

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

In Re the Marriage of:)
)
A.C.,)
)
Petitioner,) Cause No. 10SL-DR07240
)
vs.) Division No. 6
)
L.C.,)
)
Respondent,)

JUDGMENT / ORDER AND DECREE OF DISSOLUTION

THIS CAUSE was called for trial on October 25 and 28th, 2011. The Petitioner, A.C., (hereinafter referred to as “**Husband/Father**”) appearing in person and by attorney, Catherine Keefe; the Respondent, L.C. (hereinafter referred to as “**Wife/Mother**”) appearing in person and by attorney, Tonya Page. Also present was the Guardian Ad Litem, Jill Wehmer. 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, 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 a request for Findings of Fact or Conclusions of Law and therefore 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 preceding the commencement of this action and that thirty (30) days have elapsed since the filing of the Petition therein. Initially both parties sought a legal separation, however both, during the course of the proceedings changed their positions and testified that the marriage was irretrievably broken and sought a dissolution; the Court therefore 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 May 1995 in St. Louis County, State of Missouri.

(3) The parties separated on or about October 15, 2010 when Husband obtained an Ex-parte Order of Protection.

(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 or its allies.

(6) Wife is currently employed teaching at MacMurray College earning a gross income of \$42,000 per year or \$3,500 per month and part time as a nurse currently earning the gross sum of \$983 per month, a gross income of \$4,483 per month. In addition she has the ability to rent the property in Jacksonville, Illinois for a few months in the summer each year. However the Court believes this income is offset by expenses necessary to maintain the property so she has a place to stay for her work and thus will not include this in her gross income.

(7) Husband is a self employed practicing attorney. He testified that he currently is earning the gross sum of \$2,000 per month. He described difficulties in the economy, the disbarment of an attorney with a the same name, but a different middle initial, being problematic, as well as some difficulty with a former client of his own, which has now been resolved. In addition he has a real estate license and has recently been involved in the sale of a home. The Court understands his dilemma and takes judicial notice of the current status of depressed economics for attorneys who practice family law in particular, as does Husband. None the less the Court can not assume that this will remain the status of Husband's income or that it will remain this substantial of a reduction over his past income potential. The Court has reviewed the tax returns supplied for the last several years and will use the income he has demonstrated during this period, prior to the year of separation and divorce to impute income for purposes of child support. For child support purposes the Court will use the sum of \$4,500 per month for his income.

(8) There is one (1) child of the marriage of the parties, namely R age 14 years.

(9) Wife contends that during the marriage Husband has engaged in marital misconduct, to wit: She testified that Husband has been physically and emotionally abusive. She alleges that Husband has violated his fiduciary duties toward her as his Wife. She contends that throughout the marriage Husband had possession, domination and control of the financial, legal and other business information concerning not only the marital but separate property of the parties. She alleges that he gradually took over the business of leasing out the several parcels of real property which she brought into the marriage, without her concurrence. It is not precisely clear how this occurred and there was no real evidence that she demonstrated a significant effort to prevent this from happening. She testified that Husband misused his position and knowledge as an attorney in their marital relationship to convert her separate property to marital property,

among other things. Wherein she asks this Court to find a “Breach of Fiduciary Duty”, so as to impose a Constructive Trust and to Declare a Resulting Trust to protect her interests that he allegedly converted.

(10) The evidence is that Wife came into the marriage having acquired several parcels of real estate. She had property in Illinois as well as property on M. and she also had a condominium on Waterman, where she had lived at one time and which she had as rental property. She was living at the time of marriage in her home on Pershing. Husband moved into the Pershing home with Wife. At that time Husband had a home on McKnight, which he then rented for a period of time before its ultimate sale. Both parties agree that they combined their incomes into one joint account shortly after the marriage. Into that account would be deposited Wife’s employment checks (for the most part with the exception of her St. Anthony’s checks which she began keeping shortly after separation until May 2011). Husband had a successful legal practice focusing primarily in family law. Wife was employed at various positions during the marriage either as a nurse or in a teaching position except for a short period after R’s arrival. Wife worked as a per diem nurse after R was in school, working largely at night and weekends so that she could be available during the days. In 2007 she obtained a teaching position in Jacksonville, Ill., which would require her to be living in Jacksonville for part of the week. She would typically be in Jacksonville Tuesday-Thursday and had some flexibility in her work to be available when R had activities. The parties then purchased a small house in Jacksonville and placed that house in the name of RALO Properties, L.L.C. which was a corporation Husband had established over the course of the marriage for purposes of their real estate investments and rental business.

(11) To listen to Husband, he suggests that Wife would come home and indicate that “she” had found property with which they should invest. He further suggests that they then together began a series of steps to refinance and sell property (McKnight), that one or the other of them owned to improve (Pershing) and finance new purchases. The first new joint purchase was for 8039 V. Dr. for which they put approximately 20% down. Husband suggests that as they did the refinancing the properties would be placed into joint names, with joint obligations to pay the mortgages all as part of a larger plan. The move to V. was to move into the Clayton School District for R to go to school. They did make such a move. The credible evidence is that the Pershing property did not immediately sell, even though they had made the move to V. and money had to be put into the Pershing property to sell it. They also had to make improvements to the 8039 V. property in order to reside there. While there at 8039 they considered buying the attached property at 8037 V. but were initially unsuccessful. Then the current marital residence (8018 V.) came on the market and they quickly purchased that home which too was in need of improvements before relocation. There is a disagreement between the parties per their testimony at his point as to who’s idea it was to move to 8018. Wife indicates she did not want to make the purchase and Husband implies that they jointly decided on the purchase.

(12) Up to this point, except for the refinancing and transferring of the property, there is little disagreement. Husband had taken over the rental property duties at this point. Wife suggests she seeded this effort to him based upon his being an attorney and the belief that they were doing well financially. She testified that Husband purportedly suggested he was the “number one” attorney in St. Louis in paternity issues, among other things. According to Wife’s testimony, she was kept from seeing the actual income figures made by Husband. Wife testified that Husband refused to let her see the books and in fact he put the finances on the computer and

then moved the computer to his law office out of her reach. The purchase of 8018 V. occurred at approximately this time around 2003. As the Court understands it, as part of the purchasing and renovations that were being made, the parties refinanced, Husband sold McKnight with approximately \$60,000 in net proceeds. Both parties had inherited some money from their parents, the exact amounts were not verified or clear except for the inheritance by Wife of a farm which was ultimately sold for \$144,000. This was however at a later date and the proceeds were used for the Innsbrook purchases. None the less it appears the parties were doing pretty well, with rental properties that pretty much paid for themselves and a constant upward movement for the marital residence and location for their daughters schooling.

(13) At or around this time they made their first foray into the Innsbrook investments. Husband suggested that they visited friends initially and that Wife fell in love with the property. Wife never confirmed this same passion. Still they did purchase a small Chalet at Innsbrook, known as a weekend get away for many St. Louisin's. Ultimately they purchased a larger home and to accomplish this purchase Wife sold the farm (noted above) that she had inherited from her father in approximately 1999. This is when the evidence suggests that all is not a harmonious "joint effort" to acquire wealth through real estate ownership and development. Wife testified that she was pressured into selling the farm. She testified to the farm having sentimental appeal to her, some share cropping income and she thought the farm was an investment for retirement. Husband had portrayed the Innsbrook purchase as the "buy of her life", that she loved the Innsbrook area and it was Wife that insisted on this investment move.

(14) Corroborating Wife's testimony is the evidence she produced in her exhibit DDD and DDD1. Clearly here in the year 2000 there is Husband's unrefuted push for her to "enjoy" what she has been blessed with, ie, sell the farm. These letters are an interesting view of the real

marital life being lived between the parties at that point. While there is some evidence that they did agree in fact to blend incomes and pay for things for everyone, at one point Wife used a joint credit card to pay for a master's degree education. Exactly how this happened is not exactly clear but the evidence is that Wife did this on her own. What is clear is that Husband was not happy and did not approve. At the same time however he is pushing for her to transfer insurance proceeds she holds into joint accounts. He is also unhappy about the way they lived in the household, suggesting an unclean and unkempt home. Evidence of this surfaced at trial with pictures of the inside of the marital home and garage. Both parties at trial blamed the other for the state of clutter in the home. Certainly either had the opportunity to clean it up if they really chose too. At the same time it appears that as far back as 2000 the issues of the status of the housekeeping that Husband complained of and testified to at trial were present.

(15) Interestingly as well, the letters introduced at trial also give a glimpse of a Wife and woman, who did not follow along passively with everything Husband did or suggested. Examples being, that she did not put the inherited insurance money into the joint account, and she used a joint credit card for her son's education clearly against Husband's feelings. This when added to the fact that she clearly was savvy with her premarital real estate acquisitions suggests she is not a uniformed pushover as she professes in her claims of Husband's breaching his fiduciary responsibilities toward her. She had business acumen, and had acted successfully (perhaps more so than Husband) as a landlord. By her own testimony she negotiated mortgage rates, leases and kept her own books and records. She testified that at one point they as a couple used a mortgage broker or real estate person to help with their purchases and acquisitions. She was the one who appears to have seen the acquisition of 8037 V., in about 2005, as a good move to combine into one home or to use as an investment.

(16) It appears to be about this same time, 2005, that at least outwardly, for the most part the parties were successful. Husband had a law practice, they had acquired property, Wife was working after having been home for a period so R could adjust to their home life, and they combined incomes, sale proceeds and inheritances from both sides to acquire these assets. At this time is the next move, which is to purchase land and build property on the bigger lake in Innsbrook. Somehow the discussion turned to selling M. and the Chalet and doing a tax exchange for the acquisition of 8037 V.. It is at this point that it appears the “wheels start to come off”. In the effort to sell M. they did not rent the property and without tenants their finances were more difficult. They then overpriced that home and ended selling to Andrew (Wife’s son) in a scheme that ultimately did not work out very well. That resulted in purchasing the property back and using profit from selling Husband’s father’s home in a flip, in part with Andrew. At the same time, again indicating an effort to be real estate moguls, Husband had had an interest in a shopping Center purchased during the marriage and sold that interest for approximately \$60,000 profit. This money also ended up going back into the M. repurchase, and resulting with a debt against M. of about \$183,000 after all these transactions. The credible evidence is that the wheeling and dealing on the flip and subsequent problems resulting from that exercise, seems to be Husband’s doing.

(17) In considering Wife’s claim of a breach of Husband’s fiduciary duty the Court is asked to look at how Wife used her \$144,000 inheritance, and using her argument, that she was lead into these acquisitions by Husband’s misdeeds, had the equities of her Illinois property \$24,000, Condo equity of \$68,000, M. down payment of \$20,000 and equity of another \$50,000 and Pershing profits of \$50,000 used to her detriment to acquire “joint marital” wealth. However the Court must also consider Husbands personal and separate investments into these ventures as

well. The evidence is that he sold his property on McKnight for \$60,000 which went into the joint account; he inherited \$75,000 from his aunt, \$75,000 from his father, along with inheritances from his mother. The mix and match of subsequent refinancing and purchases makes it difficult to say that what was done at least at one point back in the 2008 time frame, was not a structure (albeit precariously based upon the need of continued high fixed cash flow) for long term wealth that would have benefited the marital unit. In fact Wife has suggested that she has always wanted to invest in real estate for her retirement. But then comes the down turn in the real estate and financial markets or some would say the collapse, of the real estate market. The downturn in the economy for purposes of Husband's business practices, Husband's personal business issues, some bad timing, litigation regarding the Mylette property, and rental vacancies at just the wrong time all contributed to what were already the bad marital issues at home.

(18) Husband contends that Wife has engaged in marital misconduct during the marriage, to wit: She has physically abused him and caused him emotional abuse by acting in his opinion, in a way that would indicate mental instability on Wife's part. He offered no expert testimony to bolster his allegation of mental instability. The parties had been to but one very brief joint counseling effort around 2000. Wife described Husband as wanting her to go to the session, in his own words according to her, with his saying "this is to show she is mentally ill and should be put into a facility on drugs" or something to that effect. That appears to be the end of any discussion or efforts to resolve any alleged mental health issues. Wife did begin seeing a therapist named Dr. Shaw back in the spring of 2011. It is unclear what is intended with Husband introducing the mental health issue. Husband seemingly injects the issue, but the Court is unsure about whether it is relating to marital conduct issues or custody issues? He offers no evidence other than the one counseling session, self reporting in the police incident reports

surrounding the separation and his own testimony. He frankly seemed to shy away from the issue at trial.

(19) Wife did call her current therapist Dr. Shaw to describe that Wife suffered Adjustment Disorder with Mixed Emotional Symptoms, which generally will remit when her stress abates. Dr. Shaw testified that she believed the custody issues and the divorce were the reasons for her anxiety. Quite frankly, although there appears to be some underlying issues with Wife, there was little clear cut evidence that she has caused Husband a great deal of stress that would be considered misconduct to a level that would effect this Court's rulings. It does appear to this Court that wife was not much of a housekeeper. She suggests that it was because of her work load, but the state of the living areas seen in the photos can not be all heaped upon one person. It appears neither party was interested in the details of cleaning up the clutter.

(20) Of concern to this Court are Husband's allegations which he made about Wife in the October 9th and 10th incidents that he suggests were cause for him to need to seek an Order of Protection. Not only did he admit to sleeping in the same bed with Wife on the very night of his suggested grave concern for his personal safety, but it took him several days to even file for his protective order. Albeit Wife had gone to Illinois for her teaching assignment, something does not ring true. He is not alleging actual physical abuse by Wife in the incident and in fact he does not deny that he threw the family dog down the stairs resulting in Wife breaking her finger trying to catch the dog. No doubt the parties did not see eye to eye on a lot of things as suggested in the letters penned in 2000 and admitted into evidence, but the need to file for an Order of Protection seems suspect. Also of concern, as will be discussed more fully below is Husband's testimony that he was willing to accommodate Wife on issues (pointedly relating to R) only if in fact she would give something to him in return. Thus, it is not a leap to think that this was a pattern of

his throughout the marriage. Wife however did contribute to the breakup of this marriage and the problems did not happen in a vacuum where she was the only victim. Dr. Shaw corroborates that there were issues that Wife was not dealing with appropriately, and although not meeting any identifiable psychopathic diagnosis, it appears this behavior has been going on far longer than the short period since separation.

(21) Conduct is to be considered not only for the division of property but it is also a question for this Court as whether the evidence is such that the Court can find a Breach of Fiduciary Duty. If the Court finds misconduct does it rise to the level requiring the Court to find a Breach of Fiduciary Duty and impose a Constructive Trust to protect Wife's interests that Husband has taken advantage of? Taken together, the Court does not believe that Wife meets her burden in this regard.

(22) The Court finds the conduct of both parties concerning their relationship with each other to be less than exemplary, particularly in how they have used their daughter on a tug of war between the two adults. It does seem to the Court that the parties have allowed themselves to place their daughter in the middle of their custody and dissolution issues.

Child Custody

Findings of Fact

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

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

(25) The Court has jurisdiction over the minor child born of the marriage pursuant to the Uniform Child Custody Jurisdiction and Enforcements Act, RSMo. Section 452.700 et seq. The Court has jurisdiction to act herein pursuant to RSMo. Section 452.300 et seq. and RSMo. Section 487.101 et seq.

(26) Husband/Father requested that he have sole legal custody and that the parties have joint physical custody of R and to use his address for school purposes. He is currently residing in the marital home in Clayton.

(27) Wife/Mother has requested that the parties have joint legal and joint physical custody of R and use her address for school purposes. Currently Mother lives in the City of St. Louis, which is problematic. However, she resides there because of the move necessitated by the manner in which she was removed from the home by Husband's filing for an Order of Protection. She had asked to move into the rental property located in Clayton School district on V. which is just down the street. The credible evidence is that Husband refused to allow her into that residence at the time of separation. She seeks a division of property now which would allow her to reside in this duplex which is located in the Clayton School District. Ultimately, the division of property shall control the school address issue.

(28) The Court is to consider the custody of the child using the factors set forth hereafter in accordance with V.A.M.S. §452.375.2, which states as follows:

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties;

(2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;

(3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;

(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent;

(5) The child's adjustment to the child's home, school, and community;

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm;

(7) The intention of either parent to relocate the principal residence of the child; and

(8) The wishes of a child as to the child's custodian.

With regard to the aforesaid statute and factors, the Court finds as follows:

(29) The minor child did not request any specific custody arrangement, however she was represented by the GAL who participated in the trial and who has presented a Proposed Parenting Plan A, which by stipulation was based upon only the evidence presented at trial and which she believes is in the child's best interests.

(30) There was ample evidence adduced at the trial as to the interaction and interrelationship between R her half brother, parents or any other persons who may significantly affect the child's best interests. Although the parties may have disagreed as to the extent that each participated with R in her day to day activities, the credible evidence is that both parents have used their time with her in significant ways. Father has been instrumental in her athletic

prowess. R is an accomplished softball player and has participated in competitive athletics in different “select” programs and, since separation, Father has paid the majority of said expenses. Father and witnesses attested to his participation in her sports and her extra hitting and pitching instructions as well as the majority of the transportation to those activities. Father testified that he has been helping her with homework and over the years has made himself available to be there for the child. It is pretty clear that the parties divided up responsibilities early in R’s life. She spent her first six (6) months with Mother not working and Mother devoting significant time with the child including helping R to adapt and learn English. There is evidence that Mother did participate with Father and R in softball activities among other things. Mother testified to have special “girl time” with R and that she also helps with homework, and suggested that Father does not do as much homework as he suggests by his testimony. The credible evidence is that Father on the other hand has worked with the school and has been involved, particularly since Mother has been living in Jacksonville, for her work during the school years since 2007. Mother is out of town from Monday evening or Tuesday morning and returns home until this current semester later on Thursday evenings or early on Fridays. At trial, Mother presented her parenting plan which calls for her to have every Monday and every Thursday. Mother has had a work schedule this past fall semester that apparently allows this time for custody. However, Mother also called her former supervising dean, Dr. Cox as a witness. He did testify that a full time professor does have certain expectations as to the amount of time and outside activities they are to commit to as part of their employment in addition to the teaching. Accordingly, Mother may have availability at this time but the Court does not see how she can assure herself, the Court or R that this will continue for the next three years while R is still at home.

(31) There is no question but that both parents have been involved with their daughter's life. As noted above, Father raised allegations about Mother's mental instability and alleged irrational behavior before the separation and after the separation. There is some evidence of Mother's instability and reactions to certain stresses. In fact, as noted, her therapist Dr. Shaw indicates that they have been working on issues as to how she reacts under stress. There is little direct evidence of how this has affected R, although the Court perceives from the overall attitudes and evidence of individual behaviors that R has felt the brunt of the party's inability to work together. This overall evidence includes some irrational behavior on Father's part as well, at ball games and such, as described in Mother's deposition. Ultimately R has done well under the joint care of both parents in the last year.

(32) There was evidence that R has adjusted well to school, to two (2) homes and her educational, sports and social community.

(33) As noted the mental health of Mother has been raised by Father, but not substantially proven, at least as to its affecting her ability to parent. Additionally, she has sought help for her emotional issues as testified to by Sr. Shaw. The physical health of both parties and the minor child are good. There is no evidence of physical abuse toward R. Both parents allege physical and emotional abuse by the other. Of concern would be such actions as Father's throwing the dog down the stairs in the October 10th confrontation. Also is Father's filing of the Order of Protection, which this Court has noted above with skepticism.

(34) Both parties have been and are good parents and are capable of performing their functions as mother and father for the needs of R. It is clear that at least at this juncture the parties see their responsibility to R but appear to approach her needs differently. This is not unusual even in an intact family. Father points to what he calls the need for a more structured

approach as to education and homework. Mother appears to be less structured in this regard but she is not blind to R's educational needs either. Mother describes what appears to be a concern about R's spending time unattended, this would be particularly true in the summer when Father works. Because of the teaching position that Mother has, Mother could be more available to R. Father counters with descriptions of what he calls Mother's efforts to cause confrontation in front of R (calling police), not adhering to the Court approved custody schedule, and failing to pay for athletic activities. He sees his involvement as superior to that of Mother. He points to going to parent-teacher conferences and out of town sporting events as an example. What is also interesting is that he calls Mother's teaching duties as "part-time". This is an interesting point of view. With the desperate economic difficulties being experienced by this couple, her employment is critical to each person paying for their various obligations. Further this Court does not see the teaching profession on whatever level as part time. Further, Mother works a second job when not actually teaching at McMurry. The fact is that the teaching does keep Mother away for several days of each week. Mother, in this Court's opinion, downplays this fact while Father uses this fact in an effort to seek an advantage in the custody arena.

(35) R is in need of a continuing and nurturing relationship with both parents. Both parents have contributed to her development and well being in the past even if the period of separation has been hard on everyone. Both have testified to their desire that R have ongoing contact with the other parent. Both have demonstrated ability to, in their own way; hamper R's ability to enjoy the freedom to enjoy time with each parent without worry as to what that may mean or how it may look to the other parent. Father suggests that mother hampers communication and Mother points to Father's inflexibility in changing custody times easily even for R's benefit. Even as a family law practitioner, Father sat on the stand and suggested to this

Court that he was willing to give, if he got something in return. He misses the point that the primary focus, particularly if you are asking for sole legal custody, is the child, and the child's best interests.

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

(37) The question is whether both parties would cooperate and allow R frequent and meaningful contact with the other parent after this Judgment is entered. Quite frankly the Court has concerns about Father in this regard as noted where he told the Court that he would work with Mother as long as she would work with him. When the Court asked him about whether if it was in R's best interests that Mother have some extra time, what would he do, his response was that he would be more willing if Mother gave up her request for the second Thursday in her Parenting Plan. This concept of Father's, to negotiate, seems to be found in subtle ways throughout the trial, including his letters of 2000. During the period of separation he parceled out short periods of time when Mother could do little things with R. He knows the legal system and controlled custody with the Ex-parte Order of Protection. He limited custody times even when no specific custody was provided nor prohibited by the Ex-parte Order. Another example is when he "let" R go with Mother to buy a bra and it took 1 ½ hours, in his view he was magnanimous in his not making an issue of this time line at trial. Why, when there could be the possibility that both parents could contribute in their own way for R's best interests, would he take such a stance? The willingness of both parents to share time is what is best for their child.

(38) The credible evidence is that the parties do share a commonality of interests and beliefs with regard to the R. During their marriage, the parties have agreed on decisions regarding the health, education and welfare of R and she would benefit from having both parents

continue to be actively involved and participating in decision making responsibilities. They have agreed to move to Clayton in order to live in a better school environment. They appear to agree on her involvement in sports and the extra effort necessary for her softball prowess. They both participate in R's life, they may be of two different religions, but they both present Parenting Plans which respect the significant days of each others religion and appear to have cooperated and compromised about religious issues in the past. There have been times when it appears from the credible evidence that Mother has delayed on her part in making decisions that particularly relate to R's softball activities. But these are minor. This the Court can also correct with its Parent Plan.

(39) 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 and R, that that they be awarded joint legal and joint physical custody with the obligation to confer and agree on decisions with regards to the minor child in advance as it relates to the health, education and major life decisions. With regard to softball issues, if Mother does not make a determination in writing as to an event or activity within 5 days, Father can make the final decision as to R's participation.

(40) Having heard the evidence adduced by the Guardian and having considered the Parenting Plan of both parties, the Guardian's Proposed Parenting Plan, the visitation and custody shall be in accordance with the Parenting Plan A attached hereto and made a part hereof. The Court finds that the custody and visitation arrangements ordered herein are in the best interest of the minor child and the Court has considered all relevant factors contained in RSMo. Section 452.375, RSMo. Section 452.400 and other applicable law. The Court is required to

include a specific written Parenting Plan pursuant to RSMo. Section 452.310.9. The said Parenting Plan A is attached hereto as Exhibit 1 and is incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that custody of the minor child 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

(41) In its division of marital property, the Court is guided by the examination of the factors set forth in V.A.M.S. §452.330.1, which are:

- (1) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children;
- (2) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;
- (3) The value of the nonmarital property set apart to each spouse;
- (4) The conduct of the parties during the marriage; and
- (5) Custodial arrangements for minor children.

(42) After careful consideration the Court cannot conclude that Husband has acted in any manner which would make the actions taken over the course of this marriage anything other than a sincere effort to amass assets with the intention of building a marital estate. He may, as part of his personality, have taken over the rental process, but the evidence seems to indicate that both parties had a commonality of interest in acquiring real estate that could provide for their respective marital future. Wife by the time of the marriage was familiar with business process and the buying and renting of properties. She, from the credible evidence, participated in the decisions if not always agreeing with them, and took advantage of them in the good times. It was a particularly thin financial line with regard to the need to have all the income and properties working together to make all of the payments and preserve the wealth. It appears this was done

without much of a problem for many years. It was when the economy faltered that they ran into serious financial problems. That being said, it also leads to the conclusion that Husband does carry more of the responsibility for over extending their ability to meet their financial obligations if they ran into a tough time. He was in charge. From the credible evidence Husband set up the shell game (as he described it himself) for the M. property, and used Andrew to maneuver around that issue. In the end they were forced to invest more into this asset in order to relieve Andrew of his obligations. Then when Husband's business income decreased they were in even more dire straights. The separation of the parties and the splitting of income further exacerbated the problem. All in all to meet most, yet not all, of the obligations required extensive use of the credit cards and still they are behind in most payments. A further problem is that selling real estate in these economic times is particularly difficult. The largest equity is in the Innsbrook home which is more of a vacation and retreat home than a home readily connected to the St. Louis region and its employment base. Accordingly it may take a significant reduction in order to sell the property before it is lost to foreclosure. The parties at this juncture have no where to turn for added income to meet their obligations. The asset with any immediate liquidation value is the SEP at Asset Strategies which is in Husband's name and arguably has some portion that is separate to Husband.

(43) The property that might sell more quickly is the duplex on V.. Is that the best move? When the Court considers the custodial relationships does it not make sense to have Mother residing within walking distance of the current residential unit? Is this good for R? Mother is in the Condo in the City, which she did not choose. Husband may discount her concerns about the City neighborhood and the people who reside there, but the choice of her residing there was at least partially his. The credible evidence is that the 8039 V. property was

vacant when he told her to leave and filed the OP, but he would not give the keys or allow her access.

(44) What could be the assumption that any of these properties might sell quickly? In order to save what they have there must be action taken quickly. After the date of the last hearing and prior to this Judgment the parties entered into a consent stipulation regarding Husbands SEP account, using this account to ward off legal action pending this judgment and sale of the Innsbrook property.

(45) Husband asserts that a portion of his SEP is his separate property. His evidence is a single document showing that it had an approximate value at the time of the marriage of \$25,000. There were contributions made after that time and the value increased to approximately \$100,000 by his testimony. What is the ratio to earnings from the original investment and the current asset? What about Wife's equitable values in her separate real estate properties as of the time of marriage. What should be the equitable distribution? Husband has withdrawn approximately \$30,000 to pay bills. It is unclear if this is inclusive of or not, of some \$15,000 which Wife says he withdrew without her consent or knowledge. He asserts he wants his \$25,000 back first and then to divide the balance. The remaining value at the time of trial is approximately \$39,137. However, what says that the first money deposited is not the first money withdrawn to pay bills? At best he should only receive a relative proportionate value of his investment or 25% thereof. None the less the stipulation entered on December 5, 2011, is that he shall withdraw from this SEP, held at Assets Strategies, Inc., an amount equal to two (2) months payments on the 8037 and 8039 V. properties, three (3) months payments (to pay forward) the mortgage on the Innsbrook property, payment of \$5,500 to the GAL, as and for her outstanding fees, payment of the outstanding Jacksonville electric bill and \$1,000 payment to David Hoots,

as and for repair of the roof on the Jacksonville property. The balance after taxes will be set apart to Husband as his separate property.

(46) The property at 62424 M. appears to have a negative equity. This property was purchased by Wife prior to the marriage and was used as a rental property during the marriage and they have had difficulty selling in the past let alone now. There is also current litigation regarding the property and the property is currently rented. Both parties propose to the Court that this property be set over to Wife in the Courts distribution. (Legal Ex. 3)

(47) The property at 8018 V. is the marital home currently occupied by Husband. He has asked to keep this property. This property too appears to have a negative value. Both parties agree that Husband shall retain this property. (Legal Ex. 3)

(48) The property at 8037 and 8039 V. is a duplex and both parcels are owned by the parties in joint names. (Legal's Ex. 3) This property was originally purchased so that the parties could move into Clayton for R's education and the second half purchased later as an investment and rental property. Wife has asked the Court for this property to be awarded to her. There is the obvious issue of the proximity of this property to the marital residence at 8018 V.. The Court must consider that the parties have not gotten along but also must consider what happens with R. Waterman, the other property where Mother could live, is in the City. There is some question in the Court's mind that Husband can afford (which he acknowledges) to keep the 8018 V. property based upon what he claims will be his income. At the same time selling it at a loss is problematic. So it seems that awarding Mother at least half of the V. property makes economic sense, and sense that she too will be in the Clayton School District.

(49) The property at 5171 Waterman, (Legal Ex. 3) is a condominium purchased by Wife prior to the parties' marriage and used as a rental property during the marriage. Wife

currently resides at this address. This property is to be listed for sale immediately, unless the parties can agree on one or the other receiving this property. The expenses associated with this property to include the mortgage, condo fees, real estate taxes and any other expense necessary to keep up the home or to make it ready for sale shall be born equally by the parties until the property is sold. If one party pays the entire expense or more than their share as set out herein, at the time of sale they will be reimbursed from the share of the other party prior to that party receiving any of their share, if any is available. The net proceeds after deduction of all expenses associated with sale to include a real estate commission or expense of a commissioner for sale shall be divided equally subject to the reimbursement noted herein.

(50) The property at 438 W. Oak, in Jacksonville, IL. (titled in the name of RALO Properties, L.L.C. and is a marital asset) is the house where Wife resides when she is teaching during the week at McMurry College. It makes sense that this property be set aside to her. (Legal Ex. 3) This property appears to have a value of approximately \$40,000 and no debt associated therewith.

(51) The property at 2288 Innsbrook is jointly held property used as a vacation home. (Legal Ex. 3) This property has the greatest amount of potential equity and both parties have agreed that the property is to be sold. Additionally, as part of the stipulation of December 5, 2011 they have agreed to rent the property in addition to having it on the market for sale. This is also the property where it is noted that Wife contributed approximately \$144,000 of her inheritance from proceeds after sale of her father's farm. The parties per the stipulation have paid three (3) months advance on the mortgage payment. The expenses associated with this property to include the mortgage, real estate taxes and any other expense necessary to keep up the property or to make it ready for sale shall be born equally by the parties until the property is

sold. If one party pays the entire expense or more than their share as set out herein, at the time of sale they will be reimbursed from the share of the other party prior to that party receiving any of their share, if any is available. The net proceeds after deduction of all expenses associated with sale to include a real estate commission or expense of a commissioner for sale shall be divided equally subject to the reimbursement noted herein.

(52) Accordingly since the parties do not seem to be of one mind on how to sell these properties, it is the intention of this Court to appoint a commissioner to sell the properties named for the best price available, in a reasonable amount of time. Any costs associated with the commissioner shall be paid equally by the parties if there are insufficient proceeds from the sale of the property. If there is sufficient equity to pay the commissioner, said costs shall be taken off the top before division between the parties of any balance. If the Innsbrook property has not sold, the commissioner's expense shall be deferred to be paid from the Innsbrook property, if there is not enough equity from the sale of other properties.

(53) 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.

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

A.	8018 V. Dr.	0
B.	5117 W	\$ 9
C.	2288 I	\$ 30
D.	6424 M. Ct.	\$ 0
E.	8039 V.	\$ 6
F.	8037 V.	\$ 3
G.	438 W. Oak (Ill.) (L.L. C.)	\$ 3
H.	2006 Subaru (W)	\$ 1
I.	2007 Honda (H)	\$ 1
J.	Boat (donated) (H)	\$ 1,000
K.	US Bank # (H) personal	varies
L.	US Bank (H) # Business	varies
M.	US Bank (H) Escrow (not marital)	varies

N.	US Bank (H) RALO rental account	varies
O.	US Bank # (Jt)	0
P.	PNC # (W)	\$ varies
Q.	Household Goods (W)	\$ 1,000
R.	Household Goods (H)	\$ 5,000
S.	Law Practice (marital approx. receivables)	\$ 2
T.	Harper Judgment	\$ unknown
U.	Pershing SEP (H) marital portion	\$ 0
V.	McMurry TIAA (401) (W)	\$ 4,
W.	Prudential IRA (W)	\$ 5,
W.	Real Estate Commission (earned)	\$ 10,
X.	RALCO Properties L.L.C.	none

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

- A. Separate Property of Wife
 - None
- B. Separate Property of Husband
 - 1. IRA as Beneficiary of Stanley Cohen deceased.
 - 2. Balance of SEP

(56) 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 child. There is no specific rule as to the relative weight to be afforded to any on 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.

(57) Each party has engaged in marital misconduct as noted above.

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

(58) 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.

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

A.	8018 V. Dr.	0
B.	2007 Honda (H)	\$ 10,000
C.	Boat (donated) (H)	\$ 1,000
D.	US Bank #(H) personal	varies
E.	US Bank (H) # Business	varies
F.	US Bank (H) Escrow (not marital)	varies
G.	US Bank (H) RALO rental account	varies
H.	Household Goods (H)	\$ 5,000
I.	Law Practice (approx. receivables)	unknown
J.	½ Harper Judgment	\$ unknown
K.	Pershing SEP (H) marital portion	\$ 0
L.	Livorsi Real Estate Commission (earned)	\$ 10,000
M.	Husbands Household goods	unknown
N.	Properties L.L.C.	none

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

A.	6424 M. Ct.	0
B.	8039 V.	\$ 6
C.	438 W. Oak (Ill.) (L.L. C.)	\$ 3
D.	2006 Subaru (W)	\$ 1
E.	US Bank # (Jt)	0
F.	PNC # (W)	\$ varies
G.	Household Goods (W)	\$ 1,000
H.	½ Harper Judgment	\$ unknown
I.	MacMaury TIAA (401) (W)	\$ 4,
J.	Prudential IRA (W)	\$ 5,
K.	Wife's Household goods	unknown

L. Wife is also awarded the property at 8037 V. on the condition that she shall be required to refinance said property into her own name at her own cost within 120 days of this judgment becoming final, and pay to Husband the sum of \$17,500. If said property can not be refinanced within said time limit the commissioner named herein shall take action to sell the property immediately. The mortgage after the application of the two months paid for by the stipulation of December 5, 2011 and until refinanced shall be Wife's responsibility. If she can not refinance or determines not to refinance then the expenses after the decision not to refinance or the inability to refinance, associated with this property to include the mortgage, fees, real estate taxes and any other expense necessary to keep up the home until sale will be born equally be the parties until the property is sold. She shall immediately notify the Commissioner

named herein of her inability to refinance or her determination not to refinance and the Commissioner shall immediately take over the property and place it up for sale. If one party pays the entire expense or more than their share as set out herein, then at the time of sale they will be reimbursed from the share of the other party prior to that party receiving any of their share, if any is available. The net proceeds after deduction of all expenses associated with sale to include a real estate commission or expense of a commissioner for sale shall then be divided equally subject to the reimbursement noted herein.

(61) The following debts and liabilities are owed by the parties to the following creditors:

A.	8018 V. Dr. (GMAC first)	\$ 3
B.	8018 V. Dr. (US Bank Home Equity)	\$ 1
C.	5117 W (CitiMortgage)	\$ 7
D.	2288 I (Wells Fargo)	\$ 2
E.	6424 M. Ct. (GMAC)	\$ 1
F.	8039 V. (Bank of America)	\$ 1
G.	8037 V. (GMAC)	\$ 1
H.	Discover (Jt) #	\$ 15
J.	US Bank Visa (Jt)	\$ 20
K.	Chase (H)	\$ 17
L.	Sam's (H)	\$ 11
M.	Capital One M/C # (W)	\$ 2
N.	Andrew Hagene (W)	\$ 26
O.	Nissenbaum (W)	\$ 3
P.	Zerman Mogerman (W)	\$ 7
R.	Mercy Clinic (W)	\$ 62
S.	Holly Ellis DDS (W)	\$ 1,625
T.	Ameren Ill.	\$ paid
U.	Wolkins Dental (H)	\$ 295
V.	Wolkins Dental (W)	\$ 820
W.	Rodger Davis Construction	uncertain
X.	Nemonowske Suit	uncertain
Y.	Jerry Williams Suit	uncertain
Z.	Joe Green Attorney (H)	\$ 4
AA.	Livorsi debt (H)	\$ 2
BB.	Orthodontic Consultants (Jt)	\$ 1
CC.	IAssessment (2010)	\$ 2
DD.	Waterman Condo Fee& special assessment	\$ 5
EE.	Euclid Chiropractic	\$ 395

(62) 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.	8018 V. Dr. (first)	\$3
B.	8018 V. Dr. (Home Equity)	\$1
C.	US Bank Visa (Jt)	\$ 20
D.	Chase (H)	\$ 17
E.	Sam's (H)	\$ 11
F.	Wolkins Dental (H)	\$ 295
G.	½ Rodger Davis Construction	uncertain
H.	½ Nemonowske Suit	uncertain
I.	1/2 Jerry Williams Suit	uncertain
J.	Joe Green Attorney (H)	\$ 4
K.	Livorsi debt (H)	\$ 2
L.	½ Orthodontic Consultants (Jt)	\$ 1,312
M.	Euclid Chiropractic	\$ 395

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

A.	6424 M. Ct.	\$ 1
B.	8039 V.	\$ 1
C.	Discover	\$ 10
D.	Capital One M/C # (W)	\$ 2
E.	Andrew Hagene (W)	\$ 26
F.	Nissenbaum (W)	\$ 3
G.	Zerman Mogerman (W)	\$ 7
H.	Mercy Clinic (W)	\$ 62
I.	Holly Ellis DDS (W)	\$ 1
J.	Ameren III.	\$ paid
K.	Wolkins Dental (W)	\$ 820
L.	½ Rodger Davis Construction	uncertain
M.	½ Nemonowske Suit	uncertain
N.	½ Jerry Williams Suit	uncertain
O.	Orthodontic Consultants (Jt)	\$ 1
P.	8037 V. under the terms of paragraph 60L above.	

(64) Amounts to be paid from equity at the time of sale:

A.	Innsbrook Assessment (2010)	\$ 2
B.	Waterman Condo Fee& special assessment	\$ 5

Maintenance

(65) Neither party has requested maintenance, one from the other; therefore, no maintenance shall be awarded.

Child Support

THE COURT FINDS AS FOLLOWS:

(66) 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.

(67) A health benefit plan is available at a cost of \$367 per month through Wife's employer.

(68) The Court will consider R's softball abilities as an extraordinary expense. According to Father the average cost has been \$295 per month which the Court will include in the Form 14 calculations pursuant to Missouri Supreme Court Rule 88.

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

(70) The liability of the parties to maintain health and dental insurance, or the payment of medical or dental expenses of said minor child, is authorized by RSMo. Section 454.600 et seq. The Court is required to include a specific written Parenting Plan B pursuant to RSMo. Section 452.310.9 which is to include child support and related issues. The said Parenting Plan B is attached hereto as part of Exhibit 1 and is incorporated herein by reference.

(71) The question is how to calculate child support in this case. Based upon the provisions in the Parenting Plan A the Court considers the credit to be allocated to Mother for line 11 to be 34%. The Court understands that it can go as high as 50% but chooses not to do so.

However, the Court has attached a 50% chart as well which would in effect be a negative amount because of the cost of insurance. This is true even when we include the \$295 per month for sports. The Court finds this amount to be unjust and inappropriate. Mother and daughter have a relationship which should allow for the two to pick out school clothes and other clothing and shoes. Accordingly the Court will order no child support to be paid by Mother to father but Mother will be required to purchase for R all of her back to school clothes, one pair of shoes each year in September and one outerwear garment such as a coat.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that support of the minor child born of the marriage shall be as set forth in the Parenting Plan B attached hereto as part of 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:

(72) 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 both parties for attorneys' fees and the evidence which has been adduced thereon.

(73) The GAL has incurred fees which this Court finds to be reasonable. After deducting the fees already paid there remains due and owing the sum of \$5,500. The Court finds that the previous division of payments shall not be readjusted. The parties per their stipulation have paid the GAL the balance out of the Husband's SEP account.

JUDGMENT/ORDER

(1) **IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** by the Court that the marriage of A. C. and L. C. is dissolved.

(2) Neither party is awarded maintenance from the other party; said order is not subject to modification.

(3) Custody and visitation of the minor child R shall be as set forth in the Parenting Plan A attached hereto as Enclosure (1) and incorporated herein by reference.

(4) No child support will be paid one to the other. However, Mother is ordered to provide health insurance through her employment or an equivalent policy as the one now in place should insurance no longer be available. Mother shall be required to purchase for R all of her back to school clothes, one pair of shoes each year in September and one outerwear garment such as a coat. Presumed Child Support Amounts – Calculation Worksheets) are attached hereto as Exhibit (2). (Court finds that the Form 14 amount, after consideration of all relevant factors, is unjust or inappropriate.)

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

(6) Each party shall receive as their separate property, free and clear from any claims of the other, the property as listed in paragraph 55.

(7) All right, title and interest in the parties marital property, listed with their approximate net equity values if known, are awarded and vested in the respective parties as set forth in paragraphs 59 and 60 above and subject to any conditions set out therein.

(8) The parcels of real estate shall be sold under the terms of sale as set forth in paragraphs 49 and 51 and more specifically as set forth in Exhibit 4 attached hereto and

SEALED. If the Property is not sold in accordance with the terms of Exhibit 4 or the parties are not able to reach a separate written agreement regarding sale then the Court appoints James Whitney to act as Commissioner for the sale of said parcels and for the sale of any other parcels which may be required to be sold pursuant to the terms and conditions set forth in Exhibit 5 attached herein and which shall be sealed. Said Commissioner shall have the power to take all action necessary to effectuate the sale after consultation with the parties to include the employment of a real estate agent, determination of sales price and to execute any and all necessary documents. His fees shall be approved by the Court and paid from the proceeds of each sale or of one sale if appropriate and approved by the Court.

(9) Except as may be otherwise expressly provided in paragraphs “59” and/or “60” 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.

(10) 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. As to any real estate awarded to one party or the other, each party after the payment of any mortgage payments associated with said property under the terms of the December 5th, 2011 stipulation, shall the responsibility of the to whom the property has been awarded well as any other debt associated with said property not otherwise identified herein. Each party shall use his or her best efforts to refinance the loans on said properties he or she is awarded within six (6) months from the date this judgment becomes final. If either party is unable to refinance any of

the loans he or she is obligated to pay herein, then the party responsible for debt shall hold the other party harmless from said debt and shall indemnify the other part for the same, including any reasonable attorney's fees incurred by the party in the event of a default on said loan(s).

(11) 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 child; 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 issues of attorney fees and expenses.

(12) As an additional share of marital property, Wife shall pay to Husband the sum of \$10,000 either out of her share of the Innsbrook sale proceeds or a direct payment on December 31, 2012 whichever comes first. Subject judgment shall be a lien on the Innsbrook residence located at 2288 Innsbrook.

(13) The debts of the marriage shall be the responsibility of the respective party set forth in paragraphs 62 and 63 above.

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

(15) No award of attorney fees is awarded to either party and each shall be responsible for the payment of their respective attorney fees. No further award of GAL fees is necessary because of the payment of the balance per the stipulation.

(16) The costs of Court shall be paid from the cost deposit previously posted except that the costs of depositions and Trial subpoena shall not be included in costs.

(17) All other claims arising out of the claims by Wife for Breach of Fiduciary Duty, Legal Malpractice and/or Breach of Constructive Trust against Husband are DENIED for failure to prove said claim.

(18) 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 assuming the parties shall post the costs within 10 days after the notice of fees has been mailed to the parties.

SO ORDERED:

JUDGE