

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-070657

07/08/2013

HONORABLE JOSE S. PADILLA

CLERK OF THE COURT
J. Bailey
Deputy

IN RE THE MATTER OF
PATRICIA JEAN MORRIS

CARLIE OWSLEY WALKER

AND

TAVIS TILBURNE OTT

TERRANCE C MEAD

FAMILY COURT SERVICES-CCC
LISA J DODD MC LPC
501 E PLAZA CIRCLE STE B
LITCHFIELD PARK AZ 85340

DISSOLUTION TRIAL

Prior to trial Petitioner's exhibits 1 through 6 and Respondent's exhibits 7 through 22 were marked for identification.

Northwest Facility, Courtroom 122

1:35 p.m. This is the time set for a Dissolution Trial regarding Petitioner's Petition for Legal Separation of Marriage filed February 19, 2013 and Respondent's Response to Petition for Legal Separation; Objection to Entry of Decree of Legal Separation filed March 29, 2013.

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Petitioner/Mother Patricia Morris is present and represented by counsel, Carlie Owsley Walker. Respondent/Father Tavis Ott is present and represented by counsel, Terrance C. Mead.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Patricia Morris, Tavis Ott, and Pate Tilburne are sworn.

The Rule of Exclusion of Witnesses is invoked and the witness leaves the courtroom.

Discussion is held regarding status of the case and pending issues.

Lisa Dodd is sworn and testifies.

The witness is excused.

LET THE RECORD REFLECT that Petitioner answered the jurisdictional questions required for dissolution of marriage on the record in open court this date.

2:24 p.m. Court stands at recess.

2:48 p.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Further discussion is held.

The Court is advised that the parties have reached an agreement, which is more fully set forth on the record and can be generally summarized as follows:

1. Wife will be awarded the laptop, hard drive from the broken PC, heirlooms, Christmas dishes, holiday decorations, picture of eagle, quilts and white chest as her sole and separate property.

2. Wife will divide the board games, puzzles, and other "therapy tools" for the children and baby clothes into two piles and Husband will have first choice as to which pile of items he will keep.

3. Husband will divide the coin collection into two piles and Wife will have first choice as to which pile of items she will keep.

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4. The parties will meet at 11:00 a.m. on July 14, 2013 at the storage shed and will attempt to equally divide the remaining items in the storage shed. Any items in the storage shed that the parties can not agree to will be sold at a yard sale and the proceeds of the sale will be equally divided between the parties.

5. As to the remaining items of personal property that have not been assigned herein, each party will be awarded all of the items of personal property currently in his/her possession as his/her sole and separate property.

6. Wife will pay for her own student loans as her sole and separate debt.

7. Husband will pay for all other debts.

8. Husband will pay to Wife the amount of \$250.00 for Wife's portion of the sale of the Jeep Wrangler, by no later than July 14, 2013.

9. Husband will be awarded the Jeep Commander as his sole and separate property and will pay for all associated debt as his sole and separate debt.

10. The community property portion of Husband's 401(k) account will be equally divided between the parties, except that Husband will pay for all penalties and taxes on the withdrawal of the 401(k) funds.

11. The community property portion of Husband's retirement plan through AAA will be equally divided between the parties.

Petitioner and Respondent, previously sworn, now testify that they have heard and understood the agreement as stated on the record and that it is accurate.

The Court finds that the agreement entered into between the parties is fair, reasonable and in the best interests of the parties' minor children.

The Court further finds that the parties have knowingly, voluntarily and intelligently entered into the agreement, without duress or coercion, and that the parties are fully informed as to the contents of this agreement.

IT IS THEREFORE ORDERED approving and adopting the agreement of the parties, as stated on the record, as a binding agreement pursuant to Rule 69, Arizona Rules of Family Law Procedure.

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IT IS FURTHER ORDERED that any property acquired by either party before September 10, 2004 or after March 29, 2013 shall be deemed that party's sole and separate property.

Patricia Morris testifies.

Petitioner's exhibits 1, 2 and 6 are received in evidence.

Petitioner's exhibit 23 is marked for identification and received in evidence.

3:51 p.m. Court stands at recess.

4:02 p.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Patricia Morris testifies further.

Tavis Ott testifies.

Respondent's exhibits 7, 10, 11 and 19 are received in evidence.

Respondent's exhibit 24 is marked for identification and is offered but not received in evidence.

Daniel Khan is sworn and testifies.

The witness is excused.

Pate Tilburne testifies.

The witness is excused.

Counsel for Respondent presents closing statements to the Court.

Counsel for Petitioner does not present a closing statement as the time allotted to Petitioner has expired.

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The Court has considered the evidence and testimony presented and the best interests of the minor children herein.

For the reasons stated on the record,

IT IS ORDERED adopting the Parenting Conference Report dated May 30, 2013. Specifically, the Court adopts pages 3 through 7, items C1 through C16 as the Court's findings.

IT IS FURTHER ORDERED adopting the Court Appointed Advisor Report dated July 3, 2013.

IT IS FURTHER ORDERED that the Parenting Conference Report dated May 30, 2013 and the Court Appointed Advisor Report dated July 3, 2013 shall both be filed as Confidential Court Reports.

IT IS FURTHER ORDERED that the parties shall have joint legal decision making with regard to their minor children, Evan Ott, born on February 8, 2005, Kohwen Ott, born on November 3, 2006, and Paxton Ott, born on April 20, 2009.

IT IS FURTHER ORDERED that Father shall have reasonable access with the children. Father's parenting time shall be every other weekend from Friday at 6:00 p.m. to Sunday at 6:00 p.m. with one weekday visit during the school year.

IT IS FURTHER ORDERED designating Mother primary custodial parent for the children during the school year.

IT IS FURTHER ORDERED that the parties shall have equal parenting time during the summer break according to a "5-2-2-5" parenting time schedule.

IT IS FURTHER ORDERED that Father shall have make-up parenting time from February 1, 2014 through February 5, 2014.

IT IS FURTHER ORDERED that Father shall complete a hair follicle test, as previously ordered, and shall complete the assessment, as previously ordered, prior to filing a petition to modify legal decision making and/or parenting time.

IT IS FURTHER ORDERED that Father may shave and/or cut his hair after he has provided an adequate hair follicle sample.

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IT IS FURTHER ORDERED instructing the **Court Appointed Advisor** to conduct another home visit of Father's home to insure that the home has been cleaned, the guns have been secured or removed, and that the home is safe for young children.

IT IS FURTHER ORDERED after Father has complied with all Court orders, and after the Court Appointed Advisor has conducted a second home visit that is satisfactory, the parties shall have equal parenting time according to a "5-2-2-5" schedule year round.

IT IS FURTHER ORDERED that the children shall be directly supervised by an adult at all times while the children are in Father's home. The children shall not go in the back yard of Father's home unless an adult is outside with the children.

IT IS FURTHER ORDERED that Mother shall be reevaluated with regard to her medical conditions and Social Security Disability income between August 1, 2013 and August 1, 2014. Failure to comply with this order will result in a termination of the spousal maintenance order effective July 31, 2014.

IT IS FURTHER ORDERED that Father shall have parenting time with the children during the first half of Winter Break in odd years beginning with 2013, and Mother shall have parenting time with the children during the second half of Winter Break in odd years beginning with 2013, and Mother shall have parenting time with the children during the first half of Winter Break in even years beginning with 2014, and Father shall have parenting time with the children during the second half of Winter Break in even years beginning with 2014.

IT IS FURTHER ORDERED that Mother shall have parenting time with the children during Thanksgiving in odd years and Father shall have parenting time with the children during Thanksgiving in even years.

IT IS FURTHER ORDERED taking the matter of a schedule for the remaining holidays under advisement.

IT IS FURTHER ORDERED absent an agreement in writing, neither parent shall schedule extra-curricular activities or appointments for the children during the other parent's scheduled parenting time. Failure to comply with this order may result in sanctions being imposed by the Court.

IT IS FURTHER ORDERED that in the event of an emergency, the parent who is exercising their parenting time shall be responsible for emergency medical decisions regarding the children. The other parent shall be notified of the emergency as soon as practicable.

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IT IS FURTHER ORDERED that if either parent wishes to enroll the children in an extra-curricular activity, incur tuition for education expenses, or if an elective medical decision needs to be made and the expense is greater than \$50, the parent must receive the written approval of the other parent prior to authorization. Any parent who procures elective medical treatment for the children or enrolls the children in an activity with an expense greater than \$50 without the other parent's written consent, waives the right of contribution from the other parent toward the expense of such treatment. Such authorization shall also be subject to sanctions, as determined by this Court.

IT IS FURTHER ORDERED that should an issue arise as to elective medical/dental expenses, each party may take the children to a doctor/dentist of their choice who will render their expert opinion on the issue. Should the parties be unable to agree on which doctor/dentist will treat the children, the parties shall meet in person and randomly select a doctor/dentist who will make the final decision as to the children's medical/dental issue.

IT IS FURTHER ORDERED that each parent may take the children to a church or place of worship of his/her choice during the time the children are in his/her care.

IT IS FURTHER ORDERED that in the event the parties find they are unable to reach an agreement with regard to a parenting issue, the parties shall seek mediation through the court's Conciliation Services prior to filing a pleading with the Court. Absent an emergency pursuant to A.R.S. §25-411, failure to seek mediation prior to filing a pleading with the court shall result in such pleading being summarily denied by the Court.

IT IS FURTHER ORDERED that the child(ren) shall remain at their current school(s).

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.

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Wife does lack sufficient property to provide for her 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.

Wife is on Social Security Disability at this time.

3. Contributed to the educational opportunities of the other spouse.

No evidence was presented with regard to this factor.

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.

The marriage lasted approximately eight to nine years. Wife is currently 31 years of age (date of birth: December 1, 1982) and is therefore not of an age that would preclude the possibility of gaining employment. However, Wife is currently receiving Social Security Disability income and is therefore unemployed.

Based upon the evidence presented,

THE COURT FINDS that Wife is entitled to spousal maintenance.

The issues of amount and duration are controlled by subsection (B) of A.R.S. § 25-319. It details pertinent factors to be considered. Those factors along with this Court's findings based thereon are as follows:

1. The standard of living established during the marriage.

The parties had a lower middle class standard of living.

2. The duration of the marriage.

The marriage lasted approximately eight to nine years.

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

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Wife was a stay-at-home mother during the marriage.

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.

Husband is able to provide some degree of spousal maintenance to Wife.

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

Husband is employed full time. Wife is currently receiving Social Security Disability income and is unemployed.

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

The Court has considered the evidence and testimony presented with regard to this factor.

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.

No evidence was presented with regard to this factor.

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

No evidence was presented with regard to this factor.

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.

The Court has considered the evidence and testimony presented with regard to this factor.

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.

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The only evidence presented was that Wife has acquired two Associates degrees. No other evidence was presented with regard to this factor.

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

No evidence was presented with regard to this factor.

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.

No evidence was presented with regard to this factor.

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.

No evidence was presented with regard to this factor.

For the reasons stated on the record,

IT IS ORDERED that Husband shall pay spousal maintenance to Wife in the amount of \$500.00 per month commencing August 1, 2013 for a period of 36 months by Income Withholding Order.

IT IS FURTHER ORDERED that the award of spousal maintenance shall terminate upon the death or remarriage of Wife.

IT IS FURTHER ORDERED that Wife shall be awarded a portion of her attorney fees.

IT IS FURTHER ORDERED that counsel for Respondent shall prepare the Decree of Dissolution of Marriage and submit same to the Court within 30 days of the date of filing of this order.

The Court informs counsel and the parties that child support will be calculated after conclusion of trial.

5:31 p.m. Matter concludes.

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LATER:

HOLIDAY SCHEDULE and EXTENDED SCHOOL BREAKS:

At trial the Court took the matter of the parties' holiday schedule under-advisement. Assuming Respondent/Father has complied with all testing orders and his home has been cleared for small children, e.g. child proof, gun locks or safes, back yard cleaned up, this shall be the parties' holiday schedule.

- Federal holidays: Parenting time on federal holidays (i.e., Memorial Day, Labor Day, Columbus Day, Martin Luther King Day, Presidents Day, etc.) shall be exercised in an alternating fashion and shall commence at 6:00 p.m. on the day prior to the actual holiday, unless such holiday falls on a weekend in which one of the parents are exercising their scheduled parenting time; in that case, that parent's parenting time shall continue through Monday, at 6:00 p.m. The alternating schedule shall commence with Labor Day for 2013, when Mother shall exercise her parenting time;
- Fourth of July: Shall be defined as July 3rd at 6:00 p.m. through July 4th at 10:00 p.m.; Respondent Father shall have parenting time with the children in all odd-numbered years commencing in 2013; Petitioner Mother shall have parenting time in all even-numbered years commencing in 2014.
- Spring break: Respondent Father shall have parenting time in even-numbered years commencing in 2014; Petitioner Mother shall have parenting time in odd-numbered years. This shall be defined as after school on Friday through 6:00 p.m. the following Sunday (approximately 9 days).
- Thanksgiving: Respondent Father shall have parenting time with the children on Thanksgiving in 2013 and all odd-numbered years hereafter; Petitioner Mother shall have parenting time with the children in all even-numbered years. The Thanksgiving holiday shall be defined as 6:00 p.m. the day before Thanksgiving through Sunday at 6:00 p.m.;

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- Christmas / Winter break: Petitioner Mother shall have parenting time with the children each year over the first half of the Winter/Christmas break; Respondent Father shall have parenting time with the children each year over the second half of the Winter/Christmas break. The first half of the Christmas/Winter break shall be defined as December 17th, after the children are released from school, through Christmas Day, at 8:00 a.m. The second half of the Christmas/Winter Break shall be defined as Christmas Day, at 8:00 a.m. through New Year's Day at 6:00 p.m. Additionally, parenting time shall not interfere with the children's schooling;
- Mother's Day / Father's Day: Mother shall have parenting time with the children on Mother's Day; Father shall have parenting time on Father's Day. This shall be defined as Saturday at 6:00 p.m. through Sunday at 6:00 p.m.;
- Children's birthdays: Shall be celebrated with whichever parent is exercising their parenting time that day;
- Summer parenting time: Each parent shall be entitled to two (2) weeks of uninterrupted parenting time with the children during their summer vacation. The parties shall notify each other, via e-mail, not later than 11:55 p.m. on April 15th of each year as to when they wish to exercise their summer parenting time. In the event both parties are seeking the same block of time, Petitioner Mother shall have first choice in odd-numbered years; Respondent Father shall have first choice in even-numbered years. Summer vacation shall not include the Fourth of July holiday. Other than a request by either child to speak with their parents during the extended summer vacation, there shall be no telephone contact with the children. All summer vacations shall conclude one week prior to the commencement of the new school year;
- Out-of-state travel: In the event of out-of-state travel, each party shall provide the other a complete itinerary (including destination, flight numbers, contact numbers, etc.) within 10 days prior to departure;

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CHILD SUPPORT:

THE COURT FINDS that the relevant financial factors required to be included, 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 Worksheets (2) dated July 8, 2013.

IT IS ORDERED that, for the time that Mother is primary custodial parent, Father shall pay child support to Mother in the amount of \$538.31 per month (plus a Clearinghouse Handling Fee of \$5.00) payable through the Support Payment Clearinghouse on the 1st day of each month commencing August 1, 2013 by Income Withholding Order (*formerly "Order of Assignment"*).

IT IS FURTHER ORDERED that, after Father has complied with the Court's orders issued herein, and the parties begin exercising equal parenting time, Father shall pay child support to Mother in the amount of \$156.93 per month (plus a Clearinghouse Handling Fee of \$5.00) payable through the Support Payment Clearinghouse on the 1st day of each month by Income Withholding Order (*formerly "Order of Assignment"*).

IT IS FURTHER ORDERED approving and settling the formal written Child Support Orders (2) signed by the Court on July 8, 2013.

LET THE RECORD REFLECT an Income Withholding Order is initiated electronically by the above-named clerk, confirmation # 400417.

Although an Income Withholding Order has been issued, it will not be effective until the Court receives current employer information for the party ordered to make payments.

IT IS FURTHER ORDERED that 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 Clearinghouse. Checks can be made payable to the Clearinghouse and may be mailed to the following address: Clearinghouse, P.O. Box 52107, Phoenix, AZ 85072. Checks shall include the ATLAS case number and the payer's name. The payer may call 602-506-3762 to obtain the ATLAS case number. "*Instructions for Making Support Payments through the Clearinghouse*" form is attached hereto.

LET THE RECORD REFLECT court records indicate Father's current employer as "AAA Arizona, Inc."

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IT IS FURTHER ORDERED if the above information is inaccurate, Father shall complete the “*Current Employer Information*” form attached hereto and file same with the Clerk of Court. Father shall file a new “*Current Employer Information*” form every time he changes employers for as long as support is ordered.

IT IS FURTHER ORDERED releasing Petitioner’s exhibits 3, 4 and 5 and Respondent’s exhibits 8, 9, 12 through 18, 20, 21 and 22.

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.

July 8, 2013

/s/ Jose S. Padilla

DATE

HONORABLE JOSE S. PADILLA
SUPERIOR COURT JUDGE

FILED: Exhibit Worksheet; Exhibit Release Forms (2); Parenting Conference Report; Court Appointed Advisor Report; Child Support Worksheet; Child Support Order

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:

TERRANCE C MEAD: Current Employer Information, Non IV-D Payment Instructions