

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Supreme Court Case No. 2009-0365

In the Matter of:
Paul M. Summerville and Sandra B. L'Heureux

APPEAL FROM HILLSBOROUGH COUNTY SUPERIOR COURT

BRIEF

OF APPELLANT/RESPONDENT

Ronald J. Caron, Esq., NHBA 0048
BRENNAN, CARON, LENEHAN & IACOPINO
85 Brook Street
Manchester, New Hampshire 03104
TEL – (603) 668-8300
FAX – (603) 668-1029
E-MAIL – rcaron@bcililaw.com

To be Argued By: Ronald J. Caron, Esq.

TABLE OF CONTENTS

Table of Cases and Authorities Cited ii

Table of Statutes and Other Authorities iii

Questions Presented for Review 1

 Alimony (Amount and Duration) 1

 Tuition Reimbursement 2

 Fees of Appointed Commissioner 3

Statement of the Case and Material Facts 4

 The Decree of Divorce Issued 4

 Order on Motions to Reconsider 7

 The Partial Stipulation 8

 A Review of the Record 10

Summary of Argument 18

Argument 20

Conclusion 30

Oral Argument Requested 32

Certification of Service 33

ADDENDUM

Copy of Decisions Below Appealed 00

 Decree of Divorce 34-58

 Order on Motions to Reconsider 59-61

TABLE OF CASES AND AUTHORITIES CITED

Cases Cited:

Collins v. Collins, Hillsborough County Superior Court
Docket No. 00-M-1926 (October 25, 2001) 28

Fortuna v. Fortuna, 103 N.H. 547 (1961) 24

In re Fowler, 145 N.H. 516 (2000) 22, 26, 28

Healey v. Healey, 117 N.H. 618 (1977) 22, 26

Henry v. Henry, 129 N.H. 159 (1987) 22

Murphy v. Murphy, 116 N.H. 672 (1976) 21, 24

In Re: Sutton, 148 N.H. 676 (2002) 25, 26

Russman v. Russman, 124 N.H. 593 (1984) 19, 27

In Re: Telgener, 148 N.H. 190 (2002) 29

Statutes Cited:

N.H. RSA 458:19 (Supp. 2008) 21, 22, 25, 30

Other Authorities:

Douglas, New Hampshire Practice – Family Law (3rd Ed.), Vol. 3a, Chapter 18.04 28

TABLE OF STATUTES AND OTHER AUTHORITIES

N.H. RSA 458:19 (Supp. 2008)

- I. Upon motion of either party for alimony payments, the court shall make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite or indefinite period of time, if the motion for alimony payments is made within 5 years of the decree of nullity or divorce and the court finds that:
- (a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and
 - (b) The party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and
 - (c) The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is allocated parental rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home.
- II. Upon motion of either party, the court may make orders for the payment of an alimony allowance when such orders would be just and equitable.
- III. Upon a decree of nullity or divorce, or upon the renewal, modification, or extension of a prior order for alimony, the court may order alimony to be paid for such length of time as the parties may agree or the court orders.
- IV. (a) The court may make orders for alimony in a lump sum, periodic payments, or both.
- (b) In determining the amount of alimony, the court shall consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded under RSA 458:16-a, vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; the fault of either party as defined in RSA 458:16-a, II(1); and the federal tax consequences of the order.
 - (c) In determining amount and sources of income, the court shall not consider a minor child's social security benefit payments or a second or subsequent spouse's income. The court may consider veterans' disability benefits collected by either or both parties to the extent permitted by federal law.

(d) The court may also consider the contribution of each of the parties in the acquisition, preservation, or appreciation in value of their respective estates and the noneconomic contribution of each of the parties to the family unit.

(e) In any proceeding for modification of an existing alimony order, the earned or unearned income and social security disability payments of a spouse of the obligor party shall not be considered a source of income to that obligor party for the purpose of modification, unless the obligor party resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of a subsequent spouse may be imputed to the obligor party only to the extent that such obligor party could have earned income in his or her usual employment. In such actions, the court may consider the veteran's disability benefits of a spouse of the obligor party to the extent permitted by federal law.

V. The unanticipated consequences of changes in federal tax legislation or regulations may be grounds to modify any alimony order or agreement.

VI. The court shall specify written reasons for the granting or denial of any motion for an alimony allowance.

VII. In cases where the court issues an order for permanent alimony for a definite period of time, such order may be renewed, upon the petition of either party, provided that such petition is made within 5 years of the termination date of the permanent alimony order. Nothing in this paragraph shall be construed to change or alter in any way the terms of the original alimony order.

QUESTIONS PRESENTED FOR REVIEW

1. **ALIMONY (Amount and Duration):**

The trial court awarded Respondent (53 years old at the time of trial) alimony in the sum of \$1,250.00 per month for a period of 24 months. Respondent had proposed alimony of \$2,500.00 per month for 12 years.

Respondent preserves this issue on appeal by her “Respondent’s Proposed Final Decree on Petition for Divorce” and her “Respondent’s Motion for Reconsideration”. Respondent’s Proposed Final Decree on Petition for Divorce, ¶5, p. 3 (Appendix, p. 36); Respondent’s Motion for Reconsideration, ¶¶1-5, pp. 1-3 (Appendix, pp. 51 - 53).

At the time of trial, the Parties were married for almost 26 years. For the entire period from 1992 through 2007, Respondent had a grand total of social security earnings of \$751. From 1991 through 2007, Petitioner had earnings exceeding \$125,000 per year; from 1994 through 2005 his lowest earnings exceeded \$146,000 each year; and from 1994 through 2004, his earnings exceeded \$150,000 per year.

The trial court found Petitioner had a substantially greater opportunity for future employment; Petitioner had a substantially greater opportunity to earn income and to acquire capital assets in the future; that Respondent earned comparatively little or no income as compared to that earned by Petitioner in the course of the marriage; and that Respondent lacked sufficient income and property (inclusive of property awarded by the Parties’ Partial Stipulation) to provide for her reasonable needs.

Yet, the trial court imposed upon Respondent (i) a requirement that she liquidate assets awarded by the Partial Stipulation in order to sustain herself, and (ii) a requirement that she

invest proceeds from a presumed liquidation of property in amounts the trial court did not and could not determine, and without evidence of a presumed return on investment.

The trial court essentially condemned Respondent to dissipate assets as a substitute to alimony. The trial court found Petitioner's wages to be \$130,000.00 per year.

The order is an abuse of discretion. The order evidences error as a matter of law based upon the trial courts expressed basis for its order.

2. TUITION REIMBURSEMENT:

After the filing of the Petition for Divorce by Petitioner in June, 2006, Respondent incurred a student loan in the sum of \$12,245.00 in order to finance a certificate program to become qualified to earn income as a “medical transcriptionist”. Shortly before the trial commenced, Respondent became employed as a medical transcriptionist at an annualized salary of \$33,279.96. In the preceding 16 years of this 25-year marriage, Respondent had not earned income. Respondent did not apply marital assets to finance the certificate program. Instead, she applied for and was granted a loan in the stated sum of \$12,245. She sought reimbursement for that debt.

Respondent preserves this issue on appeal by her “Respondent’s Proposed Final Decree on Petition for Divorce” and her “Respondent’s Motion for Reconsideration”. Respondent’s Proposed Final Decree on Petition for Divorce, ¶20(A), p. 5, (Appendix, p. 38); Respondent’s Motion for Reconsideration, ¶¶1-4, pp. 6-7 (Appendix, pp. 56 - 57).

The trial court denied her request. The denial was an abuse of discretion.

3. **FEES OF APPOINTED COMMISSIONER:**

The trial court appointed a commissioner to sell the Parties' real estate¹ (necessitated by the conduct of Petitioner) and charged the cost to the Parties equally. The assessment was an abuse of discretion considering (i) the basis of the appointment and (ii) the disparate resources of each Party to contribute.

Respondent preserves this issue on appeal by her "Respondent's Proposed Final Decree on Petition for Divorce" and her "Respondent's Motion for Reconsideration". Respondent's Proposed Final Decree on Petition for Divorce, ¶20(C)(3), p. 5 (Appendix, p. 38); Respondent's Motion for Reconsideration, ¶¶1-4, pp. 8-9 (Appendix, pp. 58 - 59).

¹ The appointment was made preceding the Parties' agreement to terms of their Partial Stipulation, discussed *infra*.

STATEMENT OF THE CASE
AND
MATERIAL FACTS

I. – The Decree of Divorce Issued

This Court attention should first be directed to the Decree of Divorce issued and the express findings made by the trial court (Green, Master).

The Parties settled asset award issues through their “Partial Stipulation for Final Decree of Divorce” (the “Partial Stipulation”). Partial Stipulation, June 6, 11, 2008 (Appendix, p. 1.) With respect to alimony, the Parties agreed that “Petitioner reserves argument regarding money that Respondent allegedly used from the marital assets during the course of these proceedings.” Partial Stipulation, ¶5 (Appendix, p. 2). The trial court (O’Neill, J.) approved the Partial Stipulation on June 18, 2008. Notice of Decision, June 18, 2008 (Appendix, p. 16). Thus, the Parties proceeded to trial on the issue of alimony (among other issues), with Petitioner presumably prepared to “prove” the allegation of Respondent’s alleged use of “money . . . from the marital assets.” Partial Stipulation, ¶5 (Appendix, p. 2).

Following trial, the trial court issued its “Order” dated August 4, 2008 under “Notice of Decision” dated August 19, 2008 (the “Decree of Divorce”), approving the Master’s Order. Decree of Divorce (Addendum, p.34). The Decree of Divorce publishes the following findings which appertain to this appeal:

1. On the issue of alleged misuse of marital assets and the application of such conduct (if any) on the question of alimony, the trial court points out that “[i]f Petitioner really wanted to pursue, with a degree of legal certainty, a true understanding of this matter, it would have been helpful for a forensic accountant to have been engaged and testify about the financial doings. Just providing the Court with document after document of financial records does not prove anything.” Decree of Divorce, p. 7 (Addendum, p. 41).

2. The Court concedes that it “cannot say that it could sustain with any certainty the Petitioner’s position relative to Ms. L’Heureux’s [Respondent’s] use of monies. The most the Court could conclude is that at various times both parties used funds improperly. The Court could not conclude as to any large scale fraud by either party.” Id.

Applying those findings to the litigated claims for alimony, the trial court states the following in awarding alimony to Respondent in the sum of \$1,250.00 per month for a period of 24 months:

This Court finds that Ms. L’Heureux [Respondent] shall be entitled to receive alimony in the amount of \$1,250 for a period of two years. Said alimony shall be *effective upon the divorce becoming final*. The Court could not find and makes no ruling whether or not Ms. L’Heureux [Respondent] properly or improperly utilized monies from the parties’ various businesses. The Court is issuing this order based upon the fact that it *may take a period of time before the properties in Pittsburgh are liquidated* and Ms. L’Heureux [Respondent] *can then utilize said monies to generate a cash flow*. Further, Ms. L’Heureux [Respondent] is presently working which is a positive but *under no circumstances does her income allow her to live in the same manner as existed previously*.

Decree of Divorce, pp. 7-8 (Addendum, pp. 41-42) (emphasis added). The trial court also ruled on “Respondent’s Requests for Findings of Fact and Rulings of Law” (the “Requests for Findings”). Requests for Findings (Appendix, pp. 17-33). The rulings included the trial court granting the following:

1. Respondent incurred \$12,245.00 in debt to expand her ability to enter the work force and earn income. Requests for Findings (Fact) No. 51, Granted (Appendix, p. 25).
2. In the tax years 1992 through 2007, Respondent had earnings of only \$747.00 (1992) and \$40.00 (2007). Requests for Findings (Fact) No. 52, Granted (Appendix, p. 25).
3. In the tax years 1991 through 2007, Petitioner had earnings exceeding \$125,000.00 per year. Requests for Findings (Fact) No. 53, Granted (Appendix, p. 25).
4. Petitioner’s lowest earnings in the course of 1994 through 2005 exceeded \$146,000.00, and from 1994 through 2004 exceeded \$150,000.00. Requests for Findings (Fact) No. 54, Granted (Appendix, p. 25).

5. Petitioner is “charged with a *minimum* annual earned income from U.S. Airways of \$130,000.00, considering that for the tax years 2006 and 2007 and for part of the tax year 2008, he has invoked inordinate amounts of sick time and vacation time.” Requests for Findings (Fact) No. 56, Granted (Appendix, p. 26) (emphasis added).

6. Petitioner has a substantially greater opportunity for future employment by education and experience as opposed to Respondent. Requests for Findings (Fact) No. 60, Granted (Appendix, p. 26).

7. Petitioner has a substantially greater opportunity to earn income in the future and to acquire capital assets than does Respondent. Requests for Findings (Fact) No. 61, Granted (Appendix, p. 26).

8. Petitioner has substantially greater opportunity to earn future income than does Respondent. Requests for Findings (Fact) No. 62, Granted (Appendix, p. 27).

9. In the course of the Parties’ marriage, Respondent earned comparatively *little or no income* as compared to that earned, pursued and generated by Petitioner. Requests for Findings (Fact) No. 63, Granted (Appendix, p. 27).

10. Respondent is a party in need of alimony and lacks sufficient income and property, *inclusive of the property awarded by the Parties’ Partial Stipulation*, to provide for her reasonable needs, taking into account the style of living to which she has been accustomed during the marriage. Requests for Findings (Law) No. 2, Granted (Appendix, p. 31).

Respondent had requested as part of the Decree of Divorce that Petitioner reimburse her for the costs and repayment of a student loan she had incurred on the course of proceedings. Respondent’s Proposed Final Decree on Petition for Divorce, ¶20(A), p. 5, (Appendix, p. 38); Exhibit HH (Appendix, p. 202); Transcript, Vol. 5, p. 1124. The trial court addresses this request by stating: “The Court issues no order requiring Mr. Summerville [Petitioner] to reimburse Ms. L’Heureux [Respondent] for any tuition.” Decree of Divorce, p. 9 (Addendum, p. 43). The trial court so orders while finding “Respondent incurred . . . [the] . . . debt of \$12,245.00 in furtherance of her education, designed to expand her ability to enter the work force and earn income, through Seacoast Career Schools in the sum of \$12,245.00, to which Petitioner

has not contributed.” Requests for Findings (Fact) No. 51, Granted (Appendix, p. 25); Exhibit HH (Appendix, p. 202).

Finally, and appertaining to the third issue on appeal, the trial court does not address at all by the Decree of Divorce Respondent’s request to be relieved from contribution to payment of fees and costs incurred by a commissioner appointed by the Court to effect sale of the Parties’ various parcels of real estate. Respondent’s Proposed Final Decree on Petition for Divorce, ¶20(C)(3), p. 5, (Appendix, p. 38). The trial court ultimately denies the request by its Order on Motions to Reconsider, but without comment or stated basis. Order on Motions to Reconsider, ¶8, p. 1 (Addendum, p. 60)

II. – Order on Motions to Reconsider

Respondent timely filed her “Respondent’s Motion for Reconsideration” dated August 29, 2008. Respondent’s Motion for Reconsideration, (Appendix, p. 51). Two months later, on October 31, 2008, the trial court issued its “Notice of Hearing”, scheduling a hearing on pending motions to reconsider. Notice of Hearing, (Appendix, p. 60). The hearing was scheduled for February 19, 2009. Id.

The Parties and counsel appeared for hearing February 19, 2009. The trial court proceeded by offers of proof on matters raised through the motions to reconsider. The trial court issued its “Notice of Decision” dated April 14, 2009, and attached its “Order on Motions to Reconsider” dated February 25, 2009. Order on Motions to Reconsider (Addendum, p. 59).

By the Order on Motions to Reconsider, the trial court denies without comment Respondent’s request to be reimbursed the educational expense and loan. Order on Motions to Reconsider, ¶5, p. 1 (Addendum, p. 60). It orders an equal division of the appointed

commissioner's fees/bill, without expressing findings of fact or supportive conclusions. *Id.*, at ¶8, p. 1 (Addendum, p. 60).

With respect to alimony, the effect of the trial court's ruling was to magnify the injustice of the Decree of Divorce and to exacerbate the financial ruin faced by Respondent. Specifically:

1. The trial court denies Respondent's motion respecting the amount and duration of alimony by stating simply her "request for an increase in alimony denied." Order on Motions to Reconsider, ¶2, p. 1 (Addendum, p. 60).

2. Reversing itself on its order that alimony ordered under the Decree of Divorce be "effective upon the divorce becoming final", the trial court orders that "[t]he order on alimony shall begin running as of February 19, 2009, whether or not the matter is appealed to the Supreme Court." Order on Motions to Reconsider, ¶12, p. 2 (Addendum, p. 61).

3. The trial court concludes by stating: "If the Court's order is appealed to the Supreme Court, the proposed final order as set forth by the Court is adopted as a temporary order in place of the prior temporary order." Order on Motions to Reconsider, ¶14, p. 2 (Addendum, p. 61).²

III. – The Partial Stipulation

The Partial Stipulation awards to Respondent the real property at Bedford, New Hampshire. Partial Stipulation, ¶14(A), pp. 8-9 (Appendix, pp. 8-9). Respondent was to sell or refinance the home within six months in order to relieve Petitioner from financial liability for debt associated with that property. *Id.*, at ¶14(C), p. 9 (Appendix, p. 9). It also awards properties in Pittsburgh, Pennsylvania to Respondent. Partial Stipulation, ¶15(B), pp. 11-12 (Appendix, pp. 11-12). Respondent was similarly required to sell or refinance the same within six months in order to relieve Petitioner from financial liability for debt associated with the properties. *Id.*, at ¶15(B)(3), p. 11 (Appendix, p. 11).

² The "prior temporary order" required Petitioner to pay to Respondent temporary alimony in the sum of \$2,000 per month. Petitioner had been paying the same until the issuance of this Order on Motions to Reconsider by the Notice of Decision dated April 14, 2009. The effect was to impose upon Respondent a *retroactive reduction* of alimony to the pronounced date of February 19. The reduction was by the sum of \$750 per month to \$1,250 per month. This, of course, presumably contemplated that Petitioner continued to earn in excess of \$130,000 annually (more than \$10,800 per month).

The effect of the Partial Stipulation is reflected in Respondent's Financial Affidavit. Respondent's Financial Affidavit (Appendix, p. 61-70). In fact, the Court inquired in the course of trial as to the net asset value of the Parties' respective awards of assets through that Partial Stipulation. Transcript, Vol. 5, p. 1251. Respondent's Financial Affidavit at Page 8 describes that the net asset value awarded to Respondent (based upon values and debt listed and the inclusion of ALL listed items) was \$670,890.92 (meaning the gross value less pay-off of any lien listed). Transcript, Vol. 5, p. 1251; Respondent's Financial Affidavit, p. 8 (Appendix, p. 68). The Court recognized in a colloquy between itself and counsel that the actual value of the real property awarded to Respondent was necessarily (i) dependent upon market conditions actually bringing in sale proceeds, and (ii) various real estate commissions, closing costs, and the like to be incurred if and in the event of sale in the future.³ Transcript, Vol. 5, pp. 1251-52.

Each of the parcels real estate awarded to Respondent is listed in Respondent's Financial Affidavit under the column "Respondent" and for each so listed (i) its value is listed, (ii) the source of the valuation is recited, (iii) the encumbrance on each is described, and (iv) the balance and date of pay-off of each encumbrance is described. Respondent's Financial Affidavit, pp. 5-8 (Appendix, pp. 65-68). It is noted that the New Hampshire properties were:

1. The home of 43 Buckingham Way, Bedford, New Hampshire, encumbered by a \$573,000 line of credit mortgage; and
2. An undeveloped lot at 45 Buckingham Way, Bedford, New Hampshire.

Respondent's Financial Affidavit, p. 5 (Appendix, p. 65). The properties awarded to Respondent in Pittsburgh, Pennsylvania, were listed as:

1. 302 Oneida Street – net value of \$13,061.13;
2. 304 Oneida Street – net value of \$13,061.13;

³ Unfortunately, the trial court appears not to have applied its recognition in this regard, considering the provisions of its Decree of Divorce.

3. 442 Oneida Street – net value of \$43,061.13;
4. 314 Augusta Street – net value of \$63,061.13;
5. 1882 Greenleaf Street – net value of \$2,358.78;
6. 524 Grace Street – net value of \$10,000.00;
7. 526 Grace Street – net value of \$10,000.00; and
8. 412, 414 Grace Street – net value of \$11,991.35.⁴

Respondent's Financial Affidavit, pp. 5-6 (Appendix, pp. 65-66). The “net value” for each property is not a reflection of prospective net proceeds of eventual sale, and the trial court so noted. Transcript, Vol. 5, pp. 1251-52.

IV. – A Review of the Record

The Parties were married September 11, 1982. Transcript, Vol. 1 p. 6. They separated April 15, 2006. Transcript, Vol. 1, p. 7. Petitioner filed for divorce June 15, 2006. Transcript, Vol. 1, p. 15. The Parties' child (Taylor) was born in 1994. Transcript, Vol. 4, p. 903.

At the time of trial, Respondent was 53 years old and Petitioner was 54 years old.

As of the marriage date, Petitioner was in full-time active duty in the United States Navy. Transcript, Vol. 4, p. 898. The Parties then owned two condominium units in Pensacola, Florida and resided at one of the units. Transcript, Vol. 4, p. 899. In 1985, Petitioner was hired by U.S. Airways and the Parties moved to Boston, Massachusetts, where they lived for a short time. Transcript, Vol. 4, p. 899. In that same year (1985), the Parties relocated to Pittsburgh, Pennsylvania, as a result of Petitioner's employment by U.S. Airways. Transcript, Vol. 4, p.

⁴ These properties have since been foreclosed upon by Citizens Bank as mortgagee, following the bankruptcy filing of Yellow Dog Enterprises Corp., a partner with the Parties' P&S Enterprises entity in “K.I.S., LP”. See Exhibit DD (Appendix, p. _____, *et seq.*).

900. While in Pittsburgh from 1985 to 1991, Respondent was employed as a paralegal and later a “mortgage representative”. Transcript, Vol. 4, p. 898, 900.

In 2001, the Parties relocated to Bedford, New Hampshire. Transcript, Vol. 4, p. 900. The Parties purchased their home at 43 Buckingham Way, Bedford, New Hampshire, on September 11, 2001. Transcript, Vol. 1, p. 7. In 2003, the Parties also purchased the undeveloped lot adjoining the home property. Transcript, Vol. 4, p. 915.

A review of Petitioner’s employment qualifications is necessary in order to consider the Parties’ relative abilities and qualifications to earn income and to assess the trial court’s alimony order.

While the Parties were married and Petitioner was employed by U.S. Airways, Respondent benefitted from free air travel without cost with U.S. Airways (as the spouse of Petitioner – an employment benefit to Petitioner). Transcript, Vol. 3, p. 697-98. When the Parties moved to Bedford, New Hampshire (2001), Petitioner was also in the military as a reservist. Transcript, Vol. 1, p. 8. At the time of trial, he was (and presumably continues to be) employed as a U.S. Airways captain. Transcript, Vol. 1, p. 48. At the time of trial, he was in his 24th year of flying with U.S. Airways. Transcript, Vol. 1, p. 49. He was then retired as a commander with the United States Navy. Transcript, Vol. 1, p. 49. He was (and presumably continues to be) a Federal Flight Deck Officer, and thus he must maintain currency by a six-month recurrent retesting on the firing range, qualifying with his weapon. Transcript, Vol. 1, p. 49. He is trained in anti-terrorist activities regarding breach of airliner cockpits. Transcript, Vol. 1, p. 49. He is required to undertake a first class physical each six months. Transcript, Vol. 1, p. 50.

Petitioner's pay is based upon an 80-85 hour per month flight schedule. Transcript, Vol. 1, p. 53. He is permitted to fly more than 85 hours per month at his option granted by U.S. Airways. Transcript, Vol. 1, p. 56. Petitioner has available to him flight hours of anywhere from 74 hours per month to 90, 95 hours per month. Transcript, Vol. 3, p. 660. The maximum hours per year are 1,000 hours per year. Transcript, Vol. 3, p. 660.

Reduction in income experienced by Petitioner in the tax years 2006 and 2007 was the result of "sick time" taken by Petitioner. Transcript, Vol. 3, p. 692; Exhibit H (Appendix, pp. 75-86); Requests for Findings (Fact) No. 56, Granted (Appendix, p. 26) (Petitioner was "charged with a minimum annual earned income from U.S. Airways of \$130,000.00, considering that for the tax years 2006 and 2007 and for part of the tax year 2008, he has invoked inordinate amounts of sick time and vacation time.")

Petitioner characterizes his salary with U.S. Airways to have been stable at the time of trial "for the last 3 or 4 years". Transcript, Vol. 1, p. 57. Petitioner's highest income with U.S. Airways was based upon a management position as flight instructor in the years 2000 and 2001 (preceding the move to New Hampshire September 11, 2001). Transcript, Vol. 1, p. 56. His income for 2000 was \$214,160 and for 2001 was \$221,981. Exhibit H (Appendix, p. 75). Petitioner's income per year exceeded \$120,000 for the 17 years since 1990; exceeded \$130,000 in each of the years 1992 through 2004⁵; and exceeded \$150,000 in each of the years 1994 through 2004. Exhibit H (Appendix, p. 75).

Petitioner's gross pay evidenced by Exhibit I (paystubs) for the calendar year 2006 was \$131,746.56. Exhibit I (Appendix, p. 87). For the calendar year 2007, the gross pay was

⁵ Petitioner benefitted from an increase in income in 1991, the result of earning a "captain" grade with U.S. Airways. Transcript, Vol. 4, p. 902.

\$133,024.14. Exhibit I (Appendix, p. 88). As of the time of trial, Petitioner's rate of pay remained at \$124.88 per charged hour. Transcript, Vol. 3, pp. 656-57.

Petitioner's health at the time of trial was "fine", with the exception of continued PSA tests each six months due FAA Regulations and physician orders (prostate surgery). Transcript, Vol. 1, p. 12.⁶

By contrast, Respondent earned no income at all for the 15 years of 1992 through 2007 (except for \$40 in 2007). Transcript, Vol. 3, p. 687; Exhibit H (Appendix, p. 75). She became employed only in 2008 with "Souhegan Home and Hospice Care" near the start of trial at \$2,773 per month. Respondent's Financial Affidavit, p. 1 (Appendix, p. 61). Respondent's education is limited to a bachelor's degree in political science and history (Transcript, Vol. 4, p. 901), a later earned "paralegal certificate" following a nine month course (Transcript, Vol. 4, p. 902), then a medical transcriptionist certificate in 2008 (whereby she secured her employment with "Souhegan Home and Hospice Care").

Respondent's social security income in the years 1990 and 1991 was \$7,300 and \$6,500 respectively, and thereafter essentially \$0 until 2008 when she became employed – a span of over 15 years. Transcript, Vol. 4, p. 903; Exhibit H, (Appendix, p. 75). Petitioner agreed Respondent earned no income for over 13 years preceding the Parties' separation (from 1992 through the Parties' separation year of 2006). Transcript, Vol. 3, p. 694. Respondent was not employed when the Parties separated (Petitioner left the home) in April, 2006. Transcript, Vol. 3, p. 695.

With respect to the Parties' investments in Pennsylvania, Respondent handled all financials for the Parties' and saw to the preparation of tax returns to be filed by the Parties.

⁶ Petitioner had been diagnosed with prostate cancer September 19, 2005, and was later subject to a successful surgical intervention. Transcript, Vol. 1, p. 13.

Transcript, Vol. 1, p. 113. Respondent would advise Petitioner of what she required for cash each month, and Petitioner would “write her a check” per her request. Transcript, Vol. 1, p. 114. Petitioner was not a signatory to “business accounts” of the Parties. Transcript, Vol. 1, p. 115.

Entities in which the Parties had an interest, directly or indirectly, included “K.I.S., LP”, “Galasso Place” and “P&S Enterprises”. Transcript, Vol. 1, p. 118. These entities were simply vehicles to carry title to real estate and improve the same. While some of the properties in Pennsylvania generated rent receipts and continued to do so through the course of these proceedings (Transcript, Vol. 1, p. 122), they generated no positive cash flow and Petitioner himself could not testify that the properties generated positive cash flow. Transcript, Vol. 4, p. 777. In fact, Petitioner testified he believed the “Galasso Place” 8-unit condominium development project was a failure and was losing money, desiring it to be sold.⁷ Transcript, Vol. 4, p. 779. It was also Petitioner’s opinion that Respondent “completely mismanaged every project she worked on” in Pittsburgh with respect to asset administration. Transcript, Vol. 3, p. 693. Cash flow from operations of the K.I.S., LP property was also in the red. Transcript, Vol. 5, p. 1007

Petitioner put forth some effort in the course of trial to attempt to make out a claim that Respondent stole, converted and otherwise misappropriated marital funds in the course of the proceedings, such that she should be relieved from alimony. The trial court correctly and expressly refused to make such a finding or to consider the argument in reduction or avoidance of alimony. Decree of Divorce, p. 7 (Addendum, p. 41). Therefore, Respondent seeks by this Brief to avoid citations to the myriad of exhibits and disjointed testimony on this “issue”. The

⁷ In fact, the record reflects all 8 units of this “Galasso Place” project were sold from January through May, 2006. Transcript, Vol. 4, p. 918; Exhibit GG, (Appendix, p. 177-97, *et seq.*). In fact, the Parties had always intended to sell the Galasso Place condominium units to satisfy the line of credit encumbrance on the home in Bedford, New Hampshire (the debt for which at the time of trial approximated \$573,000.00). Transcript, Vol. 4, p. 912-13.

testimony would arguably go to the issue of credibility of Petitioner and his motives in seeking to financially starve Respondent. For example:

1. Petitioner claimed in the course of trial that Respondent had converted \$28,105.27 of funds from the operations of KIS, LP. Transcript, Vol. 1, pp. 139-51; Exhibit 3 (Appendix, p. 141). By Petitioner's testimony, this claim was actually that cash was put to Respondent's personal use. Transcript, Vol. 1, p. 152.
2. Petitioner also claimed through trial the conversion of cash from the entity "Galasso Place, LP" to the extent of \$130,002.02. Transcript, Vol. 1, pp. 155-64; 169-91. The accusation actually amounted to a claim for unauthorized use and not "conversion". Id.
3. Petitioner also claimed unauthorized use of \$98,937.69 of refinance proceeds from the refinance of a Pittsburgh property. Transcript, Vol. 1, p. 192, 199-200; Exhibit 4 (Appendix, p. 162). This refinancing transaction was with Wesbanco Bank on March 31, 2006, with net proceeds from refinance being the claimed \$98,137.69. Transcript, Vol. 3, pp. 600-01; Exhibit G (Appendix, pp. 173-76). Mr. William Braund testified as to his attempts to demonstrate to Petitioner that monies alleged to have been converted (Exhibit F) were in fact properly accounted for. Transcript, Vol. 3, pp. 623-24; Exhibit F (Appendix, p. 198-99).
4. Petitioner in August of 2006 accused Respondent of converting \$340,000 from loan proceeds he perceived to have been issued in another financing transaction, but conceded at trial that no such conversion took place. Transcript, Vol. 4, pp. 845-50.
5. Petitioner himself refused to sign on to a 2007 joint tax return with Respondent, notwithstanding the fact he was advised that to file separately would cause an adverse financial impact upon the Parties. Transcript, Vol. 3, p. 629.
6. Petitioner's credibility was implicated when (per the testimony of the guardian *ad litem*) he reported to the guardian *ad litem* that his move to New Hampshire in September, 2001 caused him to sustain a \$100,000 "pay cut", and allegedly lose "all retirement and one-half million in stock". Transcript, Vol. 2, p. 389. Respondent's Exhibit H demonstrates such representation as false. Exhibit H, (Appendix, p. 75). The reduction in income was actually \$24,000. Id.
7. Petitioner is entitled to 8 companion passes per year through his employment with U.S. Airways. Transcript, Vol. 3, p. 703. Companion passes can be used at payment of 10% of the full fare. Transcript, Vol. 3, pp. 703-04. Petitioner utilized 7 of the 8 companion passes for the calendar 2008. Transcript, Vol. 3, pp. 704-05. Petitioner made clear his desire that Respondent not be permitted to use companion passes, without basis or cause. Transcript, Vol. 3, pp. 706-11.

8. Until ordered to do so in October, 2006, Petitioner made no voluntary payments of either child support or alimony to Respondent from the time of separation in April, 2006 until issuance of the Court's Order of October, 2006. Transcript, Vol. 4, pp. 790-93.

Reference is made to the testimonies of both Parties with regard to Respondent's Financial Affidavit and its recitation of monthly expenses in support of her need for alimony. Respondent's Financial Affidavit, pp. 3-4 (Appendix, pp. 63-4). By the accounting of two separate monthly expense rosters in her Financial Affidavit, Respondent demonstrated both (i) allocated and reasonable expenses (Page 3 thereof) and (ii) *absolutely critical, recurrent and necessary* expenses (Page 4 thereof). Petitioner himself was examined on the entries of each page. Transcript, Vol. 4, pp. 882 *et. seq.*

1. Petitioner admitted that after payment of mortgage indebtedness on the Bedford, New Hampshire home, based on what was then a combined child support and alimony of \$3,900, Respondent would be left with a few hundred dollars per month to meet her reasonable needs. Transcript, Vol. 4, p. 877.

2. He confirmed Respondent's income through employment to be \$2,773.00 per month. Transcript, Vol. 4, p. 882.

3. He reviewed Page 3 of the Financial Affidavit and confirmed "[t]he left column looks good, I don't have any problems with that". Transcript, Vol. 4, p. 884.

4. He was directed to all entries in that Page 3, and expressed disagreement with only a small number of those entries. Transcript, Vol. 4, pp. 884-86.

5. He was then examined on the content of Page 4 of the Financial Affidavit. Transcript, Vol. 4, pp. 886 *et. seq.* The only entry he did contest on Page 4 was for tennis lessons for the Parties child. Transcript, Vol. 4, p. 889.

6. He acknowledged a total expense per month to be \$5,935.00 for Respondent at Page 4 (Transcript, Vol. 4, p. 889) and acknowledged that even under the then-effective temporary child support and temporary alimony payments totaling of \$3,900.00 per month, combined with income of Respondent through employment, that cash flow would "barely meet" Page 4 expenses. Transcript, Vol. 4, p. 889.

7. Petitioner generally accepted the expense numbers of Pages 3 and 4 on the Financial Affidavit of Respondent. Transcript, Vol. 4, p. 891.

Respondent intended to assist the trial court in its determination of an appropriate sum of alimony by her Exhibit M. Exhibit M (Appendix, p. 41); Transcript, Vol. 5, p. 1114. Exhibit M illustrates the effect of Respondent's proposed alimony (\$2,500 per month) and child support orders (\$1,956 per month⁸), considering tax implications to both Parties at their respective incomes. Id. The Court is asked to compare the same to reported monthly expenses of Petitioner by his field Financial Affidavit. Petitioner's Financial Affidavit, p. 3 (Appendix, p. 73). The monthly expense roster of Petitioner disregards his residence with a third party and the cost savings inherent in that arrangement. Transcript, Vol. 1, p. 66; Vol. 3, pp. 670, 673, 721-22; Vol. 4, p. 979.

The foregoing analysis of the record leads to a conclusion the the trial court (i) erred as a matter of law in its order of alimony, (ii) abused its discretion in its order of alimony, (iii) abused its discretion in denying without comment claims made for reimbursement of tuition/loan costs of Respondent, and (iv) abused its discretion in denying requests of Respondent that Petitioner pay costs of the appointed commissioner.

⁸ In fact, the trial court did order child support in the stated sum as requested by Respondent. Uniform Support Order, p. 1 (Addendum, p. 55).

SUMMARY OF ARGUMENT

The trial court made express findings of fact in issuing its Decree of Divorce and its Order on Motions to Reconsider in support of an alimony award of \$1,250 per month for 24 months. The findings of fact were conflicting and contrary to law. Specifically, the trial court concludes:

1. The trial court makes no finding of the misuse of marital funds by Respondent, contrary to claims of Petitioner.
2. The trial court expresses the basis of its amount and duration of alimony to be the utilization by Respondent of assets awarded to her by a Partial Stipulation. The trial court presumed Respondent would liquidate real property awarded to her and use proceeds to generate cash flow. This basis is contrary to law and is speculative at best on an evidentiary basis, without supportive evidence presented to the Court.
3. The trial court finds that under no circumstances does Respondent's income allow her to live in the manner she did previous to the Decree of Divorce.
4. The trial court finds expressly that Respondent incurred over \$12,000 in debt to expand her ability to enter the work force and earn income, taking place in the course of these proceedings.
5. The trial court finds that for over 15 years before the trial in this matter, Respondent had not earned in excess of \$800 in income, that is, for the entire 15 years.
6. The trial court finds that from 1994 through 2004, Petitioner's income exceeded \$150,000 annually.
7. The trial court charges Petitioner with a minimum annual income for 2008 of \$130,000 and considers his income in 2006 and 2007 to have been less than in previous years because he invoked inordinate amounts of sick time and vacation time.
8. The trial court finds Petitioner has a substantially greater opportunity for future employment by his education and training; a substantially greater opportunity to earn income in the future; a substantially greater opportunity to acquire capital assets in this future; that Respondent earned comparatively little or no income as compared to that earned by Petitioner.
9. Perhaps as importantly, the trial court finds Respondent is in need of alimony and lacks sufficient income and property *inclusive of the property awarded to her by the Partial Stipulation* to provide for her reasonable needs, taking into account the style of living to which she was accustomed during the marriage.

The trial court's order of alimony in amount and duration rewards Petitioner for "escaping" a marriage unscathed and paying no financial consequence in the form of alimony to assist his former spouse. For a mere gross sum of alimony of \$30,000 per terms of the Decree of Divorce, Petitioner goes on in his life to continue to earn income and pursue a substantial career in the airline industry as a Captain with U.S. Airways.

As a matter of law, the liquidation of assets as a substitute for alimony is improper and has been reversed by this Court. Russman v. Russman, 124 N.H. 593 (1984).

The rejection by the trial court of reimbursement for debt incurred for the very purpose of being able to generate income is an abuse of discretion and is unconscionable under the circumstances depicted through the trial in this matter.

Finally, to impose upon Respondent an equality of contribution to fees and costs of an appointed commissioner disregards the Parties substantial variance in income and earning capacity and imposes upon Respondent an undue burden to finance the conduct of Petitioner throughout these proceedings with respect to properties owned by the Parties.

ARGUMENT

The Court's attention is first drawn to the inconsistent findings and errors as a matter of law pronounced by the trial court by the Decree of Divorce and the Order on Motions to Reconsider. These inconsistencies and errors are manifest.

Firstly, the trial court dispensed with Petitioner's claims of alleged misuse of marital assets. Decree of Divorce, p. 7 (Addendum, p. 41). Therefore, Respondent takes the position by this Brief that there is no issue in that regard and no cross-appeal has been taken by Petitioner in this regard.

Secondly, the trial court clearly states the basis of its order is that "it may take a period of time before the properties in Pittsburgh are liquidated and . . . [Respondent] . . . can then utilize said monies to generate cash flow." Decree of Divorce, pp. 7-8 (Addendum, pp. 41-42). It is astonishing the trial court fixed alimony based upon the utilization and liquidation of asset value. It does so while stating in the very same paragraph of the Decree of Divorce that while it recognized Respondent was "presently working", "under no circumstances does her income allow her to live in the same manner as existed previously". Decree of Divorce, p. 8 (Addendum, p. 42).

Thirdly, the trial court made express findings as to the significant variance in income between the Parties and states its recognition of law and of Respondent's predicament that she "is a party in need of alimony and lacks sufficient income and property *inclusive of the property awarded by the Parties' Partial Stipulation*, to provide for her reasonable needs." Requests for Findings (Law) No. 2, Granted (Appendix, p. 31) (emphasis added).

A trial court shall award alimony to a party if it finds, *inter alia*, (i) the party in need lacks sufficient income, property, or both, to provide for his/her reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage, (ii) the party from whom alimony is sought is able to meet his/her reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage, and (iii) the party in need is unable to be self-supporting. N.H. RSA 458:19, I (Supp. 2008). The proposed recipient spouse's needs are not, however, limited to the barest necessities. Murphy v. Murphy, 116 N.H. 672, 675 (1976). The criteria as expressed in N.H. RSA 458:19, I, were expressly found to exist by the trial court. Moreover, the Court must also consider the length of the marriage, the age of the Parties, their health, their social or economic status, their occupations and the amount and sources of income of each Party. N.H. RSA 458:19, IV(b) (Supp. 2008). The Court should consider the Parties' relative vocational skills, employability, estates, liabilities, and their needs. Id. The Court must look to each of the Parties' opportunities for future acquisition of assets and income and the federal tax consequences of any order issued. Id. In this regard, trial court expressly found a substantial disparity in the Parties' relative incomes, abilities to earn income in the future, abilities to become employed in the future through their education and experience, and the Parties' relative opportunities to acquire future assets. Requests for Findings (Fact) Nos. 60-63, Granted (Appendix, pp. 26-27). Therefore, while the trial court implicitly recognized provisions of N.H. RSA 458:19, IV(b), it apparently ignored those findings in fixing a 24-month alimony number of \$1,250 per month.

Respondent was 53 years old at the time of trial. Her proposal of \$2,500 per month for 12 years was designed to have her benefit from continued alimony payments until she reached

the age of 65, thereby being qualified for other sources of retirement or income benefits, including Social Security benefits and the utilization of her awarded interest in the pension per terms of the Partial Stipulation.

While New Hampshire courts have consistently held that the primary purpose of alimony is rehabilitative, the express language of New Hampshire's alimony statute does not suggest alimony must be "rehabilitative" in all cases. N.H. RSA RSA 458:19, I (providing for alimony awards that are "either temporary or permanent, for a definite or indefinite period of time"); N.H. RSA 458:19, IV (mandating consideration of multiple factors in calculating the amount of the alimony to be awarded); In re Fowler, 145 N.H. 516, 520 (2000).

This Court has held that the rehabilitative principle is not controlling under all circumstances. For example, rehabilitative alimony has been found inappropriate when the recipient spouse suffers from ill health or is not capable of establishing his/her own source of income. Henry v. Henry, 129 N.H. 159, 162 (1987). Awards of rehabilitative alimony have also been found inadequate where older and relatively unskilled supported spouses in long-term marriages lack the ability to independently approximate the parties' standards of living established during the marriage. Healey v. Healey, 117 N.H. 618, 620-21 (1977). Once divorced, the supported spouse "is not necessarily required to adjust her standard of living to fit the income . . . she can earn for herself." Id. In this case, the trial court expressly found those elements that would support a significant and long-term award of alimony, yet apparently disregarded it's own findings or misunderstood the law with respect thereto.

In this proceeding, the Decree provides that Petitioner pay alimony in the sum of \$1,250.00 per month for a period of 24 months. Decree of Divorce, ¶5, pp. 7-8 (Addendum, pp.

41-42). The result is to provide to Respondent a total gross sum of alimony of \$30,000.00⁹. Id.; Uniform Support Order, ¶4, p. 1 (Addendum, p. 55). This amount of alimony is woefully insufficient to put Respondent in a position to enjoy the standard of living to which she was long accustomed in her marriage, considering both the amount and duration of that alimony awarded. Indeed, Respondent cannot meet her barest financial necessities. Combined with the trial court's denial of Respondent's request to be reimbursed for \$12,245 in debt assumed in order to become eligible to generate the income at all, the effect of the award for alimony is approximately \$17,000 over two years (not including tax consequences). Conversely, Petitioner leaves his marriage with Respondent to enjoy his aviation career with U.S. Airways. Moreover, the Parties child is now 15 years of age and child support will end shortly.

As of the date of trial (June, 2008), the Parties had been married in excess of 25 years (1982-2008). The record illustrates that in the course of the marriage, the Parties enjoyed a very comfortable standard of living. Petitioner's income was the exclusive means of support for the family for at least sixteen (16) years during the course of the marriage. Respondent earned comparatively little or no income, as compared to that earned by Petitioner during the course of the marriage. Requests for Findings (Fact) No. 63, Granted (Appendix, p. 27). While Respondent earned income of less than \$1,000.00 in a 16 year time span during the marriage, Petitioner's earned income ranged from \$125,000.00 to more than \$220,000 annually. Requests for Findings (Fact) Nos. 52-54, Granted (Appendix, p. 25); Exhibit H (Appendix, p. 75).

Petitioner holds the rank of Captain with U.S. Airways with an earned income of at least \$130,000.00 annually (without consideration of bonuses and future increases in such income). Requests for Findings (Fact) No. 56, Granted (Appendix, p. 26). He enjoys prospects for

⁹ 1,250 (24) = 30,000.

advancement and increases in income. There was no evidence at trial alleging that Petitioner was under a threat of discharge from employment. In fact, Petitioner holds a senior position. The trial court found that Petitioner enjoys a substantially greater opportunity for future employment by education and experience as opposed to Respondent. Requests for Findings (Fact) No. 60, Granted (Appendix, p. 26). Petitioner has a substantially greater opportunity to earn income in the future and to acquire capital assets. Requests for Findings (Fact) No. 61, Granted (Appendix, p. 26). Petitioner has substantially greater opportunity to earn future income than does Respondent. Requests for Findings (Fact) No. 62, Granted (Appendix, p. 27).

Conversely, Respondent has a very modest employment history. Respondent earned income of less than \$1,000.00 in a sixteen (16) year time span during the marriage. At 53 years old, the employability of Respondent was severely compromised. Respondent's annualized income was \$33,279.96 at the time of trial. Respondent incurred indebtedness in the sum of \$12,245.00 to become qualified to earn that income.

Most importantly, the trial Court found that Respondent lacks sufficient income and property, inclusive of the property awarded by the Parties' Partial Stipulation, to provide for her reasonable needs, taking into account the style of living to which she has been accustomed during the marriage. Requests for Findings (Law) No. 2, Granted (Appendix, p. 31). The alimony awarded in this matter was not only paltry but unwarranted by the evidence. "It is essential that the amount of alimony awarded be sufficient to cover the wife's needs, within the limits of the husband's ability to pay." Murphy v. Murphy, 116 N.H. 672, 675 (1976) (*citing Fortuna v. Fortuna*, 103 N.H. 547, 549 (1961)).

Respondent is entitled to an equitable alimony award, both in amount and duration. While permanent alimony may not be required, the trial court's award is parsimonious.

Respondent had proposed alimony in the sum of \$2,500.00 per month for a period of 12 years. Respondent's Proposed Final Decree on Petition for Divorce, ¶5, p. 3 (Appendix, p. 36).

Respondent's request for alimony for a 12 year period accommodated the fact that Respondent was 53 years old and 12 years would conclude alimony payments when Respondent would be 65 years old and would presumably qualify for retirement benefits and/or social security benefits.

This Court is asked to review the financial affidavit of Respondent at Pages 3 and 4 thereof. Respondent's Financial Affidavit, pp. 3-4 (Appendix, pp. 63-4). The content of that affidavit was uncontested and in fact agreed by Petitioner in the course of his testimony. The purpose of the dual demonstrations of monthly expense was to highlight for the trial court that even excluding reasonable allocations of monthly expenses, Respondent would be unable to meet her reasonable needs absent an award of alimony as proposed by Respondent at \$2,500 per month.

Respondent recognizes provisions of N.H. RSA 458:19, VII (Supp. 2008), which permit Respondent to petition to renew an original alimony order. N.H. RSA 458:19, VII (Supp. 2008). The difficulty faced by Respondent in this matter is the inability to meet her reasonable in the immediate and short-term future. The result of the Decree of Divorce is that in less than two years, Petitioner will enjoy an income exceeding \$130,000 per year against an income of Respondent likely to be minimal at best. This after a marriage in excess of 25 years with Respondent's age in excess of 53 years.

An award in accordance with Respondent's request is also appropriate when considering other cases decided by this Court. In the matter of In Re: Sutton, 148 N.H. 676 (2002), this Court upheld an award of long term alimony of at least \$4,000 per month, payable until the respondent retired or the petitioner received monthly benefits from her share of the defined

benefit pension plan. In Re: Sutton, 148 N.H. 676, 680 (2002). The award was found not to be an abuse of discretion in a long term marriage where at the time of the hearing the parties were both 52 years of age, respondent's annual salary was \$252,473 and Petitioner, who worked little, if at all, during the course of the marriage, was capable of renewing her nursing license and obtaining a position with a starting annual salary of \$21,000. Id., at 677-78. In Healey v. Healey, 117 N.H. 618 (1977), the Court found that the trial court did not abuse its discretion in continuing alimony payments, as the older and relatively unskilled plaintiff was not required to adjust her standard of living to fit the income she was able to generate for herself when respondent was financially able to make the payment. Healey v. Healey, 117 N.H. 618, 621 (1977). In In Re: Fowler, 145 N.H. 516 (2000), the alimony award was found inadequate as the couple was married for 24 years, the former wife was not employed during the majority of the marriage and husband's income was sufficient to provide both parties with financial support consistent with the quality of life established during the marriage. In Re: Fowler, 145 N.H. 516, 521 (2000).

After nearly a quarter century of marriage during which the defendant committed herself to domestic responsibilities at her husband's urging and was discouraged from acquiring the educational and market skills necessary for future self-sufficiency, the court abused its discretion by leaving the defendant at risk while the plaintiff continues to enjoy a lifestyle comparable to the one the parties had during their marriage.

Id., at 521.

In this matter before the Court, the trial court expresses its basis in determining the amount and duration of alimony as "the fact that it may take a period of time before the properties in Pittsburgh are liquidated and Ms. L'Heureux can then utilize said monies to generate a cash flow." Decree of Divorce, ¶5, pp. 7-8 (Addendum, pp. 41-42). The trial court declares simply that Respondent "is presently working which is a positive but under no

circumstances does her income allow her to live in the same manner as existed previously.” Id., at p. 8 (Addendum, p. 42). It thereby imposes upon Respondent (i) a requirement that she liquidate assets awarded by the Parties’ Partial Stipulation in order to sustain herself, (ii) invest proceeds in an amount that it could not possibly have determined, and did so (iii) without evidence of a presumed return on investment. Decree of Divorce, ¶5, p. 8 (Addendum, at p. 42).

The conclusions and order of the trial court are not supported as a matter of law. In Russman v. Russman, 124 N.H. 593 (1984), this Court found:

[A]lthough the assets received in the division of property might be a proper consideration in making a corresponding support award, a presumption . . . that the asset, upon liquidation, would represent a . . . [certain and specific] value . . . to the plaintiff is unjustified and too uncertain to give validity to a corresponding support award which, alone, is clearly inadequate to meet the needs of the plaintiff and children.

Russman v. Russman, 124 N.H. 593, 598 (1984). In Russman, the master awarded to the defendant three parcels of real estate and another three parcels of real estate to plaintiff. Id., at 597. The record in that matter indicated “that the master presumed that these properties would be converted to cash that would generate interest income, which the plaintiff could then use towards her expenses.” Id. at 597-98. In regard thereto, this Court correctly concluded “a presumption, on these facts that the asset, upon liquidation, would represent a present use value of \$90,000 to the plaintiff is unjustified and too uncertain to give validity to a corresponding support award which, alone, is clearly inadequate to meet the needs of the plaintiff . . .” Id., at 598.

Russman rejects precisely the formulation imposed by the trial court in this case. The trial court had no evidence before it of presumed proceeds to Respondent upon liquidation (if at all) of properties awarded to her in Pittsburgh or Bedford. At the same time, the trial court admits Respondent lacks sufficient income and property, *inclusive* of the property awarded by

the Parties' Partial Stipulation, to provide for her reasonable needs, taking into account the style of living to which she has been accustomed during the marriage. Requests for Findings (Law) No. 2, Granted (Appendix, p. 31). Moreover, the trial court itself in its colloquy with counsel recognized that the true value of real properties awarded to Respondent would necessarily be dependent upon market conditions actually bringing forward certain sale proceeds and actual costs incident to any sale. Transcript, Vol. 5, pp. 1251-52. The trial court had absolutely no evidence before it as to what return one might realize upon investment of any sale proceeds from liquidation of the properties.

In an unreported case which serves to illustrate the considerations inherent in determining the amount and duration of alimony, the Hillsborough County Superior Court (Lynn, J.) issued an order of alimony of \$4,100 per month for a 50 year old wife until she attained the age of 65. Collins v. Collins, Hillsborough County Superior Court, Docket No. 00-M-1926 (October 25, 2001); Douglas, New Hampshire Practice – Family Law (3rd – Ed.), Vol. 3a, Chapter 18.04, p. 15. In Collins, both parties were 58 years of age at the time of divorce. Husband was employed throughout the course of the marriage as an optometrist. Wife worked sporadically during the marriage as an office manager and travel agent. At the time of hearing, husband's annual income was \$110,000, and the Court imputed to wife \$12,000 annual income. The Court indicated its goal was "as nearly as possible to equalize the incomes of the parties" because of the length of the marriage, the ages of the parties, and their lifestyles during the course of the marriage.

Douglas, supra.

Respondent understands that the Court will sustain findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law. In Re: Fowler, 145 N.H. 516, 519 (2000). The trial court in this matter had broad discretion in determining matters of

alimony and fashioning alimony by way of the Decree of Divorce. Id. Absent an unsustainable exercise of that discretion, Respondent understands this Court will not overturn its ruling or set aside its factual findings. In Re: Telgener, 148 N.H. 190, 191 (2002). In this matter, Respondent believes it cannot be reasonably argued that the trial court did not abuse its discretion, given the amount and duration of alimony ordered against the facts found expressly in the body of the Decree of Divorce and in the trial court's ruling on Respondent's Requests for Findings.

Against the backdrop of the findings made by the trial court, this Court must look to the other two issues on appeal which are (i) the ignoring by the trial court of in excess of \$12,000 in debt incurred by Respondent precisely in order to make herself employable in the short term at all, and (ii) the imposition upon Respondent of paying 50% of the costs of the appointed commissioner, considering the substantial income of Petitioner. In this regard as well, the Decree of Divorce evidences an unsustainable exercise of discretion.

CONCLUSION

Both the Decree of Divorce and the Order on Motions to Reconsider must be reversed as the only remedy available to Respondent in avoidance of a life of financial misery, while Petitioner enjoys the fruits of his marriage with Respondent, her intangible contributions to his success over the 27 year marriage between them, and his employment with U.S. Airways.

First, the alimony order by the Decree of Divorce must be vacated as to both amount and duration. The trial court must be directed to order alimony on a basis independent from assets awarded to Respondent by terms of the Partial Stipulation. By its own findings, the trial court concludes need exists and income generation of Respondent is minimal at best at her age of 53 years (at time of trial). If upon remand the trial court is ordered to reassess and modify its alimony order (length and duration), such reassessment must be undertaken with guidance from this Court, with directives to include the following considerations (per provisions of N.H. RSA 458:19 (Supp. 2008)):

1. The age of the Parties;
2. The length of the Parties' marriage;
3. The relative income histories of the Parties;
4. The abilities of the Parties to generate earned and unearned income in the future;
5. The Parties relative retirement income prospects;
6. The relative educations, training, expertise and income generation capacities of the Parties in relation to those considerations directed by this Court;
7. To exclude from consideration the fantasy of net sale proceeds and potential investment income from those presumed proceeds upon any sale of real properties awarded to Respondent by terms of the Partial Stipulation;

8. An assessment of Respondent's lack of sufficient income and property to provide for her reasonable needs, considering the style of living to which the Parties had both been accustomed through the marriage;

9. The ability of Petitioner to meet his reasonable needs considering alimony, child support and the termination of child support in the immediate future (the child being 14 years of age at time of trial);

10. The inability of Respondent to be self-supporting and her need to undertake the bulk of supervision of the Parties' child as Petitioner continued his career in the airline industry; and

11. The federal tax consequences of its order.

It is clear the trial court either refused to consider or otherwise failed to apply provisions of law in formulating its order of alimony.

Second, this Court must vacate the trial court's Order on Motions to Reconsider which reduced the previously ordered temporary alimony of \$2,000 per month to \$1,250 per month and made its order retroactive to February 19, 2009. Respondent regards the order to be retaliatory by the trial court.

Third, in light of the foregoing, this Court must reverse the trial court's order that leaves Respondent with the obligation to satisfy costs associated with her certificate program for medical transcription. Considering the total gross sum of alimony awarded of \$30,000 over 24 months and the tuition cost to Respondent of \$12,245 (incurred to *become at all employable*), the effective *gross* sum of alimony over that time is reduced to \$17,755. The result is nothing less than unconscionable.

Fourth, this Court must grant relief as pertains to sharing costs of an appointed commissioner where the Parties relative incomes are \$130,000 against \$33,276, a proportion of approximately 80% to 30%. Respondent is clearly unable to contribute to such cost. The trial

court appears to have ignored her inability to contribute and the Petitioner's comparative ability to pay the entire cost thereof.

ORAL ARGUMENT REQUESTED

Respondent respectfully requests oral argument on the issues raised by this appeal. The argument is requested before the full Court (not 3JX Panel).

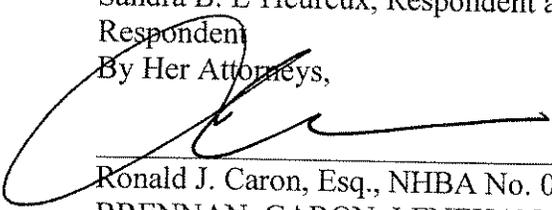
Oral argument is necessary and will likely be helpful to the Court in deciding issues raised in this appeal. The record is convoluted. The trial transcript is replete with interruptions and comment by the trial court. The Partial Stipulation presumably motivated the trial court in many respects. It is expected this Court may desire and would certainly benefit from explanations, background, and facts upon which it will likely desire to base its opinion in whole or in part.

Respondent also suggests 30 minutes to a side (rather than the mandated 15 minutes) would be appropriate and likely helpful to the Court in light of the tenor of this case and the issues raised, all as explained above and elsewhere in this Brief.

Any permitted oral argument would be delivered by Respondent's trial counsel, Ronald J. Caron, Esquire.

Respectfully Submitted,
Sandra B. L'Heureux, Respondent and
Respondent
By Her Attorneys,

Dated: November 3, 2009



Ronald J. Caron, Esq., NHBA No. 0048
BRENNAN, CARON, LENEHAN &
IACOPINO
85 Brook Street
Manchester, New Hampshire 03104
Tel. – (603) 668-8300
Fax – (603) 668-1029
E-Mail – rcaron@bclilaw.com

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that copies of this "Brief of Appellant" and related "Appendix to Brief of Appellant" have been forwarded this date by U.S. Mail, postage prepaid, to the following:

2 COPIES:

Joshua L. Gordon, Esquire
(Appellee/Petitioner Appellate Counsel)
LAW OFFICE OF JOSHUA GORDON
26 South Main Street
No. 175
Concord, New Hampshire 03301

2 COPIES:

Deborah H. Shepherd, Esq.
(Appellee/Petitioner Trial Counsel)
CLARK LAW OFFICES
694 Pine Street
Manchester, New Hampshire 03104

2 COPIES:

John D. Cameron, Esq.
(Guardian *ad Litem*)
174 Court Street
Laconia, New Hampshire 03246

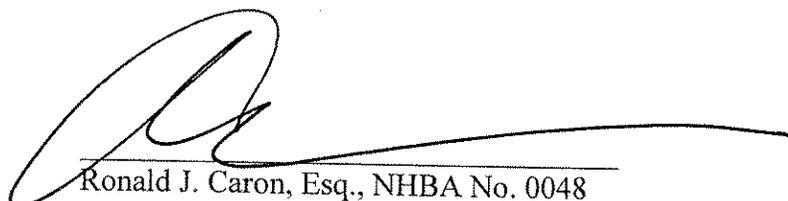
2 COPIES:

Stephanie Norrell, *pro se*
(Named co-Respondent to Petitioner)
2706 Viking Drive
Herndon, Virginia, 20171

2 COPIES:

Hillsborough County Superior Court
(Northern District)
300 Chestnut Street
Manchester, New Hampshire 03101-2490

Dated: November 3, 2009

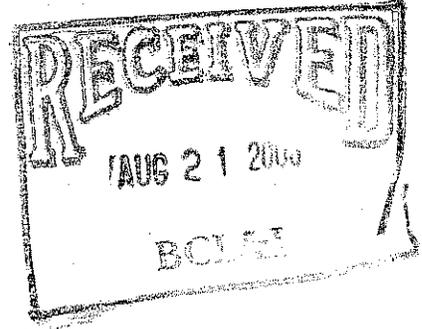

Ronald J. Caron, Esq., NHBA No. 0048

THE STATE OF NEW HAMPSHIRE
Northern District of Hillsborough County

300 Chestnut Street
Manchester, NH 03101-2490
603 669-7410

NOTICE OF DECISION

RONALD J CARON ESQ
BRENNAN CARON LENEHAN & IACO
85 BROOK STREET
MANCHESTER NH 03104-3605



NO. 06-M-0885

IN THE MATTER OF
Paul Summerville and Sandra L'Heureux

Enclosed please find a copy of the Court's Order dated 8/04/2008
relative to:

Parenting Plan
Uniform Support Order
Court Order

THE DIVORCE WILL BECOME EFFECTIVE 9/22/08. THE FEE FOR A CERTIFICATE OF
DIVORCE IS \$5.00, A CERTIFIED COPY WITH THE TERMS IS \$15.00. REQUESTS WITH
PERSONAL CHECKS ARE HELD FOR 15 DAYS.

Any party obligated to pay child support is advised that it is his/her
responsibility to keep the court (and the Division of Human Services
if appropriate) advised of his/her current mailing address in writing,
until such time as support payments are terminated.

08/19/2008

John Safford
Clerk of Court

cc: Deborah H. Shepherd, Esq.
John D Cameron, Esq.
Stephanie Norrell
Daniel C Proctor, Esq.

The State of New Hampshire

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT
Docket No: 06-M-885

In the Matter of:

Paul Summerville and Sandra L'Heureux

ORDER

MASTER RECOMMENDS:

The above case was filed on or about June 16, 2006. The case came to a final hearing in June of 2008. In the twenty years this Master has sat on the bench, he can remember no case more filled with vitriol, destructive rhetoric, waste of assets, disrespect towards one another and a willingness to destroy anyone and anything in his or her path. Both parties were willing to use every means to cause injury to the other party. Both parties at various times felt free to pick and choose the various court orders and then claim the other party is in contempt. Neither party came into the final hearing with clean hands or on the moral high ground. This case was tried for five days, even after the property settlement was reached by the parties. The parties would have done themselves, and everybody else, a great deal of good if they had resolved the totality of issues by mediation. However, to have solved everything by mediation would have meant that neither party could act in a mean, spiteful and vindictive manner towards the other party.

These parties, between lawyers' fees, experts' fees, guardian fees, mediation fees, etc., have spent between \$300,000 and \$500,000. There was no justification for what

occurred in this case, and yet the Court was powerless to stop the train wreck. For that the Court also has to share the blame. This is a classic example of where complex, high tension litigation needs close monitoring and expeditious resolution. Due to the lack of resources, the Court could do neither, and so the case dragged on, precious resources were expended, and the bitterness existing between the parties continued to spiral unabated.

An interesting aspect of this case is that both sides prepared, in excruciating detail, minutia of individual snippets of financial facts and information. The answer to all the issues may, indeed, be contained within the voluminous exhibits neatly categorized and filed by both parties. The problem the Court has is that it is very difficult to grasp a big picture so as to come up with a unified whole. This case cried out for a forensic accountant to digest and simplify the financial actions and/or chicanery of the parties. The Court most certainly does not pretend to be a financial expert. The Court does not pretend to understand all the reasonable ins and outs of economic resources of the parties which were centered in Pittsburgh. The Court cannot conclude from the evidence presented whether or not Ms. L'Heureux managed or mismanaged the various accounts and businesses in Pittsburgh. It does know that Ms. L'Heureux repeatedly failed to provide simplified accountings. Just throwing documents either at Mr. Summerville or at the Court doesn't cut muster. The financial situation was a mess at the beginning of the five-day trial, and, quite frankly, it was a mess at the end of the five-day trial. The only saving grace was that the parties had reached a property settlement. The whole exercise relative to the financial matters went to the issue of alimony. The Court found trying to go back over the financial matters that had already been settled to prove or disprove alimony very

counterproductive.

These parties have such anger and animosity that the Court finds that both parties are perfectly willing to use their one child and cause him harm. The Court believes that the child knows much of what happened concerning this divorce because he was advised, informed and educated by Ms. L'Heureux. Ms. L'Heureux denies trying to overly influence the child. The Court is reminded of a line from the Rogers and Hammerstein musical *South Pacific* when talking about prejudice. The line goes: "You have to be carefully taught." This child knows far too much and has been far too involved in this case to said child's harm. Mr. Summerville, on the other hand, most certainly uses his anger and frustration to affect the child. At the end of five days, Mr. Summerville was on the stand and testified. The issue of the child and tennis was brought up to the Court. By all accounts, especially that of the child's therapist and Guardian, this is a bright, intelligent child who is good in sports. He apparently plays tennis quite well and participates at a fairly high level. Nonetheless, Mr. Summerville felt it incumbent to publicly belittle said child's tennis accomplishments as a means of attacking Ms. L'Heureux as perhaps being overzealous in her pushing the child into tennis. The Court is aware that Mr. Summerville was attempting to show that the child did not really want to be in competitive tennis and that this was all Ms. L'Heureux's doing and part of some conspiracy to deny him fair access to his child. The Court is not saying that Mr. Summerville may not be accurate in his assessment. Accuracy is irrelevant. The Court would be shocked and amazed if within 24 hours, or maybe 24 minutes, that child was not aware that his father belittled his accomplishments as a statewide tennis player. Even if all the claims of Mr. Summerville are true about the child's ability, no child, under any circumstances, wants to know that his

parent does not support him in an activity. Demeaning a child in public in that manner is unforgivable.

1. Decree of divorce. A decree of divorce is granted to the Petitioner on his petition for divorce on grounds of irreconcilable differences having arisen between the parties causing the irremedial breakdown of the marriage. The Respondent's cross-petition for divorce is dismissed.

2. The partial stipulation for final decree of divorce is approved and made part of this Court's order.

3. Parenting issues. Parenting plan. See attached parenting plan. The Court, in essence, adopts the parenting plan proposed by the Guardian ad Litem. The Court is aware that the child has indicated, both to his therapist and to the Guardian, that he does not want a change in his parenting time with his father. The Court is also aware that, for all practical purposes, the father lives in Washington, D.C. with his girlfriend and that the current plan is grossly inconvenient for the father. The proposed plan is more sensible and more rational. The child has been described as a mature minor. The child also has been allowed far too much control over adults, or has been encouraged by adults to exercise this control. The child is mature and most certainly has a right to have his opinion heard and weighed before the Court enters an order. This was done through the Guardian and through the therapist. What the child does not have is the right to substitute his judgment for that of adults. To allow that would be to abdicate any adult responsibility and give the world over to teenagers. That may, indeed, have been what's happened here. It will not be part of this Court's order. The Court in approving the Guardian's recommendation specifically does not approve and has stricken paragraph 6C relative to

unavailability to care for the child. Such action, while excellent in theory, would probably just lead to further litigation in this case due to the parties' inability to communicate effectively and reasonably with one another. The Court has also made some modifications to paragraphs 6C, 6E and 6F. The reason for said modification is that the Guardian used the language "the parents agree." In most cases the Court does not anticipate the parents agreeing, so the Court is simply entering an order.

One parenting issue remains. This case has been in litigation for two years. In cases involving a minor child, it is usually wise and appropriate that a child not be exposed to a significant other of either the mother or the father. There are many reasons for this, not the least of which is that the child is already being traumatized by his parents being divorced and does not need to have to deal with a new third party who is stepping, as the child might perceive it, in between "his happy home." Advice which is normally sound at the beginning of a divorce action in almost all cases tends to change as the matter wears on and all parties, including children, begin to understand that the family relationship is undergoing a drastic change. It is not unreasonable to expect the mother or the father, after a reasonable period of time, to begin new relationships and for the child to meet and learn to deal with said parties. What has happened in this case is that Taylor's animosity of spending any time with Mr. Summerville's significant other has continued unabated. Whether this is solely the child's doing, or the child reacting to the direct or indirect urgings of his mother, is almost irrelevant if there may be harm to the child.

The child's therapist was greatly concerned that the child would act out in an extremely negative and destructive manner if forced to have contact with Mr. Summerville's significant other. While the Court normally would not be inclined to allow

the child to make and dictate such a limitation, the Court also has to be mindful that it acts in the child's best interest, not necessarily the best interest of Ms. L'Heureux or Mr. Summerville. Therefore, for a period of one year, from July 1, 2008 to July 1, 2009, the child shall not have any contact with Mr. Summerville's significant other unless the child agrees to have said contact. If the child is going to agree to have said contact, said matter must first be discussed with the child's therapist, who shall also sign off on said agreement. The Court does not want to place the child at this point in a position of saying one thing to his father and another thing to his mother. That could be very destructive. As I said above, this order is very unusual in that this Master, after the passage of two years, normally would never contemplate such a restriction. However, it is best never to say never, and any order by its nature must take into consideration the wishes of the child. This order is also giving the child a one-year notice that he is going to have to learn to adjust. At that point the child will be roughly 14 years of age and the Court would anticipate some of the anger and hurt relative to the breakup of this marriage may have abated.

4. Financial issues: Mr. Summerville and his counsel were transfixed with the idea that Ms. L'Heureux took, secreted, hypothecated over \$200,000 from the parties' various entities throughout the years. There is no question that Ms. L'Heureux failed to follow the Court's order relative to an accounting. It is as if Ms. L'Heureux deliberately, willfully and intentionally was determined to flaunt Mr. Summerville's legitimate requests for an accounting of the money and to flaunt the Court's order. The only "expert" evidence was testimony of the parties' retired C.P.A., Mr. William Brown. The Court notes that Mr. Brown retired in 2000 and, therefore, any activity thereafter could not be done in his

position as a C.P.A. He indicated, or at least gave some credibility, that monies were not misused.

The Petitioner and his counsel are highly skilled. Neither Petitioner, counsel, nor the Court is skilled in the art of forensic accounting. The Petitioner spent much time going over financial records in detail. However, what it all means is still highly confusing. If Petitioner really wanted to pursue, with a degree of legal certainty, a true understanding of this matter, it would have been helpful for a forensic accountant to have been engaged and testify about the financial doings. Just providing the Court with document after document of financial records does not prove anything. Considering that the parties spent anywhere from \$300,000 to \$500,000 in legal and expert fees, the Court cannot understand why a forensic accountant would not have been engaged to present matters to the Court in some rational and understandable manner. The Court received a tremendous amount of evidence, but the Court has no expertise in the type of evidence presented, and, therefore, cannot say that it could sustain with any certainty the Petitioner's position relative to Ms. L'Heureux's use of monies. The most the Court could conclude is that at various times both parties used funds improperly. The Court could not conclude as to any large scale fraud by either party.

5. Alimony. The Court finds that Ms. L'Heureux shall be entitled to receive alimony in the amount of \$1,250.00 for a period of two years. Said alimony order shall be effective upon the divorce becoming final. The Court could not find and makes no ruling whether or not Ms. L'Heureux properly or improperly utilized monies from the parties' various businesses. The Court is issuing this order based upon the fact that it may take a period of time before the properties in Pittsburgh are liquidated and Ms. L'Heureux can then

utilize said monies to generate a cash flow. Further, Ms. L'Heureux is presently working which is a positive but under no circumstances does her income allow her to live in the same manner as existed previously.

6. Child support. See Uniform Support Order. The Petitioner shall pay to the Respondent the sum of \$1,956.00 monthly on the first day of each month commencing the first day of the month following the effective date of this decree. Said order is based upon Petitioner's wages being approximately \$130,000 a year. The parties shall exchange tax returns by May 1st of each and every year. If the Petitioner has substantial additional income, either due to raises, bonuses or other factors, the Respondent shall be entitled to bring the matter back to court for an adjustment relative to child support on a yearly basis. The Court enters no order relative to any additional bonuses included in child support. Child support shall be payable by direct wage assignment.

7. Claim against the estate of Ms. L'Heureux's mother. The Court finds this action so tenuous that it declines to grant Mr. Summerville any right to claim an interest in any possible medical malpractice case regarding Ms. L'Heureux's mother. No action has even been brought in the above matter.

8. Companion passes. For the year 2008 Ms. L'Heureux shall be entitled to have two (2) companion passes. For the years 2009 and 2010, she shall be entitled to have four (4) companion passes if said passes are available to Mr. Summerville as an incident to his employment. It was represented that Ms. L'Heureux will be liquidating the Pittsburgh property. This Order is granted to enable her to commute between New Hampshire and Pittsburgh at a reasonable cost. Thereafter her choice of flying destination shall be done at her own expense.

9. Tax exemption. The Petitioner shall be entitled to claim the child Taylor for state and/or federal income tax purposes beginning with the tax year 2008, provided Mr. Summerville is current in his obligation to pay child support and alimony.

10. Health insurance for spouse. Each party shall be responsible to maintain his or her individual health and dental coverage at his or her expense.

11. Life insurance. Mr. Summerville shall maintain life insurance policies in the amount of \$300,000 naming Sandra L'Heureux as trustee for the benefit of the minor child. Said obligation to provide life insurance shall expire upon said child attaining the age of 18 or graduating from high school.

12. Furniture and other personal property. Each party is awarded the furniture and other personal property in his or her possession. The parties were to have gone to the residence and resolved issues relative to personal property and the Court issues no further order relative to the same.

13. Tuition reimbursement. The Court issues no order requiring Mr. Summerville to reimburse Ms. L'Heureux for any tuition.

14. Cash payments by Petitioner to Respondent: DENIED.

15. Respondent's Requests for Findings of Facts and Rulings of Law. The following requests are GRANTED: 18, 19, 20, 27, 28, 30, 31, 34 in part, 35, 36, 41, 45, 46, 47, 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 63, 65, 66, 68, 69. Rulings of Law: 1, 2. All others are DENIED.

16. The following Requests from Petitioner for Findings of Facts and Rulings of Law are GRANTED: 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, 33, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 64,

65, 66, 67, 69, 71, 75, 79, 85, 86, 87, 88, 89, A, B, D, E; 90, A, B; 91. 91A and B are DENIED. 92, 93, 94, 95, 96, A, 98, 99, 100. All other requests are DENIED.

August 1, 2008

Date

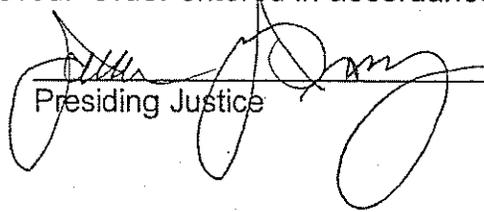


Leonard S. Green, Marital Master

Master's recommendation approved. Order entered in accordance therewith.

4 August 2008

Date



Presiding Justice

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT
Case #06-M-0885

In The Matter of Paul Summerville and Sandra L'Heureux

PARENTING PLAN

- I. This parenting plan is proposed by the Guardian *ad litem*.
- II. This parenting plan is **final**. All of the following paragraphs shall be incorporated in the Court's final order.

The parental rights and responsibilities statute, RSA 461-A, requires any party in a divorce, legal separation, or parenting (formerly known as "custody") case to file a parenting plan, whether s/he is seeking an order establishing parental rights and responsibilities or an order modifying such rights and responsibilities. This state's policy (below) as set forth in RSA 461-A:2 will guide the court in making decisions affecting parental rights and responsibilities.

Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

- (a) **Support frequent and continuing contact between each child and both parents.**
- (b) **Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.**
- (c) **Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.**
- (d) **Grant parents and courts the widest discretion in developing a parenting plan.**
- (e) **Consider both the best interest of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.**

- III. This parenting plan is for the following child:

Taylor Summerville Date of birth: 08/21/1995

A. **DECISION-MAKING RESPONSIBILITIES**

1. Major Decisions. Both parents will share equally in the responsibility for making major decisions about Taylor including, but not limited to, decisions about the child's education, non-emergency health and dental care, and religious training. Neither

parent will have unilateral authority with regard to such major decision-making responsibility.

2. Day-to-Day Decisions. The parents agree that they shall make day-to-day decisions for the child during the time s/he is caring for the child. This includes any emergency decisions affecting the health and safety of the child if necessary. However, a parent who has to make an emergency decision shall immediately attempt to contact the other parent by cell phone or other expeditious means to discuss the decision with the other parent as time permits and to make the decision with input from the other parent if at all possible. If time does not permit, or if the other parent is not reachable after a concerted effort to reach him/her appropriate under the circumstances, the parent making the emergency decision shall notify the other parent as soon as reasonably possible.

B. RESIDENTIAL RESPONSIBILITY AND PARENTING SCHEDULE.

1. **Routine Schedule.** Each parent shall have parenting time with the Taylor as follows:

a. Paul shall have parenting time with Taylor in alternate weeks beginning Wednesday after school (if school is in session) and ending at 6:00 p.m. on Sunday. If there is no school and Paul is available to begin his parenting time earlier, Paul's parenting time shall begin at 11:00 a.m. on Wednesday.

b. Sandra shall have parenting time with Taylor at all other times except as further described in this Parenting Plan, including consideration for holidays and vacations, and as the parents might otherwise mutually agree.

c. There will be no makeup time for missed parenting time. If either parent is delayed by unforeseen circumstances such that s/he will be unable to begin his/her parenting schedule as defined herein, s/he will notify the other parent of the delay at the earliest possible time and the other parent will make a good faith effort to prepare the child and adjust the child's schedule appropriately. Under no circumstances will an unforeseen delay be justification for withholding Taylor from the other parent beyond the noticed period of time.

2. **Holiday and Birthday Planning.** The holiday and birthday schedule shall take precedence over the routine schedule set forth above and the vacation schedule set forth below.

a. Mother's Day. Taylor shall be with Sandra on every Mother's Day from 9:00 a.m. until 7:00 p.m.

b. Father's Day. Taylor shall be with Paul on every Father's Day from 9:00 a.m. until 7:00 p.m.

c. July 4th. The parents will agree annually as to which parent Taylor will spend the July 4th with. If July 4th does not fall on a parent's normally scheduled parenting day, it shall begin at 11:00 a.m. and end at 11:00 p.m.

d. Thanksgiving. The Thanksgiving Holiday is defined as beginning at the end of school on the Wednesday immediately prior to the Thanksgiving holiday and ending at 8:00 p.m. on the Sunday immediately following the Thanksgiving holiday. The Thanksgiving holiday supersedes the routine parenting schedule and, in the event the Thanksgiving holiday falls during Paul's normally scheduled parenting time in a year that Sandra has Thanksgiving parenting time, the parenting "clock" will be re-set and the weekend following Thanksgiving will be Paul's parenting weekend.

Sandra shall have parenting time with Taylor for the Thanksgiving Holiday in 2009 and in each odd-numbered year thereafter.

Paul shall have parenting time with Taylor for the Thanksgiving holiday in 2008 and in each even-numbered year thereafter.

e. Christmas Eve. Christmas Eve is defined as beginning after school or at 12:00 p.m. on December 24th, and ending at 12:00 p.m. on December 25th.

Paul shall have parenting time with Taylor on Christmas Eve in 2009 and in each odd-numbered year thereafter.

Sandra shall have parenting time with Taylor on Christmas Eve in 2008 and in each even-numbered year thereafter.

f. Christmas Day. Christmas Day is defined as beginning at 12:00 p.m. on December 25th and ending at 12:00 p.m. on December 26th.

Paul shall have parenting time with Taylor on Christmas Day in 2008 and in each even-numbered year thereafter.

Sandra shall have parenting time with Taylor on Christmas Day in 2009 and in each odd-numbered year thereafter.

g. Other religious, civil and family celebrated occasions. The parents shall discuss and mutually agree in good faith regarding parenting time during holidays and school recesses not specifically identified in this Parenting Plan.

3. **Three-Day Weekends.** The parent who has parenting time on the weekend immediately preceding a Monday national federal holiday (post office is closed) shall have parenting time on that Monday holiday.

4. **Vacation Schedule.**

(a) Christmas Vacation. Christmas Vacation is defined as beginning at 12:00 p.m. on December 26th and ending at 5:00 p.m. on January 1st.

The parties shall split the Christmas Vacation as follows:

Sandra shall have parenting time with Taylor in odd-numbered years from 12:00 p.m. on December 26th until 5:00 p.m. on December 29th; and in even-numbered years from 5:00 p.m. on December 29th until 5:00 p.m. on January 1st.

Paul shall have parenting time with Taylor in even-numbered years from 12:00 p.m. on December 26th until 5:00 p.m. on December 29th; and in odd-numbered years from 5:00 p.m. on December 29th until 5:00 p.m. on January 1st.

(b) February and April Vacations. The February and April vacations are defined as beginning or ending on the respective parent's weekend, but not including both weekends of the vacation period. Thus, if one or the other parent's weekend is at the beginning of the February or April vacation, the vacation period for that parent begins after school on the Friday of that weekend and ends at 8:00 p.m. on the following Friday. If one or the other parent's weekend is at the end of the February or April vacation, the vacation begins at 5:00 p.m. on the first Sunday of the vacation week and ends at 8:00 p.m. on the following Sunday.

The parents will alternate parenting time with Taylor during the February and April school vacations as follows:

Sandra shall have parenting time with Taylor for the February school vacation in 2008 and in each even-numbered year thereafter; and for the April school vacation in 2009 and in each odd-numbered year thereafter.

Paul shall have parenting time with Taylor for the February school vacation in 2009 and in each odd-numbered year thereafter; and for the April school vacation in 2008 and in each even-numbered year thereafter.

(c) Summer School Vacation. The parents shall each have two consecutive or non-consecutive weeks of summer school vacation parenting time with Taylor. A summer vacation "week" is defined as beginning or ending on the respective parent's weekend, but not including both weekends of the vacation period unless a respective parent elects two consecutive weeks for his/her summer vacation. In such event the parenting schedule "clock" is reset if necessary such that the non-vacationing parent's normally scheduled parenting time begins immediately following the end of the vacationing parent's two-week vacation..

Each parent shall give written notice to the other parent no later than May 1st of each year as to which summer vacation weeks the respective parent chooses. If there is a conflict in the choices and the parents cannot agree to coordinate the schedules, Paul's chosen schedule shall prevail in even-numbered years and Sandra's chosen schedule shall prevail in odd-numbered years.

Unused vacation time cannot be carried over from one year to the next and will be forfeited.

5. **Supervised Parenting Time.** Not applicable.

6. **Other Parental Responsibilities.**

a. The parents agree that either one may spend such other parenting time with Taylor as the parents may agree.

b. A parent requesting a temporary change to the parenting schedule shall make his/her request of the other parent about such change with at least 48 hours notice except when family situations, illnesses, or other unforeseen circumstances commitments make 48-hours notification impossible but the request for modification is reasonable.

In the event either parent is required, due to work-related circumstances, to change his/her parenting time schedule with Taylor, s/he shall provide the required 48-hour notice to the other parent and the other parent shall not unreasonably refuse to facilitate a needed change. There shall be no requirement to readjust the parenting schedule or provide compensating parenting time to a parent if notice is not given within 48 hours, except in the event of weather-related interruptions or otherwise unforeseeable interruptions such as, but not limited to, accident, emergency, or uncontrollable delays.

c. If either parent is unavailable to care for the child at any time and for any reason during his or her scheduled parenting time, for a period reasonably expected to last longer than twenty-four hours, that parent agrees to contact the other parent and offer the other parent the opportunity to have parenting time with the child for the period of unavailability. *PL*

d. Each parent shall supply the appropriate clothing for the child for the child's transition to the other parent. This clothing is to be considered the child's clothing and shall be returned with the child to the parent that supplied the clothing.

e. The parents ~~agree that~~ *PL* the minor child can play one youth sport, or take a series of lessons such as ice skating or skiing, each of three seasons (fall, winter and spring). ~~The parents agree that~~ *PL* the sport or the lessons will not interfere with other established and agreed-upon activities in which the child may be involved. The parents ~~agree to insure~~ *shall* that the child attends all games and practices or lessons that occur on the parents' respective parenting days.

~~The parents agree that~~ *PL* Taylor may attend at least one sports camp each summer, with the parents agreeing on the camp while considering Taylor's best interest and in particular with consideration for Taylor's interest in and commitment to tennis. The camp choice(s) will be planned and made prior to the finalization of the summer vacation schedules. The parents agree to ensure that Taylor attends each session of the camp on the respective parent's parenting days as necessary.

f. As Taylor gets older, his individual interests may impact the parenting schedule set forth in this parenting plan. The parents ~~agree to~~ *shall* be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing child may necessitate.

g. Other Parenting Responsibilities. Neither parent shall plan activities for Taylor that will occur during the other parent's parenting time unless discussed and mutually agreed-upon in advance, or unless the activity is a scheduled school event or an athletic, extracurricular or enrichment event in which Taylor has been scheduled to participate.

C. LEGAL RESIDENCE FOR SCHOOL ATTENDANCE.

Taylor shall attend school in the school district where Sandra resides.

D. TRANSPORTATION AND EXCHANGE.

1. The receiving parent shall be responsible for the transportation of Taylor to his/her home, except that if either parent removes Taylor from New Hampshire, s/he is responsible for returning him to the State.

2. Unless both parents agree to a different meeting place, the exchange of Taylor shall be at Taylor's school or one-another's home.

3. The costs of transportation for normal parenting exchanges (within the State of New Hampshire) shall be the responsibility of each parent.

E. INFORMATION SHARING AND ACCESS, INCLUDING TELEPHONE AND ELECTRONIC ACCESS. Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive Taylor's school records, and both parents are encouraged to consult with school staff concerning Taylor's welfare and education. Both parents are encouraged to participate in and attend Taylor's school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning Taylor.

Both parents have equal rights to consult with any person who may provide care or treatment for Taylor and to inspect and receive Taylor's medical, dental or mental health records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting Taylor, including Taylor's medical needs, as close in time to the emergency circumstance as possible.

1. Parent-Child Telephone Contact. Taylor shall be given privacy during his conversations with either parent. While Taylor is having parenting time with one parent, the other parent shall be permitted to speak by telephone with Taylor at reasonable times.

2. Parent-Child Written Communication. Both parents and Taylor shall have the right to communicate in writing or by emailing during reasonable hours without interference or monitoring by the other parent.

F. RELOCATION OF A RESIDENCE OF A CHILD.

The relocation of Taylor's residence in which he lives at least 150 days per year is governed by RSA 461-A:12. In general, either parent may move the child's residence if it

results in the parents living closer and it if will not affect the child's school enrollment. Prior to relocating the child's residence farther from the other parent or in such a way that school enrollment will be impacted, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present. At the request of either parent, the court shall hold a hearing on the relocation issue.

G. PROCEDURE FOR REVIEW AND ADJUSTMENT OF PARENTING PLAN.

The parents agree to meet as often as necessary for the benefit of the child to review this plan and the well-being of the child. Any agreed-upon long-term (non-temporary) changes shall be in writing, signed by the parents and filed with the court.

H. METHOD FOR RESOLVING DISPUTES.

In the future, if the parents disagree about parenting issues they shall endeavor to come to agreement in the best interest of the child. If the parents cannot come to agreement, they agree to seek the assistance of GAL Cameron or a mutually agreed-upon mediator to assist them and share equally the fees. Only if the parents cannot agree even after seeking the assistance of the GAL (or another impartial third party as necessary) will they ask the Court to decide the issue.

I. OTHER AGREEMENTS.

Parental Communication.

a. Both parents have the responsibility to protect Taylor from any negativity regarding the other parent by promoting a healthy, beneficial relationship between Taylor and the other parent. Both parents shall refrain from demeaning or speaking out in any manner that would negatively affect or damage the relationship between either parent and Taylor and shall shield Taylor from any such influence from other sources. Both parents shall do everything in their power to insure that relatives and acquaintances do not engage in divisive and negative communication with Taylor concerning either parent.

b. Information, especially requests for parenting schedule changes and things of that nature, shall be communicated respectfully and in a way that provides adequate time for the other parent to respond and to prepare for any requested change.

c. The receiver of communication shall answer timely and respectfully.

d. If email is the parents' principal method of communication, each parent shall check email at least once daily.

e. If either parent receives an email from the other that requires a response, the recipient shall respond within 24 hours from the time the email was sent.

f. An emergency will be transmitted by phone or voice communication. If there is an emergency affecting Taylor, the involved parent will be proactive in attempting to reach the other parent until contact is successful. Simply leaving a single message without follow-up is unacceptable.

g. The parents shall eliminate from all communication insults, personal attacks, sarcasm, negative references to the past or to one another's new companions, and the temptation to hammer away at ones own "rightness" and the other parent's "wrongness".

Other.

a. Both parents shall respect and support the other parent's rules regarding Taylor, including discipline decisions as may be necessary.

b. Neither parent shall allow Taylor to read this parenting plan or any part of it, nor will s/he read this parenting plan or any part of it to Taylor or allow any other person to do so.

Sandra L'Heureux

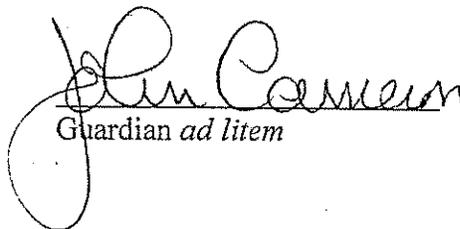
Attorney/Witness

Date

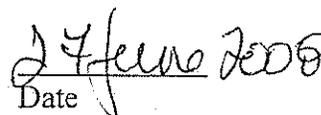
Paul Summerville

Attorney/Witness

Date

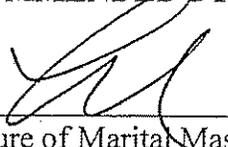


Guardian ad litem



Date

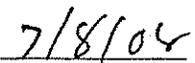
RECOMMENDED BY:



Signature of Marital Master

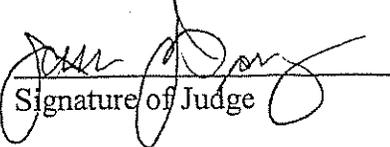
Leonard S. Green
Presiding Marital Master

Name of Marital Master



Date

SO ORDERED:



Signature of Judge

Name of Judge



Date

STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: Hillsborough Northern District Court
Case Name: In the Matter of Paul M. Summerville and Sandra B. L'Heureux
Case Number: 06-M-0885
(if known)

UNIFORM SUPPORT ORDER

Name and Address of Person Ordered to Pay Support (Obligor) Name and Address of Person Receiving Support (Obligee)
Paul M. Summerville Sandra B. L'Heureux
38 Hawthorne Drive, Apt. G104 43 Buckingham Way
Bedford, NH 03110 Bedford, NH 03110
D.O.B. 6/11/1954 Telephone (603) 714-5382 D.O.B. 3/30/1955 Telephone (603) 472-4883
E-mail Address psumm101@comcast.net E-mail Address Sandielaru@aol.com
Employer US Airways Employer Souhegan Home and Hospice Care
Employer Address Logan Airport, Boston, MA Employer Address 4 Bud Way, Suite 2
Nashua, NH

Child(ren) to whom this order applies :

Full Name Date of Birth Full Name Date of Birth
Taylor J. Summerville 8/21/1994

NOTE: SECTIONS PRECEDED BY ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered:

- after hearing
- upon approval of agreement
- upon default

2. This order is a:

- temporary order
- final order

3. This order modifies a final support obligation in accordance with :

- a three year review (RSA 458-C:7) OR substantial change in circumstances, as follows :

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS :

- CHILD SUPPORT: \$ 1,956.00 per Month
- Arrearage of \$ _____ as of _____ payable \$ _____ per Now _____
- Medical arrearage of \$ 0.00 as of 12/5/11 payable \$ 0.00 per _____
- SPOUSAL SUPPORT (ALIMONY) : \$ ~~2,500.00~~ per Month
- Arrearage of \$ _____ as of _____ payable \$ _____ per Now _____

Alimony shall terminate 24 months after it begins

5. Payments on all ordered amounts shall begin on forthwith. Effective date of Final Decree

All ordered amounts shall be payable to Obligee DCSS Other _____

6. This order complies with the child support guidelines. RSA 458 - C.

- This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.
- The following special circumstances warrant an adjustment from the guidelines :

7. Support ordered is payable by immediate income assignment.

8. The Court finds that there is good cause to suspend the immediate income assignment because :

- Obligor and obligee have agreed in writing.
- Payments have been timely and it would be in the best interest of the minor child(ren) because:

RE: Case Name: In the Matter of Paul M. Summerville and Sandra B. L'Heureux
Case Number: 06-M-0885

UNIFORM SUPPORT ORDER

- 9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT** (See Standing Order 9).
- 9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.
- 10. Obligor Obligee is ordered to provide health insurance to cover the child(ren) effective 07/01/17 forthwith.
- 11. Health insurance coverage is not available through employment is available at \$ _____ per _____ (week, month, etc), which amount is not deemed to be reasonable.
 Obligor Obligee shall immediately obtain coverage when health insurance becomes available at a reasonable cost.
- 12. Uninsured medical expenses shall be paid in the following percentage amounts :
Obligor 50 % Obligee 50 % Other _____
- 13. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the child(ren). Copies of pleadings related to medical coverage and child support were provided to the Division by mail to the Child Support Legal Office at 129 Pleasant Street, Concord, NH 03301.
- 14. Obligor Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.
- 15. The State of _____ has provided \$ 0.00 in public assistance for the benefit of the minor child(ren) between _____ and _____ for _____ weeks.
Obligor is indebted for the assistance in the total amount of \$ 0.00.
- 16. Variation to standing order (specify paragraph #), additional agreement or order of the court:

Obligor Paul M. Summerville Obligee Sandra B. L'Heureux Staff Attorney
Division of Child Support Services

Obligor's Attorney/Witness _____ Obligee's Attorney/Witness _____

Date _____ Date _____ Date _____

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 16) are part of this order and apply to all parties.

Recommended: _____
Signature of Marital Master/Referee _____ Date 8/1/08 Leonard S. Green
Presiding Marital Master/Referee

So Ordered: _____
Signature of Judge _____ Date _____ Name of Judge _____

UNIFORM SUPPORT ORDER

THE STATE OF NEW HAMPSHIRE
UNIFORM SUPPORT ORDER - STANDING ORDER

NOTICE: This Standing Order (SO) is a part of all Uniform Support Orders (USO) and shall be given full effect as order of the Court. Variations to paragraphs of the SO in a specific case must be entered in paragraph 16 of the USO and approved by the Court.

(Paragraph numbers in the SO correspond to related paragraph numbers in the USO. Variations entered in paragraph 16 should reference the related paragraph number.)

SUPPORT PAYMENT TERMS

SO-3A. All prior orders not inconsistent with this order remain in full force and effect.

SO-3B. This order shall be subject to review and modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. Except as otherwise provided, the effective date of any modification shall be no earlier than the date of notice to the other party.

SO-4A. An obligation for child support terminates when a child terminates his/her high school education or reaches the age of 18 years, whichever is later, or gets married, or becomes a member of the armed services.

SO-4B. The amount of child support may be recalculated according to the guidelines whenever there is a change in the number of children for whom support is ordered, upon petition of any party.

SO-4C. In cases payable through DCSS, if there are arrearages when support for a child is terminated, payments on the arrearages shall increase by the amount of any reduction of child support until the arrearages are paid in full.

SO-4D. Pursuant to RSA 161-C:22, III when an assignment of support rights has terminated and obligor and the recipient of public assistance reunite, obligor may request a suspension of the collection of support arrearage owed to the state under RSA 161-C:4. So long as the family remains reunited and provided that the adjusted gross income of the family as defined by RSA 458-C is equal to or less than 185% of the Federal poverty guidelines as set by the United States Department of Health and Human Services, DCSS shall not take any action to collect the support arrearage owed to the State.

SO-4E. If the collection of a support arrearage pursuant to RSA 161-C:4 is suspended, the obligor shall provide DCSS with a financial affidavit every six months evidencing the income of the reunited family and shall notify his or her child support worker in writing within ten days of any change in income or if the family is no longer reunited. Failure to report changes in income or in the status of the family as reunited or to provide a financial affidavit shall cause the suspension of collection to terminate.

SO-4F. Each party shall inform the Court in writing of any change in address, within 15 days of the change, so long as this order is in effect. Service of notice of any proceeding related to this order shall be sufficient if made on a party at the last address on file with the Court. A party who fails to keep the Court informed of such a change in address, and who then fails to attend a hearing because of the lack of notice, may be subject to arrest.

SO-5A. If no date appears in paragraph 5 of the USO, the first support payment shall be due on the date this order is signed by the Judge.

SO-5B. If support is payable through the New Hampshire Division of Child Support Services (DCSS), DCSS is authorized and directed to collect all sums, including any arrearages, from the obligor and forward the sums collected to the obligee or person, department, or agency providing support to the children named in the USO. Any payment shall be applied first as payment towards the current support obligation due that month and second towards any arrearages.

SO-5C. If support is ordered payable directly to the obligee, it can only be made payable through DCSS at a later time if (1) the children named in the USO receive assistance pursuant to RSA 161 or RSA 167; (2) a party applies for support enforcement services and certifies to DCSS that (a) an arrearage has accumulated to an

UNIFORM SUPPORT ORDER

amount equal to the support obligation for one month, or (b) a court has issued a protective order pursuant to RSA 173-B or RSA 461-A:10 which remains in full force and effect at the time of application; or (3) a court orders payment through DCSS upon motion of any party that it is in the best interest of the child, obligee, or obligor to do so. RSA 161-B:4.

- SO-5D. Collection by DCSS on any arrearage may include intercepting the obligor's federal tax refund, placing liens on the obligor's personal and real property including qualifying financial accounts. Federal tax refund intercept and lien remedies shall be used to collect arrearages even if an obligor is complying with the child support orders. Pursuant to 45 CFR 303.73 (h) any federal tax refund intercept shall be applied first as payment towards the past due support assigned to the State.
- SO-5E. In all cases where child support is payable through DCSS, obligor and obligee shall inform DCSS in writing of any change of address or change of name and address of employer, within 15 days of the change.
- SO-5F. In all cases where child support is payable through DCSS, obligor and obligee shall furnish their social security numbers to the Department.

INCOME ASSIGNMENT

- SO-7A. Until such time as an income assignment goes into effect, payments shall be made as follows: (1) if the case is not payable through DCSS, directly to obligee, or (2) if support is payable through the DCSS by use of payment coupons available at the local DCSS office. An income assignment will not go into effect for self-employed obligors as long as they do not receive income as defined in RSA 458-B:1, paragraph IX. Future income will be subject to assignment if the case is payable through DCSS.
- SO-7B. If a parent is ordered to provide health coverage for Medicaid-eligible child(ren), he or she must use payments received for health care services to reimburse the appropriate party, otherwise his or her income may be subject to income assignment by DCSS. RSA 161-H:2(V).
- SO-7C. Increased income assignment for the purposes of payment on arrearages shall continue until such time as the arrearages are paid in full.
- SO-8. Whenever an income assignment is suspended, it may be instituted if a Court finds obligor in violation or contempt of this order OR after notice and the opportunity to be heard (RSA 458:B-5 & 7), when DCSS begins paying public assistance for the benefit of a child OR when an arrearage amounting to the support due for a one-month period has accrued.

REPORT CHANGES OF EMPLOYMENT

- SO-9A. If support is payable through DCSS, obligor shall report in writing monthly, or as otherwise ordered by Court, to DCSS, and shall provide details of efforts made to find a job. Efforts to obtain employment shall include registering with New Hampshire Employment Security within two weeks of the date of this order. The obligor shall immediately report employment to DCSS in writing.
- SO-9B. Immediately upon employment the obligor shall report to the obligee, in writing, details of employment, including name and address of employer, the starting date, number of weekly hours and the rate of pay.

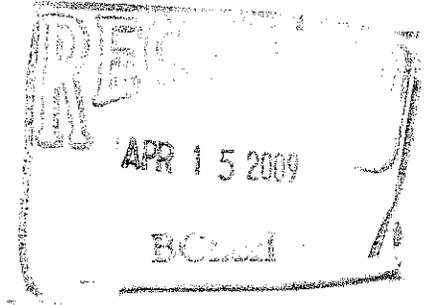
HEALTH INSURANCE PROVISION

- SO-10. A party providing or ordered to provide health insurance for the child(ren) shall give the other party sufficient information and documentation to make sure insurance coverage is effective. If support is payable through DCSS, or if there has been an assignment of medical support rights to DCSS, the information and documentation shall be provided to DCSS. In addition, obligor shall inform DCSS in writing when health insurance is available, obtained or discontinued.

THE STATE OF NEW HAMPSHIRE
Northern District of Hillsborough County

300 Chestnut Street
Manchester, NH 03101 2490
603 669-7410

NOTICE OF DECISION



RONALD J CARON ESQ
BRENNAN CARON LENEHAN & IACO
85 BROOK STREET
MANCHESTER NH 03104-3605

NO. 06-M-0885

IN THE MATTER OF
Paul Summerville and Sandra L'Heureux

Please be advised that on 2/25/2009 Judge Abramson made the following order relative to:

Court Order ; Approved

04/14/2009

John Safford
Clerk of Court

cc: Deborah M. Shepherd, Esq.
John D Cameron, Esq.
Stephanie Norrell
Daniel C Proctor, Esq.

The State of New Hampshire

HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT
Docket No: 06-M-0885

In the Matter of:

Paul Summerville and Sandra L'Heureux

ORDER ON MOTIONS TO RECONSIDER

MASTER RECOMMENDS:

1. Some confusion arose relative to the pleadings in the file. Apparently, certain documents relative to reconsideration were placed in a new file, file number 5, out of sequence with some of the pleadings placed at the end of file number 4. It appears that all the pleadings have been properly located and are part of the Court's record.

2. The Respondent's request for an increase in alimony is denied.

3. Request that arrears be in the amount of \$5,129 is granted.

4. The request to consider the bonus of \$8,568 is denied.

5. The request for reimbursement for Ms. L'Heureux's educational expenses is denied.

6. Orthodontic bill. Mr. Summerville shall pay his one-half share of said bill forthwith.

7. Guardian ad Litem fees. There will be no change relative to the Guardian ad Litem fees.

8. Commissioner Proctor's bill. Said bill shall be divided 50/50.

9. Life insurance. There shall be no changes in the life insurance order.

10. Experts. Dr. Sciarappa's bill. Respondent's request that Mr. Summerville pay \$350 towards Dr. Sciarappa's bill is reasonable. Each party is responsible for one-half of said bill.

11. Exchange of tax information. The Court's order remains in effect. The parties are to exchange information in a timely manner and in accordance with the Court's order. What the parties do with the information is their decision.

12. Alimony. The order on alimony shall begin running as of February 19, 2009, whether or not the matter is appealed to the Supreme Court.

13. Parenting time. The Petitioner's request is denied. No order of contempt shall issue. Mr. Summerville will have to make some very difficult decisions concerning his troubled son, who is nearly 15 years old. Whether or not the Court believes that the problems Mr. Summerville is encountering with his child are due to the mother's actions is not relevant, unfortunately. After hearing from the child's therapist, the Court must place the child's best interest ahead of the interests of the mother or the father. At a minimum, the Court's order must "do no harm" to the child.

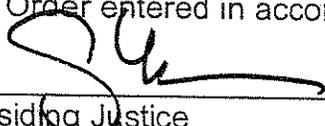
14. If the Court's order is appealed to the Supreme Court, the proposed final order as set forth by the Court is adopted as a temporary order in place of the prior temporary order.

February 25, 2009
Date


Leonard S. Green, Marital Master

Master's recommendation approved. Order entered in accordance therewith.

2/25/09
Date


Presiding Justice

