

LOUJENIA LYNN NANCE MALLOY,)
)
 Plaintiff,)
 vs.)
)
 JAMES JOSEPH MALLOY, JR.,)
)
 Defendant.)

IN THE CIRCUIT COURT
 FOR
 SHELBY COUNTY, ALABAMA
 CASE NO. DR-78-022

JUDGMENT

This cause coming on for trial on February 28, 1978 and both parties being in open Court in their own and proper persons and by and through their Attorneys of Record and announcing ready for trial, the Court proceeded to take testimony ore tenus and receive evidence in open Court and the trial of this cause being continued to March 1, 1978 for conclusion, at which time both parties and their Attorneys of Record again appeared in Court and the Defendant announced to the Court that he had relieved and discharged his Attorney of Record and his Attorney of Record requested leave to withdraw, following which announcement the Court permitted such discharge and withdrawal but simultaneously appointed the said attorney John R. Frawley to act and function as the Defendant's counsel throughout the remainder of the trial for the purpose of advising the Defendant and providing such representation as the Defendant would permit, which Court appointment was accepted by both the Defendant and the said attorney John R. Frawley, following which the Court proceeded to a conclusion with the testimony ore tenus and evidence in this cause and both parties rested and submitted this cause to the Court and the Court took this cause under advisement.

After due consideration, the Court is satisfied from all of the testimony and evidence in this cause that there exists such a complete incompatibility of temperament that the parties can no longer live together as wife and husband and that there exists an irretrievable breakdown of the marriage between the parties and further attempts at reconciliation would be futile and not in the best interest of the parties or their minor child and that the Plaintiff is entitled to be forever divorced from the Defendant and, in connection with dissolving this marriage, the Court makes the following additional findings of fact: That under the circumstances now existing the Plaintiff should

Wade Norton


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be awarded the general care, custody and control of the minor child of the parties, namely, Jonathan Malloy, but that the Defendant should have broad visitation rights and should be entitled to have the custody and visitation determinations in this Judgment reviewed by this Court any time after said child enters public or private grade school; that the Defendant should make adequate child support payments to the Plaintiff and other financial arrangements for the welfare of said child; that the jointly owned real estate of the parties occupied as their homestead at the time of their separation should be awarded to the Plaintiff subject to the purchase money mortgage by the parties to the Farmers Home Administration, which indebtedness is to be paid by the Plaintiff together with the loan from the First National Bank of Columbiana dated March 31, 1977, the proceeds of which was spent for improvements to said real estate, and, further that the Plaintiff should have all of the household furniture, furnishings and appliances located in the residence of the parties at the time of their separation, except for an adequate quantity thereof to the Defendant to initially establish his residence elsewhere; that all of the other indebtednesses incurred by the parties prior to their separation should be paid by the Defendant, except for an installment loan to the Plaintiff by the First National Bank of Birmingham, and the Defendant should pay all of the debts incurred in connection with his occupancy of the dwelling house from the time of the separation of the parties up to the present time; that the Plaintiff should be awarded the 1971 Ford Mustang automobile, which she customarily used prior to the separation of the parties; and, that the Defendant should pay all of the attorney's fee due to the Plaintiff's Attorney of Record, Wade H. Morton, Jr., Attorney at Law, Columbiana, Alabama, for his services in connection with this case, except the portion thereof previously paid by the Plaintiff, and the Court finds that a reasonable fee for such services is the sum of \$1,076.50, of which the Plaintiff has paid \$300.00, leaving a net amount of \$776.50 to be paid by the Defendant, and, further, that such attorney's fee should be taxed as a portion of the Court costs in this cause and all the Court costs in this cause should be taxed to the Defendant.



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IT IS, THEREFORE, ORDERED by the Court as follows:

1. That the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be and the same are hereby dissolved and that said Loujenia Lynn Nance Malloy is forever divorced from said James Joseph Malloy, Jr. for and on account of incompatibility of temperament between the parties and the existence of an irretrievable breakdown of the marriage between the parties.

2. That the Plaintiff and the Defendant be and they are hereby permitted to again contract marriage. However, neither party shall marry again except to each other until 60 days after the date of this Judgment and if an appeal is taken (which must be instituted within 42 days from the date of this Judgment or from the date that a post trial motion is denied), then neither party shall again marry except to each other during the pendency of the appeal.

3. That the Plaintiff be and she is hereby awarded the general care, custody and control of the minor child of the parties, namely, Jonathan Malloy, a minor whose date of birth is July 28, 1972, and the legal domicile of said child will be the same as that of the Plaintiff. The Defendant will have the right to visit with said child away from the Plaintiff's residence every other weekend from not earlier than 8:00 A.M. on Saturday until not later than 8:00 P.M. on Sunday, provided the Defendant notified the Plaintiff a reasonable time in advance as to the time he will arrive to receive said child and the time when he will return said child. In addition, the Defendant shall have the right to have said child for up to four (4) consecutive weeks each year during June, July or August, which Summer visitation period shall be selected by the Defendant upon not less than 21 days advance written notification to the Plaintiff. In addition to the above specified visitation rights to the Defendant, by mutual agreement of the parties the Defendant may visit with said child and have said child visit with him at other reasonable times and places; the Court encourages such additional visitation by the Defendant, but the Defendant shall not present himself at Plaintiff's residence or elsewhere for this purpose without previously having notified the Plaintiff and obtained her consent.

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There shall be no abatement of the Defendant's child support obligations while said child is with him. The Defendant's visitation rights are dependent upon him being current with his child support payments to Plaintiff and other obligations as provided in this Judgment and, if he is not, the Plaintiff has the right to deny any visitation of said child by the Defendant.

The Plaintiff shall not remove the child from the State of Alabama without obtaining the consent of this Court, except for temporary periods after having first notified the Defendant of her plans to do so. The Defendant shall not remove the child from the State of Alabama for any purpose without the consent of this Court, except he may do so on a definite temporary basis after fully informing the Plaintiff of his plans and obtaining her consent.

The Court invites review by Defendant of the custody and visitation provisions of this Judgment upon motion or petition anytime after said Jonathan Malloy enters public or private grade school and this Court retains jurisdiction of this cause for this purpose and for any further order concerning the custody and visitation of said child.

4. That the Defendant pay to the Plaintiff as his contribution toward the support and maintenance of said child on a weekly basis a sum equal to 20% of his disposable earnings for that week (that is, Defendant's gross pay less required tax deductions), said child support payment to be made on Saturday of each week beginning on Saturday, March 11, 1978 and each such payment will be accompanied by the Defendant's payroll stub for the current week or a true and correct copy thereof for the Plaintiff to keep with her records. This weekly child support payment is waived for any week during which the Defendant receives no payment for personal services, that is, is unemployed, provided that for each calendar month beginning with March, 1978 the Defendant's child support payment to the Plaintiff must be equal to or greater than \$95.00 per month.

As additional child support, the Defendant shall be solely responsible for the reasonable cost of all reasonably necessary medical,



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hospital and dental expenses incurred for the care and treatment of said child.

As additional child support, the Defendant shall maintain in full force and effect a policy of insurance upon his life with death benefits in the minimum amount of \$10,000.00 with said Jonathan Malloy being named as the primary beneficiary thereof. The Defendant will furnish to the Plaintiff a certificate of insurance evidencing such insurance coverage on or before March 31, 1978 and on the same day of each year hereafter.

All of the above child support provisions of this Judgment shall continue and be in full force and effect until such time as said child shall become 19 years of age or sooner marry or until further order of this Court.

5. That the Plaintiff, Loujenia Lynn Nance Malloy, be and she is hereby awarded fee simple title to the following described real estate, subject to the hereinafter described mortgage, occupied by the Plaintiff and the Defendant as their homestead prior to and at the time of their separation and owned jointly by them with the right of survivorship under that certain Warranty Deed from the Plaintiff's parents dated April 20, 1973 and recorded in Deed Book 280, at Page 71, in the Office of the Judge of Probate of Shelby County, Alabama, and the Defendant, James Joseph Malloy, Jr., be and he is hereby divested of his interest in said jointly owned real estate and his interest is hereby awarded to and invested in the name of Loujenia Lynn Nance Malloy, said real estate lying and being situated in Shelby County, Alabama and described as follows, to-wit:

From the Southeast corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 15, Township 19 South, Range 1 East, Shelby County, Alabama, run North along the East boundary of said $\frac{1}{4}$ - $\frac{1}{4}$ Section a distance of 210 feet to the point of beginning; thence continue in a straight line North a distance of 210 feet; thence 90 deg. left and run Westerly for 246.82 feet to the right-of-way of Shelby County Road No. 55; thence Southerly along the right-of-way of said road a distance of 210.02 feet; thence East 258.45 feet to the point of beginning.

Subject to easements and rights-of-way of record and to ad valorem taxes for 1978 and subsequent years.

This judicial conveyance is subject to the mortgage of the parties to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, dated



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June 6, 1973 and recorded in Mortgage Book 331, at Page 454, in said Probate Records, securing an initial principal sum of \$16,000.00 and on which the unpaid balance as of February 27, 1978 was the sum of \$15,382.93, and it shall be the sole responsibility of the Plaintiff to make all future payments on such mortgage beginning with the installment due on March 6, 1978, other than the \$176.00 due on said mortgage as of February 27, 1978 and this \$176.00 shall be paid by the Defendant within 48 hours after service of this Judgment upon him. Provided, however, that the Plaintiff shall not and is prohibited from selling or conveying or mortgaging her title to said real estate without first obtaining the further order of this Court and this Court retains jurisdiction of this cause for the purpose of insuring that the said Loujenia Lynn Nance Malloy uses this real estate to the best interest of the minor child of the parties.

That the Defendant shall vacate said real estate within 48 hours after service upon him of this Judgment and take with him only his clothing and personal belongings and such items of household furniture, furnishings and appliances as hereafter provided in this Judgment.

That the Register of this Court cause a certified copy of this Judgment to be recorded in the Deed Records of the Office of the Judge of Probate of Shelby County, Alabama, in order to effectuate of record this judicial conveyance and listed in the Direct Index for Deeds under the name of James Joseph Malloy, Jr. and in the Indirect Index for Deeds under the name of Loujenia Lynn Nance Malloy and that the cost of such recording is hereby taxed as a portion of the Court cost in this cause.

6. That the Plaintiff be and she is hereby awarded all of the household furniture, furnishings and appliances located in the residence of the parties at the time of their separation on January 12, 1978, except the Defendant's personal belongings, which include all power tools, and the following items of household furniture, furnishings and appliances: the bed, one chest of drawers, two pole lamps and Magnavox clock radio from the back bedroom; console stereo, console television and end table from the den; five bath and hand towels and


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and one set of sheets and pillowcases; and, the four-slice toaster, two place settings of dishes and flatware, frying pan, one-quart pot, three pieces of Tupperware and green four-quart stew kettle from the kitchen, all of which enumerated items are hereby awarded to the Defendant.

7. That the Plaintiff be and she is hereby awarded the 1971 Ford Mustang automobile, Serial No. 1F01F173011, and this Judgment operates as a conveyance to her of all of the Defendant's right, title and interest in and to said automobile.

8. That the Defendant be and he is hereby solely responsible for paying (1) the balance due on the installment loan of the parties to the First National Bank of Columbiana as evidenced by a promissory note dated December 16, 1977 in the initial amount of \$3,767.40 and (2) the single payment note made by the Plaintiff on October 7, 1977 and due and payable in the amount of \$525.40 on April 7, 1978; the Defendant hereby indemnifies the Plaintiff from any default under said notes.

9. That the Plaintiff be and she is hereby solely responsible for paying (1) the single payment note made by the parties on March 31, 1977 and due and payable in the amount of \$1,620.00 on March 31, 1978 and (2) the balance due on the Plaintiff's installment loan from the First National Bank of Birmingham; the Plaintiff hereby indemnifies the Defendant from any default under said notes.

10. That the Plaintiff and the Defendant will file joint Federal and State income tax returns for 1977 and each party will be entitled to 50% of the tax refund on each such return.

11. That the Defendant be and he is hereby solely responsible for paying all other debts and financial obligations of both parties incurred by either party prior to their separation on January 12, 1978, including the installment purchase of educational books from Grolier Enterprises, Inc. and any other company or firm for the benefit of Jonathan Malloy and the 1977 ad valorem taxes on the real estate previously jointly owned by the parties, as described above, in the original amount of \$60.50, which delinquent taxes with the interest and penalty thereon shall be paid by the Defendant on or before March 31, 1978.

12. That the Defendant be and he is hereby solely responsible for paying all utility bills incurred in connection with the real estate previously jointly owned by the parties, as described above,

and occupied by the Defendant since January 12, 1978 up until the time said real estate is vacated by the Defendant under this Judgment.

13. That the Defendant be and he is hereby ordered to pay Wade H. Morton, Jr., Attorney at Law, P O Box 1227, Columbiana, Alabama, as Attorney of Record for the Plaintiff in this cause, the sum of \$776.50 for the balance found to be due by the Court for his services rendered in this cause, such attorney's fee to be taxed as a portion of the Court costs in this cause.

14. That the Court costs in this cause be and such cost is hereby taxed to and against the Defendant, for which let execution issue if not paid within thirty days (30) from the date of this Judgment.

15. That a certified copy of this Judgment be served upon the Defendant by the Sheriff and by mailing a certified copy hereof to the Defendant's Court appointed attorney, Hon. John R. Frawley, and upon the Plaintiff by mailing a certified copy hereof to the Plaintiff's Attorney of Record.

DONE AND ORDERED this 9th day of March, 1978.

James H. Sharbutt
Circuit Judge

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CERTIFICATION

I, Kyle Lansford, Register of the Circuit Court of Shelby County, Alabama, do hereby certify that the foregoing is a correct copy of the original Judgment rendered by the Judge of the Circuit Court in the above stated cause, which said Judgment is on file and enrolled in my office.

Witness my hand and seal this the 9th day of March, 1978.

Kyle Lansford
Register of Circuit Court

FILED IN OFFICE, This the 9th day
of March 1978

Kyle Lansford

Register Circuit Court of
Shelby County, Alabama

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

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Thomas A. Brantley, Jr.
JUDGE OF PROBATE

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