



IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA
DOMESTIC RELATIONS

IN RE: THE MARRIAGE OF

ANAIITA RAHNEMAEI

Plaintiff,

vs.

MOHAMMAD HEYAT

Defendant.

DR 2010-900375.01 DAC



20130108000011310 1/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

ORDER

This matter came on to be heard on the 12th day of June, 2012, on the Plaintiff's Motion for Default on Plaintiff's Rule Nisi Petition with Bruce L. Gordon appearing for the Plaintiff and the Defendant not appearing, and after taking ore tenus testimony from the Plaintiff and the attorney for the Plaintiff at the hearing, the Court, is of the following opinion:

FINDING OF FACT

1. The Court notes that the Defendant was originally represented by counsel in the original divorce proceedings but no one has filed an appearance with respect to the Petition for Rule Nisi on behalf of the Defendant nor has the Defendant filed any response pro se.

2. The Court also notes that the original Petition for Rule Nisi was served on the Defendant on February 22, 2012, by a private process server and that the Motion for Default Judgment and Order setting the Motion for Default Judgment for 1:30 P.M. June 12, 2012, was personally served on the Defendant on June 3, 2012, by a private process server. Evidence of the service of the Motion for the Default and the Order setting the hearing on June 12, 2012 at 1:30 P.M. before this Court was introduced into evidence for the Court's consideration.

3. This Court called the case for hearing in open Court at 1:30 PM on June 12, 2012 and after a reasonable waiting period, the Defendant, nor anyone on his behalf, was present at the June 12, 2012, hearing. The Plaintiff was present with her counsel

Bruce L. Gordon and upon the call of this case, the Defendant was not present.

4. The Court called the case and the Plaintiff and the attorney for the Plaintiff provided testimony for the Court's consideration.

5. For purposes hereof the term Final Judgment of Divorce shall be deemed to mean both the Final Judgment of Divorce filed of record on the 13th day of September 2011 and the Order on the Rule 59 Motions filed of record on the 8th day of day of December, 2011.

6. Plaintiff testified that :

i) The Defendant had failed to pay child support to the Plaintiff as provided for in Paragraph 6 of the Final Judgment of Divorce as set forth below:

September 1, 2011	\$991.00
November	\$ 80.00 short
December	\$991.00
February 1, 2012	\$ 80.00 short
June 1, 2012	\$991.00

ii) The Defendant is in arrears in the payment of child support in the aggregate amount of Three Thousand One Hundred Thirty Three and no/100 Dollars (\$3133.00) through the date of the hearing on June 12, 2012.

iii) Pursuant to Paragraph 9 of the Final Judgment of Divorce, the former marital residence of the parties located at 386 North Lake Road, Hoover, Alabama 35242 (the "Residence") was to be retitled in both the Plaintiff and the Defendant as tenants in common. Although the attorney for the Plaintiff has submitted the form of the Deed to the attorney for the Defendant to be executed by the Defendant, the Defendant has willfully and wantonly refused to comply with the Court Order and has not delivered the Deed to the Plaintiff. See Exhibit A and B to the Petition for Rule Nisi evidencing where the documents were sent to the attorney for the Defendant. Further, the Plaintiff has had the Final Judgment of Divorce certified by the Clerk of the Court of Shelby County and files the Final Judgment of Divorce of record in the Probate Court of Shelby County, Alabama.

iv) Further pursuant to Paragraph 9 of the Final Judgment of Divorce, the Defendant was to grant to the Plaintiff a mortgage on the Residence within ten days (10) of the rendition of the Final Judgment of Divorce. The attorney for the Plaintiff has submitted the form for the Mortgage to be executed by the Defendant to the attorney for the Defendant but the Defendant has willfully and wantonly refused to comply with the Court Order and has not delivered the Mortgage to the Plaintiff (See Exhibit A and B) of the Petition for Rule Nisi.

20130108000011310 2/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

v) Pursuant to paragraph 9 of the Final Judgment of Divorce, the Defendant was ordered to pay one-half of the homeowner's insurance on the residence. The attorney for the Plaintiff has submitted to the Defendant for reimbursement the amount of the insurance in the amount of \$850.00(of which the defendant was to reimburse ½) but to the date of the filing of the Petition and as of the date of this hearing the Defendant has willfully and wantonly refused to pay to the Plaintiff the one-half he was ordered to pay notwithstanding the fact that the statement for the reimbursement was submitted to the Defendant directly and to his attorney of record. See Exhibits to the Petition for Rule Nisi.

vi) Pursuant to Paragraph 9 of the Final Judgment of Divorce, the Plaintiff and the Defendant were to equally be responsible for major repairs to the Residence. The Plaintiff had to have a dead tree removed from the Residence because of fear that it would fall and cause major damage to the property and/or Residence and the insurance carrier required the removal in order to obtain insurance, as well as the requirement of the Homeowners Association where the Residence is located, to maintain the property consistent with the covenants. The attorney for Plaintiff has submitted to the attorney for the Defendant the cost of \$350.00 for said removal but the Defendant has willfully and wantonly refused to pay his one-half of said amount to the Plaintiff (see the Exhibits to the Petition for Rule Nisi). This Court finds that the costs of the removal of the tree falls within the definition of costs the Defendant is required to reimburse to the Plaintiff.

vii) Pursuant to Paragraph 12 a) and c) of the Final Judgment of Divorce, the Defendant was ordered to return to the Plaintiff certain personal items, including those set out below which have not been returned. The Defendant has willfully and wantonly refused to return the following items to the Plaintiff:

- a) Family photos.
- b) Antique Termeh received from the Plaintiff's grandmother.
- c) 6" silver bowl and 8" plate.
- d) Plaintiff's Iranian passport
- e) Birth certificates for Ali Heyat and Arusha Heyat.
- f) Plaintiff's mother's diamond bracelet.
- g) Certificate of Title to the Plaintiff's Mercedes

viii) The Plaintiff presented a letter from a banking institution preapproving her for a loan to purchase the Residence from the Defendant pursuant to Paragraph 9 of the Final Judgment of Divorce and testified that she desired to complete that purchase immediately. She also presented evidence in the form of a letter addressed to the Defendant that was notification of this intent and that same was being mailed on June 12, 2012, by regular mail and by certified mail to the last address the Plaintiff has for the Defendant.

ix) That the Plaintiff is incurring legal expenses associated with this filing caused by the Defendant's willful and intentional violation of the



20130108000011310 3/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

Final Judgment of Divorce and she is without funds with which to pay her attorney for his services in filing these proceedings. Further that Bruce L. Gordon had been engaged to represent the plaintiff in these proceedings

x) That interest is accruing on the outstanding amounts due at the statutory rate of interest of seven and one-half (7 1/2) per cent per annum.

7. Bruce L. Gordon testified:

i) That he had been engaged by the Plaintiff to represent her in the handling and prosecution of this Rule Nisi and had incurred fifteen (15) hours of time including the time at this hearing on June 12, 2012; that his hourly rate being charged in these matter was at Three Hundred and Fifty Dollars (\$350.00) per hour.

ii) That the process server had signed an Affidavit as to service of the Motion for Default Judgment and Notice of the hearing for June 12, 2012, on the Defendant stating that the Defendant threw the documents from the window of his vehicle after being served. The Affidavit was introduced into evidence.

iii) That he had incurred \$700.00 in expenses to obtain service on the Defendant in addition to the court costs associated with the filing of the Petition for Rule Nisi.

8. The Plaintiff acknowledged that an appeal of the Final Judgment of Divorce and Order of December 8, 2011, has been filed by the Defendant and a Cross Appeal filed by the Plaintiff.

9. A review of the court file and the case summary sheet reflects that no Motion to Supersede or Stay the proceedings had been filed pursuant to Alabama Rules of Civil Procedure or the Alabama Rules of Appellate Procedure pursuant to, among other provisions, Rule 8 of the Alabama Rules of Appellate Procedure.

10. The Defendant having failed to enter an appearance or appear at the hearing held on June 12, 2012 and failing to file any pleading to supersede or stay the enforcement of the Final Judgment of Divorce pending an appeal for the matters for which he is responsible under the Final Judgment of Divorce, this Court orders as follows:

ORDERED, ADJUDGED & DECREED as follows:

1. The Defendant is held in civil and criminal contempt for the following:


a. Willful and contumacious failure to make any payment of the \$3133.00



20130108000011310 4/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

arrearage in the child support as set forth in Paragraph 6 of the Final Judgment of Divorce rendered September 13, 2011, which was to be paid to the Plaintiff.

- b. Willful and contumacious failure to make payment of his obligation to pay to the Plaintiff one-half the cost of homeowner's insurance on the residence located at 386 North Lake Road, Hoover, Alabama 35242 ("Residence") in the amount of \$429.00 and one-half the cost of having a tree removed from the Residence at the demand of the insurance company in the amount of \$175.00 for a total due of \$604.00.
 - c. Willful and contumacious failure to deliver to the Plaintiff a mortgage in the amount of \$100,000.00 on the Residence pursuant to paragraph 9 of the Final Judgment of Divorce.
 - d. Willful and contumacious failure to deliver to the Plaintiff the following items of personal property believes to be in the possession of the Defendant:
 - a) Family photos.
 - b) Antique Terneh received from the Plaintiff's grandmother.
 - c) 6" silver bowl and 8" plate.
 - d) Plaintiff's Iranian passport
 - e) Birth certificates for Ali Heyat and Arusha Heyat.
 - f) Plaintiff's mother's diamond bracelet.
 - g) Certificate of Title to the Plaintiff's Mercedes
 - e. Willful and contumacious failure to appear in this Court for the hearing on this Petition for Rule Nisi.
2. Defendant shall be immediately arrested by any law enforcement officer of the State of Alabama, and Defendant shall be incarcerated in the Shelby County jail. **Notice of this arrest order shall be delivered to the Sheriff's Department for Shelby County with instructions to take such efforts and coordinate with other jurisdiction law enforcement agency(ies) to have the Defendant arrested and delivered to the Shelby Court jail subject to the other provisions of this Order.**
3. Upon Defendant being incarcerated, the Shelby County jail shall immediately notify the Court of Defendant's incarceration;
4. Upon notification of Defendant's incarceration, a Court hearing shall be scheduled for the purpose of determining the terms of conditions of his release which shall include notification and scheduling with the Plaintiff and the Plaintiff's attorney to be present if they desire at said hearing;


20130108000011310 5/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

5. A copy of this Order is to be served upon Defendant by U.S. Mail to Defendant's last known address.
6. The Court acknowledges that there is currently an appeal of the Final Judgment of Divorce as modified by Order dated December 8, 2011 (the "Appeal").
7. The Court further acknowledges that the Defendant has not filed any pleading in this Court to supersede or stay the enforcement of the Final Judgment of Divorce.
8. The Court hereby orders that the Residence be sold to the Plaintiff for a purchase price (pursuant to paragraph 9 of the Final Judgment of Divorce) of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) less the amount due from the Defendant to the Plaintiff as set out herein of \$3133.00 plus arrearage in child support, \$429.00 for one-half the homeowner's insurance and \$175.00 for one-half the cost of the tree removal for a total aggregate amount of \$3742.00 plus interest on the arrearage from the date due from the Defendant to the Plaintiff and that is at 7.5 % as follows:

a)	Child support payments	
	September 1, 2011	\$991.00 9/1/2011
	November	\$ 80.00 11/1/11
	December	\$991.00 12/1/11
	February, 2012	\$ 80.00 02/1/12
	June 2012	\$991.00 06/1/12
b)	Tree removal and Insurance	\$609.00 01/01/12

9. That at the closing of the finance of Residence by the Plaintiff, and upon notice of the Closing to this Court, the Court shall issue a judicial deed to the Plaintiff in a form satisfactory to the lender to the Plaintiff and the title company issuing the title commitment to the lender. That said One Hundred Fifty Thousand and no/100 (\$150,000.00) be paid into court pending a final decision by the Alabama Court of Civil Appeal. In the event that the Alabama Court of Civil Appeal rules in favor of the Defendant and the provisions of paragraph 9 of the Final Judgment of Divorce are due to be reversed, the \$150,000.00 shall be paid to the financial institution from which the Plaintiff obtains the funds to purchase the Residence and the mortgage will be released. In the event that the Alabama Court of Civil Appeal affirms the provisions of paragraph 9 of the Final Judgment of Divorce, the \$146,258.00 shall be released to the Defendant. The Court reserves jurisdiction of this issue to address the effect on the sale of the Residence and the mortgage granted to the Lender consistent with any decision of the Alabama Court of Appeals or the Supreme Court of the State of Alabama.



20130108000011310 6/7 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT

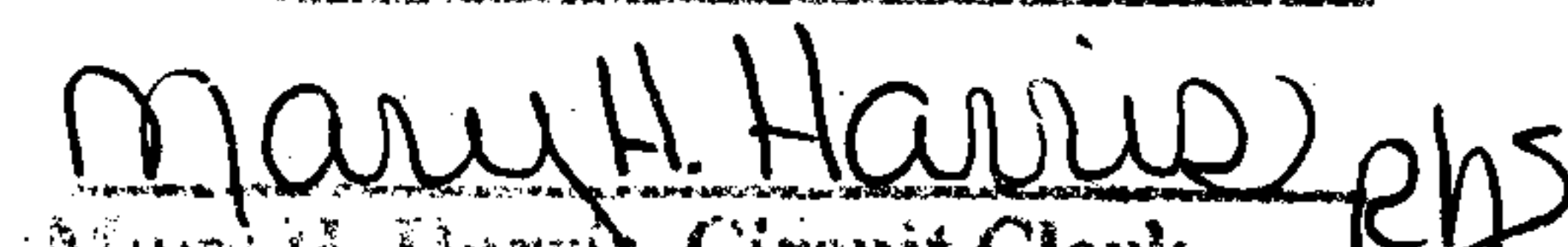
10. The Court finds that the Defendant is due to pay to the Plaintiff for her engagement of Bruce L. Gordon as an attorney and his services to the Plaintiff in this matter the sum of \$5250.00 plus reimbursement of court costs in the amount of \$262.08 (on line filing fees) and \$700.00 for expenses for a total of \$6212.08 for which a judgment is hereby entered.
11. This Court reserves the jurisdiction for the imposition of the penalty for the criminal and civil contempt of the Defendant pending the Defendant purging himself of contempt

Done and ordered this 14th day of June, 2012


D. Al Crowson
CIRCUIT JUDGE

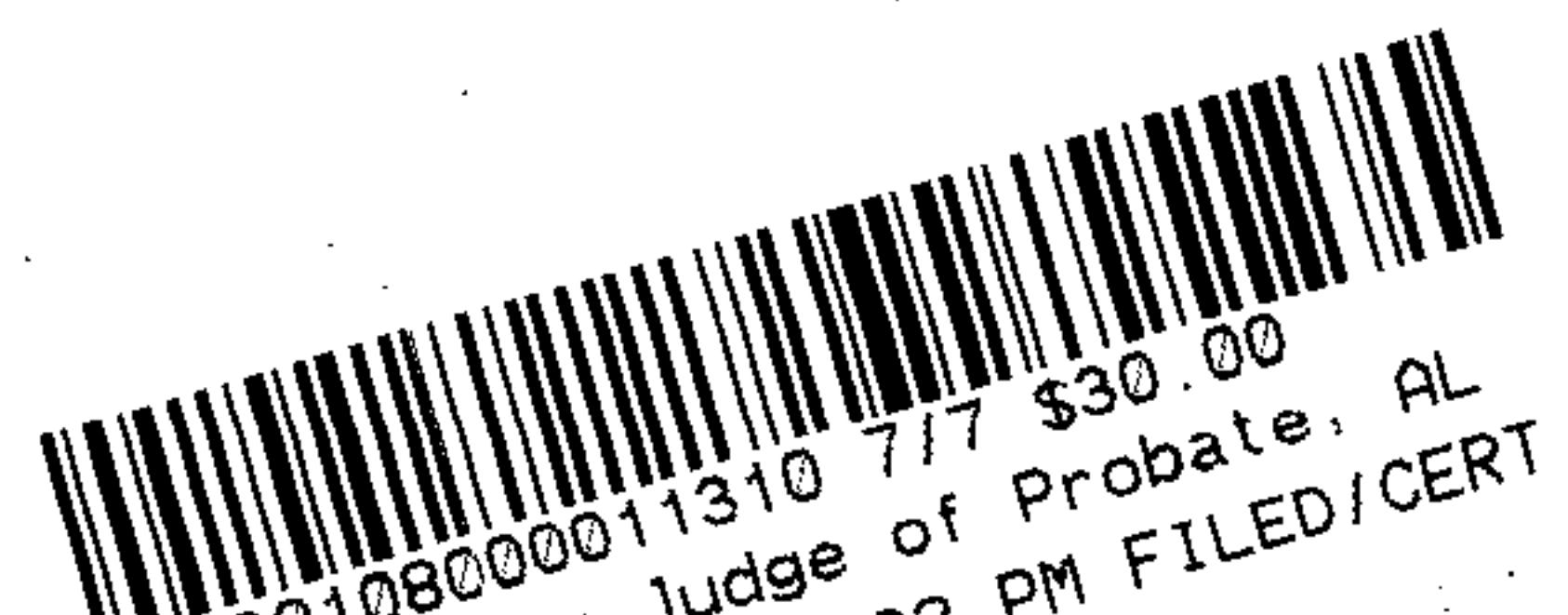
Certified a true and correct copy

Date: 01-08-13


Mary H. Harris, Circuit Clerk
Shelby County, Alabama

Copies to:
OF COUNSEL FOR PLAINTIFF
BRUCE L GORDON
Gordon, Dana, Knight & Gilmore, LLC
600 University Park Place, Suite 100
Birmingham, Alabama 35209
205 874-7950 phone
205 874-7960 fax
bgordon@gattorney.com

Mohammad Heyat
4027 Waterford Landing
Hoover, AL 35216


20130108000011310 717 \$30.00
Shelby Cnty Judge of Probate, AL
01/08/2013 01:59:32 PM FILED/CERT