

FILE NO. _____

HEARING DATE(S): April 10, 2023
COURTROOM: _____

WILMA LEE MAGNOLIA,
Plaintiff Wife

vs.

HENRY MAGNOLIA,
Defendant Husband

ALIMONY:

FINDINGS OF FACT TO BE INCLUDED IN ORDER:

PERSONAL AND SUBJECT MATTER JURISDICTION:

- Recite Service of Process
- Recite Residence of Parties (at time of filing of pleadings and time of hearing)
- Include PSS and Alimony requested in Complaint along with Divorce
- Include Alimony requested before entry of divorce

DATE OF MARRIAGE AND SEPARATION:

DOM: July 4, 2001
DOS: December 1, 2021

DATE OF DIVORCE: _____

At the hearing, the Court received evidence of income as follows [these are examples of what you may receive as income):

WIFE:

1. Financial Affidavit [Wife/Husband Exhibit #_____];
2. Pay Stubs from 01/01/2023 - 04/15/2023 [Wife/Husband Exhibit #_____];
3. 2022 Tax Return [Wife/Husband Exhibit #_____];
4. Child Support Order [Wife/Husband Exhibit #_____]

HUSBAND:

1. Financial Affidavit [Wife/Husband Exhibit #_____];
2. Pay Stubs from 01/01/2023 - 04/15/2023 [Wife/Husband Exhibit #_____];
3. 2022 Tax Return [Wife/Husband Exhibit #_____];
4. Child Support Order [Wife/Husband Exhibit #_____]

THIS IS HOW I WOULD DECIDE THIS CASE:
FACT PATTERN INCLUDING ALIMONY AND
EQUITABLE DISTRIBUTION SCENARIOS

INCOME, EXPENSES, DEBT PAYMENTS:

WIFE:

1.	GROSS INCOME:	\$4,000.00	
11.	DEDUCTIONS:	\$	
111.	NET INCOME:	\$3,150.00	
IV.	SHARED FAMILY EXPENSES:	\$3,012.50 ¹	
V.	INDIVIDUAL EXPENSES:	\$1,907.00	
VI.	CHILDREN EXPENSES:	<u>\$.00</u>	
VII.	TOTAL EXPENSES:	\$4,919.50	
VIII.	DEBT PAYMENTS:	\$ 15.00 ²	
IX.	TOTAL EXPENSES + DEBT:	<u>\$4,934.50</u>	
X.	NET INCOME MINUS EXPENSES + DEBT TOTAL:	(\$1,784.50)	
XI.	CHILD SUPPORT (AS PAYOR):	<u>\$.00</u>	
XII.	DISPOSABLE INCOME:	(\$1,784.50)	DEFICIT

¹ SHARED FAMILY EXPENSES: I WOULD ADDRESS THE FOLLOWING SHARED EXPENSES FOR WIFE AS FOLLOWS [*Robinson v. Robinson*, 707 S.E.2d 785 (N.C. App. 2011)] :

- a. ELECTRICITY, HEAT, WATER, CABLE TV, FOOD AND SUPPLIES, HOUSE AND YARD MAINTENANCE: **REDUCED ALL BY 50%** - ACCOUNT FOR CHILDREN'S SHARE THAT CONTRIBUTES TO THESE EXPENSES;
- b. MORTGAGE: NOT REDUCED BECAUSE WIFE OBLIGATED TO PAY THIS AMOUNT WHETHER CHILDREN LIVING WITH HER OR NOT;
- c. TELEPHONE: NOT REDUCED UNLESS EVIDENCE RECEIVED THAT A PORTION APPLIES TO CHILDREN;
- d. CAR PAYMENT & GASOLINE EXPENSES: NOT REDUCED UNLESS ANY AMOUNT ATTRIBUTED TO CHILDREN;
- e. INTERNET: NOT REDUCED BECAUSE WIFE WOULD PAY THIS AMOUNT REGARDLESS OF CHILDREN RESIDING IN THE HOME.

² WIFE PAYS \$15 PER MONTH TOWARDS A CREDIT CARD DEBT WITH A BALANCE OWED OF \$2,500.

HUSBAND:

1.	GROSS INCOME:	\$8,333.00
11.	DEDUCTIONS:	\$
111.	NET INCOME:	\$6,083.00

IV. SHARED FAMILY EXPENSES: \$2,201.00³

V. INDIVIDUAL EXPENSES: \$1,713.00⁴

VI. CHILDREN EXPENSES: \$.00

VII. TOTAL EXPENSES: \$3,914.00

VIII. DEBT PAYMENTS: \$ 77.50⁵

IX. TOTAL EXPENSES + DEBT: \$3,991.50

³ SHARED FAMILY EXPENSES: I WOULD ADDRESS THE FOLLOWING SHARED EXPENSES FOR HUSBAND AS FOLLOWS:

- a. HOUSE PAYMENT, ELECTRICITY, HEAT, WATER, CABLE TV, HOUSE AND YARD MAINTENANCE, INTERNET, SECURITY: **REDUCE ALL BY 50%** - SPLIT EQUALLY BETWEEN HUSBAND & EMPLOYED GIRLFRIEND;
- b. TELEPHONE: NOT REDUCED UNLESS EVIDENCE RECEIVED THAT A PORTION APPLIES TO GIRLFRIEND;
- c. FOOD & SUPPLIES: \$350 (SAME AMOUNT ATTRIBUTED TO WIFE)
- d. CAR PAYMENT & GASOLINE EXPENSES: NOT REDUCED UNLESS ANY AMOUNT ATTRIBUTED TO GIRLFRIEND.

⁴ Re: Husband's Individual Expenses:

- a. Medical/Dental/Vision Insurance: Husband's \$450 includes \$250 that he pays for the children. Husband received credit for that \$250 expense in the child support computation; Husband will receive credit for his child support obligation when computing alimony. Including the \$250 for the children as part of Husband's Individual Expenses would be giving Husband double credit for the same expense;
- b. Husband would generally claim his 401k contribution as an Individual Expense (or it may be listed as a deduction). He has contributed \$800 in 16 months which equals \$50/month. However, this is not listed as an expense because if it were listed as an expense, I would strike it since Wife is not able to contribute to her 401K [and it would increase his disposable income].

⁵ Husband is paying the following monthly debt expenses: \$62.50 – IRS with balance of \$17,000; \$15-credit card with balance of \$1000.

X.	NET INCOME MINUS [EXPENSES +DEBT] TOTAL:	\$2,091.50
XI.	CHILD SUPPORT (AS PAYOR):	<u>\$1,275.00</u>
XII.	DISPOSABLE INCOME:	\$ 816.50

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**STATUTORY FACTORS CONSIDERED BY THE COURT PURSUANT TO
NCGS 50-16.1A(3) and NCGS 50-16.3A:**

[When applicable, I reference exhibits [i.e., Wife/Husband Exhibit #_____] when making findings related to the statutory factors]

**1. MARITAL MISCONDUCT [pursuant to NCGS 50-16.1A(3):
[of either spouse during marriage and prior to separation] :**

a. ILLICIT SEXUAL BEHAVIOR:

Wife:

No evidence presented that Wife engaged in such behavior.

Husband:

Sufficient evidence presented that Husband engaged in illicit sexual behavior during the marriage and prior to separation based upon:

3 months prior to DOS, Husband withdrew \$15,000 from his 401K to spend on a Caribbean vacation that he took with a female friend; this was the cause of the parties separating. Opportunity and inclination existed for Husband to engage in illicit sexual conduct. Additionally, if Husband's current live-in girlfriend is the same female that he took on vacation, then that information corroborates and supports the evidence that he engaged in illicit sexual conduct during the marriage.

**b. INVOLUNTARY SEPARATION OF SPOUSES DUE TO CRIMINAL ACT
COMMITTED PRIOR TO PROCEEDING:**

No evidence presented

c. MALICIOUS TURNING OUT-OF-DOORS OF OTHER SPOUSE:

No evidence presented

**d. CRUEL OR BARBAROUS TREATMENT ENDANGERING LIFE OF
OTHER SPOUSE: -**

No evidence presented

e. **INDIGNITIES RENDERING CONDITION OF OTHER SPOUSE INTOLERABLE AND LIFE BURDENSOME:**

No evidence presented that either party engaged in repeated and persistent conduct over a period of time during the marriage rendering one's condition intolerable and making life burdensome.

f. **RECKLESS SPENDING OF INCOME OF EITHER PARTY, OR DESTRUCTION, WASTE, DIVERSION, OR CONCEALMENT OF ASSETS:**

Reckless Spending:

Wife:

No evidence presented that Wife engaged in reckless spending.

Husband:

He withdrew \$15,000 from his 401K account to travel with another female to the Caribbean for a vacation which ultimately resulted in the parties separation.

Concealment:

Wife:

No evidence presented that Wife engaged in such behavior.

Husband:

No evidence presented that during the marriage Husband engaged in such behavior (however, just noting that Wife observed him removing farm equipment from their barn after DOS).

g. **EXCESSIVE USE OF ALCOHOL OR DRUGS SO AS TO RENDER CONDITION OF OTHER SPOUSE INTOLERABLE AND LIFE BURDENSOME:**

No evidence presented that either party engaged in this behavior.

h. **WILLFUL FAILURE TO PROVIDE NECESSARY SUBSISTENCE ACCORDING TO ONE'S MEANS AND CONDITION SO AS TO RENDER THE CONDITION OF THE OTHER SPOUSE INTOLERABLE AND LIFE BURDENSOME:**

No evidence of this because Husband was required to pay PSS pursuant to an order entered twelve months ago. Husband was ordered to pay the mortgage payment on the marital residence that Wife and children continue to occupy.

2. **Relative earnings and earning capacities of spouses:**

Wife:

She has been employed full-time for the past three [3] months after being a stay-at-home mother for the majority of the marriage. She is earning a gross income of \$48,000 per year and a monthly net income of \$3,150. Wife's salary is aligned with her education, experience and skills.

Husband:

He is earning appropriate income relative to his education, experience and skills as a manager for a local business. He was employed throughout the marriage and he is earning a gross income of \$100,000 per year and a monthly net income of \$6,083.

3. **Ages and the physical, mental, and emotional condition of spouses:**

Wife:

Age: 45 years of age

Physical Health: No concerns

Mental Health: No concerns

Husband:

Age: 49 years of age

Physical Health: No concerns

Mental Health: No concerns

4. **Amount and sources of earned and unearned income of both, including earnings, dividends, benefits {medical, retirement, insurance, social security, etc.):**

Wife:

See Financial Affidavit information above.

Current monthly gross income is \$4,000 and monthly net income is \$3,150.

No evidence that Wife is receiving any other income.

Husband:

See Financial Affidavit information above.

Current monthly gross income is \$8,333 and monthly net income is \$6,083.

He owns 25% of the stock in Super Sewing, Inc.; however, there is insufficient evidence regarding the amount of income received [if any] from this source.

There is no evidence that Husband is receiving any other income.

5. **Duration of marriage:**

20 years

6. **Contribution by one spouse to education, training, or increased earning power of other spouse:**

Wife:

As a result of Wife either being a stay-at-home mother or working part-time only during the marriage, she assumed the role as primary caretaker of the minor children and was primarily responsible for the everyday obligations of the home. Her contribution to the family obligations allowed Husband to engage in consistent full-time employment with opportunities for advancement in his employment and increased earnings.

Husband:

No evidence presented that Husband contributed to Wife's education, training or Increased earning power.

7. **Extent to which earning power, expenses or financial obligations of spouse will be affected by serving as custodian of minor child:**

Wife:

She is the primary custodian of the minor children who are ages 13 and 15. Wife currently receives \$1,275 per month for child support from Husband. There is insufficient evidence that Wife has a monthly deficit regarding expenses related to the children that exceed her monthly child support obligation of \$732 (see Worksheet A).

Husband:

He is not the primary custodian of the minor children, but regardless, there is insufficient evidence that Husband has a monthly deficit regarding expenses related to the children that exceed his monthly child support obligation of \$1,275 (see Worksheet A).

8. **Standard of living established during marriage:**

The parties did not struggle financially during their marriage and they enjoyed a comfortable middleclass lifestyle. Most summers they were able to take vacations at the beach or in the mountains.

9. Relative education of spouses and time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet her reasonable economic needs:

Wife:

She has an undergraduate degree [ED scenario indicates that she has a BA degree from a liberal arts college and a nursing degree]. She was employed full-time from when the parties were married until their second child was born. Upon the birth of the second child, Wife did not work for six [6] years. Wife began working part-time when the children were in elementary school. It appears that following DOS, Wife engaged in education and/or training that would enable her to seek meaningful employment since she has been gainfully employed full-time for the past three [3] months.

Husband:

Not applicable since he is not the moving party for alimony.

10. Relative assets and liabilities of spouses and relative debt service requirements of spouse, including legal obligations of support:

See Financial Affidavit information above for both parties.

11. Property brought to the marriage by either spouse:

Wife:

No evidence presented that Wife brought property to the marriage.

Husband:

He built the residence now known as the “marital property” prior to the parties getting married.

12. Contribution of a spouse as homemaker:

Wife:

As a result of Wife either being a stay-at-home mother or working part-time only during the marriage, she assumed the role as primary caretaker of the minor children and was primarily responsible for the everyday obligations of the home. Her contribution to the family obligations allowed Husband to engage in consistent full-time employment with opportunities for advancement in his employment and increased earnings.

Husband:

He was not a homemaker during the marriage.

13. **Relative needs of the spouses:**

See Financial Affidavit information above for both parties.

14. **Federal, State and local tax ramifications of the alimony award:**

No evidence presented requiring the Court to consider any tax ramifications.

15. **Any other factor relating to the economic circumstances of the Parties that the Court finds to be just and proper:**

Wife:

On _____, an Equitable Distribution Order was entered whereby Wife received:

- The marital residence which has a fair market value of \$210,000;
- The mortgage on the marital residence which has a balance of \$13,000;
- A van;
- Her 401K retirement account valued at \$21,000

Husband:

On _____, an Equitable Distribution Order was entered whereby Husband received:

- A vehicle that is newer and more valuable than Wife's van;
- His 401K retirement account valued at \$51,000

Husband has paid spousal support [PSS] to Wife in the amount of \$1,700 for the past twelve [12] months pursuant to a court order⁶. There is no evidence that Husband has failed to timely pay this monthly obligation.

16. **Fact that income received by either party was previously considered by the court in determining value of a marital or divisible asset in ED of parties marital or divisible property:**

This was not a consideration when the Equitable Distribution Order was entered on _____.

⁶ The Post Separation Support Order entered on _____ awarded Wife spousal support in the amount of \$1,700. Husband was ordered to pay the monthly mortgage payment in the amount of \$1,700 on the marital residence in lieu of making any direct payments to Wife.

ORDER MUST ALSO INCLUDE THESE FINDINGS:

Wife is entitled to Alimony.

Wife is a Dependent Spouse because she is actually substantially dependent on Husbands since she is without means for providing for her accustomed standard of living during the marriage.

Wife is substantially in need of maintenance and support from Husband because her monthly expenses exceed her monthly income for a monthly deficit of (\$1,784.50).

Husband is a supporting spouse because he has a monthly surplus of income over his expenses in the amount of \$816.50.

An award of alimony is equitable after considering all relevant factors.

IF ARREARS NOT ADDRESSED IN THE PSS ORDER, THEN INCLUDE:

It is fair and equitable that the Court relate the alimony claim back to the filing of the action which is fourteen [14] months based upon the following:

- The evidence received as it related to the statutory factors for alimony;
- Wife was always a dependent spouse during the marriage and Husband was always financially responsible for their monthly expenses;
- Husband did not pay any spousal support for two [2] months after DOS

Husband owes a total of \$11,431 [$\816.50×14 months] in alimony arrears, which is from filing of the action to DOT.

Husband paid monthly spousal support in the amount of \$1,700 for the mortgage on the marital property for a total of twelve (12) months after DOS.

Husband paid a total of \$20,400 [$1,700 \times 12$ months] in post separation support over the past twelve (12) months.

Husband paid \$8,969 [$\$20,400 - \$11,431$] more than what the alimony award would require of him since filing of the action by Wife [14 months ago].

It would not be fair and equitable for the Court to credit Husband with any post separation support overpayments [\$8,969] made to Wife from filing of the action through DOT due to Husband's marital misconduct, namely illicit sexual conduct.

It is fair and equitable to require Husband to pay alimony for ten (10) years due to the length of the marriage, the ages of the parties, the parties expenses and needs, and the statutory factors considered.

CONCLUSIONS:

1. Court has jurisdiction over the Parties and subject matter in this case.
2. Wife is Actually Substantially Dependent and Substantially in Need (although both prongs are not necessary) based upon Wife having a monthly deficit of income over expenses in the amount of (\$1,784.50).
3. Husband is a Supporting Spouse and has the ability to pay alimony in the designated amount of \$816.50 because Husband has a monthly surplus of income over expenses in the amount of \$816.50.
4. An award of alimony is equitable after considering all relevant factors.
5. The amount of alimony awarded is fair and just to all parties.
6. It is fair and equitable for the Court to award alimony from the month following the filing of the action, which is fourteen (14) months from DOT.
7. It is fair and equitable to give Husband a credit towards alimony arrears since he paid post separation support payments for twelve (12) months after DOS.
8. It is not fair and equitable to require Wife to reimburse Husband for any spousal support overpayments made by Husband from filing of the action to DOT due to Husband's marital misconduct.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court hereby awards alimony to Wife in the amount of \$816.50 per month, effective May 1, 2023.
2. Husband shall submit the alimony payments directly to Wife on or before the 1st day of each month. The payment shall be in the form of a certified check or money order.
3. Alimony shall terminate upon the occurrence of any one of the following:
 - Death of Wife, or
 - Death of Husband; or
 - Wife remarries; or
 - Wife's cohabitation with romantic partner; or
 - Upon last payment being paid January 1, 2031[10 years=120 months minus 14 months = 106 months total from May 1, 2023]
4. The parties are subject to the contempt powers of the Court for failure to comply with this Court Order.