

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

J. MARK DAVIS,
Plaintiff,

vs.

NANCY DAVIS,
Defendant.

Case No. DR-95-018

FINAL JUDGMENT OF DIVORCE

THIS CAUSE coming before the Court on July 14, 1995, July 17, 1995, July 21, 1995, July 28, 1995 and concluding on July 31, 1995 was submitted for a final judgment based upon the pleadings on record in this cause. Upon consideration of said pleadings, ore tenus testimony and exhibits admitted into evidence, the Court enters the following partial findings of fact and order.

The Court finds, inter alia: The parties have been married to each other for just over twenty (20) years. They have two (2) children as a result of their marriage, namely, Kristopher Matthew Davis, eighteen (18) years of age, and Elizabeth Davis, fourteen (14) years of age. The parties are incompatible and as a result of their differences, they separated in June, 1994.

The Plaintiff's education consists of one to one-and-a-half years of college, plus training in nuclear power while he was in the Navy. His work history consists of working for Alabama Power Company and later doing work as a consultant in nuclear power plants and in petro chemicals. Later, the Plaintiff and Defendant started a business called "Eggstra", later described herein.

The Defendant is thirty-nine (39) years of age. She is a high school graduate and has attended Northport Vocational School. The Defendant was employed when she and the Plaintiff married. Since

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the marriage of the parties, the Defendant has worked but not on a full-time basis as she had to care for the minor children of the parties. The Defendant currently is self-employed as a medical transcriptionist, doing this work out of her home. In 1989, while the Defendant was helping her husband with "Eggstra", the Defendant made approximately \$ 8,000.00 (Eight Thousand Dollars and No/100) to \$ 12,000.00 (Twelve Thousand Dollars and No/100) as a medical transcriptionist. In 1992, as well as in 1993, the Defendant made over \$ 20,000.00 (Twenty Thousand Dollars and No/100) from her business. The Defendant admits that in 1994, she had a significant increase in her earnings as a medical transcriptionist as a result of her not helping the Plaintiff with "Eggstra", thereby devoting more time to her own business.

In 1990, the year "Eggstra" was incorporated, the Plaintiff worked for a company and his salary was \$ 55,000.00 (Fifty-five Thousand Dollars and No/100). As a result of work the Plaintiff also did for an entity called "Gandy, Davis and Matthews", the Plaintiff earned an additional \$ 7,085.00 (Seven Thousand Eighty-five Dollars and No/100) and also received residuals from Davis, NDE of \$ 10,000.00 (Ten Thousand Dollars and No/100), this being a business that the Plaintiff began. The Plaintiff's total earnings that year were just over \$ 70,000.00 (Seventy Thousand Dollars and No/100). The Plaintiff continued to work for the same company in 1991 as he did in 1990 and earned therefrom almost \$ 69,000.00 (Sixty-nine Thousand Dollars and No/100). The Plaintiff had additional income in 1991, but when offset with his losses, the Plaintiff earned just short of \$ 70,000.00 (Seventy Thousand

Dollars and No/100) for the year.

In May or June, 1992, the Plaintiff quit the company he worked for in 1990 and 1991. The Plaintiff earned almost \$ 27,000.00 (Twenty-seven Thousand Dollars and No/100) for said company before he left. The Plaintiff earned an additional \$ 17,987.00 (Seventeen Thousand Nine Hundred Eighty-seven Dollars and No/100) from Davis, NDE, and \$ 6,500.00 (Six Thousand Five Hundred Dollars and No/100) from "Eggstra", giving him a total income in 1992 of \$ 51,333.00 (Fifty-one Thousand Three Hundred Thirty-three Dollars and No/100).

In 1993, "Eggstra" was doing well financially and the Plaintiff earned \$ 60,000.00 (Sixty Thousand Dollars and No/100) by way of salary. The Plaintiff also received other income from that year for just over \$ 100,000.00 (One Hundred Thousand Dollars and No/100) for the year.

The year 1994 was a banner year for the Plaintiff and his earnings were significant over the prior years.

For the year 1995, the Plaintiff's salary has been set at \$ 60,000.00 (Sixty Thousand Dollars and No/100) for "Eggstra" and \$ 30,000.00 (Thirty Thousand Dollars and No/100) for Davis, NDE. In February, 1995, the Plaintiff received a \$ 68,720.00 (Sixty-eight Thousand Seven Hundred Twenty Dollars and No/100) distribution in cash, for which he needed to pay taxes for the year 1994. The Plaintiff has used \$ 41,000.00 (Forty-one Thousand Dollars and No/100) of this for the 1994 taxes and has not finished his 1994 tax return. The Plaintiff holds the remainder of the said \$ 68,720.00 (Sixty-eight Thousand Seven Hundred Twenty Dollars and No/100) distribution to finish his tax liability.

"Eggstra" is a business concerning itself exclusively with a product known as an "eggsercizer." This product has both the size and shape of an egg and is made of a rubber-like material which is marketed for use in exercising one's hand. The product is currently not patented and other enterprises are selling a similar type product. Therefore, its future remains uncertain.

Davis, NDE is a consulting company which actually consists of the services of the Plaintiff in his field of expertise.

The Court finds the Plaintiff's gross monthly income under Rule 32, A.R.J.A. to be \$ 90,000.00 (Ninety Thousand Dollars and No/100) and finds the Defendant's gross monthly income under Rule 32, A.R.J.A. to be \$ 24,000.00 (Twenty-four Thousand Dollars and No/100). The Court finds that the Plaintiff should maintain medical insurance on the said minor children and that the costs therefor is \$ 236.00 (Two Hundred Thirty-six Dollars and No/100).

Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED** by the Court as follows:

1. That the bonds of matrimony heretofore existing between the parties are dissolved and the said J. MARK DAVIS and the said NANCY DAVIS are divorced each from the other for and on account of incompatibility of temperament.

2. That neither party shall marry again except to each other until sixty (60) days after the date of this judgment of divorce and if an appeal is taken [which must be instituted within forty-two (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 costs of court are taxed against the Plaintiff.

4. That the care, custody and control of the two (2) minor children of the parties, namely, Kristopher Matthew Davis and Ashley Elizabeth Davis, is awarded to the Defendant, subject to the following right of visitation reserved in the Plaintiff:

- a. On the first and third weekend of each month, from 6:00 p.m. on Friday until 6:00 p.m. on Sunday, with the first weekend beginning on the first Friday of the month;
- b. For thirty (30) consecutive days during the summer (with summer being defined as beginning June 1 and ending August 31 and not interfering with any regular school term) at a time to be selected by the Defendant but upon written notice to the Plaintiff at least thirty (30) days in advance of such visitation;
- c. Each Christmas Day from 3:00 p.m. until 3:00 p.m. on the following New Year's Day;
- d. Every other Thanksgiving Day from 10:00 a.m. until 6:00 p.m. of the same day, beginning in 1996;
- e. Every other birthday of the minor children from 6:00 p.m. on said date until 8:00 a.m. of the following day, beginning with the next birthday;
- f. Each Father's Day, irrespective of the visitation previously set out. Should said holiday fall upon a non-visitation weekend, the Plaintiff shall be allowed to exercise visitation from 10:00 a.m. to 6:00 p.m. on said day;
- g. Should Mother's Day fall upon a visitation weekend of the Plaintiff, the minor children shall be returned to the Defendant at 10:00 a.m. on said day.

5. That the Plaintiff is hereby ordered to maintain medical insurance, comparable to his existing coverage, on the said minor children of the parties. The parties shall each pay one-half (1/2) of all non-covered expenses on the said minor children. This paragraph shall be effective only until the said minor children reach the age of majority, marry or otherwise become self-

supporting.

6. That the Plaintiff shall pay to the Defendant the sum of \$ 1,140.00 (One Thousand One Hundred Forty Dollars and No/100) per month for the support and maintenance of the said minor children of the parties, the first payment being due and payable on the first day of September, 1995 and all subsequent payments being due and payable on the first day of each month thereafter until such time as the said minor children shall reach the age of majority, marry or otherwise become self-supporting. The amount of child support shall decrease to \$ 740.00 (Seven Hundred Forty Dollars and No/100) per month upon the oldest child of the parties reaching the age of nineteen (19) years. The Court finds that the award of child support made herein was determined by application of the Child Support Guidelines established by Rule 32, A.R.J.A. A copy of the guideline form has been filed herein and is made a part of the record in this cause.

7. That in the event the obligor becomes delinquent in a dollar amount equal to one month of support payment as herein ordered and upon written affidavit of the obligee of such delinquency, or upon request of the obligor or upon the Court's own motion, the Income Withholding Order for child support, which order is contained on separate paper and is specifically incorporated as a part of this decree as required by Section 30-2-61, Code of Alabama, (1975), shall be served upon the obligor's employer and shall become effective within fourteen (14) days of service of same. However, said Income Withholding Order shall NOT be served at this time due to the Plaintiff's self-employment.

8. That the Plaintiff shall be allowed to claim the two (2) minor children of the parties as dependents for income tax purposes.

9. That the Plaintiff shall pay to the Defendant the sum of \$ 750.00 (Seven Hundred Fifty Dollars and No/100) per month as periodic alimony, the first payment being due and payable on the first day of September, 1995, and all subsequent payments being due and payable on the first day of each month thereafter until the said Defendant shall die, remarry or cohabitate under the provision of Section 30-2-55, Code of Alabama, (1975), or until the Plaintiff shall die, whichever shall occur first.

10. That the Plaintiff shall continue to maintain his current life insurance policy with the Phoenix Home Life Insurance Company in the amount of \$ 385,000.00 (Three Hundred Eighty-five Thousand Dollars and No/100) and shall designate the Defendant as the irrevocable beneficiary to one-half (1/2) of any proceeds therefrom on account of his death until such time as the Defendant should remarry, die or cohabitate under the provision of Section 30-2-55, Code of Alabama, (1975). The Plaintiff shall also designate his two (2) minor children as irrevocable beneficiaries to one-half (1/2) of any proceeds therefrom on account of his death until such time as the said minor children shall reach the age of majority, marry or otherwise become self-supporting.

11. That the house and lot jointly owned by the parties located at 211 Norwick Forest Drive, Alabaster, Alabama is hereby awarded to the Defendant. The Plaintiff is hereby divested of any right, title and interest in said house and lot and further, the

Plaintiff shall execute a general warranty deed conveying all his right, title and interest of said house and lot over unto the Defendant. The Defendant shall pay the mortgage indebtedness on said house and lot to the Prudential Company according to the terms and conditions of said mortgage and note covering said indebtedness and hold the Plaintiff harmless therefrom.

12. That the Defendant shall receive as alimony in gross the following for each year for five (5) consecutive years following the date of this order, beginning with the calendar year 1995, the Defendant shall receive from the Plaintiff a sum equal to:

- a. Five percent (5%) of the Plaintiff's outstanding stock by Plaintiff at the time of trial in this cause in the "Eggstra" corporation, or
- b. Ten percent (10%) of the aggregate of the Plaintiff's salary, retained earnings and distributions attributable to the Plaintiff and any other monetary benefits during the calendar year from "Eggstra", or
- c. \$ 7,000.00 (Seven Thousand Dollars and No/100),

said election to be made within thirty (30) days of her receipt of the financial statements of the said corporation. The Plaintiff shall forward to the Defendant, by certified mail, the aforesaid financial statements as soon as they are prepared at the close of each of the subject years, but in no event shall the forwarding be postmarked later than April 16 following the subject calendar year. The Plaintiff shall comply with his annual obligation under this paragraph within thirty (30) days of his receipt of the Defendant's annual election.

13. That the Plaintiff is hereby awarded all the stock and interest the Plaintiff has in the "Eggstra" business concern

subject only to the provisions in Paragraph Nine. The Plaintiff is also awarded all stock and interest he has in Davis, NDE, Stress Lab and Quest.

14. That the Defendant is awarded the 1991 GMC van and the Plaintiff is divested of any right, title and interest the Plaintiff may have in said van. The Defendant shall assume and pay the outstanding indebtedness on said van and hold the Plaintiff harmless therefrom. The Plaintiff shall execute any and all papers necessary to effectuate title of said van from the Plaintiff over unto the Defendant.

15. That the Defendant is also awarded the 1988 Honda Civic automobile which the parties' son is currently driving. The Defendant shall be responsible for any indebtedness owed on said Honda.

16. That the Plaintiff is awarded the 1988 GMC truck and the Oldsmobile Cutlass automobiles, as well as, any interest he may have in the 1993 Jeep Cherokee currently owned by Davis, NDE, but being driven by the Plaintiff. The Plaintiff shall assume and be responsible for the outstanding debts owed by him and/or Davis, NDE.

17. That the Plaintiff shall be responsible for and shall pay the following debts:

- a. Norwest Finance, the approximate amount of \$ 2,200.00 (Two Thousand Two Hundred Dollars and No/100);
- b. AmSouth Bank, the approximate amount of \$ 15,500.00 (Fifteen Thousand Five Hundred Dollars and No/100);
- c. APCO, the approximate amount of \$ 3,300.00 (Three Thousand Three Hundred Dollars and No/100);

- d. Davis, NDE Officer Loan, the approximate amount of \$ 7,700.00 (Seven Thousand Seven Hundred Dollars and No/100);
- e. Eggstra Corporation, the approximate sum of \$ 3,700.00 (Three Thousand Seven Hundred Dollars and No/100);
- f. All medical bills incurred to date on the said minor children which are not covered by medical insurance;
- g. All income taxes on income earned by the Plaintiff and/or any corporations the Plaintiff has an interest in for which he has any personal tax liability;
- h. All credit cards or other debts in his name, not specifically set out in this Final Judgment of Divorce.

18. That the Defendant shall be responsible for and shall pay the following debts:

- a. J.C. Penney;
- b. Wachovia, the approximate amount of \$ 5,000.00 (Five Thousand Dollars and No/100) to \$ 5,400.00 (Five Thousand Four Hundred Dollars and No/100);
- c. BP;
- d. McRae's, the approximate amount of \$ 250.00 (Two Hundred Fifty Dollars and No/100);
- e. Nation Bank Card, approximate amount of \$ 6,000.00 (Six Thousand Dollars and No/100) to \$ 7,400.00 (Seven Thousand Four Hundred Dollars and No/100);
- f. Macy's;
- g. Rich's;
- h. Any credit cards or other debts in her name not specifically set out in this Final Judgment of Divorce.

19. That the Defendant is awarded the following items of personal property:

- a. Bookshelves previously owned by the Plaintiff's father;
- b. Bench;

- c. Tools;
- d. One-half (1/2) of all pictures;
- e. All but \$ 5,000.00 (Five Thousand Dollars and No/100) of the certificates of deposit containing almost \$ 30,000.00 (Thirty Thousand Dollars and No/100);
- f. IRA - Putman Growth and Income Fund, approximate amount of \$ 10,000.00 (Ten Thousand Dollars and No/100);
- g. SEP - Putman Global Growth Fund, approximate amount of \$ 4,000.00 (Four Thousand Dollars and No/100);
- h. All insurance policies in the Plaintiff's name.

20. That the Defendant is awarded \$ 5,000.00 (Five Thousand Dollars and No/100) of the aforementioned certificate of deposit and all the other personal property not specifically enumerated above in her possession, including, but not limited to the furniture and appliances located in the aforesaid house and lot previously occupied by the parties.

21. That the Plaintiff shall pay and be responsible for paying the unpaid debt owed to the expert witness, Mr. James Wesley Eubank, Jr., for his services rendered on behalf of the Defendant.

22. That the Plaintiff shall pay to the counsel for the Defendant, Stella Tipton, the sum of \$ 8,615.00 (Eight Thousand Six Hundred Fifteen Dollars and No/100) representing the value of her services rendered in this cause she should receive from the Plaintiff, as well as for the cost of photo copies made by said attorney in this cause.

DONE and ORDERED on this the 21st day of August, 1995.

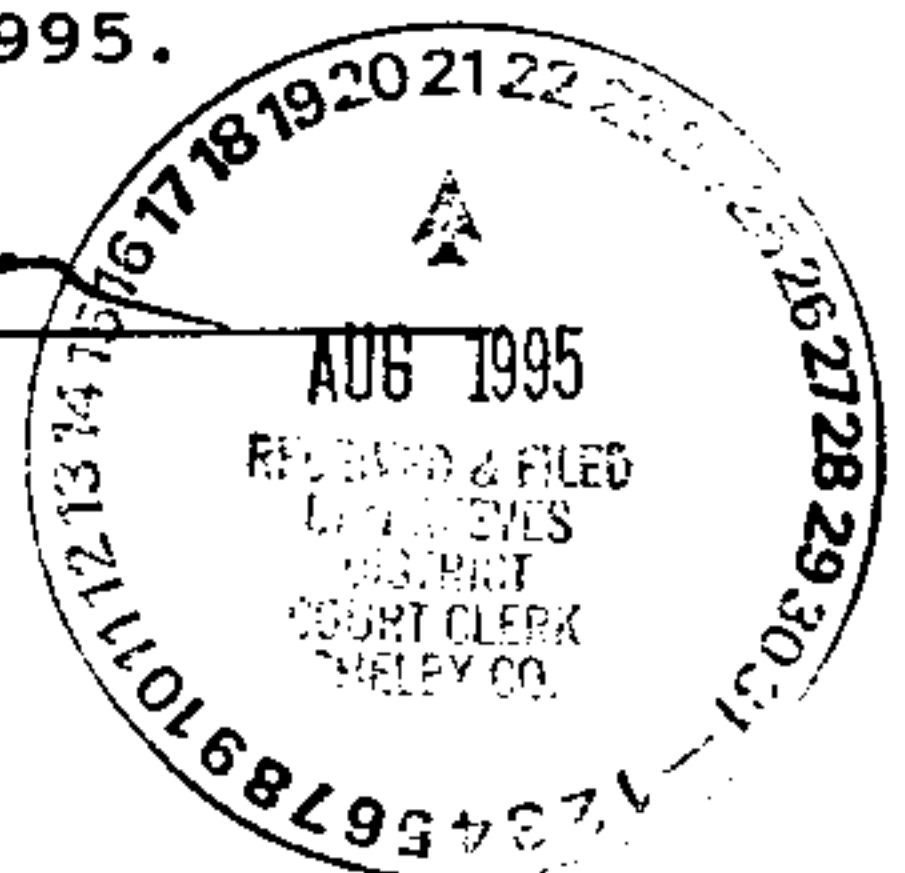
I, Dan Reeves, Clerk and Register of the Circuit Court for Shelby County, Alabama, do hereby certify that the foregoing is a correct copy of the original decree rendered by the Judge of the Circuit Court in the above stated cause, which said decree is on file and enrolled in my office

Witness my hand and seal this the 29th

day of Aug, 1997

Dan Reeves
Clerk & Register of Circuit Court

D. Al Crowson
Circuit Court Judge



IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

J. MARK DAVIS,
Plaintiff,

vs.

NANCY DAVIS,
Defendant.

Case No. DR-95-018

EX MERO MOTU
ORDER CORRECTING CLERICAL ERROR

This Court, having entered a Final Judgment of Divorce in the above-styled cause on August 21, 1995, comes now ex mero motu to correct clerical errors in said Final Judgment of Divorce.

Accordingly, it is hereby ORDERED that the said Final Judgment of Divorce previously entered by this Court be and is hereby amended nunc pro tunc as follows:

1. That the last paragraph of this Court's findings of fact is hereby amended to read:

The Court finds the Plaintiff's gross monthly income under Rule 32, A.R.J.A. to be \$ 7,500.00 (Seven Thousand Five Hundred Dollars and No/100) and finds the Defendant's gross monthly income under Rule 32, A.R.J.A. to be \$ 2,000.00 (Two Thousand Dollars and No/100). The Court finds that the Plaintiff should maintain medical insurance on the said minor children and that the costs therefor is \$ 236.00 (Two Hundred Thirty-six Dollars and No/100) per month.

2. That paragraph twelve of this Court's order is hereby amended to read:

That the Defendant shall receive as alimony in gross the following for each year for five (5) consecutive years following the date of this order, beginning with the calendar year 1995, the Defendant shall receive from the Plaintiff a sum equal to:

- a. Five percent (5%) of the Plaintiff's outstanding stock by Plaintiff at the time of trial in this cause in the "Eggstra" corporation, or
- b. Ten percent (10%) of the aggregate of the Plaintiff's salary, retained earnings and distributions attributable to the Plaintiff and any other monetary benefits during the calendar year from "Eggstra", or
- c. \$ 7,000.00 (Seven Thousand Dollars and No/100), said election to be made within thirty (30) days of her receipt of the financial statements of the said corporation. The Plaintiff shall forward to the Defendant, by certified mail, the aforesaid financial statements as soon as they are prepared at the close of each of the subject years, but in no event shall the forwarding be postmarked later than April 16 following the subject calendar year. The Plaintiff shall comply with his annual obligation under this paragraph within thirty (30) days of his receipt of the Defendant's annual election.
- d. That the Plaintiff is prohibited from directly or indirectly competing with the business of Eggstra Corporation. Further, the Plaintiff is prohibited from revealing information regarding said corporation to potential competitors.

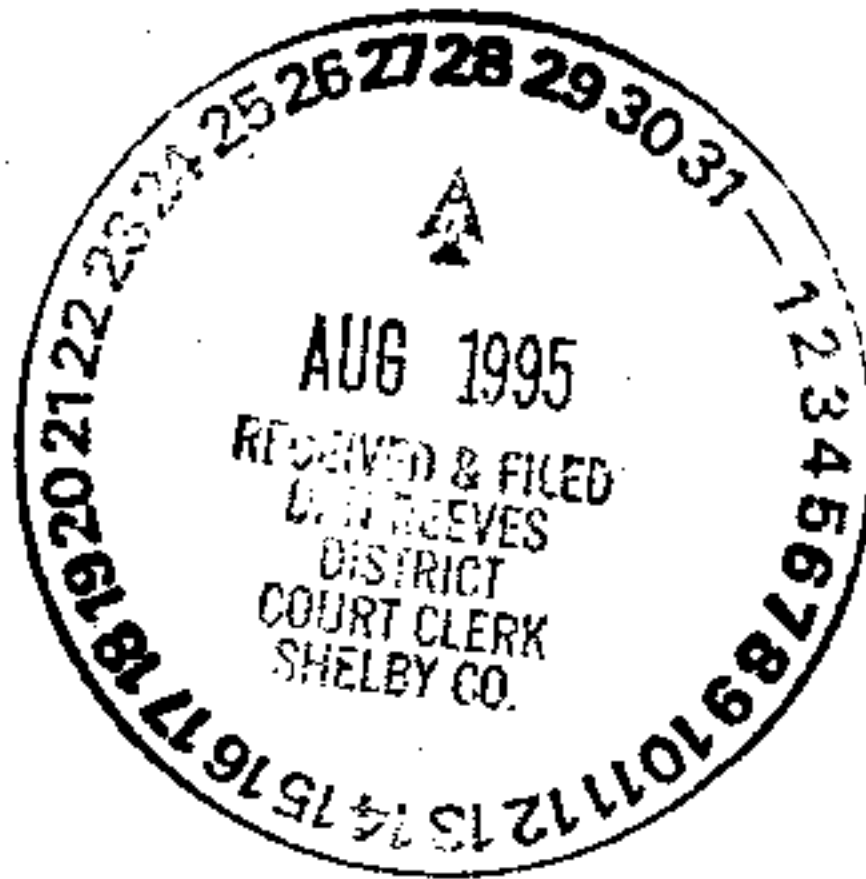
3. That paragraph nineteen of this Court's order is hereby amended to read:

- 19. That the Plaintiff is awarded the following items of personal property:
 - a. Bookshelves previously owned by the Plaintiff's father;
 - b. Bench;
 - c. Tools;
 - d. One-half (1/2) of all pictures;
 - e. All but \$ 5,000.00 (Five Thousand Dollars and No/100) of the certificates of deposit containing almost \$ 30,000.00 (Thirty Thousand Dollars and No/100);
 - f. IRA - Putman Growth and Income Fund, approximate amount of \$ 10,000.00 (Ten Thousand Dollars and No/100);

- g. SEP - Putman Global Growth Fund, approximate amount of \$ 4,000.00 (Four Thousand Dollars and No/100);
- h. All insurance policies in the Plaintiff's name.

DONE and ORDERED on this the 24th day of August, 1995.



D. Al Crowson
Circuit Court Judge



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Certified a true and correct copy

Date: 8-29-97


Dan Reeves, Circuit Clerk
Shelby County, Alabama

Stella Tipton
2363 Lakeside Dr
B'ham, AL 35244