

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

In Re the Marriage of:)	
)	
J. W.)	
Petitioner,)	
)	Cause No. 09SL-DRO1615
vs.)	
)	Division No. 6
D. W.)	
Respondent,)	

JUDGMENT / ORDER AND DECREE OF DISSOLUTION

THIS CAUSE having heretofore been called for Trial on June 14, 23, 28, July 14th, August 11, September 27 and September 29th, 2011. The Petitioner, J. W., (hereinafter referred to as “**Wife/Mother**”) appearing in person and by attorney, Susan K. Roach; the Respondent, D. W. (hereinafter referred to as “**Husband/Father**”) appearing in person and by attorneys, Alisse C. Camazine and Bruce Friedman. Also present and representing the children was the Guardian Ad Litem, Jennifer Borsherd. This matter having been submitted to the Court on the pleadings and proof and the Court having considered the record, the evidence, the testimony, and the proposed Findings of Fact and Conclusions of Law filed by the parties, the Court now enters its Findings of Facts and Conclusions of Law including findings on such controverted fact issues as have been specified by the parties pursuant to Rule 73.01. (This cause is tried without a jury. The parties have filed requests for Findings of Fact or Conclusions of Law and therefore, the court makes such findings as it deems necessary to state the grounds for its decisions, if any, as required by Rule 73.01 (c) All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the results reached. Rule 73.01(a) (2). Any

finding of fact herein equally applicable as a conclusion of law is adopted as such and any conclusion of law herein equally applicable as a finding of fact is adopted as such.

Findings of Fact and Conclusions of Law

(1) The Court finds that one of the parties has been a resident of this State for ninety (90) days next proceeding the commencement of this action and that thirty (30) days have elapsed since the filing of the Petition therein; the Court further finds that there remains no reasonable likelihood that the marriage between the parties can be preserved and the marriage, therefore, is irretrievably broken.

(2) Husband and Wife were married on ____, 1993 State of Missouri.

(3) The parties separated on or about November 13, 2008.

(4) Husband's last four digits of his Social Security Number are ____ and Wife's last four digits of her Social Security Number are ____.

(5) Wife is not now pregnant and neither party is a member of the Armed Forces of the United States nor its allies.

(6) Wife is currently unemployed however she is receiving marital assets which generate income to be considered in any award of child support or maintenance. She will receive income from St. Louis Home Health using an average of the last five (5) years the gross sum of \$18,419 per month and a net monthly sum of approximately \$12,344 per month taking into consideration deductions for taxes only. There is also the issue of her ability to work. She has testified to having contributed during the marriage to the family business in a number of ways and it would seem appropriate that she could also be employed since the children are all in school. The Court will impute income to her of \$20,000 gross per year or \$1,666 per month and a net of \$1,083 per month taking into consideration deductions for taxes only.

(7) Husband is current employed at Select Orthopedics he also has income from Whitman & Associates and St. Louis Home Health Care and assuming investment income of \$4,000 per month . Currently earning the gross sum of \$115,600 per month and a net monthly sum of \$65,457 per month taking into consideration deductions for taxes only.

(8) There are three (3) children born of the marriage of the parties, namely

(9) The parties agree that the best interests of the minor children would be served by the Wife and Husband having joint legal custody. The parties disagree about the physical custody arrangements for the children. Mother seeks sole physical custody and to have Father having custody for a few hours on Wednesday of each week and every other weekend from Friday after school to Sunday night. Father seeks every Thursday and every other weekend from Friday at 8 am until Monday at 9 am.

(10) Husband has engaged in marital misconduct during the marriage, to wit: Husband has had sexual relations with a person other than Wife during the marriage of the parties. Additionally this person was one of his employees and brought into the home to work for the parties in their business, was used as a babysitter at times and knew the Petitioner and the children as a friend prior to the sexual relationship that was developed with Husband. In addition the parties had set this case for trial and just prior to trial Husband asked Wife to consider reconciliation. Wife agreed with the condition that__ (the paramour) would no longer work for Husband and he would give up any relationship with her. He said that he did do this, but in fact he did not cut off or terminate the relationship with A and it continues until this date. It serves no further purpose to elaborate on the details concerning Husband's misconduct at this juncture.

(11) Wife has engaged in an emotional relationship with a man whom she has known for many years, without informing Husband. There is no clear evidence of a sexual nature however, it is clear that for a period she had an emotional attachment which she hid from her Husband and impacted the marriage at least to some degree. She admits to meeting with this person privately for drinks while the family vacationed in Florida. It serves no further purpose to elaborate further on these details either.

Child Custody

Findings of Fact

(12) The Court finds that the parties have not participated in any capacity in any other litigation concerning custody of the minor children in this State or any other state. The Court finds that the parties have no information of any custody proceedings concerning the minor children.

(13) The Court finds that the parties know of no person not a party to this proceeding who has physical custody of the minor children or any person who claims to have any custody or visitation rights with respect to said children.

(14) The Court has jurisdiction over the minor children born of the marriage pursuant to the Uniform Child Custody Jurisdiction and Enforcements Act, RSMo. Section 452.700 et seq.

(15) The Court has jurisdiction to act herein pursuant to RSMo. Section 452.300 et seq. and RSMo. Section 487.101 et seq.

(16) Husband requested that the parties have joint physical custody of the minor children.

(17) Wife has requested sole legal and sole physical custody of the minor children. She in fact wants Father to have limited custody time with the children not because he does not love them or because he endangers them, but because she believes that he is narcissistic and is more interested in himself than with the needs of the children. She has little to verify her belief that this type of personality as described by her evidence, would justify the limitations she suggests to his custody time. It is clear that he may have narcissistic tendencies but that is not unusual with successful individuals. They have also lived financially with the monetary rewards from his personality. They have both lived expecting the best of everything. It appears that for much of the marriage they had developed a parenting arrangement with Wife/Mother attending to most of the children's needs such as doctor's appointments, events, getting tutors and other extracurricular things. This is not to say Husband/Father was not involved or would not go to such events. In fact in Wife's testimony of what she sees as her reasonable financial needs, she suggests that financially she and the children are entitled to expect to have the best in the future. In fact, as will be noted later in discussions about the children, she describes a desire that Father only have the children for the "fun things" in life. She described how they would be driven to events in limousines, that they would have front row seats; they stayed only in the best hotels and went on the best vacations. But what is the evidence that he can not be a capable Father, in fact there is evidence that he has improved as a responsible Father in areas the pre separation were areas normally dealt with by Wife, as part of the parenting styles and responsibilities they had developed over time.

(18) Neither Son nor Daughter has specifically declared a desire for physical custody with either parent. Son spends a great deal of time with his Father. Daughter has had issues with staying overnight with her Father, especially after he moved into the home closer to the former

marital residence. She has spent overnights with Father when he resided at the Son and on away vacations.

(19) There was evidence at the Trial as to the interaction and interrelationship between the children, their siblings, parents or any other persons who may significantly affect the children's best interests. The children appear to have a good relationship with each other. They seem to have the ability to work with both parents. They are active and involved in their school, church and community. During the marriage Mother and Father have created a loving and emotionally well developed family. Mother testified that they agreed early on that she would be a stay at home mother, raising the children. She has not worked outside of the house or family businesses since Son's birth. As is typical of many families who make the decision that the mother will stay at home, the Petitioner has pretty much been responsible for all aspects of the children's lives, while the Respondent, by his own admission worked many long hours in order to create a lucrative business. In fact the Wife/Mother testified that the parties at least early on in the relationship were in sync regarding the business and the family life. They mutually embraced the idea of developing a business and in fact were in her words, "in a partnership". She would work on books and payroll for the businesses at home while also tending to the children and the children's needs while Husband would be out increasing the businesses. Both were very successful at what they did together and for each other in the respective areas of responsibility.

The credible evidence is that that when the parties first separated in 2008, much of the parental responsibilities remained the same, namely that Mother maintained the primary responsibility regarding the children. Father had a more limited custody schedule but it was not necessarily entirely of his choosing. It was a negotiated compromise which included at the time,

input from the Court. As noted above, after about a year and a half or more specifically in March 2010, the initial trial was postponed and the parties went into a period of negotiation and attempted reconciliation. Wife is adamant that in her opinion the reconciliation was a fraud perpetrated on her by her Husband and he never intended to reconcile or at least give up his paramour. None the less, over time Father requested more time with the children resulting in a modification of the original more limited time lines to give Father more custody time with the children. As a result he has had the opportunity to have the children with him more and correspondingly more opportunity to be responsible for some of the obligations and requirements of a parent, which were previously by agreement, solely the responsibility of Mother. This arrangement began in March of 2011. It is Mother's testimony that the added time has not been good for the children. She in fact suggested that he would be better left to be the "Kodak" dad, the guy with whom the kids can have fun and do all the fun things and leave her with the education and other responsibilities. Father's testimony is that he does not want to be just the Kodak dad. He has been going to counseling and has changed his behavior and freely admits that he certainly has more to learn. There is no clear evidence that he done or not done anything which would justify the Court curbing his time with the children. They have two parents. He has and may in the future make his share of mistakes at parenting. His commentary regarding the gun left in his car that was borrowed by Son is less that exemplary. He did not show in this Court's mind the proper self reflection for making a mistake, but instead played out his usual roll at the time, which was verbally attaching Mother on issues with the intent to emotionally hurt her with his words, rather than to be contrite for his mistaken actions. However, if he seeks the opportunity for more time with the children, the Court must consider his request because he remains their Father. He needs to understand his priorities, but the family unit over the many

years of the marriage allowed for him to be gone a great deal of the time. Now he will need to readjust and place more emphasis on being a parent to the children. He may not see eye to eye with Christina, but that is not that unusual for a teenage daughter and father. Nor is it unheard of for an 11 or 12 year old, to have issues with staying overnight, and particularly in divorcing families. To suggest this will be the basis for a definitively limited custody order into the indefinite future is not in the children's best interests. In fact, the credible evidence is that the parties have all worked hard at managing these typical parental and family issues in the past and will continue to work on them in the future.

The Court can not help but believe that some of Mother's desire to limit the time the children have with their Father, has to do with Father's on going relationship with A. Mother flat out feels that A can not and should not morally be in the same household as the children, when A and Father are not married. Of course that may push Father to a marriage, but if not, as the Court pointed out to Mother, the current state of the law suggests that moral issues alone are not sufficient for the Court to prohibit Father from living with a paramour when he has custody of the children.

(20) There was evidence adduced that the children are individually making their own adjustment to their new living arrangements, spending part of the time with each parent. As noted, Son is most comfortable at Father's but that is not surprising of a 16 year old who looks for time alone. There is conflicting testimony as to whether Father allows too much time. Christina wants to have more say about her own life and believes that her Father is not necessarily listening to what she wants and addressing her needs. Apparently she believes that her Mother does listen to her more. Christina and her Mother appear to be closer as to their religious beliefs. Daughter is having problems with staying over night at her Father's home.

None of the children are afraid of their father and all seem to enjoy spending time with him and the frills he provides like a limousine, the best tickets to events good times and parties and great vacations. They have sound social lives at school and work at maintaining their grades. They have active lives in their community.

(21) The mental and physical health of both parties and the children are good, and there is no evidence of any abuse on the part of either party or any third party.

(22) Both parties are good parents and are capable of performing their functions as mother and father for the needs of the children and are in need of a continuing and nurturing relationship with both parents.

(23) There is no evidence that either party has any intention to relocate outside the State of Missouri.

(24) Both parties would cooperate and allow the children frequent and meaningful contact with the other parent.

(25) The parties share a commonality of interests and beliefs with regard to the children. During their marriage, the parties have agreed on decisions regarding the health, education and welfare of the children. The children would benefit from having both parents continue to be actively involved and participating in the decision making responsibilities regarding the health, education and welfare of the children.

(26) The Court, having considered all relevant factors including those set forth in RSMo. Section 452.375.2, concludes that it is in the best interest and welfare of the parties minor children, that the parties be awarded joint legal and physical custody of the children.

(27) Having heard the evidence adduced by the Guardian and having considered the Parenting Plan of both parties, the Guardian's Proposed Parenting Plan (which by stipulation was

based upon facts only heard at Trial) the visitation and custody shall be in accordance with the Parenting Plan A attached hereto and made a part hereof.

(28) The Court finds that the custody and visitation arrangements ordered herein are in the best interest of the minor children and the Court has considered all relevant factors contained in RSMo. Section 452.375, RSMo. Section 452.400 and other applicable law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that custody of the minor children born of the marriage shall be as set forth in the Parenting Plan A attached hereto as Exhibit 1. The parties are ordered to perform the terms and conditions set forth therein.

Classification and Division of Property

(29) The parties are possessed of certain marital property which the Court must divide. The parties are also possessed of certain items of separate property as set forth below. There is also debt, which is identified and allocated as set forth below.

(30) The parties have essentially three different business entities in which they are involved in various capacities, namely, Whitman & Associates L.L.C., St. Louis Home Health Inc. and Select Orthopedics, Inc. It is not disputed that Wife has been involved with these businesses particularly in their early stages. She was employed at the time of the marriage, working with the Federal Reserve and additionally working stocking shelves. As Husband started as a salesman she would assist wherever she could. This apparently worked because his business flourished and shortly after marriage she and Husband determined that she would seek another career, but shortly determined that she was pregnant with their first child. Accordingly, decisions were made that she would remain at home and raise the children. That did not mean however that she abandoned the efforts to support the various businesses with which they were

involved. She worked on books, did payroll, wrote letters, did marketing follow up and participated in the extensive entertainment that is required in these types of businesses. As the businesses grew including Whitman and Associates and the Home Health businesses, the entertainment requirements grew and Wife would be involved in all of the various obligations of giving parties, dinners, trips, business vacations and other entertaining required as part of Husband's working his contacts, which in turn brought in more business. This type of joint effort is instrumental in the ultimate rewards brought to the business and family. Over time the parties have had two other children while work on some of the businesses has taken place in the marital home. In fact, for Whitman and Associates, much of the administrative work was done out of the house with Wife's direct involvement. At times outside help has been brought into the marital home to assist Wife in this work. After the second child was born it was Mother's primary job to care for the children most of the time. Husband was on call at all times. He worked weekends and often holidays. He was away a great deal of the time pursuing business which admittedly may have involved golfing and out of town pleasure trips, in addition to spending time in the hospitals, but that is the way his business develops and maintains itself. Wife apparently went along with this lifestyle for a significant period.

(31) Wife felt that the parties were working together for the same thing until around 2000. At that time she was not entirely happy with how Husband continued with his "outside business" entertainment becoming more happy hours and bars and less attractive activity. There was a big business falling out with St. John's Hospital and a large portion of the business was lost for a time. Wife felt like she saw a better side of Husband during this down turn, his being more of her partner and father of the children. However, many other things began to pull on the marriage with Husband's mother getting sick and requiring attention, which came pretty much

solely from Wife, at least from her perspective. His mother lived with them for a period, they paid her bills and at the same time Wife still maintained her work for the businesses and taking care of the children, while Husband would be gone all the time at work. Her family would pitch in to help her. In 2005, Husband's mother had a stroke and now although she lived in a separate apartment she did not drive and this too was added to the responsibilities of Wife. The credible evidence is that Wife did get support from her family; however around 2005 her father became ill with cancer. She sought emotional and actual help from Husband and she felt he was not emotionally supportive and extremely insensitive to her needs at that time, particularly in light of all she felt she had done for his mother.

(32) At about this time Husband became a distributor which she encouraged and eventually Husband and a Marty Pranger become partners and started Select Orthopedic Inc. and worked a product line with Biomet products. Wife continued to work at home on business related matters. Others would come into the home to assist. Wife thought that as things in the business arena were improving that Husband would be able to find more family time and delegate more of the business responsibilities to others. Also by this time the parties had created Whitman & Associates. She testified that 70% was husband efforts and 30% were her efforts. She did inventory, delivery and other work, while he began making unannounced out of town trips leaving Wife to be responsible more and more for the children by herself. Around 2006 Husband hired others to help with inventory, PO's and to help Wife with business activities. They continued to do business did work with various companies including IsoTis, which was ultimately bought out by Integra. Wife testified at this time she was being helped by "A" and even went to bat for A to help her keep working the product line when Integra came in to acquire that part of the business, not knowing at that time of Husband's affair with A. Wife testified that

A came into the home and got to know the children. Wife trusted A and A would care for the children so that Wife and Husband could go away on trips. All the while the Husband's relationship remained unknown to her and she took this as a betrayal by Husband.

(32) It is around 2006 when Wife learns about the illness of her childhood grandmother figure and through involvement during this illness, developed what she calls an emotional tie with "Mr. G" the son of her friend. Wife testified that this was not a sexual relationship however the evidence indicates that it was in fact a strong emotional involvement which did affect the marital relationship. It is unclear from all of the evidence, but it appears that at this time she is not aware of the A involvement. From the credible evidence Wife did manipulate a Florida family trip so that she could have face to face contact with Mr. G, even having everyone get together for dinner and moving hotels to effectuate the same. After this Florida trip, Husband found evidence of numerous phone contacts including one while they were closing on the new home on Ro Ridge. After this confrontation she terminated the contact with Mr. G and in fact in late 2007, Husband and Wife renewed their marital vows.

(33) Starting in 2007 Wife became suspicious as Husband made subtle changes in his appearance. In early 2008 Wife found some pictures, text messages and some bills for very large expenditures at places like the Ice Bar in Las Vegas, where Husband admits was present at a party for A. Wife alleges she confronted Husband and he admitted a sexual relationship at this time. Husband denied that he was sexually engaged with Arnott at that time, but the clear evidence is that he did develop and has maintained a sexual relationship with this woman. The parties tried marriage counseling for a brief time but the marital relationship continued to falter and in March 2009 Wife filed her initial action to dissolve the marriage, after what she described as having heard Husband over the phone, in November 2008, engaging in some kind of sexual

encounter. Wife testified that her phone rang and when she answered it, she could hear Husband and A talking and having a sexual encounter.

(34) Since the separation she has not been involved in, nor responsible for business activities. Husband runs Whitman & Associates, does the hiring and maintains the business records.

Businesses

(35) The parties have stipulated that they will use March 31, 2011 as the valuation date for all three of the business values to be determined by this Court.

(36) SELECT ORTHOPEDIC, INC: This Company is the mainstay of the party's marital income. Husband is a 50% owner of this business along with Marty Pranger who owns the other 50% of the shares. Wife's expert valued this asset at \$1,612,000 and Husband's expert placed the value at \$1,000,000. This business generates a salary for Husband of approximately \$650,000 per year, with distributions of approximately another \$400,000 per year. From the credible testimony this business was started after the marriage. Husband currently is responsible for the majority of the sales although initially both he and his business partner Mr. Pranger did sales and built the business. The credible evidence is that in the recent past Mr. Pranger does more of the administrative side of the business. Thus with holding a 50% interest, there has been an issue of whether that means that any valuation must consider that Husband has a "non-controlling interest", which means that there is no readily accessible market for him to sell his interest and thus his interests are non-marketable. The work of Select Orthopedic is directly related to its contract with a company known as Biomet. Husband and Pranger entered into a contract that restricts their ability to sell their shares without approval of any new person by Biomet; additionally they have but the one product to sell. The question is whether this

distinction and limitation has an impact on the valuation. Wife's expert Mr. Volz sees this as a "discouragement" to change of ownership, while Husband's expert Mr. Carlie, seeing this as more of a definitive restriction. This comes into play with the way each apply their valuation methodology.

(37) Both experts appear to use the same general industry assumptions, it is when they make the company specific adjustments that they go in different directions. One particular area is in the "key person" considerations. Even changing discounts by a percentage changes the end valuation.

(38) It is not for this Court to critique each expert in areas of their expertise, they are both clearly knowledgeable in their field. They both considered and rejected the various methods to value all three companies and the marital portions thereof and both indeed ended up using the same ultimate methodology. It is for this Court to consider all of the evidence adduced, consider the reports, testimony of the experts and non experts as to the facts relied upon by the experts and then arrive at a determination as to credible value for this dissolution. The Court is not bound to take one or the other of the expert's valuations but is free to find value from the evidence adduced. Certainly two experts can disagree on value. Quite frankly this Court finds that Wife's expert Mr. Volz does not place enough emphasis on the control that Biomet has over sale of Husband's interest, nor the noncontrolling interest of Husband. The Court is persuaded by his being one of only two partners, the fact that Select sold off assets to Biomet over the last few years and that there are other competitors in this field. Mr. Volz pointed to a proposed offer made by competitors for Husband to leave and join the competitor as an indicator of value. Yet, even a \$10,000,000 buyout after complying with Biomet's non

complete clause, would mean speculation for the future income, which is not what this Court should be in the business of considering for a dissolution today.

Additionally, as a consideration the Court notes that Wife seeks an award of substantial maintenance from Husband in addition to what income she may generate from other assets awarded to her in this dissolution. If we are to siphon off the income to pay maintenance, that is the very income used to generate a valuation for the dissolution. Wife potentially benefits from the total income used for value and the same income then is to be used to pay her maintenance. Although the Court will not quantify the value to assign to this concept it is at least consideration.

(39) Of further interest to this Court in assessing credibility to the testimony, is the consideration or lack thereof given by Mr. Volz to apply any or only a small amount of discount in his calculations for Select Orthopedics and Whitman & Associates, to the lack of marketability. Is he saying that there is no or little risk to a potential hypothetical person, even if you get by the issues of the contract restrictions in effect with Biomet, that you do not have control of the business? It is the opinion of this Court that Missouri looks for purposes of valuation in a dissolution case, to the Fair Market Value of the business. It is noted that some jurisdictions look to what is called the "Fair Value" which to some extent places less emphasis on the issue of minority interests, which appears to be at least partially the consideration used by Mr. Volz. Thus, Mr. Volz uses a much smaller discount, if any, for application in the capitalization model for valuation purposes. This of course has a direct impact on the bottom line. Since much of the actual discount rate application from any expert has a certain degree of subjectivity inherent in it, this allows for a variation in value between the experts. Yet this approach of not assessing any, or a small discount to minority shares, would seem more

appropriate in a shareholder fight than in a valuation for dissolution. For in reality this is not a sale, but an attempt to have a credible value for purposes of dissolving a marriage and placing a value on a marital asset for equitable divisions of assets.

(40) Whitman & Associates L.L.C.: According to the credible evidence Husband owns 100% of this company. This Company has exclusive agreements within certain markets and with certain products produced by “Iso Tis”/Integra. This is a contractual agreement ending in December 2012 and has been renewed for three year periods in the past. There appears no reason to assume this will end now. This agreement has Whitman & Associates as an independent contractor with 1099 employees and the arrangement can be terminated without cause with 90 days notice. The sales reps do a large portion of the business sales. Again, both experts used the income approach and both used the same method of capitalizing earnings to determine value. There was disagreement between the experts in the areas that allow for experts to use their individual judgment in assessing risk in arriving at value. Upon review it appears that Mr. Volz’ capitalization rates and multiples he used for Whitman & Associates were very similar to those he used for Select Orthopedic. The Court is not an expert in this area, but understood that for the values to be so closely associated there should be similarities found in type of business, the comparable size and comparable size of financial transactions. The Court does not see that close a similarity from its view of these businesses. Mr. Volz’s further used the “last” 12 months business in coming up with averages and used a portion of the Select Orthopedic salary projections into his valuation. Husband asserts that the “trailing twelve months” is double dipping, which the Court notes in its considerations, but is not of significant application to the Court’s determination of value. This as the Court understands it, impacts the cash flow base used for the application of the capitalization rate. Both experts accounted for the

marketability for this organization as well and that if sold it can be sold with a controlling interest. Frankly, the Court finds Husband's valuation to be low based upon the past success of this business even with all of the inherent risks noted during the testimony and which was apparent from his experts report.

(41) St. Louis Home Health Inc.: This Company provides services in the home health care field. This Company has a number of shareholders including several husband and wife combinations, all of which are subject to restrictions in the transfer of shares. The party's here own differing amounts of shares. Wife owns 13.06254% and Husband owns 10.6875%. Wife's expert found the value of each 1% interest to be worth \$66,600 and Husband's expert found the value to be \$79,000 for each 1% interest. This business was started some time ago and obtains much of the business from referrals with cooperating doctors. It is heavily dependent on Medicare for income. It has a number of employees, along with a structured management staff which does not include Husband. It is the one company which is not dependent on the hands on capabilities of Husband. Again both experts used the same valuation approach and ultimately have provided a valuation on a 1% interest value. Valuation is less an issue to the Court in this instance since each party has shares independently and the value of each share will be the same. Frankly, the Court is drawn more into this issue because of Husband's proposal that Wife be give seventy five percent (75%) of the party's joint interest because this is income producing property and thus by giving her a larger share throws income into her column and thus would have a greater impact on maintenance, than value. The credible evidence is that the average income over the last five (5) years has been \$221,028 for Wife's share and \$180,843 for Husband's share. Wife's expert, from his testimony was of the opinion, that the income derived by the company was more dependent on referrals from Husband than was indicated by Husband and his

expert. That dependence is not evident from the evidence and is only relative to the issue of an award to Wife of more than her current ownership or some division akin to equalization for income purposes.

(42) Wife alleges that Husband dissipated marital assets. Specifically she has presented evidence that Husband spent money on moving A to Texas in the sum of \$10,000, which he admits. She alleges another \$9,000 for a party in Las Vegas, a \$10,000 dollar loan to a Mr. Stallings for a Kentucky Derby event, as well as a \$35,000 loan to Stallings (the evidence was this has been paid back) the purson of the Limousine, allegations about his living at the Son when “Jacks” house was available and an expense of attorneys fees expended in what she describes as a “farce” reconciliation. The attorney’s fees will be dealt with under that heading below. Additionally, Wife brought up during the trial expenses Husband paid for his mother which apparently she wanted to be assessed separately against Husband. Why Wife felt the need to bring this matter up for any purpose other than to hurt Husband is beyond this Court’s understanding. None the less, Husband did agree in order to settle the issue to account for his mother’s expenses. The Court however believes that the parties spent money on his mother as well as spending money on Wife’s parents and will consider those expenditures as a wash.

(43) Another marital asset is the Audi purchased for Son, age 16. The Court may in fact have a question about the judgment of both parents who purchases \$53,000 brand new car for their 16 year old son, however; it appears that they in fact may have agreed with the purchase. However, at trial the Court asked whether this would be a marital asset or considered Son’s separate property for purposes of the division of assets. Husband was agreeable to assigning this to Son. Wife on the other hand would agree to not assigning a marital value, only

if Husband agreed to purchase new cars for each of the girls when they turned 16 from his personal funds, which understandably he would not agree with at this time.

(44) Marital property and approximate net values are as follows:

	1.	18615 Ro Bridge Court (legal Ex. 3)	\$
	2.	18603 Ro Bridge Court (lot 32) (Ex. 4)	\$
	3.	18533 Wild Horse Creek (Ex. 5)	\$
	4.	18668 Wild Horse Creek (lot 21) (Ex.6)	(\$16,520)
	5.	2006 Range Rover	
\$	6.	2007 Cadillac Escalade	\$ 28,000
	7.	2008 GMC Yukon	\$ 31,000
	8.	Honda ATV	\$ 1,000
	9.	Bank of America (#) (W)	\$ 877
	10.	Bank of America (#) Jt	\$ 68,858
	11.	Bank of America (#) Jt	\$ 13
	12.	Bank of America (#) Jt	\$ 40,542
	13.	Bank of America (#) Jt	\$ 18,574
	14.	Bank of America (#) (W)	\$ 3,680?
	15.	Bank of America (#) (W)	\$ 11,800?
	16.	Midland States Bank (#) JCJ L.L.C.	\$ 9,593
	17.	Midland States Bank (#1) Jt-CD	\$ 58,708
	18.	Midland States Bank (#5) Jt-CD	\$ 68,399
	19.	Midland States Bank (#8) (H)	\$ 71,645
	20.	Midland States Bank (#0) (W)	\$ 14,193
	21.	DWS Investments (#) Jt	\$ 35,310
	22.	Charles Schwab (#) Jt	\$ 23
	23.	Charles Schwab (#) (H)	\$ 97,368
	24.	Charles Schwab (#2) Jt	\$ 27
	25.	Charles Schwab (#) H- SEP IRA	\$ 88,434
	26.	Charles Schwab (#) Jt	\$ 53,018
	27.	Charles Schwab (#) (W)	\$ 21,021
	28.	Charles Schwab (#) W-SEP IRA	\$ 21,876
	29.	Charles Schwab (#) (H)	\$ 0
	30.	Ameritrade (#) (W)	\$ 79,233
	31.	Ameritrade (#) (H)	\$ 51,829
	32.	Delta/VSR (#) (H)	\$ 38,763
		a. VSR (#5) (H)	\$ 26,380
		b. VSR(#2) (H)	\$ 28,915
		c. Bradford Drilling (H)	\$ 20,000
		d. Membourne Energy (H)	\$ 30,000
		e. Atlas Resources Public (H)	\$ 50,000
		f. Atlas Res. Series (H)	\$ 50,000
	33.	Moloney Securities (9270) Jt	\$223,719
	34.	Minnesota Life (7720) (H)	term
	35.	Symetra Life – 401K name of Husband	\$ 24,930

36.	Minnesota Annuity - IRA(#4820)	(W)	\$ 18,765
37.	Select Orthopedic	(H)	\$1,200,000
38.	Whitman & Associates	(H)	\$ 382,000
39.	St. Louis Home Health	Jt	\$1,897,000
40.	Top Ten Investments	(H)	\$ 25,000
41.	Scripture Memory Creations	(W)	unknown
42.	Scripture Memory Creations	(W) patent	unknown
43.	Scripture Memory Creations	(W)	unknown
	trademark/copyright		
44.	Bt. Trademark	(W)	unknown
45.	New Creations recipes trademark	(W)	unknown
46.	All .com or .org's created by	(W)	unknown
47.	Stock Options – Biomed (60,000 shares)		unknown
48.	R&D Milwaukee	(H)	\$ 15,000
49.	Federal/State tax credits (applied from 2010)		\$107,350
50.	Federal estimated taxes paid for 2011 thru date of diss.		\$200,000
51.	JCJ Development Group, L.L.C.	(W)	listed above
52.	PNC (moved to VSR)		0
53.	Coin collections		unknown
54.	Household goods	(W)	\$ 60,342
55.	Household goods	(H)	\$ 37,279
56.	Safe deposit	Jt	50/50
57.	Dissipation by H		
	Loan to Stallings	(H)	\$ 10,000
	Arnott moving	(H)	\$ 9,000
58.	Audi		\$ 53,000
59.	Loan to Kassing's	(W)	\$ 15,000
60.	Cymtec	(H)	unknown

(45) The parties have the following UGTMA accounts in the name of the children and have agreed that these accounts shall remain the accounts of the children and controlled by the parent who is named as co-owner. The accounts shall not be considered marital for the purposes of division and shall only be used by agreement of the parties for the benefit of the respective child.

1.	Bank of America (Son)	W	\$ 4,110
2.	Bank of America (Christina)	W	\$ 1,050
3.	Bank of America (Daughter)	W	\$ 395
4.	Charles Schwab (#9813) Son	H	\$58,997
5.	Charles Schwab (#0219) Christina	W	\$56,625
6.	Charles Schwab (#8873) Daughter	W	\$53,043
7.	MOST accounts in children's respective names. W		

(46) The parties are possessed of certain separate, non-marital property, to-wit:

A. Separate Property of Wife

1. 2007 Jeep Wrangler \$21,000
 2. Silver bars unknown
 3. Inheritance from Father \$41,000
- B. Separate Property of Husband
1. \$1,000 bill
 2. Coin collection

(47) In its division of marital property, the Court is guided by Section 452.330 RSMo. and has determined that each of the parties has contributed to the acquisition of the marital property, the economic circumstances of each of the parties at the time the division of property is to become effective, the conduct of the parties during the marriage, and the value of the property set apart to each of the parties, and the custodial arrangements for the minor children. There is no specific rule as to the relative weight to be afforded to any one of the enumerated factors. The Court acknowledges that it is generally accepted, but not required that the division should be substantially equal unless one or more of the statutory and non-statutory factors causes such a division to be unjust.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the property of the parties be divided as follows:

(48) Each party is awarded the personal property they now have in their respective possessions as their sole and separate property except as specifically stated herein.

(49) All right, title and interest in the following marital property of the parties shall be awarded to Husband as his sole and separate property:

- | | | | |
|-----|--|----|------------|
| 1. | 18533 Wild Horse Creek (Ex. 5) | | \$ 40,000 |
| 2. | 18668 Wild Horse Creek (lot 21) (Ex.6) | | (\$16,520) |
| 3. | 2006 Range Rover | | \$ 34,500 |
| 4. | 2007 Cadillac Escalade | | \$ 28,000 |
| 5. | Bank of America (#1975) | Jt | \$ 68,858 |
| 6. | Bank of America (# 8175) | Jt | \$ 13 |
| 7. | Bank of America (#3317) | Jt | \$ 18,574 |
| 8. | Midland States Bank (#274-8) | H | \$ 71,645 |
| 9. | DWS Investments (#3813) | Jt | \$ 35,310 |
| 10. | Charles Schwab (#9955) | Jt | \$ 23 |
| 11. | Charles Schwab (#4315) | H | \$197,368 |

12.	Charles Schwab (#0242)	Jt	\$ 27
13.	1/2Charles Schwab (#0244)	H- SEP IRA as of date of division	
14.	Charles Schwab (#7878)	H	\$ 0
15.	Delta/VSR (#7678)	H	\$438,763
	a. VSR (#5829)	H	\$ 26,380
	b. VSR(#2133)	H	\$ 28,915
	c. Bradford Drilling	H	\$ 20,000
	d. Membourne Energy	H	\$ 30,000
	e. Atlas Resources Public	H	\$ 50,000
	f. Atlas Res. Series	H	\$ 50,000
16.	Minnesota Life (7720)	H	term
17.	Symetra Life – 401K	name of Husband	\$124,930
18.	Select Orthopedic	H	\$1,200,000
19.	Whitman & Associates	H	\$ 382,000
20.	St. Louis Home Health (shares in his name)		\$ 853,937
21.	Top Ten Investments	H	\$ 25,000
22.	½ Stock Options – Biomed (60,000 shares)		unknown
23.	R&D Milwaukee	H	\$ 15,000
24.	1/2Federal/State tax credits 2010		\$ 53,675
25.	½ Estimated taxes pd for 2011 thru date of diss.		unknown
26.	PNC (moved to VSR)		0
27.	Household goods	H	\$ 37,279
28.	Safe deposit	Jt	50/50
28.	½ any estimated taxes paid for 2011 to date of decree		
29.	½		
29.	Dissipation by H		
	a. Loan to Stallings	H	\$ 10,000
	b. Arnott moving	H	\$ 9,000
30.	Audi		\$ 53,000
31.	Cymtec		unknown

(50) All right, title and interest in the following marital property of the parties shall be awarded to Wife as her sole and separate property:

1.	18615 Ro Bridge Court (legal Ex. 3)		\$600,000
2.	18603 Ro Bridge Court (lot 32)(Ex. 4)		\$300,000
3.	2008 GMC Yukon		\$ 31,000
4.	Honda ATV		\$ 1,000
5.	Bank of America (#3822)	W	\$ 877
6.	Bank of America (#0232)	Jt	\$240,542
7.	Bank of America (#3317)	Jt	\$ 9,287
8.	Bank of America (#2275)	W	\$ 2,567
9.	Bank of America (#0766)	W	\$ 20,789
10.	Midland States Bank (#2897) JCJ L.L.C.		\$ 9,593
11.	Midland States Bank (#10163) Jt-CD		\$ 58,708
12.	Midland States Bank (#10275) Jt-CD		\$ 68,399

13.	Midland States Bank (#4290)	W	\$ 14,193
14.	1/2 Charles Schwab (#0244)	H- SEP IRA as of date of division	
15.	Charles Schwab (#0246)	Jt	\$ 53,018
16.	Charles Schwab (#4498)	W	\$121,021
17.	Charles Schwab (#9756)	W-SEP IRA	\$ 21,876
18.	Ameritrade (#1112)	W	\$579,233
19.	Ameritrade (#1294) (392457)		\$551,829
20.	Moloney Securities (9270)	Jt	\$223,719
21.	Minnesota Annuity - IRA(#4820)	W	\$ 18,765
22.	St. Louis Home Health (shares in her name)		\$1,043,692
23.	Scripture Memory Creations	W	unknown
24.	Scripture Memory Creations	W patent	unknown
25.	Scripture Memory Creations	W	unknown
	trademark/copyright		
26.	Bt. Trademark	W	unknown
27.	New Creations recipes trademark	W	unknown
28.	All .com or .org's created by	W	unknown
29.	½ Stock Options – Biomed (60,000 shares)		unknown
30.	JCJ Development Group, L.L.C.	W	listed above
31.	Household goods	W	\$ 60,342
32.	Safe deposit	Jt	50/50
33.	1/2 Federal/State tax credits 2010		\$ 53,675
34.	½ Estimated taxes pd for 2011 thru date of diss.		unknown
35.	Loan to Kassing's (W)		\$ 15,000

(51) The debts and liabilities owed to the following creditors are to be assumed and paid by Husband, and he is to hold Wife harmless and shall indemnify Wife for any payments made by her thereon:

A.	Midland Bank (#60-00)	\$214,667
B.	Midland Bank (#4800)	\$161,519
C.	2009 Federal/State tax ½	

(52) The debts and liabilities owed to the following creditors are to be assumed and paid by Wife Other than the marital home the contested debt has been regarding the Mariposa bill for landscaping and other actions taken around the house. Joanne Larimore testified as to the outstanding bill for \$41,000. Although her recordkeeping and bookkeeping could be better, it is clear that the majority of this remaining bill has been incurred by Wife without any involvement or concurrence from Husband. Yes there are a few bills that carry over, but she has been receiving money throughout this separation from which she could have paid these bills and she should be paying for holiday lights and those types of items and for the landscaping she had

order since separation whether it is required by the subdivision indentures or not. Therefore she is to hold Husband harmless and shall indemnify Husband for any debts thereon:

A.	Citi-mortgage (#4381-2)	\$1,001,499
B.	Niemen Marcus	
C.	2009 Federal/State tax ½	
D.	Mariposa	\$ 41,000

MAINTENANCE

(53) Pursuant to R.S.Mo 452.335.1, requirements must be met to entitle a spouse to maintenance, namely:

- (a) That spouse lacks sufficient property, including marital property, apportioned to him/her, to provide for his/her reasonable needs;
- (b) Is unable to support himself/herself through appropriate employment.

(54) With regards to the first requirement, the Court has awarded Wife property, which is income producing and in combination with income from her separate funds may not provide for her reasonable needs.

(55) The Court finds that Wife is in good health. She has been employed during the marriage of the parties working first independently and then working within the family businesses. She has not been gainfully employed on a full-time basis for a number of years. The Court finds that the Wife does have the ability to earn an income and is capable of employment.

(56) With regards to the second requirement, the Court finds that based upon the Husband's/Wife's health, that he/she has the ability to earn a wage, that when added to the above amounts would be sufficient with other income he/she has to meet and support himself/herself through appropriate employment with the other income derived therein.

(57) Husband is found to be an intelligent, competent, and able bodied person, capable of supporting himself.

(58) There is no evidence that establishes that there is an impending change in the financial conditions of the parties; there is no reasonable expectation that such a change will take place within the foreseeable future which would allow Wife to become self-supporting; and therefore an award of maintenance for Wife of limited duration would be inappropriate.

(59) In consideration of the issue of the amount of maintenance is the issue surrounding the sale or retention of the marital home on Ro Bridge. Wife asks the Court to award this property to her, suggesting that it is the home that the children are attached to and are used to living in and thus will provide stability and security to their family unit. There was an assertion by her, that Husband has always asserted or by implication left the children to believe that they would remain in this property. The Court does not give a lot of weight to her suggestion nor ultimately does it control this issue. Wife wishes to retain the home and reside there. Husband wants to sell the property, and tells this Court that it was never his desire to live in such splendor and the he was content with the smaller previous abode, which from the evidence was valued at something like \$750,000. Wife points to his boasting and apparent pleasure with its building as expressed to others, that he was happy and very satisfied with this home as he suggested to Ms. Larimore. That again is really not even the issue at this time as we dissolve this marriage. This being the home for the children has its importance, as does the current economic climate. If this house were sold at this time it would not bring its true value or at least the value as determined by its building costs alone. It does not appear to this Court however that there is any real long term “family” connection, as an intact family, with this house. Father has been out of this house for about as long as he was in the house. The parties have not really been making any headway to reduce principal and they have had a carry cost to this property, running now at \$7,000 per month, plus real estate taxes of another \$3,000 per month.

The question is whether this is a “reasonable” expense in light of the dissolution of this marriage. The Court recognizes that this house has a connection to the party’s lifestyle. They have enjoyed a life of travel, extravagant vacations; they enjoyed the best seats in the house and limousine deliveries and eating at the best establishments, no matter where they might go. The Court must consider however that this house alone generates costs post divorce of \$10,000 per month, is that a reasonable expense for living conditions of Wife and children alone. It does not appear to this Court that that cost can be justified together with other expenses and lifestyle considerations asked for by Wife. It is further this Court’s belief that Wife’s attribution of \$7,000 per month for a mortgage payment in her expense calculations is also excessive, even were she to decide to retain the house she could refinance the balance of the principal for much less than the current amount being paid. Accordingly, the Court will award the home to Wife, but not allow her the full extent of her stated mortgage expense. She can keep it or sell it at her pleasure.

(60) The terms “reasonable needs” as used in the statutes is a relative term and does not automatically equal the standard of living established during the marriage. The Court is required to recognize the expenses and needs of the spouse and may use other factors to consider what are reasonable needs in each particular case. The Court has discretion to determine the credibility of witness testimony concerning the subject of reasonable needs, and may accept or reject testimony regarding reasonable needs. Even if this Court accepts a party’s testimony regarding their expenses, and finds those expenses to be reasonable, the amount of maintenance awarded remains within the discretion of the Court. The Court is under no obligation to award a spouse the entirety of their reasonable expenses even where the other spouse has the means to pay the expenses. Further the information provided by Wife’s expert was not consistent with her Income Statement and appeared to be based upon the highest earning year the parties have had

due to the purson by Biomet of the assets of Select Orthopedics. Which is only relative in that the parties none the less have a significant life style.

(61) Her reasonable expenses, include: mortgage (\$3,000), [based upon the assumption that the house could be sold and the net equity used to partial purson other property] utilities (\$1,250) including gas, water, and electric), telephone (\$400), auto gas and oil (\$650), auto maintenance (\$150), auto taxes and license (\$200), auto insurance (\$350), food (\$1,200), clothing (\$1,500), medical insurance (\$600), medical/dental care exclusive of insurance (\$150), recreation and travel (\$3,500), laundry and cleaning (\$150), beauty shop (\$300), dental (\$100), Gifts (\$1,500), personal care (\$1,000), pet care (\$300), home and yard maintenance (\$1,500), lessons/clubs/trainer (\$650), home cleaning services (\$400), subdivision dues (\$400), real estate taxes (\$1,500), church (\$400), misc. (\$650) and homeowners (\$700).

(62) Based on the credible evidence presented at Trial, Wife's reasonable needs for her living expenses total approximately \$22,197 per month after tax.

(63) Wife will receive income from assets awarded to her, specifically her share of the St. Louis Home Health Inc. which has paid gross income per month on average approximately \$18,400 which should net approximately \$12,344. Based upon Wife's income from her separate property and the amounts to be derived from the investment of marital assets of approximately 1.9 million at 3%, the Court calculates to be approximately a gross income of \$4,750 per month which would net approximately \$3,183 per month, plus net income as imputed by agreement \$1,083 there is a shortfall of \$ 5,587 per month.

(64) Wife has reasonable monthly expenses for the minor children born of the marriage while in her custody in addition to those expenses included in her reasonable monthly needs listed above as follows:

1.	Food	\$ 750	
2.	Clothing	\$ 500	
3.	Medical, Dental, Drugs	\$ 100	
4.	Recreation	\$ 500	
5.	Laundry and Cleaning	\$ 50	
6.	Personal Care	\$ 150	
7.	Education Expenses	unknown	
8.	Health Insurance	\$ 0	
9.	Car Insurance		to be paid by Husband by his agreement.

(65) Wife's total expenses including those for the minor children born of the marriage in her custody are \$24,097 per month. The child support to be received by Wife includes a sum for Wife as custodian of the minor children.

(66) The reasonable expenses for Husband, include: rent or mortgage (\$1,500), utilities including gas, water, and electric (\$580), telephone (\$0), auto gas and oil (\$85), auto maintenance (\$200), auto taxes and license (\$132), auto insurance (\$121), food (\$500), clothing (\$458), medical insurance (\$350), medical/dental care exclusive of insurance (\$20), recreation and travel (\$2,200), laundry and cleaning (\$195), barber shop (\$87), real estate taxes (\$240), yard maintenance (\$300), home maintenance (\$450), gifts (\$458), homeowners (\$130), church (\$200), disability (\$500), vacations (\$1,250) and misc (\$1,000). (This does not include his tax liability)

(67) Based on the credible evidence presented at Trial, Husband's reasonable needs for his living expenses total approximately \$10,958 per month, not including taxes.

(68) Husband has reasonable monthly expenses for the minor children born of the marriage while in his custody in addition to those expenses included in his reasonable monthly needs listed above as follows:

1.	Food	\$ 325
2.	Clothing	\$ 250
3.	Medical, Dental, Drugs	\$ 20
4.	Recreation	\$ 575

5.	Laundry and Cleaning	\$ 0
6.	Personal Care	\$ 150
7.	Education Expenses	\$ 0
8.	Auto insurance	\$ 108

(69) Husband's total expenses including those for the minor children born of the marriage in his custody are \$12,386 per month.

(70) Having previously found Wife's claimed reasonable expenses to be approximately \$22,197 per month and considering the requirements as set forth by the state statutes and in taking into account the state and federal income tax effect, both as of the division of property and maintenance and the imputed income, the Court finds that Wife is not able to meet her reasonable expenses from the income available to her.

(71) Husband did not request this Court to order Wife to pay maintenance to him.

(72) In calculating the income tax consequences of the maintenance to be paid to Wife by Husband and the funds available to each party after the payment of taxes, the Court has not included in its calculation any deductions such as mortgage interest which might be claimed by either party on his or her income tax return. If a party attempts to lower his or her income taxes by investing in real estate or other investments, then the savings from said investment inures to the party making that investment.

(73) Also, it should be noted that there was evidence presented at Trial by experts as to the amount of income taxes to be paid at certain maintenance levels chosen by the parties, but not the same levels ultimately determined by this Court. Accordingly, the only method available to the Court is to attempt to approximate the net income of the parties after taxes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

(74) Husband is to pay to Wife the sum of \$7,000 per month as and for modifiable maintenance. Said order with respect to maintenance is to be modifiable upon proof of a

substantial and continuing change of circumstances. Said maintenance is to terminate upon the death of either party or the remarriage of Wife.

Child Support

THE COURT FINDS AS FOLLOWS:

(75) The amount of child support is governed by RSMo. Section 452.340.1 and RSMo. Section 452.340.8 and Missouri Supreme Court Rule 88.01.

(76) A health benefit plan is available at a cost of \$388 per month through Husband's employer.

(77) There are no extraordinary expenses for the minor children born of the marriage which must be taken into account in determining the amount of child support pursuant to Missouri Supreme Court Rule 88.

(78) There are no extraordinary medical expenses for the minor children born of the marriage which must be taken into account in determining the amount of child support pursuant to Missouri Supreme Court Rule 88.

(79) The liability of the parties to maintain health and dental insurance, or the payment of medical or dental expenses of said minor children, is authorized by RSMo. Section 454.600 et seq.

(80) The Court is required to include a specific written Parenting Plan pursuant to RSMo. Section 452.310.9 which is to include child support and related issues. The said Parenting Plan is attached hereto as Exhibit 1 and is incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that support of the minor children born of the marriage shall be as set forth in the Parenting Plan B attached hereto as Exhibit 1. The parties are ordered to perform the terms and conditions set forth therein.

Attorneys' Fees, Costs of Court, and Other Orders

THE COURT FINDS AS FOLLOWS:

(81) In determining the amount of attorneys' fees to be paid by either party, the Court has considered all relevant factors as set forth in RSMo. Section 452.355, including each party's marital and separate property, and each party's income. The Court has further considered the request by Wife for attorneys' fees and the evidence which has been adduced regarding said fees.

(82) Wife has asked the Court to attribute a portion of the attorney's fees which have been paid out of the joint marital assets as a debt to be accounted for solely by Husband. As noted above, during the separation of November 2008 until the eve of trial in March of 2010 Husband continued his relationship with Ms. Arnott. On the eve of trial Husband told Wife he wanted to try and reconcile. Wife agreed at the last moment to try and work things out under certain conditions, which notably included Husband breaking off his relationship with A Arnott and that A not work for any of Husband's businesses. She was told by Husband that Ms. Arnott had moved to Texas. In fact A did move to Texas and Husband paid the approximate \$10,000 moving expense. However, the credible evidence is that Husband did not break off the relationship, or at least not for more than a month or so and thus in the fall of 2010 this matter went back on the dissolution docket. Husband's failure to abandon this relationship with Ms. Arnott establishes that he was not serious about the rekindling of the marital relationship. Whether it was a complete sham is not clear from the evidence as Wife would like this Court to think. However, Wife does have a point and she presents evidence that since March 2010 Wife has incurred attorney's fees and costs in the amount of \$80,899 which she seeks to be allocated to Husband so that she is reimbursed. The Court is a little puzzled by this particular request.

The Court understands what she is asking, but would think that the amount incurred up to March 2010 would be the amount which would be in question. Based upon the evidence the Court will attribute a sum of \$40,000 to offset a portion of the fees incurred.

(83) Wife's attorneys' fees over and above those awarded and paid out of joint marital assets during the course of the litigation that are reasonably chargeable to Husband in consideration of the respective financial conditions of the parties and all other relevant factors are \$40,000.

JUDGMENT/ORDER

(1) **IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** by the Court that the marriage of J. W. and D. W. is dissolved.

(2) Financial, Custody and visitation of the minor children shall be as set forth in the Parenting Plan A & B, attached hereto as Exhibit (1) and incorporated herein by reference.

(3) Husband is ordered to pay to Wife as and for modifiable maintenance the sum of \$7,000 per month until his death, Wife's remarriage or further order of this Court.

(4) Husband is ordered to pay Wife as and for the support of the minor children the total sum of \$1,917 per month for three (3) children. (In the event Wife shall be entitled for support for only two (2) children the sum shall be \$1,659 per month and in the event Wife shall be entitled to support for only one (1) child the sum shall be \$1,152 per month. Form 14 (Presumed Child Support Amount – Calculation Worksheet) is attached hereto as Enclosure (2). (Child support amounts were determined in accordance with authorized support guidelines.) (Court finds that the Form 14 amount, after consideration of all relevant factors, is unjust or inappropriate.)

(5) All child support payments called for shall be payable to the **Family Support Payment Center, P.O. Box 109002, Jefferson City, Missouri 65110-9002.**

(6) Notice of Income Withholding: This shall serve as notice pursuant to Section 452.350 RSMo that upon application by the party receiving support or the Missouri Division of Child Support Enforcement of the Department of Social Services, the party paying support wages or other income shall be subject to withholding without further notice if the party paying support becomes delinquent in child support payments in an amount equal to one month's support obligation; withholding shall be for the current month's support under the above provisions; the withholding shall include an additional amount equal to fifty (50%) percent of one month's child support to defray delinquent child support which additional withholding shall continue until the delinquency is paid in full.

(7) Termination of Support: Unless otherwise agreed in writing or expressly provided in the judgment, provisions for the support of the child are terminated by emancipation of the children. The parent entitled to receive support shall have the duty to notify the parent obligated to pay support of the child's emancipation and in failing to do so, the parent entitled to receive child support shall be liable to the parent obligated to pay support paid following emancipation of the child plus interest.

(8) Income withholding shall be prepared by the obligee and issued by the Circuit Clerk upon the effective date of this judgment.

(9) Both parties shall notify, in writing, the Circuit Clerk of St. Louis County of any change of mailing address.

(10) Each party shall receive as their separate property, free and clear from any claims of the other, the property as listed in paragraph 46.

(11) All right, title and interest in the party's marital property, listed with their approximate net equity values if known, are awarded and vested in the respective parties as set forth in paragraphs 49 and 50 above.

(12) The division of any pension is intended to be a Qualified Domestic Relations Order (QDRO) pursuant to the U.S. Internal Revenue Code; and, pursuant to Section 452.330.5 R.S.Mo shall be modified only for the purpose of establishing or maintaining the Order as a QDRO or to revise or conform its terms so as to effectuate the express intent of this Order. Each party shall be responsible for the payment of taxes on their respective portion of the retirement plan distribution. The attorneys shall draft the QDRO for the Court's signature and subsequent filing with the plan administrator.

(13) Except as may be otherwise expressly provided in paragraphs "49" and/or "50" hereinabove, all other personal property of the parties shall be the sole and exclusive property of the party presently in the possession, custody or control of the same or in whose name the same may be titled or denominated. However the property identified in paragraph 45 above as belonging to the children shall be the property of each respective child as identified and controlled by the parent in whose name the asset is maintained.

(14) Except as may be expressly provided herein to the contrary, each party shall defend, indemnify and hold harmless the other from any and all debts, loans, mortgages, obligations, and expenses in any manner arising from, related to or connected with, any item of property, real or personal, respectively received by each under the provisions of this Judgment.

(15) In arriving at the division of marital property, the Court has taken into consideration the conduct of the parties during the marriage, the economic circumstances of each of the parties and the custodial arrangements for the minor children; and the Court has not

intended to set off the marital property into approximately equal shares, considering the nature of the assets of the parties and taking into consideration the award of Wife's attorney fees and expenses as against Husband and giving Husband credit therefore.

(16) The debts of the marriage shall be the responsibility of the respective party set forth in paragraphs 51 and 52 above.

(17) Each party is directed to execute all deeds, titles, documents and other instruments necessary to effectuate fully the provisions and intent of this Judgment.

(18) RELOCATION NOTICE: Absent exigent circumstances as determined by a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation, each party to this action of any proposed relocation of the principal residence of the child, including the following information: (1) the intended new residence, including the specific address and mailing address, if known, and if not known, the city; (2) the home telephone number of the new residence, if known; (3) the date of the intended move or proposed relocation of the child; and (5) a proposal for a revised schedule of custody or visitation with the child. Your obligation to provide this information to each party continues as long as you or any other party by virtue of this order is entitled to custody of a child covered by this order. In addition, your failure to notify a party of a relocation of the child may be considered in a proceeding to modify custody or visitation with the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the required notice.

(19) Husband shall pay the sum of \$40,000 as and for the attorney fees of Wife to be paid directly to Susan K. Roach within 60 days of this Judgment becoming final. The payment of all other attorney's fees shall be the responsibility of the parties to their respective attorney.

(20) The costs of Court shall be paid from the cost deposit previously posted except that the costs of depositions, experts and Trial subpoenas shall not be included in costs and shall be paid by the party incurring the same.

(21) Circuit Clerk is ordered to file for record a certified copy of this decree in the office of the Recorder of Deeds in the County of St. Louis, State of Missouri, where the real property is situated at such time as the parties have paid the costs for said recording to the Clerk.

SO ORDERED:

JUDGE