERED that the parties' Agreement to Arbitrate, set forth above in Paragraphs 1 through ~~11~~ 12 (a – l), shall be and is hereby issued as the enforceable Order of this Court; and

IMC

IT IS SO ORDERED.

/s/ Dorothy McKeag Jones
CHIEF ADMINISTRATIVE JUDGE
FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Dated: April 9, 2013

Columbia, South Carolina

I CONSENT TO SERVE AS ARBITRATOR TO THE ABOVE ENTITLED CASE:

KARL A. FOLKENS, ESQUIRE

WE CONSENT TO THE AGREEMENT TO ARBITRATE CONTAINED IN PARAGRAPHS 1 THROUGH 15 ABOVE:

LEANN MARIE COGHLAN
PLAINTIFF

PHILIP ANTHONY COGHLAN
DEFENDANT

JOHN O. McDOUGALL
ATTORNEY FOR PLAINTIFF

J. MARK TAYLOR
ATTORNEY FOR DEFENDANT

JMC

The Supreme Court of South Carolina

Leann Marie Coghlan, Respondent,

v.

Phillip Anthony Coghlan, Petitioner.

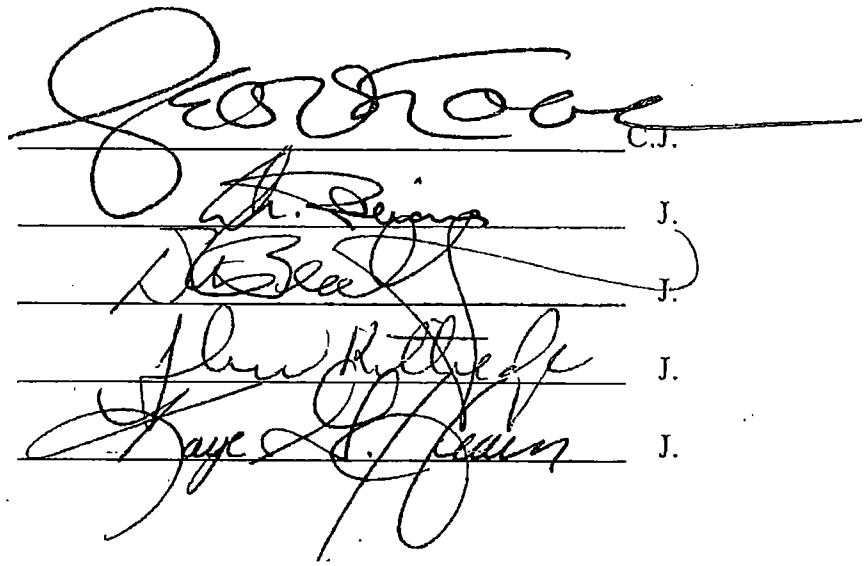
Appellate Case No. 2013-000436

ORDER

Counsel for petitioner has sought and received two extensions of time to file a petition for a writ of certiorari pursuant to Rule 242, SCACR, in this matter. Counsel for petitioner has now informed the Court that the parties have reached an agreement *and a consent order has been entered confirming the agreement*, therefore, petitioner will not be filing a petition for a writ of certiorari.

Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court. In the case at hand, the remittitur has not been sent to the family court because petitioner has sought extensions of time to file a petition for a writ of certiorari. *See* Rule 221, SCACR ("Where a petition for rehearing has been denied, the Court of Appeals shall not sent the remittitur to the lower court . . . until the time to petition for a writ of certiorari under Rule 242(c) has expired."). Accordingly, the family court did not have jurisdiction to enter a consent order in this matter.

We therefore vacate the consent order issued by the family court. We hereby hold his matter in abeyance and remand the case to the family court for consideration of the parties' settlement agreement. Following the issuance of a proper order by the family court on remand, the parties may seek, pursuant to Rule 260(b), SCACR, to have the matter before this Court dismissed.



Columbia, South Carolina

May 1, 2013

cc:
John O. McDougall, Esquire
Peter George Currence, Esquire
J. Mark Taylor, Esquire
Katherine Carruth Goode, Esquire
George W. Branstiter, Esquire
The Honorable Jenny Kitchings
The Honorable Richard W. Chewning, III