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December 28, 2018

The Honorable Clark A. Ritchie, Judge
Rockingham County Circuit Court
80 Court Square
Harrisonburg, VA 22802

RE: Esther P. Sweet v. Michael L. Sweet, Jr.
Winchester City Docket # CL-18-452

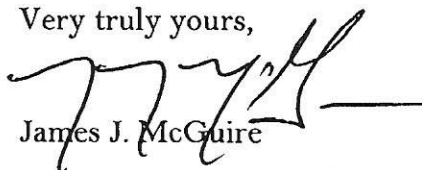
Dear Judge Ritchie:

Enclosed for your review and consideration is the original Pendente Lite Order from the hearing held on December 20, 2018, in the Winchester City Circuit Court and the draft Pretrial Scheduling Order.

By copy of this letter to Terry Whittle, the Winchester City Circuit Court Clerk, and Michael L. Sweet, Jr., I am advising them of this submission to you.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



James J. McGuire

JJM/tls

Enclosure

cc: Terry Whittle, Clerk
Esther P. Sweet
Michael L. Sweet, Jr.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

ESTHER P. SWEET

Plaintiff

v.

Case No: CL-18-452

MICHAEL L. SWEET, JR.

Defendant

PENDENTE LITE DECREE

On this 20th day of December, 2018, came the Plaintiff, in person, together with her counsel, James J. McGuire, Esquire, and the Defendant appeared, in person, *pro se*, for a Pendente Lite Hearing. Evidence was heard *ore tenus* and argued.

Whereupon, the Plaintiff moved the Court to confirm, ratify, and incorporate the parties' Temporary Marital Settlement Agreement, dated July 31, 2017, as a *pendente lite* Order of this Court pending entry of a Final Decree as provided in Virginia Code Sections 20-103 and 20-109.1.

Upon consideration whereof, the Court finds as follows:

- 1) The parties entered into a Temporary Marital Settlement Agreement dated July 31, 2017. The parties entered into the Agreement freely, voluntarily and without any coercion and duress.
- 2) The Defendant willfully and intentionally breached the terms of the Agreement by failing to pay certain obligations therein beginning in May of 2018.
- 3) As a result of the Defendant's breach, Plaintiff has incurred expenses for the time period of May, 2018 through December, 2018, in the amount of \$7,896.00 and attorney fees of \$8,079.25.

It is, therefore, ADJUDGED, ORDERED and DECREED as follows:

- 1) The Temporary Marital Settlement Agreement dated July 31, 2017, is hereby CONFIRMED, RATIFIED and INCORPORATED, but not merged, into this Pendente Lite Decree and made a part hereof as if set out in full.

2) The Defendant shall reimburse the Plaintiff the sum of \$7,896.00 at the rate of \$1,000.00 per month beginning January 1, 2019, and continuing to come due on the 1st day of each month thereafter until paid in full.

3) The Plaintiff is awarded attorney fees in the amount of \$8,079.75. The Court reserves ruling on the terms of payment of this fee award until the final trial on March 28, 2019 at 9:00 a.m.

4) The Defendant shall forthwith deliver to the Plaintiff the Costco card and the charge card associated with Amazon for her use as provided in the July 31, 2017 Temporary Marital Settlement Agreement.

5) The Defendant shall comply with all provisions of this Order and the July 31, 2017 Temporary Marital Settlement Agreement.

The endorsement of the Defendant is dispensed with pursuant to Supreme Court Rule 1:13.

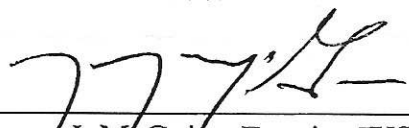
The Clerk is directed to forward an attested copy of this Order to counsel of record and to the *pro se* Defendant at _____, Winchester, Virginia 22601.

This Cause is continued to March 28, 2019 at 9:00 a.m. for trial.

Enter this _____ day of January, 2019.

Clark A. Ritchie, Judge

I ASK FOR THIS:



James J. McGuire, Esquire [VSB No. 36239]
Peter W. Buchbauer, Esquire
Lawrence P. Vance, Esquire
Christopher E. Collins, Esquire
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Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

ESTHER P. SWEET

Plaintiff

v.

Case No: CL-18-452

MICHAEL L. SWEET, JR.

Defendant

DOMESTIC PRETRIAL ORDER

On the 20th day of December, 2018, came the parties for hearing on Plaintiff's Motion to Continue the trial of this matter.

Upon consideration whereof, the Motion is granted and that his matter is rescheduled for trial on March 28, 2019 at 9:00 a.m.

It appears from the pleadings and stipulations of the parties that the contested issues are:

1. Grounds for Divorce;
2. Equitable Distribution;
3. Child support;
4. Spousal Support and
5. Attorney's fees and court costs.

Upon consideration whereof, it is ADJUDGED and ORDERED that:

1. This cause is set for **trial before the Court on March 28, 2019 at 9:00 a.m.**
2. The parties shall complete discovery thirty days prior to the trial date. All discovery requests shall be filed in sufficient time to allow responses under the Rules of Court by that date.

3. The parties shall file child support calculation Form 637 thirty days before the trial date.

4. The parties shall not less than thirty days before the trial date exchange, and file with the Court:

- A. Itemized affidavits of
 - (1) The marital property however titled. See Code § 20-107.3A 2.
 - (2) The separate property of each spouse and the source of title of each item. See Code § 20-107.3A1.
 - (3) Liabilities.
 - (4) Income from all sources.
 - (5) Estimated periodic expenses.
- B. Copies of Federal Income Tax Returns for two years last past.
- C. Statements from employers of average periodic earnings and payroll deductions.
- D. Statements from physicians with respect to any health problem of the parties or dependent, which the filing party will claim, are relevant.
- E. Copies of any documents relevant to paragraph A above; e.g. conditional sales contracts, leases, statements from obligee showing the balance due on liabilities, appraisal of items in A (1) and (2).
- F. Affidavit of any gifts in the total amount of more than \$500.00 to any one person within 2 years last past, or the transfer of any such property at less than fair market value within such time.

The filing of documents or statements under B, C, D and E shall constitute a Request for Admission pursuant to Rule 4:11 that the document is genuine, or the person purportedly signing the statement would testify as stated therein, and shall be deemed admitted unless a denial is filed more than ten days before trial date. A denial filed less than ten days before the trial date, on a matter deemed material by the Court, may constitute grounds for a continuance on motion of the other party.

5. Not later than thirty days before trial Counsel for the Plaintiff shall file with the presiding judge and serve on opposing counsel, proposed Findings of Fact and Conclusions of Law on all issues to be decided by the Court. Not later than twenty days before trial, the Defendant shall file its proposed Findings and Conclusions. The form in which the Findings of Facts and Conclusions of Law shall be submitted is essentially as follows:

Plaintiff (or Defendant) hereby requests the Court to make the following Findings of Fact and Conclusions of Law in this suit:

I. Findings of Fact

List separately in numbered paragraphs in detail the specific factual findings desired and necessary to support the conclusions of law requested. The findings should set forth a logical, factual path, which the Court can follow to reach the Conclusions of Law sought by the party.

II. Conclusions of Law

List separately in numbered paragraphs specific conclusions desired and where appropriate cite authorities and the applicable provisions of those authorities. Email in Word or Format your findings and conclusions and financial affidavits to the presiding judge.

(a) In all cases in which equitable distribution is an issue, proposed findings and conclusions on:

- (i) Factors specified in Va. Code § 20-107.3 and how each factor affects the proposed distribution of the marital property.
- (ii) Plan of implementation of the equitable distribution award to include the specific distribution or sale of property and the payment or allocation of the parties' marital debts.
- (iii) For each item of property claimed to be hybrid (separate and marital), the specific portion of the property, which is marital, and a tracing of any asset path creating the hybrid status of the property. If the hybrid classification is based upon personal efforts of the parties pursuant to Va. Code § 20- 107.3.A.3, detailed findings as to how

those specific efforts produced an increase in value of the property in question.

- (iv) Schedule of values for all marital property, indicating which items have an agreed valuation and which are disputed. For each disputed item set forth the basis of the claimed valuation, e.g., owner's estimate, appraisal of, etc. Specify what liens are against the property and by whom held.
- (v) Schedule of value for all separate property tracing the source of that property.
- (vi) Proposed division of any pension or other future interest pursuant to Va. Code § 20-107.3. If present value of a future interest is a material factor in the analysis, set forth the present value and provide a description of the present value methodology. If a qualified domestic relations order (QDRO) is sought, set forth the specific provisions of that part of the order.
- (vii) If a privately held business or professional practice is to be valued, a one page description of the valuation method will be provided to include any valuation formulas used and a list of authorities consulted by any expert in determining the value. Balance sheets, statements of income and expenses, and tax returns for the past three years will be provided.

(b) In all cases in which child support is an issue and in which a party is claiming that the statutory guidelines of Va. Code § 20-108.1 should not be followed, Findings of Fact as to why the application of the guidelines would be unjust or inappropriate with specific reference to the pertinent statutory factors set forth in Va. Code §20-108.1.

(c) In all cases in which spousal support is an issue, Findings of Fact as to the propriety and amount of spousal support referring specifically to the pertinent statutory factors set forth in Va. Code § 20-108.1.

(d) In all cases in which a fault ground of divorce is claimed, specific findings necessary to support a conclusion that a fault ground exists with specific reference to each date, time and place of any material incident. However, most divorces are entered on a no fault grounds. "Where dual or multiple grounds for divorce exist, the trial judge can use his sound discretion to select the grounds

upon which he will grant the divorce." *Konefal v. Konefal*, 18 Va. App. 612, 613-14, 446 S.E.2d 153, 154, 11 Va. Law Rep. 7 (1994) (quoting *Williams v. Williams*, 14 Va. App. 217, 220, 415 S.E.2d 252, 254, 8 Va. Law Rep. 2521 (1992)). See also *Fadness v. Fadness*, 52 Va. App. 833, 840 (Va. Ct. App. 2008).

6. Thirty days before trial, the plaintiff and the defendant shall identify in writing the name of any expert witness upon which they intend to rely at trial. If not already provided pursuant to discovery, for each expert identified, the parties shall state the subject matter upon which the expert will testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Additionally, for each expert who will testify a curriculum vitae be provided. For any business valuation expert identified by a party, a one page statement shall be filed setting forth a summary of the facts upon which the expert is relying, a description of the valuation methodology used by the expert, any formula used in the valuation, and the reasons for the formula's selection.

7. Exchange of exhibits and a list of witnesses shall be submitted on or before 20 days prior to trial. Any objections to exhibits submitted by any party must be filed with the Clerk of the Court and with the opposing party within 5 days of submission, or they will be deemed waived. Any exhibits filed and not objected to in writing will be admitted at trial. **The actual exhibits shall be filed 20 days in advance of trial. The filed exhibits shall be on a disc, thumb drive or single pdf file with a numbered tab for each exhibit. A copy shall be delivered on the day of trial in a 3-ring binder with a numbered tab for each exhibit. If an exhibit has more than one page, the exhibit shall be paginated. If there is more than one picture or item on a page, the pictures or items on an individual page, shall be designated alphabetically, e.g., if Ex. 4 is a single sheet containing four photographs, they shall be designated 4A, 4B, etc. At trial, *unless* impractical due to the magnitude of the exhibits, the proponent shall provide extra copies for the court and for the witness testifying. Use of an exhibit shall, unless specifically disclaimed or limited, be deemed an offer of the exhibit in evidence; and, unless excluded on objection promptly made, the exhibit shall be deemed received in evidence. If prior notice of the proposed use has been given, the presentation of evidence shall not be interrupted for opposing counsel to examine the exhibit. Each side shall designate a representative to aid the courtroom deputy in maintaining current lists and indexes of the exhibits that have been received. ***Unobjected to Exhibits may be introduced at any time during the trial including prior to a party's opening statement.*****

8. Thirty days before trial, the parties shall exchange all summary plan descriptions, account balances at separation and presently, model order or transfer forms, and any instructions or descriptions issued by any retirement, pension or referred compensation plans, whether qualified or not, vested or not, owned and/or maintained for the benefit of a party in which either party may or has claimed a

marital portion, so that any necessary orders dividing said retirement, pension or deferred compensation plan or account can be entered timely upon divorce of the parties.

The Clerk is directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Enter this _____ day of January, 2019.

Clark A. Ritchie, Judge