

STATE OF NORTH CAROLINA
HARNETT COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 09 CVD 9999

JOY [REDACTED],
Plaintiff,

Vs.

ALIMONY ORDER

RANDY [REDACTED],
Defendant.

AOC CODE: ALIM-GW

THIS CAUSE came on to be heard during the January 11, 2010 term of Civil District Domestic Court of Harnett County before the Honorable [REDACTED], upon the Plaintiff's claim for alimony. The Plaintiff was present and represented by counsel and the Defendant was present and represented by counsel. Both parties presented evidence, testified, called witnesses to testify, and submitted exhibits into evidence. Upon conclusion and after consideration of the evidence, and from the record, the Court makes the following:

FINDINGS OF FACTS

1. Plaintiff is a resident of the State of North Carolina, County of Harnett, and has been a resident of the state of North Carolina for at least six months next preceding the institution of this action.
2. Defendant is a resident of the State of North Carolina, County of Harnett, and has been a resident of the state of North Carolina for more than six months next preceding the institution of this action.
3. Plaintiff and Defendant were married to each other on December 31, 1980. The parties separated from each other on or about August 20, 2009. The parties were divorced on November 8, 2010. There were no minor children born of the marriage.
4. All parties are properly before the Court and the Court has jurisdiction of the parties and the subject matter of this action.
5. The Plaintiff brought this action by filing a complaint on or about September 12, 2009 seeking, among other things, alimony. Plaintiff alleged that she was and is a dependent spouse as defined by NCGS 50-16.1A(2) and that the Defendant was and is a supporting spouse as defined by NCGS 50-16.1A(5). The Defendant filed an answer denying these allegations.
6. The Court has considered the financial needs of the parties, the accustomed standard of living of the parties prior to their separation, the present employment income and other recurring earnings of each party from any source, the income earning abilities of the parties, the separate and marital debt service obligations of the parties, those expenses reasonable necessary to

support each of the parties, and each parties' respective legal obligation to support any other person.

7. During the marriage, the parties owned and operated a family business which consisted of operating mobile home parks and renting out mobile homes to tenants.

8. Subsequent to the separation, the Defendant has continued to operate, maintain and have exclusive control over this family business.

9. The Plaintiff filed and presented to the Court a financial affidavit, which was received in evidence. This affidavit listed financial expenses of \$3,265.00 per month in order for the Plaintiff to subsist at or near the same standard of living which the parties had enjoyed during the last several years of marriage and prior to separation. The Court disallowed, as unreasonable and unnecessary, Plaintiff's voluntary expenses of \$200 per month in church donations and \$200 per month that she provides to her son from a prior marriage. The Plaintiff's reasonable monthly needs, after these disallowances, are \$2,865.00.

10. The Defendant filed and presented to the Court a financial affidavit, which was received in evidence. This affidavit listed financial expenses of \$3,400.00 per month. The Court disallowed, as unreasonable and unnecessary, Defendant's voluntary expenses of \$250 per month in church donations, \$600 per month that he pays for a second vehicle (a Jaguar convertible), and \$123 of the \$223 per month that he contends he needs for gifts to family members. The Defendant's reasonable monthly needs, after these disallowances, are \$2,427.00.

11. The Plaintiff is a dependent spouse, in that she is and has been actually substantially dependent upon Defendant for her maintenance and support, and she is in need of support and maintenance from Defendant. She is 63 years of age, with a few health problems that cause some work-related restrictions.

12. The Defendant is a supporting spouse, in that he is the person the Plaintiff is actually substantial dependent upon for her maintenance and support, and in that he is the person upon whom the Plaintiff is in need of maintenance and support. He is 58 years old and in reasonably good health.

13. The Plaintiff has not worked regularly outside the home, but is currently seeking employment, though she recognizes the limitations she faces as a result of her age and health problems. The Plaintiff worked in the family business during at least the last ten years of the marriage. She was also a housewife for a good portion of the marriage.

14. The Plaintiff has no current monthly income. She does not have a separate estate that produces any significant income, although she does have \$5,000 in a Certificate of Deposit and approximately \$540 in a checking account.

15. The Defendant has continued to operate and control the family business and has been the person collecting the rent and handling maintenance issues. The Defendant contends that he earns a gross income of about \$10,000 per month from this business.

16. There are rental units and lots which have the potential to provide at least \$17,675.00 of monthly rental income. The Court, based on expert testimony, finds that a reasonable occupancy rate for these rental units is 80% and, after considering the reasonable occupancy rate and collection rate, finds that the Defendant has a reasonable monthly gross income of at least \$14,440.00. There is \$7,000.00 of reasonable monthly business related expenses. The net income from this business operation, prior to the application of a 33% tax rate (Defendant's customary tax bracket) is \$7,140.00 per month.

17. The Court has reviewed and considered the most recent tax return available which was the return for the year 2008 and finds that the parties adjusted gross income was \$88,634.00; however a large portion calculated in determining the adjusted gross income was accelerated depreciation, which is a not an actual monthly or yearly outlay of cash, and which this Court discounted. The net income after deduction of 33% for taxes is \$4,784.00. The Defendant's reasonable monthly expenses are \$2,427.00. This results in the sum of at least \$2,357.00 being available to the Defendant for the payment of alimony.

18. Defendant has a separate liquid estate in the approximate amount of \$34,000, which is held by him in a brokerage account in his name.

19. The Court has considered the evidence presented by the parties regarding the tax consequences to the Plaintiff of receiving alimony, and the tax consequences to the Defendant of paying alimony to Plaintiff.

20. The Court finds that an appropriate gross amount for the Defendant to pay to the Plaintiff as alimony is the sum of \$2,000.00 per month. This sum is reasonable and necessary to provide the Plaintiff with the funds needed to meet her reasonable needs according to her accustomed standard of living.

21. In that this was a marriage of about 30 years, and considering that the Plaintiff is now 63 years old with little career history and little job training, and that Plaintiff has some health-related work limitations, it is reasonable and appropriate that alimony continue until the death of either party or the Plaintiff's remarriage or cohabitation as set forth in NCGS 50-16.9, whichever should first occur.

22. The Defendant has the ability to pay the support ordered herein. Based upon and after giving due consideration to the factors specified in the statute, the Court concludes that the resources of the Plaintiff are not adequate to meet her reasonable needs.

23. Plaintiff presented evidence that the Defendant committed marital misconduct by abandoning the Plaintiff and moving from the marital residence without her consent and against her wishes, and by failing thereafter to provide her with adequate financial support.

24. Defendant presented evidence that his move out of the marital residence was caused in large part by years of constant nagging by the Plaintiff, which he alleges constitutes indignities toward him by the Plaintiff.

25. The court considered this evidence, but determined that none of these acts of alleged marital misconduct would warrant an adjustment to either the amount of or duration of the alimony award set forth herein.

CONCLUSIONS OF LAW

1. All parties are properly before the Court and the Court has jurisdiction of the parties and the subject matter of this action.
2. The parties are divorced, and Plaintiff's alimony claim was filed prior to their divorce.
3. The Plaintiff is a dependent spouse.
4. The Defendant is a supporting spouse.
5. The Plaintiff is in need of and entitled to an award of alimony from the Defendant.
6. The Defendant has the means and ability to pay alimony as set forth herein after due consideration to the economic factors set forth in NCGS 50-16.3A(b) until the death of either party or the Plaintiff's remarriage or cohabitation as set forth in NCGS 50-16.9, whichever should first occur.
7. Any finding of fact which would be an appropriate Conclusion of Law is incorporated herein by reference.

It is, THEREFORE, ORDERED ADJUDGED, AND DECREED as follows:

1. Beginning on April 1, 2011, and on or before the first day of each month thereafter, the Defendant shall pay the sum of \$2,000.00 each month to the Plaintiff as alimony, such alimony to terminate upon the earliest to occur of the following: the death of either party, or the Plaintiff's remarriage or cohabitation as set forth in NCGS 50-16.9.
2. The court retains jurisdiction over this matter pursuant to NCGS 50-16.9 and other relevant statutes.

Entered in open court on the 11th day of January 2011, and signed on this the 8th day of March, 2011.

Honorable [REDACTED]
District Court Judge Presiding