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1/25/2021 6:46 AM

01-DR-2016-900064.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

JACQUELINE ANDERSON SMITH, CLERK

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
BIRMINGHAM DIVISION**

SHEARS CASSIE MICHELLE,
Plaintiff,

V.

SHEARS JEREMY DWAYNE,
Defendant.

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Case No.: DR-2016-900064.00

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FINAL JUDGMENT OF DIVORCE

THIS CAUSE came before the Court for trial on August 3, 2017; August 4, 2017; March 13, 2019; July 12, 2019; July 15, 2019; and July 26, 2019 for the taking of testimony and evidence in this cause. This divorce action was filed on January 18, 2016 and was pending for one (1) year prior to the undersigned taking the bench. During the first two (2) days of trial, Plaintiff/Wife was represented by the Honorable J. Brian Huff and the Defendant/Husband was represented by the Honorable Stephen L. Sexton. On August 29, 2017, the State of Alabama Department of Human Resources (DHR) filed a Motion and Petition to Intervene. On August 31, 2017, the parties filed a Joint Motion to Consent to DHR's Motion to Intervene and an Order was entered by the Court on said date granting DHR's Intervention. DHR had no objections to the resuming trial after the granting of its intervention.

On November 8, 2017, the Defendant/Husband filed a Suggestion of Bankruptcy placing this Court on notice that he had filed a Chapter 7 Bankruptcy, case number BK-2017-04792-TOM7. On November 9, 2017, trial in this cause was scheduled to resume, but the Court was unable to proceed due to the stay created by Defendant/Husband's Bankruptcy filing. Present on said date were the parties both represented by their respective attorneys of record and the Honorable Jack Wallace on behalf of DHR. The Court entered an Order on said date Granting-In-Part Defendant/Husband's oral Motion to Stay the Proceedings due to the Defendant/Husband's Bankruptcy filing. The Court further granted the Honorable Stephen L. Sexton's oral Motion to Withdraw as counsel of record for the Defendant/Husband.

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After the November 9, 2017 hearing, Plaintiff/Wife filed an Emergency Motion for Ex Parte Order; and this Court entered an Ex Parte Order and an Order Appointing the Honorable Kathy-Ann Alexis as Guardian Ad Litem (GAL) for the minor children of the parties. Said GAL filed a Motion for Leave to Withdraw, which was granted by the Court. On December 27, 2017, the Court entered an Order appointing the Honorable Jacqueline Morrette as GAL who has been the GAL since said date and was present during the last four (4) days of trial in this cause: March 13, 2019; July 12, 2019; July 15, 2019; and July 26, 2019.

On December 21, 2017, the Honorable Kathryn Crawford Gentle filed a Notice of Appearance as counsel of record for the Defendant/Husband. On January 4, 2019, counsel for Defendant/Husband filed a Motion and Request for Hearing, which noted therein in that the Defendant/Husband had received a Bankruptcy discharged on April 24, 2018. On February 11, 2019, an Order was entered specially setting trial to resume on March 13, 2019. The Honorable Kathryn Gentle represented the Defendant/Husband on said date, which was the third day of trial in which evidence and testimony was taken. Trial in this cause was carried over to July 12, 2019.

On June 6, 2019, the Honorable Kathryn Gentle filed a Motion to Withdraw as counsel for Defendant/Husband; and an Order was entered by the Court granting said withdrawal on June 27, 2019. Trial in this cause resumed on July 12, 2019, the Defendant/Husband appeared Pro Se' and informed the Court that he wanted to proceed by way of self-representation and filed in open Court a Waiver of Right of Counsel. The Defendant/Husband represented himself during the last three (3) days of trial: July 12, 2019; July 15, 2019; and July 26, 2019.

On September 19, 2018, the Honorable Thomas Shane Smith filed a Notice of Appearance as counsel for Plaintiff/Wife, the Honorable J. Brian Huff filed a Notice of Withdrawal as Plaintiff/Wife's attorney, and this Court entered an Order granting the withdrawal of the Honorable J. Brian Huff as counsel of record for Plaintiff/Wife. The Honorable Thomas Shane Smith has consistently represented Plaintiff/Wife in this cause since the filing of his Notice of Appearance and was present with Plaintiff/Wife during the last four (4) days of trial: March 13, 2019; July 12, 2019; July 15, 2019; and July 26, 2019.

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The Honorable Jack Wallace appeared on behalf of DHR on March 13, 2019, the third day of trial in this cause. The Honorable Rebecca Boykins appeared on behalf of DHR on the fourth and fifth days of trial, July 12, 2019 and July 15, 2019. All issues involving DHR were resolved on the July 15, 2019 trial date.

On July 12, 2019, the parties, GAL and counsel for DHR signed a Joint Stipulation and on July 15, 2019 a signed Agreement was reached both resolving some of the issues to be tried by the Court. Said documents were offered and admitted into evidence as Plaintiff/Wife's Exhibits 9 and 16. The issues relating to GAL's fees, division of the marital property, attorneys' fees, and other requested relief not disposed by the signed Stipulation and Agreement remain unresolved.

On July 15, 2019, counsel for DHR informed the Court that based upon the signed Stipulation and Agreement, the basis for DHR's intervention had been resolved, DHR had no interest in the remaining unresolved issues, and requested permission to be relieved. There were no objections in response thereto; and the Court relieved DHR from having to make any further appearances at trial in this cause. As such, DHR was not present on July 26, 2019, the last day of trial.

A Partial Final Order reflecting the terms of the July 12, 2019 signed Joint Stipulation and July 15, 2019 signed Agreement was entered by the Court on July 20, 2019. Said Order further disposed of other pending pleadings and issues in this cause. The Court notes that temporary Orders have been entered throughout the litigation of this case, including an Order Confirming Report of Daily Master entered on May 27, 2016 and several other temporary and post-trial Orders. As such, the parties have been under Temporary Orders and a Partial Final Order pending entry of the final decree.

On July 17, 2019, prior to the final trial date set on July 26, 2019, Plaintiff/Wife filed a Motion to Set Aside Real Property Transfers alleging that the Defendant/Husband had transferred and/or disposed of certain real properties throughout the divorce proceedings and during trial in this cause. Plaintiff/Wife's Motion was set to be heard on the final trial date of July 26, 2019.

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On July 26, 2019, the last date of trial in this cause, the parties and GAL reached a signed Stipulation to proceed without a court reporter and a separate Agreement mooting the GAL's Motion to Show Cause and the parties' Responses and Objections thereto. Said Agreement reserved the issue of the GAL's final fees to be determined by the Court in its final Order. Said documents were offered and admitted into evidence as Plaintiff/Wife's Exhibits 25 and 26.

Trial concluded on July 26, 2019 and the parties were instructed to submit Proposed Orders to the Court. Counsel for Plaintiff/Wife and GAL requested to file written Affidavits in support of their requested fees, time and expenses. On July 31, 2019, counsel for Plaintiff/Wife filed his Affidavit; and the GAL filed her Affidavit on August 1, 2019. Plaintiff/Wife submitted her Proposed Order on August 16, 2019 and Defendant/Husband submitted his Proposed Order on August 22, 2019.

On September 12, 2019, Plaintiff/Wife filed a post-trial Motion for Immediate Relief. On September 30, 2019, the Court entered an Order setting a hearing on Plaintiff/Wife's post-trial Motion for October 15, 2019. On October 14, 2019, Plaintiff/Wife filed a Motion to Remove Hearing from Docket and the Court entered an Order on said date mooting and removing the case from the Court's October 15, 2019 Docket.

On March 18, 2020, the GAL filed a Notice of Extinguishment of Second Bankruptcy Stay. Defendant/Husband filed a second Bankruptcy during this divorce action on December 19, 2017, case number BK 17-05308-TOM, which was after the filing of his first Bankruptcy, case number BK 17-04792-TOM, and prior to final trial in this cause. Defendant/Husband also had a third Bankruptcy action, which was a lawsuit filed on March 23, 2018, case number BK 18-00152-TOM. Defendant/Husband only filed one (1) Suggestion of Bankruptcy on November 8, 2017 putting this Court on Notice that he had filed Bankruptcy. A Suggestion of Bankruptcy was never filed notifying this Court of Defendant/Husband's second Bankruptcy filing. A copy of Defendant/Husband's second Bankruptcy Petition was admitted during final trial as Plaintiff/Wife's Exhibit 22.

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The stay in Defendant/Husband's second bankruptcy, case number BK 17-05308-TOM was not extinguished until December 13, 2019 when the case was closed. No pleading providing notice of the lifting or extinguishment of the stay in Defendant/Husband's second Bankruptcy was filed with the Court and the record is void of any such notice being filed prior to the filing of the GAL's Notice on March 18, 2020.

On March 26, 2020, this Court entered an Order directing both parties to file Affidavits with the Court regarding their Bankruptcy statuses within ten (10) days. Plaintiff/Wife filed a Notice with the Court on March 30, 2020 noting she had no active bankruptcy proceedings and requested that in the event the Defendant/Husband failed to comply that she and her attorney be relieved of appearing due to the COVID-19 Pandemic and to avoid incurring any additional attorney's fees. The Defendant/Husband failed to comply with this Court's Order and did not file a responsive pleading as ordered.

The Court after following up on this matter and seeing no Affidavit filed by the Defendant/Husband, *sua sponte* entered an Order on May 11, 2020 setting a virtual hearing on May 22, 2020 for the limited purposes of taking testimony to determine whether a bankruptcy stay was in place that would prohibit this Court from entering a final Order dividing the marital assets, disposing of all other issues, and divorcing the parties. Present for said hearing were Plaintiff/Wife represented by the Honorable Thomas Shane Smith; Defendant/Husband appearing Pro Se'; the Honorable Jacqueline Morrette, Guardian Ad Litem; and the Honorable Rebecca Boykins on behalf of DHR. The parties both testified under oath that neither party had any active pending bankruptcy cases.

On June 15, 2020, Plaintiff/Wife filed a Motion to Open Evidence, and in the Alternative Renewed Motion for the Entry of Final Judgment of Divorce noting that the Defendant/Husband was selling and/or had sold other marital property with attached exhibits. On June 16, 2020, the Court entered an Order setting a hearing on Plaintiff/Wife's Motion for June 26, 2020. On June 24, 2020, Plaintiff/Wife filed a Motion to Continue and for Temporary Restraining Order. On June 24, 2020, the Court entered an Order granting a continuance and setting a hearing on July 2, 2020 to address Plaintiff/Wife's Motion to Open Evidence and request for a Temporary Restraining Order mutually restraining both parties from disposing or transferring any property in this cause.

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Present at the July 2, 2020 hearing were the Plaintiff/Wife represented by the Honorable Thomas Shane Smith; Defendant/Husband appearing Pro Se'; the Honorable Jacqueline Morrette, Guardian Ad Litem; and the Honorable Leigh Tyson on behalf of DHR. During said hearing, the Court took limited testimony of the parties. Defendant/Husband testified that he had certain documents that were at his office that he had not exchanged with the attorneys prior to the hearing date. After taking testimony of the parties and hearing arguments, the Court entered a Temporary Restraining Order and continued the hearing to July 20, 2020. The Order specifically directed and provided timelines for the Defendant/Husband to produce certain documents to all attorneys.

On July 20, 2020, the Court resumed and concluded the hearing on the post-trial pleadings. Present at said hearing were the Plaintiff/Wife represented by the Honorable Thomas Shane Smith; Defendant/Husband appearing Pro Se'; the Honorable Jacqueline Morrette, Guardian Ad Litem; and the Honorable Rebecca Boykins on behalf of DHR. The Court heard arguments, reviewed evidence admitted by the Plaintiff/Wife, and testimony of the parties regarding all remaining post-trial pleadings.

The Court notes no Objections were filed or raised regarding any of the post-trial hearings, which were held during the State of Emergency due to the COVID-19 Pandemic. The Alabama Supreme Court and the Presiding Judge for the Tenth Judicial Circuit for Jefferson County entered Orders suspending non-emergency in-person proceedings from March 13, 2020 through August 15, 2020. Said Orders required numerous cases and dockets to be continued, converted, and/or reset; new COVID-19 Protocols; and the unprecedented installation, learning, and use of new technology to conduct certain proceedings virtually.

On December 9, 2020, the Honorable Phillip E. Gable, Plaintiff/Wife's father, filed a Notice of Appearance in this cause as additional counsel for Plaintiff/Wife. On December 22, 2020, the GAL filed a Motion to Disqualify Phillip E. Gable as an attorney on the basis that he testified as a witness in trial in this cause and Plaintiff/Wife continues to be represented by the Honorable T. Shane Smith who had not filed a Motion to Withdraw. The Honorable Phillip E. Gable subsequently filed a Notice of Withdrawal of Counsel acknowledging he testified as a witness at trial in this cause and stating that his appearance was inadvertent.

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The Court notes herein for the sole purposes of preserving the integrity of the record that said Phillip E. Gable has made no physical appearances as an attorney for Plaintiff/Wife at any time prior to, during, or after trial in this cause. Phillip E. Gable only physically appeared as a witness on behalf of Plaintiff/Wife and testified at trial in this cause during the first two (2) days of trial. The only pleading filed by Mr. Gable as an attorney in this cause is the one (1) page Notice of Appearance filed on December 9, 2020. As reflected in the record, on October 5, 2020, this Court had certain exhibits that were admitted into evidence during trial filed with the Clerk to be made a part of the record. This Court began reviewing the numerous exhibits and notes and preparing the final decree before the Honorable Phillip E. Gable filed his Notice of Appearance. The Court also entered a Partial Final Order on July 20, 2019, prior to the filing of Phillip E. Gable's Notice of Appearance and the extinguishment of Defendant/Husband's second bankruptcy stay. The Partial Final Order disposed of certain pleadings as noted therein and certain issues relating to the parties' minor children. All other issues were specifically reserved to be disposed in this Final Judgment of Divorce. Accordingly, it is hereby **ORDERED and ADJUDGED** by the Court as follows:

1. The Court hereby acknowledges the Notice of Withdrawal filed by Honorable Phillip E. Gable and the Clerk of this Court is hereby directed to withdraw and/or remove the Honorable Phillip E. Gable as an attorney of record for Plaintiff/Wife in this cause and from any and all notices.

2. The GAL's Motion to Disqualify Phillip E. Gable is hereby deemed MOOT.

Upon consideration of the pleadings, signed Stipulations and Agreements, arguments of attorneys, *ore tenus* testimony, and other evidence presented, the Court is of the opinion the following Order should be entered. Accordingly, it is hereby **ORDERED and ADJUDGED** by the Court as follows:

3. The bonds of matrimony heretofore existing between the parties are dissolved, and said CASSIE MICHELLE SHEARS (Hereinafter referred to as "Wife") and JEREMY DWAYNE SHEARS (Hereinafter referred to as "Husband") are divorced from one another by decree *vinculo matrimonii*.

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4. 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 this Judgment, or from the date that a post-trial motion is denied), then neither party shall marry except to each other during the pendency of the appeal.

5. **CUSTODY** - Husband and Wife are hereby awarded joint legal custody of the minor children of the parties, namely: Tessa Estelle Shears, date of birth October 29, 2007, and Scarlett Olivia Shears, date of birth June 12, 2012. Wife is hereby awarded primary physical care, custody, and control of the minor children. Husband shall be the secondary custodian with custodial/visitation periods as set forth herein.

6. **VISITATION** - Husband's custodial/visitation time shall be as follows:

- A. Tuesday, July 16, 2019, at 9:00 a.m. through Tuesday, July 23, 2019 at 6:00 p.m.
- B. Every other weekend of each month beginning Friday, August 2, 2019, from 3:00 p.m. on Friday until the following Monday. Husband shall return the minor children to school on Monday if school is in session.
- C. Should the minor children be out of school or their attendance at school be excused due to the school's calendar or the closing of school on any Friday of Husband's custodial/visitation period and/or on the Monday following said period, the weekend custodial/visitation period shall be extended to include said Friday and/or Monday. The Friday visitation period shall begin Thursday at 6:00 p.m. The Monday visitation period shall end at 6:00 p.m. Monday.

The specified holiday, summer and birthday custodial periods set forth herein shall take priority over normal weekend/weekday custodial periods.

- D. **CHRISTMAS:** Every Christmas holiday in odd numbered years beginning at 6:00 p.m. on the first day of the children's school holiday season as set out in the school calendar until 1:00 p.m. Christmas Day in even years from 1:00 p.m. on Christmas Day until 1:00 p.m. on New Year's Day.
- E. **THANKSGIVING:** In the even numbered years on the week of Thanksgiving from 4:00 p.m. on the Wednesday afternoon until 6:00 p.m. the following Friday. During odd years and when the regularly scheduled weekend visitation/physical custody does not fall on the weekend following Thanksgiving Day (if Husband desires), the third weekend of the November may be substituted for the weekend immediately following Thanksgiving Day.

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- F. **SUMMER:** Beginning 2020, every other week beginning the first week school is in recess from 6:00 p.m. on Sunday until the following Sunday at 6:00 p.m. The children shall be back to the Wife's residence at least five (5) days before the school resumes for the fall season.
- G. **SPRING BREAK:** Every spring school break in the even numbered years as set by the children's school calendar. Said spring break visitation/physical custody shall commence at 6:00 p.m. on the Friday beginning the spring break, and conclude at 6:00 p.m. on the following Friday. Plaintiff/Wife shall have right to same in the odd numbered years.
- H. **FALL BREAK:** Every fall school break in odd numbered years as set by the children's school calendar. Said fall break visitation/physical custody shall commence at 6:00 p.m. on the Friday beginning the fall break, and conclude at 6:00 p.m. on the following Friday. Wife shall have right to the same in the even number years.
- I. **JULY 4TH:** On July 4th in the even numbered years, on the day before the holiday until 8:00 p.m. on the day of the holiday. Wife shall have right to the same in the odd number years.
- J. **FATHER'S DAY:** Notwithstanding periods of visitation/physical custody set herein, the Husband shall have the right of visitation/physical custody with the children for Father's Day of each year. Said visitation/physical custody shall begin at 4:00 p.m. on the Saturday prior to Father's Day and shall end no later than 6:00 p.m. on Father's Day.
- K. **MOTHER'S DAY:** Notwithstanding periods of visitation/physical custody set herein, the Wife shall have the right of visitation/physical custody with the children for Mother's Day of each year. Said visitation/physical custody shall begin at 4:00 p.m. on the Saturday prior to Mother's Day and shall end no later than 6:00 p.m. on Mother's Day.
- L. **BIRTHDAYS:** Husband shall have visitation/physical custody with the children on his birthday in odd numbered years from 4:00 p.m. until 7:30 a.m. the following day. Wife shall have visitation/physical custody with the children on her birthday in the even numbered years from 4:00 p.m. until 7:30 a.m. the following day. This provision shall take priority over other scheduled visitation/physical custody periods. Husband shall have visitation with the minor children on each child's birthday from 4:00 p.m. until 7:30 a.m. the following day. Wife shall have the right to the same in the event the minor children's birthdays occur during Husband's custodial/visitation time.
- M. **OTHER VISITATION:** The visitation/physical custody rights for the parents as provided herein are intended by the Court to be the minimum to which said parent or guardian is entitled. The parties are encouraged to extend such periods, as herein allowed, as the children grow older, and as may be in the best interest of said children, and to reschedule, by mutual agreement, and visitation/physical custody which is inconvenient for the

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parties or interferes with the children's extracurricular activities, with both parties keeping in mind the best interest of the children.

- N. **NOTIFICATION OF ILLNESS OR ACCIDENT:** In the event either of the minor children become seriously ill or require hospitalization due to an illness or accident, the party having the actual physical custody of the children at the time of such occurrence shall promptly notify the other party of such occurrence. Such notification shall include the nature of illness or accident, the location of the children, and the name of the child(ren)'s treating physician.
- O. Neither party shall, in any way, attempt to harass, harm, hinder, decrease, or destroy the natural love of the children for the other parent. Neither parent shall discuss this case or make disparaging remarks or otherwise speak badly of the other parent to another party, to, or in the presence of, the children. Both parents shall make every effort to prevent other from doing the same. Further, the parties shall strive to maintain harmonious relations for the benefit of the parties' children.
- P. **TELEPHONE ACCESS:** Each party shall have reasonable telephone access with the minor children while in the physical control of the other parent. The children shall also have reasonable telephone access to both parents at all reasonable times. Husband and the Wife shall each have the right to reasonable contact with the minor children by telephone/cell phone and other social media, including but not limited to, Facebook, Twitter, and Skype.
- Q. **NOTICE:** No advance notice shall be required of Husband when exercising visitation/physical custody. However, Husband and Wife shall both notify the other party as soon as practicable, if he or she is unable to visit with the children at their scheduled time and place.
- R. **CHILDREN'S ACTIVITIES:** Neither party shall schedule activities for the minor children which will preclude the other party from having the children with him or her at the times and places set forth herein above. In the event it is necessary to schedule activities for the children, the parties shall jointly confer and shall make joint decisions concerning those activities in as much as possible and it shall be the responsibility of the party who is either visiting or has physical custody of the children to transport the children to those activities. The scheduling of activities shall not be utilized to deprive either party of periods of visitation/physical custody. Husband and Wife shall each have the right to attend all school and extracurricular activities of the minor children and to visit with the minor children at school so long as doing so is not disruptive to the children or the school's schedule or policies.
- S. **ACCESS TO INFORMATION:** Both parties shall have access to information concerning their children including but not limited to, medical, dental and hospital records, school records, report cards, and any other information concerning the parties' minor children. This constitutes each party's consent to the release of such information to the other party without

the necessity of a formal release. Both parties shall keep the other informed of the address and phone number where the children reside or visit.

- T. Should the children feel that Husband has become too intoxicated while in his care, the children may unilaterally terminate the visitation for that time period and contact the Wife to pick them up.
- U. Wife shall maintain the passports of the minor children. The minor children shall not travel outside of the country without the express permission of the Wife.
- V. The parties shall follow all state and federal laws as to safety protocols for the minor children.
- W. Husband shall have such additional or other visitation as agreed upon between the parties.

7. **RELOCATION** - The parties shall notify one another of any changes in their address or telephone number, or both and of any change or proposed change of principal residence and telephone number and numbers of the children. This shall be a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such children reach the age of majority or become emancipated and for so long as each party is entitled to custody or visitation with the minor children covered by this Order. If there is to be a change of principal residence by one of the parties or by a child subject to the custody or visitation provisions of this Order, the party making such change must provide the following information to each other person who has custody or visitation rights under this decree as follows:

- (1) The intended new residence, including the specific street address, if known;
- (2) The mailing address, if not the same as the street address;
- (3) The telephone number or numbers at such residence, if known;
- (4) If applicable, the name, address, and telephone number of the school to be attended by the children, if known;
- (5) The date of the intended change of principal residence of a child;
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable;
- (7) A proposal for a revised schedule of custody or visitation with a child, if any.

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- (8) Unless the party relocating is a member of the Armed Forces of the United States of America and being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within thirty (30) days of receipt of the notice or relocation will be permitted.

Notice must be given by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail no later than the 10th day after the date you obtain such information.

Failure to notify the other party entitled to notice of the intent to change the principal residence of a child may be taken into account in a modification of the custody or visitation.

If the non-relocating party does not commence an action seeking a temporary or permanent order to prevent the change of a principal residence of a child within thirty (30) days after receipt of notice of the intent to change the principal residence of the children, the change of principal residence is authorized.

8. **CHILD SUPPORT** - Husband's prior child support obligation to pay to Wife the sum of One Thousand Seven Hundred Dollars and NO/100 Cents (\$1,700.00) per month is hereby terminated effective July 31, 2019. Beginning August 1, 2019, Husband shall pay to Wife the sum of One Thousand Dollars and NO/ Cents (\$1,000.00) per month and continuing each month thereafter for the support and maintenance of the minor children of the parties. The child support amount was not calculated pursuant to the Alabama Child Support Guidelines Rule 32 A.R.J.A. and is an upward deviation as such is in the best interests of the minor children of the parties. Husband's child support obligation shall continue until the minor children reach the age of nineteen (19), marry or otherwise become self-supporting.

9. **CHILD SUPPORT ARREARS/CONTEMPT**

A. By stipulation and agreement of the parties, Husband owe child support arrears in the amount of Thirteen Thousand Two Hundred Eighty Dollars and 38/100 Cents (\$13,280.38) as of July 2, 2019. Husband acknowledged that he did not pay his *pendente lite* child support during this action as ordered by the Court. Husband stipulated and agreed that he is out of compliance for nineteen (19) months and is hereby found in civil and criminal contempt of Court. Husband failed to pay his *pendente lite* child support obligation in the months of May 2016 and July 2016 through December 2017.

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B. Husband shall serve five (5) days for each of the nineteen (19) months that he was not in compliance with payment of his child support obligation. Husband is hereby sentenced to a total of ninety-five (95) days in the Jefferson County, Alabama Jail. Said sentence is hereby suspended contingent upon Husband's compliance with this Order. Any issues of Husband's non-compliance shall be addressed upon the filing of a new action.

C. Husband shall pay Two Hundred Dollars and NO/100 Cents (\$200.00) per month towards his total child support arrears beginning August 1, 2019 and each month thereafter until all child support arrears are paid in full. This amount shall be in addition to Husband monthly current child support obligation set forth in Paragraph 9 herein.

10. INCOME WITHHOLDING ORDER AND SUPPORT PAYMENTS

A. Reference is hereby made to Order entitled "Income Withholding Order" which is specifically incorporated herein as part of this Court's Order. Said Order was entered by the Court on July 20, 2019, but not served as Husband is self-employed.

B. Husband is hereby ordered and directed to pay all arrearage ascertained by this Order and all future current child support payments directly and made payable to the Alabama Child Support Payment Center (A.C.S.P.C.) by cashier's check or money order with the case number noted thereon and mail to:

**Alabama Child Support Payment Center
P. O. Box 244015
Montgomery, Alabama 36124-4015**

C. All monies due under this Order not collected through Income Withholding Order shall be paid by Husband. Upon receipt of same, the State of Alabama Department of Human Resources (DHR) shall forthwith make distribution of the funds pursuant to Title 38-10-8, Code of Alabama (1975).

D. This Order nor the parties' agreement in no way restricts or prohibits the State of Alabama Department of Human Resources (DHR) from using other collection methods available to the agency, such as tax offset, or other enforcement of payment methods.

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E. Husband shall provide any employer and/or residential change of address to the Department of Human Resources, P. O. Box 12585, Birmingham, Alabama 35202-2585, AND Jacqueline Anderson-Smith, Clerk of Court, Suite 100, Domestic Relations Court, 2124 7th Avenue North, Birmingham, Alabama, 35203, forthwith at such time as any such change occurs.

11. **MEDICAL INSURANCE FOR CHILDREN** - The minor children are presently on All-Kids. Wife shall provide and maintain medical insurance for the use and benefit of the minor children of the parties. Husband and Wife shall each pay fifty percent (50%) of any medical, dental, orthodontic, vision, psychiatric/psychological, prescription drugs, and other similar expenses not covered under or by insurance. This insurance obligation shall terminate when the minor children of the parties reach the age of nineteen (19) years, marry or become self-supporting. The parties shall submit to the other party any and all bills, invoice or receipts within thirty (30) days of receiving said bill or incurring said expense and the receiving party shall remit their share of the payment to the other party of facility within thirty (30) days of receiving said bills, invoice or receipt.

12. **LIFE INSURANCE**

A. Wife testified that there was a life insurance policy with Lincoln Benefit Life on the lives of the parties with a death benefit amount of Five Hundred Thousand Dollars and NO/100 Cents (\$500,000.00) each. Wife testified that she did not know who is listed as the beneficiary of said policy. Wife requested that she be allowed to pay the premium payments and maintain said policy. No Exhibit or other evidence relating to said life insurance policy was presented to the Court during trial in this cause.

B. Wife is hereby awarded "ownership" of the Lincoln Benefit Life Insurance Policy. Wife shall name the minor children as irrevocable beneficiaries of said policy(ies). Wife shall name herself as Trustee in the event of Husband's death and name Husband as Trustee in the event of Wife's death. Wife's obligation to maintain said life insurance shall continue until the oldest child reaches the age of nineteen (19), marries or becomes self-supporting, whichever shall first occur. After which time, the death benefit amount shall be reduced to Two Hundred Fifty Thousand and NO/100 Cents (\$250,000.00) until the youngest child of the parties reaches the age of nineteen (19), marries or becomes self-supporting, whichever shall first occur.

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C. The parties shall not encumber or otherwise cause the death benefits of said insurance to be reduced to an amount less than the prescribed face amounts noted herein. Should Wife fail to provide said life insurance as ordered or should said insurance lapse, then the equivalent amount shall be charged against that Wife's estate in favor of the minor children.

13. REAL PROPERTIES

The parties own and/or have an interest in several real properties acquired during marriage. The parties resided as Husband and Wife in two (2) of the real properties, 1904 Waterford Place, Hoover, Alabama 35244, which use and possession was awarded to Wife *pendente lite*, and at the time of final trial was being used as rental property; and 617 Mountain View Drive, Wilsonville, Alabama 35186, which use and possession was awarded to Husband *pendente lite*, and at the time of final trial continued to be used as Husband's primary residence.

The parties both owned individually or have an interest in several investment real properties acquired during the marriage or used for the benefit thereof. There was evidence and testimony that Husband sold and/or transferred some of the investment real properties during this divorce proceeding, some were seized and sold by Bankruptcy Court and the State of Alabama, and Husband alleged some were foreclosed. Admitted into evidence were copies of deeds prepared and signed by Husband transferring certain real properties during this divorce proceeding.

The real properties transferred were in Husband's name individually or Hengberg Real Estate Development, LLC (Hereinafter referred to as "Hengberg"), a company established and registered solely in the name of a non-party, Stephen Sexton. Hengberg was formerly Shears Enterprises, Inc., which was started solely by Husband in 2006 until 2011 when it became Hengberg, LLC. Husband testified he receives income from Hengberg and has a Power of Attorney that gives him authority to transact all business affairs of Hengberg. Husband testified he has never had possession of the Power of Attorney despite his testimony of recent usage of said document to transfer certain real properties during this divorce proceeding and final trial in this cause.

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Husband testified that several of the real properties foreclosed were purchased by Hengberg. There were some real properties that Husband retained either in his name or Hengberg. There was testimony that some properties were not listed in Husband's second Bankruptcy despite his interest in said real properties. Husband also testified to giving his father Fifty Thousand Dollars and NO/100 Cents (\$50,000.00) forty-five (45) days before the July 26, 2019 trial date. Husband also had Four Thousand Dollars and NO/100 Cents (\$4,000.00) cash in his personal safe on the last date of trial.

There was undisputed evidence and testimony that throughout this action and during trial in this cause Husband sold and/or transferred the following real properties:

- 617 Mountain View Drive Wilsonville, Alabama 35186;
- 1524 Cleveland Avenue SW, Birmingham, Alabama 35211;
- 1526 Cleveland Avenue SW, Birmingham, Alabama 35211;
- 6612 Division Avenue, Birmingham, Alabama 35206;
- 2200 Stouts Road Birmingham, Alabama 35234; and
- 649 Forest Lakes Drive, Sterrett Alabama 35147.

The 5439 Camellia Avenue, Birmingham, Alabama 35205 investment property, Husband testified he was holding an executed deed transferring said property, which had not been recorded as of the last date of trial.

Husband testified he prepared and executed the deeds, transferred and/or sold said real properties in anticipation that his former attorney, Kathryn Gentle, Esq., was going to file a lien for monies due and owing by Husband for services rendered in this cause. An Attorney's Lien was filed by Attorney Kathryn Gentle in this cause on July 12, 2019. Husband also testified on July 26, 2019 that he alone transferred all liabilities and real and personal properties of Hengberg after the July 15, 2019 trial date to Christopher Powell for Zero Dollars and NO/100 Cents (\$0.00); and closed all Hengberg's accounts.

Husband further testified that he did not receive the amounts noted on those deeds relating to the real properties that reflected amounts received noted thereon despite the fact Husband prepared and signed by said deeds. Some of the real properties were sold and/or transferred for Zero Dollars and NO/100 Cents (\$0.00) and had mortgages due and owing, but no assumption of the mortgages was reflected on the deeds.

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During trial in this cause, Wife requested under oath for the Court to award her the real property located at 1904 Waterford Place, Hoover, Alabama 35244, which Wife testified was solely in her name, and three (3) of the investment real properties as reflected at the top of Wife's Exhibit 12, and for the Court to award Husband all remaining real properties. The investment real properties requested by Wife are as follows:

- 649 Forest Lakes Drive, Sterrett Alabama 35147;
- 6612 Division Avenue, Birmingham, Alabama 35206; and
- 5439 Camellia Avenue, Birmingham, Alabama 35205

A. The Court hereby finds that Husband transferred the real properties during this divorce action and trial with the actual intent to hinder, delay, or defraud his prior attorney of record, Kathryn Gentle, Esq., for amounts due and owing for services rendered in this cause. Wife's marital rights and interests in the real properties she requested during trial in this cause were substantially impacted and Husband constructively defrauded Wife by said transfers. Accordingly, Wife's Motion to Set Aside Real Property Transfers is hereby GRANTED-IN-PART.

B. The Court hereby set aside any and all transfers and deeds made after the filing of this divorce action regarding the following real properties:

- 649 Forest Lakes Drive, Sterrett Alabama 35147;
- 6612 Division Avenue, Birmingham, Alabama 35206; and
- 5439 Camellia Avenue, Birmingham, Alabama 35205

C. Wife is hereby awarded sole title, all interests, use, and possession of the real properties listed in Paragraph 13 B, above, and any and all rights and interests of Husband in said real properties are hereby nullified and/or divested. The Clerk of this Court is directed to issue Clerk's deeds conveying to Wife any and all interests in and to said real properties with the Wife being listed as the rightful and legal owner of each property. Wife shall submit to the Clerk of this Court the legal descriptions or a copy of the deeds bearing the legal descriptions of said real properties for the preparation of the Clerk's deeds. Wife shall record said Clerk's deeds with the Probate Court of the County in Alabama in which said properties are located upon receipt. Each property shall pass to the Wife, as is, in their current state and subject to any liens and mortgages thereon. Each property shall remain, as is, with all appliances, air conditioning units, fixtures, and the

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like remaining with said properties. Husband shall solely be responsible for and pay any loss or claim brought relating to the transfer of said real properties to Wife; and shall indemnify and hold Wife harmless therefrom.

D. Wife is further awarded sole title, all interests, use and possession of the real property located at 1904 Waterford Place, Hoover, Alabama 35244, which is in Wife's name alone, and Husband is hereby divested of any and all interests he may have therein. Wife shall solely be responsible for and pay any mortgages, taxes, liens or other indebtedness owed on said real property; and shall indemnify and hold the Husband harmless therefrom.

E. Husband is hereby awarded any and all interest, if any, in all remaining real properties; and Wife is hereby divested of any interest she may have therein. Said real properties awarded to Husband are as follows:

- 617 Mountain View Drive, Wilsonville, AL 35166;
- 1520 Cleveland Avenue SW, Birmingham, AL 35211;
- 1524 Cleveland Avenue SW, Birmingham, AL 35211;
- 1526 Cleveland Avenue SW, Birmingham, AL 35211; and
- 2200 Stouts Road, Birmingham, AL 35234.

F. Husband shall solely be responsible for and pay any mortgages, taxes, liens or other indebtedness owed on all real properties awarded to him herein, above; and shall indemnify and hold the Wife harmless therefrom.

14. **PERSONAL PROPERTY** - There was evidence and testimony that during this divorce proceeding Wife sold and/or transferred personal property, including two (2) automobiles, 2007 Volvo and 2007 GMC Arcadia; Wife's engagement ring appraised at Eighteen Thousand Dollars and NO/100 Cents (\$18,000.00), which Wife testified she sold said ring for Six Thousand Dollars and NO/100 Cents (\$6,000.00); and Wife took Four Thousand Dollars and NO/100 Cents (\$4,000.00) from the safe located at the 617 Mountain View Drive, Wilsonville, AL 35186 residence, and other items of personal property. There was testimony and evidence of several deposits into Wife's personal bank account with Regions Bank from May 6, 2016 through March 15, 2018, which included a One Million Dollar and NO/100 Cents (\$1,000,000.00) deposit.

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A. Except as specified herein, Husband is hereby awarded all items of personal or real property currently in the Husband's name, possession, control, or belonging solely to him, including without limitation, cash, bank accounts, clothing, jewelry, clothing accessories, securities, retirement plans, business interests, partnerships, insurance policies, books and the like, and said property shall be Husband's sole property, and the Wife is divested of any interest she may have therein.

B. Except as specified herein, Wife is hereby awarded all items of personal or real property currently in the Wife's name, possession, control, or belonging solely to her, (except as specifically referred to in this Order), including without limitation, cash, bank accounts, clothing, jewelry, clothing accessories, securities, retirement plans, business interests, partnerships, insurance policies, books and the like, and said property shall be Wife's sole property, and the Husband is divested of any interest he may have therein. Specifically, Wife is awarded the following items, and Husband is divested of all right, title, and interest thereto:

1. Wurlitzer Grand Piano (birthday gift at age 16);
2. One (1) curio cabinet (inherited from Wife's Grandmother);
3. Wife's clothing and other personal effects;
4. Paintings including; all paintings done by the Wife and or children as gifts, one (1) portrait of Tessa given as gift by Wife's Aunt, all pictures owned prior to marriage including, one (1) blue with yellow flower, three (3) beach scenes, one (1) Canvas of New York with World Trade Center, given by gift by Wife's Grandmother;
5. Two (2) sets of China, given as a gift by Wife's Grandmother;
6. All inherited items from Wife's Grandmother (dolls, pictures, plaques, collectibles); and
7. Barney costume purchased by Wife for Tessa's 1st Birthday Party.

C. Wife shall notify Husband two (2) weeks in advance of the date a professional moving company will arrive at the residence to move the Grand Piano and any additional furniture and personal items specifically awarded to Wife herein. Wife shall arrange for all items to be moved within thirty (30) days of the date of this decree. Any

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items not moved within said thirty (30) day period shall be awarded to Husband for so long as Husband did not interfere or contribute to Wife's failure to retrieve said items. Husband shall allow Wife afforded reasonable time to move the items awarded to Wife herein. Wife shall solely pay and be responsible for all moving fees associated with moving said items. Husband shall not tamper with or destroy any items specifically awarded to Wife herein.

15. AUTOMOBILES

A. 2010 GMC SIERRA 1500 - Wife financed the 2010 GMC Sierra 1500 solely in her name on September 17, 2010. A copy of the Finance Contract and Transfer of Title was admitted into evidence as Wife's Exhibit 11. The total amount financed was Forty-Three Thousand Six Hundred Forty-Six Dollars and 35/100 Cents (\$46,646.35) for seventy-two (72) months in installments of Six Hundred Six Dollars and 20/100 Cents (\$606.20) per month with the monthly payments beginning October 17, 2010. The Transfer of Title attached to Exhibit 11 is dated for April 13, 2014, forty-three (43) months after Wife finance said vehicle.

The Transfer of Title reflects that the vehicle was transferred to Hengberg formerly Shears Enterprises, Inc. Wife's father prepared the paperwork to setup Hengberg. Wife did the bookkeeping for the company and prepared Husband's business and individual tax returns for the 2014 tax year although Wife's father is listed as the preparer. The 2014 tax documents were admitted into evidence as Husband's Exhibit 2. The Finance Contract bears a stamp in the top left corner of the first page, which notes that the 2010 GMC Sierra 1500 was paid in full on March 19, 2014, less than one (1) month prior to the execution of the Transfer of Title. At the time, Wife would have had thirty (30) months of installment payments remaining, a balance of at least Eighteen Thousand One Hundred Eighty-Six Dollars and NO/100 Cents (\$18,000.00) due and owing. No evidence was presented regarding any advance payments made or other amounts assessed to Wife after she financed the vehicle on September 17, 2010 and before the early payoff.

Wife testified that she did not sign her name on the Transfer of Title dated April 13, 2014, and that the document was signed by Husband. This divorce action was filed on January 18, 2016, nearly two (2) years after the vehicle was transferred. The parties separated in January 2016, the same month this action was filed. The alleged fraudulent

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transfer of the 2010 GMC Sierra 1500 is not pled in Wife's January 18, 2016 Divorce Complaint. The record is void of any amendments to Wife's Complaint. Accordingly, it is hereby ORDERED Wife's request to set aside the pre-divorce alleged fraudulent transfer of the 2010 GMC Sierra 1500 and award said vehicle to Wife is hereby DENIED.

B. 2007 GMC ACADIA - Wife testified that she sold the 2007 GMC Acadia during the pendency of this divorce proceeding to her father for Four Thousand Dollars and NO/100 Cents (\$4,000.00), but never registered the Bill of Sale. Wife as requested is hereby awarded sole use, possession and title of the 2007 GMC Acadia; and Husband is hereby divested of any and any interest he may have therein. Said vehicle was titled solely in Wife's name and no indebtedness is owed thereon.

C. OTHER AUTOMOBILES, CAMPERS, ETC. - Wife testified she did not want the camper, any of the other automobiles (except the 2007 GMC Acadia and 2010 GMC Sierra), boats, or the like acquired during the marriage. Husband is hereby awarded sole use, possession and title of the camper and any and all other automobiles, and boats not specifically awarded to Wife herein; and Wife is hereby divested of any and any interest she may have therein. Husband shall solely pay and be responsible for any outstanding indebtedness due on said camper, automobiles, boats, or the like awarded to him herein; and shall indemnify and hold the Wife harmless from any obligation or loss thereon.

16. DEBTS

A. The parties shall pay any and all debts solely in his or her name; and indemnify and hold harmless the other therefrom. There are no joint debts.

B. Neither of the parties hereto will cause any debt to be made which subjects the other party hereto to any liability or responsibility, including any further encumbrance of the marital residence in any manner whatsoever, and any debts that either of the parties have made since the time of the separation of the parties will be paid by the person having made the obligation.

17. TAX RETURNS - Wife shall claim the minor children as dependents for any and all tax purposes in the year 2019 and thereafter.

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18. **MAIDEN NAME** - Wife shall be allowed to resume the use of her maiden name, to wit: Cassie Michelle Gable.

19. **ALIMONY** - Upon consideration of the testimony, evidence, property division herein, and estate of each party, neither party is awarded alimony of any kind.

20. **RETIREMENT** - No retirement accounts exist for division by this Court.

21. **EXECUTION OF DOCUMENTS** - The parties shall both execute any and all documents necessary to effectuate the provisions of this decree.

22. **MICELLANEOUS AND OTHER REQUESTED RELIEF**

A. The GAL's Motion to Show Cause and Husband's and Wife's Responses and Objections thereto are hereby DENIED as MOOT.

B. Any and all other requested relief or pending Motions not addressed herein be and the same are hereby DENIED.

23. **ATTORNEYS' FEES, GAL'S FEES, AND COURT COSTS**

A. The parties shall each pay their own attorneys' fees incurred in this cause.

B. The parties shall equally (50/50) pay and be responsible for the outstanding GAL's fees owed in this cause in the amount of Five Thousand One Hundred Eighty Dollars and NO/100 Cents (\$5,180.00) for services rendered in this cause. The parties shall pay their respective share in the amount of Two Thousand Five Hundred Ninety Dollars and NO/100 Cents (\$2,590.00) by mailing a check or money order to: Jacqueline O. Morrette, Esq., 20 Cedar Street, Trussville, AL 35173. Said amount is hereby reduced to a judgment against Husband and Wife and shall be non-dischargeable in bankruptcy.

C. The Court costs accrued herein are hereby taxed as paid.

***** LAST ITEM *****

DONE this 25th day of January, 2021.

/s/ NAKITA R BLOCTON
CIRCUIT JUDGE



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
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Allie S. Boyd