

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-093996

06/01/2012

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Nevenhoven
Deputy

IN RE THE MARRIAGE OF
JEAN MARIE KROHN

JENNIFER S SUMMERS

AND

KEVIN DAVID KROHN

KEVIN DAVID KROHN
P O BOX 2844
MESA AZ 85210

AZ DEPARTMENT OF VITAL
RECORDS
DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

The Evidentiary Hearing in this matter was conducted on May 29, 2012. During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments. After significant deliberation, the Court makes the following findings and enters the following orders.

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.

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- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on June 7, 1998. By operation of law, the marital community is deemed to have terminated on August 22, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are two minor children, common to the parties, namely: Macayla (born June 19, 1996) and Kaari (born May 21, 2003).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

IMPACT OF PENDING BANKRUPTCY

Mother and Father filed bankruptcy together. Later, Father's bankruptcy was severed from Mother's bankruptcy. Father proceeded with a Chapter 7 bankruptcy, and Father has been discharged. Mother proceeded with a Chapter 13 bankruptcy, but she has not been discharged at this point. As a result of Mother having a pending bankruptcy, this Court has no jurisdiction to address issues related to the parties' property. This Court, nonetheless, may move forward with the other issues before it, including the final dissolution of the parties' marriage.

Jurisdictional Impact

Once a party to a dissolution action files a bankruptcy, the federal bankruptcy court has "exclusive jurisdiction" over the bankruptcy estate. *See* 28 U.S.C. § 1334(e) (giving district court "exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of [the] case, and of property of the estate."). The bankruptcy estate includes any potential community property and debt. Therefore, the court that is hearing the parties' dissolution action may not resolve the distribution of the parties' property and debt.

A court, however, does not lose jurisdiction over all matters. *See* 11 U.S.C. § 362(b). Section 362(b) provides that the filing of a bankruptcy "does not operate as a stay (2)(A) of the commencement or continuation of a civil action or proceeding (i) for the establishment of paternity; (ii) for the establishment or modification of an order for domestic support obligations; (iii) concerning child custody or visitation; (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate or (v) regarding domestic violence." This Court also may enter order to allow for the collection or withholding of income for support obligations. *See* 11 USC § 362(b)(2)(B-C).

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Entry of Decree

This Court may not bifurcate a dissolution action. *See* A.R.S. § 25-312(4) (providing that the court may not enter a decree of dissolution unless it makes certain findings, including “[t]o the extent it has jurisdiction to do so, the court has . . . made provision for . . . the disposition of property.”); *see also Porter v. Estate of Pigg*, 175 Ariz. 194, 196, 854 P.2d 1180, 1182 (Ct. App. Div. 1993) (clarifying that a final decree that does not resolve property issues to the extent the court has jurisdiction to do so is voidable by direct appeal).

This Court, nonetheless, may proceed with the dissolution of the marriage and enter a final decree without further action on the property and debt because at this point, the Court has no jurisdiction over the property and debt. By not entering further orders with regard to the property and debt, “[t]o the extent it has jurisdiction to do so, the court has . . . made provision for . . . the disposition of property.” *See* A.R.S. § 25-312(4).

The Court finds nothing in Arizona law that requires the Court to delay the entry of a final decree merely because at some point in the future, the Court may acquire jurisdiction over an issue. Instead, the Court may enter a decree dissolving the marriage under the following circumstances:

- A court may dissolve a marriage and not address child custody, parenting time, and child support if another court has jurisdiction over the children as the children’s home state.
- A court may dissolve a marriage without dividing personal property or entering orders regarding spousal maintenance if the court does not have personal jurisdiction over both spouses.
- A court may dissolve a marriage when service of process has been secured by publication, even though the court may not determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.

In each of the above instances, a court may later acquire jurisdiction to resolve the matters, but the Court need not delay entry of the decree.

Arizona law recognizes that a court may dispose of the parties’ property and debt in a later proceeding if the court “previously lacked jurisdiction over the parties’ property and debt.”

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See A.R.S. § 25-318(A). Section 25-318(A) is consistent with and supports this Court's ruling. Section 25-318(A) states, "In a proceeding for disposition of property following dissolution of the marriage by a court which previously lacked . . . jurisdiction to dispose of the property . . ."

Therefore, this Court may enter a final decree without addressing and resolving the distribution of the parties' property and debts over which this Court has no jurisdiction.

DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

PATERNITY

THE COURT FINDS that based on the testimony and evidence presented, Kevin David Krohn is the natural father of the following minor children: Macayla born to Jean Marie Ardito on June 19, 1996.

IT IS ORDERED declaring that Kevin David Krohn is the natural father of the following minor children: Macayla born to Jean Marie Ardito on June 19, 1996.

IT IS FURTHER ORDERED that the parties shall take all necessary steps to have the birth certificate of the minor child amended in accordance with this order if the correct information does not now appear on the original certificate. Information for amendment of an Arizona birth certificate may be obtained from the Office of Vital Records, Department of Health Services, 1818 W. Adams, Phoenix, Arizona 85007; Phone (602) 364-1300. A certified copy of this minute order may be obtained after ten days of receipt of same, and shall then be provided, together with all other required documents and fees, to the Office of Vital Records, so that the birth certificate can be amended or supplemented as ordered.

IT IS FURTHER ORDERED that each party shall be responsible for paying all/one half of the costs associated with changing the child's birth certificate.

CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that Mother and Father have two minor children in common: Macayla (born June 19, 1996) and Kaari (born May 21, 2003). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of

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the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25-1031.

Best Interest Findings: A.R.S. § 25-403

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

THE COURT FURTHER FINDS that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed. In particular, the concerns raised before have been addressed. The Court Appointed Advisor agreed that the progress had been made and the issues have been addressed.

Legal Custody

THE COURT FURTHER FINDS that that based on the above, it is in children’s best interest that Mother and Father be awarded joint legal custody of Macayla (born June 19, 1996) and Kaari (born May 21, 2003).

IT IS THEREFORE ORDERED awarding Mother and Father joint legal custody of Macayla (born June 19, 1996) and Kaari (born May 21, 2003).

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child’s education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

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Medical And Dental Arrangements- Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- In furtherance of each child's best interests the parents shall confer and shall consider the views of each parent. The parents shall communicate to address day-to-day and more significant issues. The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither Mother nor Father shall relocate the residence of the children outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Mediation Or Conciliation Services- The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Decision Making Authority- Parental decisions shall be required for major issues in raising the children and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.

Parenting Time

IT IS ORDERED that as a term of the overall custody orders, parenting time shall be exercised as follows:

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A. Regular Parenting Time:

1. **Mother:** Mother shall be the child's primary residential parent. The children shall reside with Mother at all times except as expressly provided below.

2. **Father:** Father shall have parenting time with the children every other weekend from 5:00 p.m. on Friday until 7:00 p.m. on Sunday.

B. Father's Holidays in Even-Numbered Years; Mother's Holidays in Odd-Numbered Years:

1. **New Year's Day:** New Year's Day shall begin at 10:00 a.m. January 1st and ends at 10:00 a.m. on January 2nd.

2. **Easter:** Easter starts at 9:00 a.m. and ends at 7:00 p.m. on Easter Sunday.

3. **Christmas Eve:** Christmas Eve shall begin at 10:00 a.m. on December 24th and ends at 10:00 a.m. on December 25th.

C. Father's Holidays in Odd-Numbered Years; Mother's Holidays in Even-Numbered Years:

1. **Thanksgiving:** Thanksgiving starts at 10:00 a.m. on the Wednesday before Thanksgiving and ends at 10:00 a.m. on the Friday following Thanksgiving Day.

2. **Christmas Day:** Christmas shall begin at 10:00 a.m. December 25th and ends at 10:00 a.m. on December 26th.

3. **New Year's Eve:** New Year's Eve shall begin at 10:00 a.m. on December 31st and ends at 10:00 a.m. on January 1st.

D. Other Holidays:

1. **Monday holidays/Three-day weekends** (Memorial Day and Labor Day only): The children will remain in the care of the parent who has the children for the weekend. The return time will be 7:00 p.m. on Monday.

2. **Father's/Mother's Day:** The children shall be with Father on Father's Day and with Mother on Mother's Day. Father's/Mother's Day begins at 9:00 a.m. and ends at 7:00 p.m. on Sunday evening.

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3. The Children's Birthdays: Mother will have odd-numbered years, and Father will have even-numbered years. The birthday shall begin at 10:00 a.m. on the birthday shall end at 10:00 a.m. the next day.

4. Parent's Birthdays: The children shall be with Father on Father's birthday and Mother on Mother's birthday. The birthday shall begin at 10:00 a.m. on the birthday shall end at 10:00 a.m. the next day.

5. All Other Holidays: For any other holidays not detailed above, special occasions or birthdays, the regular access schedule shall apply.

E. Holiday Time Priority: Holiday time shall take priority over regular parenting time and summer vacation time.

F. Summer:

- Mother and Father also shall have three weeks of uninterrupted parenting time during the summer commencing on a mutually agreed upon date.
- The three weeks may be continuous or may be taken in two separate blocks. If Mother and Father cannot mutually agree, Father shall have precedence in even-numbered years, and Mother shall have precedence in odd-numbered years.
- Starting in 2013, each parent shall notify the other of the preferred weeks by April 15th. If there is a conflict, the parent who does not have priority shall notify the other parent of any changes by May 15th.
- Neither Mother nor Father may use summer vacation time to preempt the other parent's holiday time scheduled above.

G. Transportation: The parent whose parenting time is beginning will be responsible for picking up the children at the other parent's residence or the children's school.

H. Travel: If either Mother or Father has any desire to travel with the children outside of the State of Arizona, that parent must provide the other parent with a written itinerary of their travel by no later than thirty (30) days prior to the intended date for travel. If either parent travels within the State of Arizona but more than 100 miles from that parent's home, that parent must provide the other parent with a written itinerary of their travel by no later than seven (7) days prior to the intended date for travel.

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I. Telephone Contact: Each parent shall have reasonable telephone contact with the children when the children are in the care of the other parent.

CHILD SUPPORT

THE COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

THE COURT FURTHER FINDS that in applying these findings under the Arizona Child Support Guidelines, no deviation is appropriate regarding the obligation to pay child support.

IT IS THEREFORE ORDERED that Father shall pay to Mother as and for child support the sum of **\$815.11** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing March 1, 2012 by Income Withholding Order.

IT IS FURTHER ORDERED reaffirming Father's child support obligations under the temporary orders of \$1,203.25 for the period from November 1, 2012 through February 29, 2012.

LET THE RECORD REFLECT that an Income Withholding Order is initiated electronically by the above-named deputy clerk. Confirmation #373467.

IT IS FURTHER ORDERED that at any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Income Withholding Order issued this date. Father is advised that until such time as the Income Withholding Order becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health

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expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

IT IS FURTHER ORDERED that Father shall provide medical insurance for the benefit of the parties' minor children, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid **50%** by Father and **50%** by Mother.

IT IS ORDERED that unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within **180 days** after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within **45 days** after receipt of the request.

Both parents must use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

Tax Deduction For The Children As A Dependent

IT IS ORDERED that the parties may claim the eligible dependent as follows: Every year until Macayla is no longer eligible to be claimed as dependent, Mother shall claim Macayla and Father shall claim Kaari. Once Macayla is no longer eligible to be claimed as dependent, Mother shall claim Kaari in even-numbered years, and Father shall claim Kaari in odd-numbered years.

IT IS FURTHER ORDERED that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the children for tax purposes, Father shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that Father receives, which shall be applied

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first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage.

Exchange Of Income Information

IT IS FURTHER ORDERED that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

SPOUSAL MAINTENANCE

Mother seeks an award of spousal maintenance in the amount of \$1,000.00 per month for a term of 48 months. Father opposes the award, asserting that Mother does not qualify for an award of spousal maintenance.

The determination of spousal maintenance is controlled by A.R.S. § 25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute. It provides as follows:

In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

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THE COURT FINDS that that in accordance with subsection (A) above, Mother is entitled to an award of spousal maintenance because the parties had a marriage of medium duration, Mother and Father both leave the marriage with very little property, but Mother sacrificed her career to care for the children so she needs time to develop a clientele base so that she can be self-sufficient.

The Court, therefore, must address the amount and duration of spousal maintenance. In determining the amount and duration, "the current aim [of spousal maintenance] is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance." *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989). Noting this underlying principle, the Court must consider the statutory factors of A.R.S. § 25-319(B). Those factors, along with this Court's findings based thereon, are as follows:

1. The standard of living established during the marriage.

The parties owned their home. They bought a lot to build a house, but the housing market made it impossible. They lost the lot through a short sale, and they were liable on the deficiency. Mother thought the parties were comfortable. Father said it was paycheck to paycheck. The parties were able to provide for their children, take occasional vacations, and support some activities for the children.

2. The duration of the marriage.

The parties were married for approximately 14 years.

3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.

Mother is 46 years old. She is a hairdresser. She is working, but she needs to build a clientele base.

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.

Father is 44 years old. He works as a field manager for construction project testing.

5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.

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Father has greater earnings than Mother, but both face some challenges.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.

The parties supported each other during the marriage. Neither Mother nor Father contributed to the other's earning ability in any substantial way. Mother, however, sacrificed building a clientele base so that she could provide primary care for the children.

7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.

Mother stayed home with the children, which reduced her ability to build her business as a hairdresser.

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.

Neither Mother nor Father is well-positioned to help their children with their future educational needs.

9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.

Both parties have bankruptcies, so neither party has much in the way resources.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

Both parties are working, but both need time to build up their earnings.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

This factor does not apply.

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12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

Mother is looking to secure coverage through the Arizona Health Cost Care Containment System (AHCCCS). For Mother to secure private insurance, it would be \$400 a month.

13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

This factor does not apply.

THE COURT FINDS that Mother is entitled to an award of spousal maintenance in the amount of **\$150.00** for a term of 48 months.

THE COURT FURTHER FINDS that Father is capable of paying spousal maintenance in the amount of **\$150.00** per month for 48 months.

IT IS THEREFORE ORDERED that effective as of March 1, 2012, Father shall pay Mother spousal maintenance in the amount **\$150.00** per month for 48 months. The 48 months will allow Mother the time that she needs to secure additional clientele and arrange for any training she needs to secure additional clientele.

All spousal maintenance paid by Father to Mother shall be tax deductible for Father and shall be deemed income to Mother for income tax purposes. Further, the award shall be modifiable as to amount and duration in accordance with A.R.S. § 25-327. It shall terminate upon the death or remarriage of Mother.

The spousal maintenance payments shall be made through the Support Clearinghouse. An automatic Income Withholding Order is issued. Until it becomes effective, Father shall be responsible for ensuring that the payment is made through the Support Clearinghouse in a timely fashion.

DIVISION OF PROPERTY AND DEBTS

THE COURT FINDS that as noted above, because of Mother's pending Chapter 13 bankruptcy, this Court may enter a final decree without addressing and resolving the distribution of the parties' property and debts over which this Court has no jurisdiction.

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RESTORATION OF NAME

Ms. Jean Marie Krohn asks on the record to have her name restored.

IT IS THEREFORE ORDERED restoring Jean Marie Krohn to her former name, Ms. Jean Marie Ardito.

ATTORNEY FEES AND COSTS

IT IS ORDERED that based on the parties' agreement, each party shall bear his or her own attorney fees and costs.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/ s / HONORABLE DAVID B. GASS

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

KEVIN DAVID KROHN: Current Employer Information, Non IV-D Payment Instructions