

Sample Orders

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NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 03 CVD 12351

ROD [REDACTED],
Plaintiff,

v.

KELLE [REDACTED]
Defendant.

ORDER FOR CHILD SUPPORT

THIS CAUSE came on for hearing on Plaintiff's Motion for Establishment of Child Support, and Defendant's Motion for Establishment of Child Support and Attorney's Fees during the during the June 4, 2007 session of District Court, Wake County. Defendant subsequently dismissed her Motion for Establishment of Child Support and Attorney's Fees on June 7, 2007, during the first session that lasted from June 5 – 7, 2007. The hearing on the matters before the Court resumed on September 4, 2007, until completion on that same day. Plaintiff was present during the proceedings and was represented by counsel, Robert A. P [REDACTED], Jr. and D. Caldwell B [REDACTED], [REDACTED] of Wyrick Robbins Yates & Ponton, LLP. Defendant was present during the proceedings and was represented by counsel, Kimberly A. W [REDACTED] and Cathy C. H [REDACTED] of Gailor, Wallis & Hunt, P.L.L.C. Both parties presented evidence and, based upon the evidence presented and the arguments of counsel for both parties, by the greater weight of the evidence, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Wake County, North Carolina, and has been for more than six months next preceding the institution of this action.
2. Defendant is a citizen and resident of Wake County, North Carolina.
3. The parties were married to each other on August 4, 1996, and separated one from the other on September 10, 2003.
4. Three children were born of the parties' marriage: Briley [REDACTED] born January 18, 1998; Skyler [REDACTED] born July 27, 1999; and Reece [REDACTED], born September 6, 2000. The children were ages five (5), four (4), and three (3) years old at the time the parties separated. They are now ages nine (9), eight (8), and seven (7) years old.

Procedural History

5. Plaintiff filed the Complaint in this action on September 11, 2003, seeking child custody and equitable distribution.
6. On November 20, 2003, a consent order was entered providing for a partial distribution of marital property. By the terms of this Order, the parties evenly divided the funds in CapTrust Account ****-7919, which was then valued at approximately \$2,100,000.
7. Defendant filed her answer on December 5, 2003, counterclaiming for postseparation support, alimony, child custody, child support, equitable distribution, and attorney's fees.
8. On February 18, 2004, a consent order was entered providing for postseparation support ("PSS"). By the terms of this Order, Plaintiff was obligated to pay Defendant \$36,333 per month in February and March, 2004, along with paying the mortgage payments on [REDACTED] Birchfalls Drive (the "former marital residence"). Beginning April 2004, Plaintiff's postseparation support obligation increased to \$43,208 per month and Defendant was required to begin making the monthly mortgage payments on the former marital residence. The Postseparation Support Order also obligated Defendant to pay all the expenses related to the former marital residence and to pay the parties' nanny.
9. On March 16, 2004, the Order Approving Parenting Agreement (hereinafter the "Custody Order") was entered, having been signed by Plaintiff and Defendant on March 9 and March 11, 2004 respectively. Since the entry of this Order, the parties have shared physical custody of the minor children.
10. On June 15, 2004, Defendant filed an Amended Answer, counterclaiming for PSS, alimony, child custody, child support, equitable distribution and attorney's fees.
11. The financial matters in this case were zealously litigated by both parties, and a trial on all claims except child custody was scheduled for August 2, 2004.
12. On July 30, 2004, the parties executed a "Memorandum of Agreement of Equitable Distribution and Support Between Rod [REDACTED] and Kelle [REDACTED]" (hereinafter referred to as the "Agreement"), which settled all issues relating to equitable distribution and alimony, and it addressed "family and child support". No portion of the Agreement has been incorporated into a court order.
13. On August 2, 2004, each party dismissed, with prejudice, his or her respective claims expressly excluding child custody and child support from the operation of the dismissal.

14. On September 8, 2006, Plaintiff filed a Motion in the Cause for Establishment of Child Support.
15. On January 31, 2007, Defendant filed a Motion in the Cause for Establishment of Child Support and for Attorney's Fees. On June 7, 2007, after the child support trial had commenced, Defendant took a voluntary dismissal on this Motion. Defendant did not, however, dismiss her claim for child support, which was filed in December 2003. To date, this claim remains pending.
16. On May 30, 2007, Defendant filed a Motion in Limine that sought to prevent Plaintiff from testifying or offering any evidence on certain issues related to each party's expenses encompassing a span of time both before and after the parties' separation, to preclude Plaintiff from offering any evidence as to why his child support amount should be reduced, and to preclude Plaintiff from offering any testimony or evidence as to the appropriate amount of child support. Counsel for both parties argued the Motion in Limine on June 5, 2007, immediately prior to the start of the hearing on child support. This Court took judicial notice of the Plaintiff's discovery responses that were the basis of Defendant's Motion in Limine. This court reserved ruling on part of the Motion, so as not to prejudge the evidence in the case and allowed that Defendant could object to specific evidence or testimony at the time it was presented and could cross-examine Plaintiff as desired to show any inconsistencies in his trial testimony and his prior discovery responses and deposition testimony. This Court denied those portions of the Motion in Limine that sought to preclude Plaintiff from offering testimony or evidence as to the appropriate amount of child support or his contentions as to why the amount of child support should be reduced from the amount in the Agreement, and held that ultimately, the appropriate amount of child support is a determination to be made by the Court based upon all of the evidence presented by the parties.

Intent of the Agreement

17. The Agreement expressly provides that either party may request that the Court establish child support at anytime prior to the start of the 2006-2007 hockey season. Further, the Agreement expressly provides that all claims pending in the action at the time of the Agreement will be dismissed, except for the parties' respective claims for child support and child custody. The Agreement expressly provides as follows:
 - a) “. . . either party shall have the right to seek a modification of the child support amount prior to the start of the 2005-2006 [sic] NHL season as set forth in paragraph II.B (iii), below.” (Agreement, ¶II,B(i))
 - b) “Either party will have the right to file a claim regarding the support of the children in the event: (1) a NHL lockout occurs during the 2004-2005 season and RB is employed and earning income as a hockey player; (2) a NHL lockout will occur or continue into the 2005-2006 or 2006-2007 hockey seasons; or (3) prior to

the beginning of the 2006-2007 hockey season after the expiration of RB's [Rod [REDACTED]'s] current contract." (Agreement, ¶II,B(iii))

- c) "Neither party will be required to show a change of conditions or substantial change in circumstances in requesting an order for child support following the occurrence of any of the three events set forth in this paragraph II B(iii)." (Agreement, ¶II,B(iii))
 - d) "The parties agree to execute full and complete releases of all claims either may have against the other as of the date of execution of this Memorandum of Agreement excepting claims relating to child support and custody and any claims regarding the validity or enforcement of this Memorandum of Agreement." (Agreement, ¶IV(b))
 - e) "Upon execution of this Memorandum of Agreement on July 30, 2004, each party will file a dismissal with prejudice of his or her claims and counterclaims except for his or her claims for child custody and child support." (Agreement, ¶V(c))
18. The Agreement evidences the intent of the parties with regard to child support and child custody, which was to leave these matters within the jurisdiction of the Court. The Agreement further evidences the intent of the parties that their settlement with regard to child support was temporary in nature at least until either party exercised their right to request the Court to establish an appropriate child support amount prior to the start of the 2006-07 hockey season.
19. In addition to the intent of the parties as evidenced by the specific terms of the Agreement, the parties acted in a manner consistent with their intent as evidenced in the specific language of the Agreement that the support amounts provided in the Agreement were temporary. Consistent with the Agreement:
- a) Plaintiff timely exercised his right under the Agreement to ask the Court to make an initial determination of child support prior to the start of the 2006 – 2007 hockey season.
 - b) Defendant also requested that the Court make an initial determination of child support.
 - c) Both parties filed their Motions in the child support action that had been pending prior to the execution of the Agreement and neither party ever dismissed their respective claims for child support.
 - d) In the Motions filed by both parties, each party's motion requested that the Court determine the appropriate amount of child support for the minor children and both Motions agreed that neither party would be required to show a change in circumstances in order to have the Court make its determination regarding child support.

e) In filing her Motion in Limine on May 30, 2007, Defendant implicitly recognized the continued validity of the pending child support claims because she argued that Plaintiff should have supplemented his responses to discovery served and initially answered in 2004, prior to the execution of the Agreement.

20. Given the temporary nature of the parties' agreement with regard to child support amounts, the presumption accorded child support in unincorporated separation agreements – that the amount agreed to by the parties is just and reasonable – is rebutted by the intent of the parties as evidenced in the Agreement and in their conduct both before and after the execution of the Agreement.

The Children's Reasonable Needs

21. As part of the Agreement, Defendant waived her claims to postseparation support and alimony. The only matters pending before the Court at the time of this decision are Plaintiff's Motion in the Cause For Establishment of Child Support and Defendant's oral motion for attorneys' fees.

22. As noted more fully below, the parties' combined income exceeds \$25,000 per month. As such, the North Carolina Child Support Guidelines do not apply.

23. The [REDACTED] children have enjoyed advantages that are not available to most children. These advantages include large homes, travel, and exposure to a multitude of extracurricular activities including fine arts classes, participation in sports, and attendance at plays, musicals, museums and magic shows.

24. Since the parties separated, the [REDACTED] children have never wanted for anything. They have always had their needs met.

25. Plaintiff and Defendant have divergent views on the lifestyle each wants for the children. The Custody Order provides the parents with joint decision-making authority regarding major decisions affecting the health and welfare of the children. The custody Order further provides that day-to-day decisions concerning the children will be made by the parent the children are with at the time.

26. While growing up, Plaintiff enjoyed a simple lifestyle. His basic needs were met, but his parents struggled to make ends meet. Plaintiff's parents encouraged him to excel at whatever he chose to do. In seeing the sacrifices his parents made, Plaintiff grew to appreciate the value of hard work and their sacrifice motivated him to succeed as a professional athlete.

27. Plaintiff has a strong desire to instill the value of frugality and hard work in his children, notwithstanding his high income. With the exception of the expenses related to the former marital residence, which has been for sale almost since its completion more than 5 years ago, Plaintiff's living expenses for himself and the

minor children when they are in his care are substantially lower than those of the Defendant and the minor children when they are in her care.

28. Family finances were a constant source of contention throughout the parties' marriage. Although there was no shortfall of money available to spend, Plaintiff wanted his family to have a less extravagant lifestyle than what Defendant wanted.
29. Throughout the parties' marriage, Plaintiff tried to curtail Defendant's expenditures. Defendant was responsible for paying the bills for a short period of time during their marriage, but then Plaintiff assumed that responsibility because he thought the expenses had gotten out of control.
30. Mr. [REDACTED] was traded from the Philadelphia Flyers to the Carolina Hurricanes with no notice in approximately January 2000. Ms. [REDACTED] and the children stayed behind in Philadelphia to make arrangements for the move to North Carolina. Ms. [REDACTED] came to North Carolina for 24 hours in 2004 while pregnant and during a snow storm to locate a home for the family. Ms. [REDACTED] selected a home on Falls Bridge Drive which cost about \$560,000 at that time. This home was similar to the home they left in New Jersey but with a bigger yard. The parties moved into the home in approximately April of 2000. The parties' third child, Reece, was born in September 2000 and the parties decided to locate a new home and initially agreed to spend approximately \$1,000,000. The parties found a lot which they bought with cash. Several months later, on October 23, 2001, the parties retained Steve D [REDACTED] to build a new home.
31. The parties' divergent philosophies about money, wants, and needs extended to the construction of this new home. Defendant had the burdening oar in overseeing the construction of the new home. From early in the construction phase of the project, Plaintiff was concerned about the extravagant direction the home had taken. However, he signed all the financial papers relating to the construction of the home. The final cost on the home was closer to three million dollars (\$3,000,000) and included many luxuries that Plaintiff did not want and to which the family was not accustomed.
32. Defendant enjoyed the work she put into the design, planning, and construction of the former marital residence, and she was happier than she had been in some time. Plaintiff could have stopped the excessive spending relating to the former marital residence, but he did not, as he hoped that this project would help strengthen their marriage, and he saw how happy this project made Defendant.
33. The parties moved into the former marital residence in December 2002. The parties' marital woes continued, and the former marital residence was listed for sale in February 2003. Defendant lived in the marital residence following the parties' separation until required to move from the former marital residence by the terms of the Agreement. The house remains for sale, and Plaintiff currently resides in the former marital residence pursuant to the parties' Agreement. The parties continue to

own the residence jointly, but Plaintiff is responsible for paying the mortgage until the residence sells. Pursuant to the parties' Agreement and a subsequent agreement executed between the parties on April 21, 2006, Plaintiff paid off "his half" of the mortgage debt secured by the former marital residence, but he continues to maintain the monthly debt service of approximately \$5,300 on the remaining mortgage balance related to "Defendant's half" of the debt secured by the former marital residence. Pursuant to the parties' subsequent agreement, Plaintiff will receive a dollar for dollar credit for all reduction of principal below \$2,000,000 on the outstanding debt.

34. Defendant's spending on the minor children in some areas has increased since the parties' separation. Defendant claims reasonable monthly expenses for the minor children in excess of \$24,000. Plaintiff's monthly expenditures related to the minor children while they are with him at least 40% of the time (and at least 50% during the "hockey off-season") have been consistently lower than Defendant's expenditures related to the minor children, but he has met the reasonable needs of the children while they have been in his care. Defendant believes that the minor children should have lifestyles commensurate with the parties' ability to pay. Defendant acknowledges the parties' conflict over what is an appropriate lifestyle for the children and both parties acknowledge the conflict between Defendant's views and the Plaintiff's long-stated desire for a more frugal and more "normal" lifestyle, which he held long before the parties' separation.
35. As noted above, Defendant has waived her rights to and dismissed her claims for spousal support. An amount in excess of the amount awarded as child support, below, would essentially result in Plaintiff providing support to Defendant and/or result in Plaintiff subsidizing Defendant's choices regarding the children's standard of living – choices that Plaintiff has historically not supported and are inconsistent with his own lifestyle and the choices he has made for the minor children.
36. Plaintiff has as much right as the Defendant to choose the lifestyle for his children and to participate in the development of an appropriate value system for the children. It is unreasonable for Plaintiff to be required to pay more child support than the amount set forth herein because the Defendant's expenses related to the children are excessive (as detailed below). Requiring Plaintiff to pay more than the amount set forth herein would involuntarily transfer the power of discretionary spending on the children to Defendant and result in a windfall to her that would benefit her, and her choices, more than it would serve to benefit any reasonable needs of the children.
37. In accordance with the terms of the Custody Order, the parents' custodial times during the hockey season are defined by Plaintiff's hockey schedule. During the hockey season, which normally runs from September until April, the children are with Plaintiff about forty percent (40%) of the time and with Defendant about sixty percent (60%) of the time. During the rest of the year (hereinafter referred to as the "hockey off-season"), the parents' custodial times are split evenly.

38. The parties have abided by the terms of the Custody Order resulting in Plaintiff having the children at least forty percent (40%) of the time and Defendant having the children no more than sixty percent (60%) of the time.
39. The Agreement sets forth the amount of “tax deductible family support” and child support to be paid. The amount and nature of the support varied depending on the timeframe and/or the happening of certain events. Under the terms of the Agreement, at the present time, Plaintiff is obligated to pay Defendant \$15,000 per month in child support pending the outcome of his Motion in the Cause.
40. The Agreement further provides that Plaintiff is to pay for all of the children’s extra-curricular activities, to maintain health insurance coverage for the children and to pay all uninsured medical, dental, and other healthcare related expenses for the children.
41. Plaintiff has health insurance available to him as a benefit of his employment. He has had the children continuously covered by health insurance in accordance with the Agreement. Defendant is not employed, and therefore would have to purchase health insurance if she was responsible for providing insurance coverage for the children. It is reasonable for Plaintiff to continue to provide health insurance for all the children. It is also reasonable to give deference to the provision in the Agreement that requires Plaintiff to pay for all uninsured medical, dental, and other healthcare related expenses for the children.
42. Since the parties separated, Plaintiff has not approved of all of the extracurricular activities in which Defendant enrolled the children. Prior to the hearing on this matter, Plaintiff had not fully reimbursed Defendant for all of the children’s extracurricular activities.
43. Given the parties’ shared custodial arrangement, the children’s participation in any extracurricular activity will likely occur during both parties’ respective custodial times. It is in the children’s best interest for the parties to mutually agree as to the extracurricular activities in which the children will participate. It is also reasonable to give deference to the provision in the Agreement that requires Plaintiff to pay for all of the children’s extracurricular activities. Because the children’s custodial schedule is based upon Plaintiff’s hockey schedule, it changes each year. Pursuant to the parenting agreement, Defendant must be available to care for the children when Plaintiff is unavailable due to his hockey schedule. The Defendant plays in approximately 80 regular season games, one-half of which are out of town. Given Plaintiff’s unusual work schedule, the children’s different school schedules, and the parties’ agreement regarding custody, it would be extremely difficult for Defendant to secure outside employment that would allow her to arrange her work schedule so that she would be available to care for the children based on Plaintiff’s hockey schedule.
44. All three of the children are in private school. Skyler attends Ravenscroft, and Briley and Reece attend Montessori school. The current combined annual tuition for the

children is approximately \$34,807. Neither party is paying for the children's private school expenses out of his or her separate funds.

45. As part of the Agreement, the parties designated the Kayne Account ****7884 to pay for educational expenses through high school (hereinafter the "Education Account"). Any balance remaining in this account after the last child completed high school is to be used to defray the cost of the children's college, university and post-graduate educations, relying first on the children's pre-existing College Bound Funds. Upon completion of a child's college and post-graduate education or when Reece reaches age 25 (whichever first occurs), the balance remaining in these accounts, if any, will be equally divided between the parties.
46. Since execution of the Agreement, the total withdrawals from the Education Account have been less than the growth in the account such that the current balance in the Education Account exceeds the balance at the time the Agreement was signed.
47. The parties fully resolved their property division disputes and dismissed, with prejudice, their respective claims for equitable distribution. All of the parties' marital property, including the Education Account, has been allocated and divided. Pursuant to the Agreement, the marital asset designated as the Education Account will be used to pay the children's primary and secondary school educational expenses.
48. It is reasonable and just for the Court to give deference to the Agreement with regard to elementary and secondary school educational expenses. The payment of post-secondary educational expenses is beyond the jurisdiction of this Court.
49. It is just and reasonable for Plaintiff to be responsible for any amounts that the Education Account does not cover with regard to reasonable and necessary primary and secondary school educational expenses.
50. Defendant is not employed outside the home, which allows her to have a more flexible schedule. She plays on three different tennis teams at [REDACTED] Country Club and volunteers at the children's schools. Such volunteer activities include chaperoning field trips for each child's class, holding end of year parties for each child's class, assisting with class picnics and parties for each child's class, reading to children in the class and regularly volunteering in each child's class. All three children are involved in numerous extra curricular activities including soccer, basketball, baseball, music lessons, art class, skating lessons, tennis, scuba diving, horseback riding, hockey, dancing, book club and drama. Defendant provides transportation to practices, games and meetings with the assistance of a nanny when schedules conflict or when only one child has an event and the other children are engaged in other activities.
51. Defendant spends \$15,600 annually (\$1,300 per month) on a nanny. In addition, Defendant provides a separate automobile for the nanny to use.

52. The children need care and supervision. They need to be transported to school and to their extracurricular activities.
53. For most, if not all, of the children's lives, the parties have employed a nanny to help with the children. Since the parties' separation, both parties have continued to use a nanny, although when the children are in Defendant's care, Plaintiff helps transport the children to activities if he is available. Because of the flexibility in her schedule, when the children are in the care of Defendant, the children's need for supervision and transportation can be met by Defendant without the assistance of a nanny. Currently there is only one evening per week when the children are in Defendant's care for which the children's scheduled activities conflict. The cost of a nanny is not a reasonable expense when the children are in Defendant's care.
54. Currently, Plaintiff pays 40% of the salary of the nanny and Defendant pays 60% of her salary. If Defendant no longer pays the nanny, it is likely that Plaintiff will have to pay the full amount required by the nanny. To the extent that Plaintiff has to pay the nanny a minimum salary that would cover more hours than what he needs from the nanny, it is reasonable for Plaintiff to make the nanny available to Defendant when the children are in her care.
55. Defendant owns two (2) vehicles, one that she keeps for the nanny's use. One of the vehicles is leased, and Defendant has taken out a loan for the second vehicle. Defendant could have purchased both vehicles without financing them, but after receiving financial advice, she decided to lease one and finance the purchase of the other. Her total automobile payments are \$1,096.87 per month. The cost of the second vehicle is not an expense that is reasonably related to the needs of the children.
56. The children are accustomed to having a nice home that is clean.
57. Defendant spends \$883.33 per month to have someone to clean her home two times a week. Although Defendant may be used to having someone else clean her house two times a week, because of the flexibility in Defendant's schedule, this is not a need of the children when they are in Defendant's care. Plaintiff works outside the home, and he pays \$325 per month for house cleaning services for a house that is larger than Defendant's. Plaintiff's monthly house cleaning expense is a more reasonable amount for Defendant to pay someone to clean her home.
58. The children are accustomed to having a big, well-maintained yard in which to play.
59. The former marital residence is on approximately two (2) acres. Defendant's current residence is located on approximately five and one-half (5.5) acres. She spends \$855.63 per month to maintain the yard and for landscaping. Defendant's yard includes a go-cart track, a trampoline, and trails through the woods.

60. There is no evidence that the children had a go-cart track at any of their former residences. Defendant made the decision to provide this for the children at her residence. There is no evidence she consulted with Plaintiff about this decision. Defendant has three (3) acres bush-hogged and mowed every three weeks. Defendant selected the lot on which to build her home. Defendant paid cash for the lot from her portion of the equitable distribution, and the cost of the lot is not included in Defendant's mortgage.
61. At the time of separation, Defendant spent \$500 per month on yard maintenance and landscaping. Plaintiff's cost for yard maintenance is approximately \$637 per month. Defendant's expenditure of \$855.63 per month for lawn maintenance is unreasonable and excessive. Plaintiff's cost for yard maintenance is a more reasonable cost for Defendant to incur.
62. Defendant spends \$569.10 per month on household furnishings and seasonal décor. The decorations that are important to the children are the ones in which they directly participate, such as decorating the Christmas tree. The evidence is insufficient to determine what portion of this claimed expense is for the Christmas tree and other seasonal decorations in which the children directly participate. Therefore, this cost is not a reasonable expense as it relates to the children.
63. Defendant buys double the amount of clothes needed by the children in order for the children to have clothes at both Plaintiff's and Defendant's respective homes. Defendant spends approximately \$1,147.14 per month on the children's clothing. Given the custodial split between Plaintiff and Defendant, it is reasonable for Plaintiff to purchase clothing used by the children when they are in his care. Therefore, it is reasonable to reduce Defendant's clothing cost for the children to one-half the amount she claims.
64. Defendant uses life insurance as part of her estate planning. She spends approximately \$1,708 per month (\$20,500 annually) in life insurance premiums. This is not an expense reasonably related to the current needs of the children.
65. Defendant currently spends \$2,045.34 per month for the children's portion of her vacations with the children. The children also vacation with Plaintiff, who spends \$330 per month for the children's portion of their vacations with him.
66. At the time of separation, the parties took two family vacations a year, three vacations with Defendant and one child, and 2-3 long weekend trips for Defendant only. The children's cost for these vacations was \$250 per child per month (\$9,000 per year). These costs include the cost for Defendant to bring someone with her to assist on the family vacations.
67. The amount Defendant currently spends for the children's vacations when they are with her is unreasonable and is excessive. A more reasonable amount for the children's total vacation expense with a parent is the date of separation expense,

\$9,000 (or \$750 per month). It is reasonable to apportion this total cost between the parents with Plaintiff spending \$330 per month and Defendant spending \$420 per month.

68. Pursuant to the Agreement, Defendant received a residence located in Sweetwater, Indiana (the “Indiana home”). The parties have used the Indiana home as a vacation home, spending from one to three months there during the year. This property is not titled in the children’s names, nor is it held in trust for the children. Defendant owns this property as her separate property.
69. The expenses for the Indiana home are not expenses reasonably related to the needs of the children.
70. Defendant spends \$389.49 per month on children’s pictures. This includes framed pictures of artwork, team pictures and portraits, and the cost includes making extra copies of the pictures for Plaintiff. Defendant presented insufficient evidence as to what portion of these costs is for Plaintiff’s copies of the pictures. It is reasonable to reduce the claimed amount by one-half.
71. Defendant spends approximately \$1,130.37 per month on the children’s entertainment and recreation. The children are ages seven, eight, and nine years old. They split their time between their parent’s homes, with Plaintiff having the children at least forty percent (40%) of the time. Defendant’s home has a pool, a go cart track, a trampoline, and a wooded area for the children to explore. The children are involved in numerous extracurricular activities on an almost daily basis. The children go on frequent vacations out of state where they go to amusement parks, museums, and get massages, and the vacation expense is accounted for separately.
72. The children attend plays, musicals, magic shows, and go to the museums as entertainment and recreation when they are with Defendant. Defendant hosts birthday parties for each child as well as end-of-school pool parties for the children. She hosts other parties as well for her tennis teammates.
73. Defendant has provided insufficient evidence to determine what portion of her expenditures for recreation and entertainment was solely for the children’s parties as opposed to parties she threw for her friends. In addition, Defendant has provided insufficient evidence to determine the entertainment costs for the children for the other local activities.
74. It is excessive and unreasonable for Defendant to spend \$1,130.37 per month on the children’s entertainment. A more reasonable amount is \$355 per month, which allows for spending \$500 on each child’s birthday party, \$300 on each child’s end of school pool party, and \$60 per week for the time the children are in her custody.
75. Attachment A, Part I, attached hereto and incorporated herein by reference, lists the reasonable household expenses from which the children benefit while they are in

Plaintiff's care. These expenses total \$10,999 for the household. The amount of time the children are present in the home directly impacts \$1,268 of these expenses.

76. It is reasonable to allocate a portion of Attachment A, Part I expenses to the children's reasonable needs. Three-fourths is a reasonable portion to allocate to the children for the expenses that are not directly impacted by the children's presence in the home, which totals \$7,298.25. Thirty percent (40% of three-fourths) is a reasonable portion to allocate to the children for the expenses that are directly impacted by the children's presence in the home, which totals \$380. Plaintiff's household expenses reasonably attributable to the children total approximately **\$7,678**.
77. Attachment A, Part II, attached hereto and incorporated herein by reference lists the children's reasonable monthly individual expenses while in the care of Plaintiff. These expenses total at least **\$2,490** currently.
78. The children's current total reasonable monthly expenses while in Plaintiff's care total at least **\$10,168**.
79. Attachment B, Part I, attached hereto and incorporated herein by reference, lists the reasonable household expenses from which the children benefit while they are in Defendant's care. These expenses total \$10,575.53 for the household. The amount of time the children are present in the home directly impacts \$1,838.94 of these expenses.
80. It is reasonable to allocate a portion of Attachment B, Part I expenses to the children's reasonable needs. Three-fourths is a reasonable portion to allocate to the children for the expenses that are not directly impacted by the children's presence in the home, which totals \$6,552.44. Forty-five percent (60% of three-fourths) is a reasonable portion to allocate to the children for the expense that are directly impacted by the children's presence in the home, which totals \$827.52. Defendant's household expenses reasonably attributable to the children total approximately **\$7,380**.
81. Attachment B, Part II, attached hereto and incorporated herein by reference lists the children's reasonable monthly individual expenses while in the care of Defendant. These expenses total approximately **\$2,783** currently.
82. The children's current total reasonable monthly expenses while in Defendant's care total approximately **\$10,163**.
83. The children's total reasonable monthly expenses are \$20,331.

Income and Assets

84. Plaintiff is thirty-seven years old and has played hockey professionally since he was eighteen (18) years old. He is one of the captains for the Carolina Hurricanes.

85. In 2004, Plaintiff's total income was \$2,911,995. His employment generated \$2,639,786, and his investments generated approximately \$248,008 in income. He paid \$758,193 in federal taxes and \$189,463 in North Carolina taxes.
86. In 2005, Plaintiff's total income was \$2,470,441. Capital gains made up \$740,542 of this; his employment generated \$1,433,827; and his investments generated approximately \$273,573 in income. He paid \$586,753 in federal taxes.
87. In 2006, Plaintiff's total income was \$4,929,964. Capital gains made up \$309,916 of this; his employment generated \$4,396,008; and his investments generated approximately \$222,903 in income. He paid \$1,522,190 in federal taxes.
88. Plaintiff's contract with the Hurricanes for the 2007-2008 season provides that Plaintiff will be paid four million dollars (\$4,000,000), which is the same salary as he was paid during the 2006-2007 season. In 2007, Plaintiff will be paid an average of \$333,333 per month. He has mandatory deductions totaling approximately forty to forty-five percent (40% - 45%) percent of his income (\$133,333 - \$149,999).
89. Pursuant to the terms of the Agreement, Plaintiff received marital assets totaling \$3,963,853, but he contributed \$215,000 of his separate property to Defendant as part of their settlement and he received credit for his separate property contribution. He has also received one-half of the proceeds from the sale of the 2002 Mercedes, is entitled to one half of the net proceeds from the sale of the former marital residence, and owns one half of the marital share of Plaintiff's National Hockey League ("NHL") retirement benefits (plus all of the non-marital portion of his NHL retirement benefits). In addition, pursuant to an order entered November 20, 2003, Plaintiff received approximately \$1,050,000 as an interim distribution.
90. Since the parties separated, Plaintiff has been able to invest on average approximately \$1,000,000 - \$1,150,000 each year from his income from the Hurricanes.
91. Plaintiff has made no withdrawals from his investment accounts since the parties separated.
92. Plaintiff's current debt is limited to the mortgage on the former marital residence and charges on his American Express card, which is paid off monthly.
93. Plaintiff's current investments total at least \$13,251,139.54. In addition he is entitled to his share (estimated to be approximately \$1.3 million) of the net sales proceeds of the former marital residence, and he has his share of the NHL retirement benefits.
94. Defendant is thirty-nine (39) years old. She received a bachelor's degree in psychology and sociology in 1991. She was working as a flight attendant for a specialty airline when she met Plaintiff. Defendant was last employed in an area

related to her degree while living in New Jersey sometime prior to when the parties married.

95. In 2004, Defendant's total income was \$406,208, which was comprised of \$1,239 in interest income, \$43,949 in dividend income, \$303,498 in alimony, and \$57,814 in capital gains. She reported a loss of \$1,806. Defendant paid \$93,977 in federal income tax and \$27,350 in North Carolina income tax.
96. In 2005, Defendant's total income was \$290,182, which was comprised of \$5,023 in interest income, \$127,143 in dividend income, \$181,602 in capital gains. She reported a loss of \$23,595. Defendant paid \$34,217 in federal income tax and \$14,807 in North Carolina income tax.
97. In 2006, Defendant's total income was \$290,111, which was comprised of \$7,517 in interest income, \$74,082 in dividend income, \$206,992 in capital gains, and \$1,611 from her Fidelity investments. Defendant paid \$25,251 in federal income tax and \$15,601 in North Carolina income tax.
98. Defendant chose to build a home that cost slightly over \$1.5 million (\$250,000 plus \$1.272 million in construction costs). This is fourteen (14) times the average annual income she received from interest and dividends in 2005 and 2006 – her only source of income other than child support. Her monthly mortgage payment is \$5,961, which is 67% of her interest and dividend income.
99. Pursuant to the terms of the Agreement, Defendant received assets totaling at least \$3,749,706, of which \$215,000 was a contribution of Plaintiff's separate property.
 - a) Defendant received the Indiana home, valued at \$440,000.
 - b) Defendant received the Florida condominium, valued at \$218,000.
 - c) Farms in Indiana, valued at \$390,250.
 - d) Defendant received investment accounts totaling \$2,648,415 and a checking account with a balance of \$46,771.
 - e) Defendant received the Dodge Durango, valued at \$6,270.
 - f) She was to receive one-half of the proceeds from the sale of the 2002 Mercedes
 - g) She was to receive one half of the net proceeds from the sale of the former marital residence;
 - h) She was to receive one half of the marital share of Plaintiff's National Hockey League retirement benefits.
100. In addition, pursuant to an order entered November 20, 2003, Defendant received approximately \$1,050,000 as an interim distribution.
101. Since the execution of the Agreement:
 - a) Defendant has withdrawn approximately \$1,101,940 from her investment accounts.

- b) Defendant purchased a home for just over \$1.5 million dollars. This home has a tax value of \$825,104, and Defendant owes approximately \$985,000 on this home.
 - c) Defendant sold the Florida condominium, for which she received approximately \$271,700.
 - d) Defendant became a founding partner of Siblings, LLC, which was formed for the purpose of purchasing buildings. Defendant owns a 55% interest in this business. She has contributed at least \$224,000 to Siblings, LLC. In 2005, she earned approximately \$14,803 from this business. In 2006, she earned approximately \$454 from this business.
 - e) Defendant's investment accounts now total approximately \$3,346,015.
 - f) Defendant's interest in Plaintiff's NHL retirement account.
 - g) Defendant's share (estimated to be approximately \$300,000) of the net sales proceeds of the former marital residence
102. Defendant's estimated annual tax payments are approximately \$43,560 (or \$3,630 per month).
103. Plaintiff continues to reside in the former marital residence because it has not yet sold. Plaintiff paid down the mortgage by one-half (\$1,000,000) to reduce the interest payments on this outstanding marital debt. Pursuant to the Agreement, the parties will equally divide the net sales proceeds such that the remaining mortgage balance will be paid from Defendant's share of the net sales proceeds. Plaintiff is paying \$5,300 per month on an interest only loan and will receive no credits for maintaining Defendant's debt on this asset.
104. Both Plaintiff and Defendant have substantial assets; however, Plaintiff's assets are more than triple Defendant's assets. Plaintiff's assets have the potential for substantial growth for so long as he continues employment with an NHL hockey team. Plaintiff's ability to play professional hockey is limited by his age, the possibility of injury, and other conditions beyond his control.

Prospective Child Support

105. Both parents owe a duty of support to the minor children, and both parents have the ability to provide support for the children as set forth herein. Each parent has the ability to pay for the children's reasonable expenses that occur while the children are in that parent's care.
106. It is reasonable for Plaintiff and Defendant to pay a portion of the children's reasonable expenses that is in proportion to the parties' 2006 income.
107. It is reasonable and in the best interests of the children for Plaintiff to pay prospective child support to Defendant in the amount of \$9,147 per month, effective October 2006, the month following the filing of his Motion in the Cause.

108. Plaintiff is entitled to a credit on his child support obligation in the amount of \$70,236 (\$5,853 per month from October 2006 through September 2007). It is just and reasonable for Defendant to reimburse Plaintiff for this credit, and she has the ability to do so.

Attorneys' Fees

109. In closing argument, Defendant orally asked the Court for an award of attorneys' fees, which includes fees relating to time spent prior to the filing of Plaintiff's Motion in the Cause.
110. As noted above, Defendant dismissed (with prejudice) her claim for attorneys' fees that she asserted in her Answer and Counterclaims when the Agreement was executed on or about August 2, 2004. Defendant is barred from asserting a claim for attorneys' fees for attorney time expended prior to and including August 2, 2004.
111. Plaintiff has provided support that is adequate under the circumstances existing at the time of the filing of his Motion in the Cause.

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over the parties to this action and jurisdiction over the subject matter of this action.
2. The Defendant is entitled to child support from Plaintiff as set forth below.
3. The North Carolina Child Support Guidelines are not applicable in this action because the parties' combined income is in excess of \$300,000 annually.
4. The decretal provisions of this Order as they relate to support for the minor children are just and reasonable and are in the best interests of the minor children.
5. Defendant was in no way precluded from challenging Plaintiff's testimony through cross-examination or the presentation of other evidence.
6. Defendant was in no way precluded from objecting to the introduction of evidence by Plaintiff related to the parties' expenses on the basis that the evidence was unfairly prejudicial or for any other appropriate reason.
7. The determination of the "appropriate" and reasonable amount of child support is the province of the Court and the Court is not solely bound by the contentions of either party in that regard.
8. The child support provisions in this Order are in such amount as to meet the reasonable needs of the minor children for their health, education and maintenance, giving due regard to the estates, earnings, conditions, and accustomed standard of

living of the minor children and the parties, the child care and homemaker contributions of each party, and the facts set forth herein.

9. The amount of child support set forth in the parties' Agreement is not entitled to a presumption of reasonableness (see *Pataky v. Pataky*, 160 NC App. 289, 585 SE2d 404 (2003)); however, even if the "presumption of reasonableness" related to the amount of child support established by the parties' Agreement did apply in this case, the presumption has been rebutted by the evidence presented as set forth herein.

10. Defendant previously dismissed her claims for attorneys' fees incurred prior to June 30, 2004, and subsequently dismissed her claim for attorney's fees during the hearing and she is therefore not entitled to recover her attorney's fees. Notwithstanding Defendant's dismissals of her claims for attorney's fees, and assuming the oral motion for attorney's fees made on Defendant's behalf would have otherwise supported her request for attorney's fees, Plaintiff has paid an appropriate amount of child support which was adequate under the circumstances existing at the time of the filing of his Motion in the Cause and Defendant is not entitled to an award of attorneys' fees.

11. Any Findings of Fact set forth in this Order which are more appropriately deemed Conclusions of Law are incorporated herein by reference as if set forth in full.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Effective October 1, 2007, Plaintiff is to pay monthly support to Defendant in the amount of \$9,147 per month.

2. Plaintiff is entitled to a child support credit of \$70,236 for amounts paid to Defendant following the filing of his Motion in the Cause, which shall be paid as follows:

- a. If the former marital residence sells within twelve (12) months of the entry of this order, Defendant shall pay Plaintiff the balance of the credit then due from her share of the net sales proceeds from the former marital residence;
- b. If the former marital residence has not sold within twelve (12) months of the entry of this order, Defendant shall pay Plaintiff the full amount of the credit due by no later than two weeks after the twelve month period has elapsed.

3. Plaintiff is to provide health (medical, dental and vision) coverage for the minor children, and is responsible for payment of all premiums.

4. Plaintiff is to pay 100% of the children's necessary unreimbursed health care costs including medical, dental (including orthodontia), vision, and mental health care. Within 14 days of incurring any health care costs, Defendant will submit receipts to Plaintiff. He will reimburse Defendant for her out of pocket expenses within 14 days and will be responsible for filing insurance claims. Plaintiff's current health insurance typically covers 100% of medical and dental expenses for the minor children; however, if Defendant chooses to take the minor children to a non-emergency health or dental care service provider that is not covered by Plaintiff's insurance, then Defendant shall be responsible for paying any such unreimbursed medical or dental expenses.
5. Plaintiff is to pay 100% of all the children's extracurricular activities (including lessons, registration fees, clothing, equipment, supplies, and transportation to events located outside of Wake County) for activities in which he and Defendant mutually agree the children should participate. The clothing, supplies and equipment for which Plaintiff shall be responsible, shall be such clothing, supplies and equipment specifically required and related to the participation of the minor children at the agreed upon activity and shall not include the purchase of supplies for use in the Defendant's residence. The parties shall consult with one another before purchasing clothing, supplies and equipment for the minor children's extra-curricular activities to make sure that they are not buying duplicative items. Within 14 days of incurring any expenses related to the children's extracurricular activities, Defendant will submit receipts to Plaintiff, who will reimburse Defendant within 14 days after receiving the receipts.
6. To the extent that the educational funds do not cover the children's educational expenses (as expenses are defined by the Agreement) through and including high school, Plaintiff is responsible for paying for all remaining reasonable and necessary educational expenses for the children's primary and secondary education. Within 14 days of incurring reasonable and necessary educational expenses for which there are insufficient funds in the Education Account, Defendant will submit receipts to Plaintiff, who will reimburse Defendant within 14 days.
7. Plaintiff shall be entitled to claim the dependency exemptions related to all three children on his income tax returns.
8. Defendant's claim for attorneys' fees is denied.
9. Defendant's Motion in Limine is denied.
10. The court retains jurisdiction of this matter for the entry of further orders as necessary and appropriate.

This the _____ day of _____, 2007.

The Honorable [REDACTED]
District Court Judge Presiding

Plaintiff's reasonable expenses
Relating to the support of the children**

Expense	Plaintiff's Current	Children's Current	Additional Findings
Mortgage/rent	5300		Plaintiff is paying an interest only loan on the former marital residence. He has reduced the principal amount to \$1,000,000.
Residence insurance	294		
Taxes not included in the mortgage	1569		
House and appliance repair/maintenance	293		
Electricity*	434		
Gas, heating fuel, oil*	142		
Water*	139		
Garbage*	22		
Cable, digital TV	56		
Telephone	86		
Internet service	0		Included in telephone costs
Yard maintenance	637		
Home security system	0		
House cleaning service	325		
Pest Control services	100		
Auto payment	509		
Auto insurance	85		
Gasoline*	197		
Auto repair, registration, taxes	62		
Food and household supplies*	334		
Pets	0		
Other: pool maintenance	415		
SUB TOTAL – PART I	10999		

* Expenses noted with an “*” are directly impacted by the fact that the children are only with Plaintiff 40% of the time.

Medical insurance premiums	0	0	Plaintiff's employer fully covers the cost of Plaintiff's health insurance for Plaintiff and the children.
Dental/Vision insurance premiums	0	0	
Uninsured medical	0	0	
Uninsured dental	0	0	
Uninsured medication	0	0	
Other uninsured medical expenses	0	0	
Other insurance premiums	0	0	
Work-related child care	0	867	Defendant and Plaintiff currently share a nanny at a cost of \$500 per week. Plaintiff pays for 2/5 of this cost, or \$867 per month.
Cell phone	113	0	
Eating Out	200	59	
School lunches	0	0	
Newspapers, Magazines	0	11	
Clothing and Accessories	170	27	
Personal upkeep	0	0	
Dry cleaning	9	0	
Education	0	0	
Babysitting (not included above)	0	0	
Dues	0	0	
Extracurricular	0	347	This is an average amount spent on the children on Tae Kwon Do, piano, soccer, and baseball. It does not include money Defendant spent on hockey lessons, tennis, gymnastics and dance (\$1000).
Church donations	0	0	
Other charitable contributions	0	0	
Entertainment/recreation	0	0	
Club dues and assessments	45	45	
Annual vacation	110	330	

Gifts	375	39	
Professional fees	1472	0	
Savings	0	0	
College Fund	0	0	
Other: Gold (TPC)	470	0	
Other: ATM Cash withdrawals	213	638	
Target expenditures	46	100	Plaintiff spends \$146 per month at target, primarily on children's clothing. However the expense also includes household items, and toiletries.
Dicks Sporting Goods expenditures	0	27	Extracurricular activities for the children
SUB TOTAL—PART II	3223	2490	
GRAND TOTAL	15122	2490	

Defendant's reasonable expenses^{}
Relating to the support of the Children**

Expense	Defendant's Current	Children's Current	Additional Findings
Mortgage/rent	5,961		This figure includes principal, interest, taxes and insurance. Defendant has been making additional payments on the principal but only the mortgage amount due pursuant to the loan is reasonable
Taxes not included in mortgage	0		Defendant's affidavit lists expenses of \$3,556.67 for taxes on the Indiana home and state/federal taxes. The state and federal taxes are accounted for above. The taxes on the Indiana home are not a reasonable expense on behalf of the children.
Electricity**	447.47		
Gas, heating fuel, oil**	209.18		
Water**	0		Defendant has a well; therefore no monthly water expense.
Garbage**	27.19		
Cable, digital TV	80.56		
Telephone	105.82		
Computer maintenance/Internet service	67.19		
Yard maintenance	637.00		See findings above about yard maintenance costs.
Home security system	41.67		
House cleaning service	325.00		See findings above about house cleaning costs.
Pest Control services	65.83		
Auto payment	548.00		See findings above about auto payments
Gasoline**	269.78		
Auto insurance, repair, registration, taxes	130.76		Defendant spends \$261.52 per month for two vehicles. The cost for one vehicle is reasonable.
Groceries**	863.44		
Household supplies and maintenance	326.24		Defendant incurs routine costs for household supplies and maintenance. She paid \$12,172.50 for a non-recurring

^{**} Expenses noted with an "****" are directly impacted by the fact that the children are only with Plaintiff 40% of the time.

			repair of the entrance road to the residence, and she included this cost in her \$1,340.62 monthly expense. It is not reasonable to include the road repair costs in her monthly expenses for this item
Pets	102.36		At the time Defendant owned a dog and two cats, she was spending approximately \$153.54 per month for insurance, vet bills, food and kennel costs. At this time, Defendant owns only the two cats. Her costs for pets at the time of the hearing would be less than the amount in her affidavit. It is reasonable to allocate two-thirds of actual costs to the costs of the cats.
Pool expenses	345.16		
Culligan water*	21.88		
SUB TOTAL – PART I	10,575.53		
Medical insurance premiums	0	0	
Dental/Vision insurance premiums	0	0	
Uninsured medical, dental and vision	400.78	0	Plaintiff is obligated by the terms of the Agreement to pay the children's unreimbursed health related costs, and he remains obligated under the provisions of this Order to pay these expenses. As such has Defendant will have no ongoing expense for this item.
Cell phone	85.00	0	There was no reasonable evidence presented that children of this age (9, 8, 7) have or need a cell phone.
Eating Out	453.06	460.44	
School	0	69.00	School lunches, supplies, class party supplies and projects for volunteering are included.
Newspapers, Magazines	363.08	0	Defendant spends \$363.08 on newspapers and magazines. The evidence is insufficient to determine how much of this expense is for the children materials.
Clothing and Accessories	711.74	573.57	See findings above about clothing expenses.
Personal upkeep	388.20	117.60	
Dry cleaning	37.21	0	
Babysitting (not included above)	0	0	See findings above about nanny cost.

Extracurricular	0	0	Pursuant to the Agreement, Plaintiff is to pay for all of the children's extracurricular activities. Under the terms of this Order, Plaintiff is responsible for paying all expense related to the children's extracurricular activities to which he has agreed. As such Defendant has no ongoing expense for this item.
Children's pictures	0	194.75	See findings above about children's pictures
Other charitable contributions	269.90	0	
Entertainment/recreation	99.63	355	See findings above about entertainment expenses
Personal exercise	233.77	0	
Club dues and assessments	86.68	75	
Annual vacation	782.22	420	See findings above with regard to annual vacation.
Gifts	2430.80	516.87	
Professional fees (including accounting and investment fees)	1455.07	0	
Parenting class	0	0	Plaintiff presented insufficient evidence that the parenting class she took in September 2006 is recurring or that she is currently paying for this class.
Life Insurance	0	0	
Savings	0	0	In 2001, the parties were saving approximately \$100,000 per month. Defendant has presented insufficient evidence from which to find her current savings expense.
SUB TOTAL—PART II	7797.14	2782.23	
GRAND TOTAL			

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 CVD 16887

KEITH [REDACTED],
Plaintiff,
v.
MARIE [REDACTED],
Defendant.

CHILD SUPPORT ORDER

This matter came before the undersigned District Court Judge [REDACTED] on Defendant's counterclaims for permanent child support on May 5, 2009 and May 15, 2009. Plaintiff was present in court and represented by his attorney of record, Scott [REDACTED]; Defendant was present in court and represented by her attorney of record, Suzanne [REDACTED]. The Court having heard and considered testimony and evidence presented by the parties and their witnesses and the arguments made on behalf of each party by their respective attorneys, enters the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Wake County, North Carolina and has been so for at least six consecutive months immediately preceding the filing of the action.
2. Defendant is a citizen and resident of Wake County, North Carolina.
3. Plaintiff filed his Complaint in this matter on July 28, 2008.
4. Defendant filed her Answer and Counterclaim in this matter on October 21, 2008, seeking, among other things, child support and attorney fees.
5. The parties were married to each other on or about October, 2002, and separated from each other on March 24, 2008.
6. The parties are the parents of one minor child born of their marriage, to wit: T [REDACTED], born October 6, 2006.
7. Plaintiff is employed as a full-time nurse at Presbyterian Hospital. Plaintiff is guaranteed to work thirty-six hours per week, but the number of days that Plaintiff works and the differential pay he receives varies. Plaintiff has considerable control over his work schedule and on how many hours he works per pay period. For example, during the time period from March 1, 2009 and March 14, 2009, Plaintiff earned \$3,845.07, which is \$8,330.98 on a monthly basis.

8. Plaintiff's 2008 income averaged \$8,425.46 per month. Plaintiff had three different employers in 2008.

9. Plaintiff's income from March 20, 2009 through May 1, 2009 averaged \$6,838.90 per month, although one pay period (the pay period from March 1, 2009 through March 14, 2009) was more in-line with Plaintiff's 2008 income average.

10. Plaintiff's current income is \$8,330.98.

11. Defendant is employed as an executive assistant at Pharmaceutical Product Development. She works from 8:30 a.m. until 5:00 p.m. on Mondays through Thursdays, and a half-day on Fridays from 8:30 a.m. until 12:30 p.m.

12. Defendant earns monthly income of \$3,998.83.

13. Defendant provides medical and dental insurance coverage for the minor child at a cost of \$110.04 per month.

14. The child support amount shall be calculated using the North Carolina Child Support Guidelines, Worksheet B, wherein the Plaintiff shall have a total of 137 overnights with the minor child and the Defendant shall have 228 overnights.

15. The parties currently do not make any direct payments for work-related child care costs. Defendant and the minor child reside with Defendant's parents and they provide child care for the minor child, and no child care cost shall be included at this time for the calculation of child support under this Order.

16. The minor child will begin attending preschool as of the 2009-2010 school year, and that this expense is not used in the calculation of child support under this Order but will be paid pro rata.

Based upon the foregoing Findings of Fact, the Court enters the following:

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction of the parties and subject matter jurisdiction of this matter.

2. Defendant is entitled to child support payments from Plaintiff for the support and maintenance of the parties' minor child, as set forth in the decretal portion of this Order.

3. The child support provisions set forth in the decretal portion of this Order are consistent with the North Carolina Child Support Guidelines and the parties have the ability to comply with this Order.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Beginning June 1, 2009, Plaintiff shall pay child support to Defendant for the support and maintenance of the parties' child in the amount of \$639.00 per month.

2. Defendant shall continue to maintain health insurance for the minor child for so long as it continues to be available to her through her employment at a reasonable cost.

3. The parties shall divide all unreimbursed healthcare costs, including all medical, dental, orthodontia, prescription, and counseling expenses, incurred for the benefit of the minor child with Plaintiff paying 67% and Defendant paying 33% of such costs. The party incurring the expenses shall provide the other with documentation of the payment within thirty days of incurring the same and the other party shall provide reimbursement for his or her share within thirty days of receiving such documentation.

4. The parties shall divide any and all fees, including, but not limited to, registration fees and any monthly tuition for the minor child to attend preschool beginning in the 2009-2010 school year. These fees shall be paid directly to the preschool provider on time and pro rata with the Plaintiff paying 67% and the Defendant paying 33%. In the event the preschool requires single monthly payments, however, Plaintiff shall pay his share directly to Defendant each month on or before the first day of each month.

5. Plaintiff shall mail all of his child support payments, including monthly payments, medical expense reimbursements, and preschool payments if applicable, to Defendant by regular mail in a timely manner so they are received on or before the due date. Defendant shall provide e-mail confirmation to Plaintiff of her receipt of each payment she receives within twenty-four hours of receiving the payment. Plaintiff shall not deliver any payments directly to Defendant, whether at custodial exchanges or other times, nor shall he send such payments by certified mail. All payments shall be made payable to Defendant in her legal name, currently Marie Henry. Defendant shall promptly inform Plaintiff of any change in her legal name or mailing address.

This the _____ day of July, 2009.

The Honorable

STATE OF NORTH CAROLINA WAKE County		File No. <div style="text-align: center; border: 1px solid black; padding: 2px;">08 CVD 16887</div> Case No. (Code)		IV-D Case No. UIFSA Case No.	
In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division					
<input checked="" type="checkbox"/> Civil: Plaintiff KEITH <input type="checkbox"/> Criminal: STATE VERSUS Name Of Defendant MARIE		WORKSHEET B CHILD SUPPORT OBLIGATION JOINT OR SHARED PHYSICAL CUSTODY			
		G.S. 50-13.4(c)			
Children		Date Of Birth		Children	
T					
<div style="background-color: black; color: white; border-radius: 50%; width: 30px; height: 30px; display: flex; align-items: center; justify-content: center; margin-bottom: 5px;">STOP</div> STOP HERE IF the number of overnights with either parent is less than 123, shared physical custody does not apply (see Worksheet A).		Plaintiff		Defendant	
		Combined			
1. MONTHLY GROSS INCOME		\$ 8,330.98		\$ 3,998.83	
a. Minus pre-existing child support payment		—		—	
b. Minus responsibility for other children		—		—	
2. MONTHLY ADJUSTED GROSS INCOME		\$ 8,330.98		\$ 3,998.83	
3. PERCENTAGE SHARE OF INCOME (line 2 for each parent's income divided by combined income)		67.57 %		32.43 %	
4. BASIC CHILD SUPPORT OBLIGATION (apply line 2 to Combined Child Support Schedule, see AOC-A-162, Rev. 10/06)				\$ (2011) 1,253.00	
5. SHARED CUSTODY BASIC OBLIGATION (multiply line 4 x 1.5)				\$ 1,879.50	
6. EACH PARENT'S PORTION OF SHARED CUSTODY SUPPORT OBLIGATION (line 3 x line 5 for each parent)		\$ 1269.98		\$ 609.52	
7. OVERNIGHTS with each parent (must total 365 x total number of children)		137		228	
8. PERCENTAGE WITH EACH PARENT [line 7 divided by (365 X total number of children)]		37.53		62.47	
9. SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT (line 6 x other parent's line 8)		\$ 793.36		\$ 228.75	
10. ADJUSTMENTS (expenses paid directly by each parent)					
a. Work-related child care costs		\$		\$	
b. Health Insurance premium costs - children's portion only		\$		110.04	
c. Extraordinary expenses		\$		\$	
d. Total Adjustments (For each col., add 10a, 10b, and 10c. Add two totals for combined amount.)		\$		\$ 110.04	
11. EACH PARENT'S FAIR SHARE OF ADJUSTMENTS (line 10d combined x line 3 for each parent)		\$ 74.00		\$ 36.00	
12. ADJUSTMENTS PAID IN EXCESS OF FAIR SHARE (Line 10d minus line 11. If negative number, enter zero.)		\$		\$ 74.00	
13. EACH PARENT'S ADJUSTED SUPPORT OBLIGATION (Line 9 minus line 12.)		\$ 793.00		\$ 154.00	
14. RECOMMENDED CHILD SUPPORT ORDER (subtract lesser amount from greater amount in line 13 and enter result under greater amount.)		\$ 639.00		\$	
Date		Prepared By (Type Or Print)			

(NOTE: This form may be used in both civil and criminal cases.)

INSTRUCTIONS FOR COMPLETING CHILD SUPPORT WORKSHEET B PARENTS WITH JOINT OR SHARED CUSTODY

Worksheet B should be used when the parents share joint physical custody of at least one of the child(ren) for whom support is sought. Legal custody of the child(ren) is not relevant with respect to this determination. Worksheet B should be used if one parent has sole legal custody but, in fact, the parents exercise joint physical custody of the child(ren) as defined below. On the other hand, the worksheet should not be used simply because the parents share joint legal custody of the child(ren).

Joint physical custody is defined as custody for at least one-third of the year (more than 122 overnights per year) - not one-third of a shorter period of time, e.g. one-third of a particular month. For example, child support would not be abated merely because the child spends an entire month with one parent during the summer. **Worksheet B should be used only if both parents have custody of the child(ren) for at least one-third of the year and the situation involves a true sharing of expenses, rather than extended visitation with one parent that exceeds 122 overnights.** Parents share custody of a child if the child lives with each parent for at least 123 nights during the year and each parent assumes financial responsibility for the child's expenses during the time the child lives with that parent. A parent does not have shared custody of a child when that parent has visitation rights that allow the child to spend less than 123 nights per year with the parent and the other parent has primary physical custody of the child. Split custody refers to cases in which one parent has primary custody of the other child or children. Child support computations for shared and split custody are determined without regard to whether a parent has primary, shared, or joint legal custody of a child.

In cases involving joint or shared physical custody, the basic child support obligation is multiplied by 1.5 to take into account the increased cost of maintaining two primary homes for the child(ren). Each parent's child support obligation is calculated based on the percentage of time that the child(ren) spends with the other parent. The support obligations of both parents are then offset against each other, and the parent with the higher support obligation pays the difference between the two amounts.

Lines 1 through 4 of Worksheet B are calculated in the same manner as lines 1 through 4 of Worksheet A. Multiply line 4 by 1.5 and enter the result on line 5. On line 6, multiply line 5 by each parent's percentage share of income (line 3) and enter the result under the appropriate column for each parent.

On lines 7 and 8, enter the number of nights the child(ren) spend with each parent during the year and calculate the percentage of total overnights spent with each parent. If at least one of the children does not spend at least 123 overnights with each parent, Worksheet B should not be used. The total number of nights should equal 365 times the total number of children. On line 9, multiply plaintiff's line 6 by defendant's line 8 and enter the result under the column for plaintiff, then multiply defendant's line 6 by plaintiff's line 8 and enter the result under the column for defendant.

Lines 10a through 10d of Worksheet B are calculated in the same manner as lines 5a through 5d of Worksheet A. On line 11, multiply line 10d (Combined) by line 3 for each parent and enter the result under the column for that parent. Subtract line 11 from line 10d for each parent and enter the result on line 12 (if negative, enter zero).

Subtract line 12 from line 9 for each parent and enter the result on line 13 under the appropriate column. In some cases, the result may be a negative number. If the result is negative, enter it as a negative number on line 13, not as a positive number or as a zero. If plaintiff's line 13 is greater than defendant's line 13, enter the difference between these two amounts on line 14 under plaintiff's column and leave defendant's column blank. If defendant's line 13 is greater than plaintiff's line 13, enter the difference between these two amounts on line 14 under defendant's column and leave plaintiff's column blank. [Note that if either of the number on line 13 is a negative number, you must change the signs when you subtract. For example, \$100 minus negative \$50 equals \$150.]

NOTE TO PLAINTIFF AND DEFENDANT: *The information required to complete the worksheet is known only to the parties. It is the responsibility of the parties to provide this information to the Court so that the Court can set the appropriate amount of child support. The Clerk of Superior Court CANNOT obtain this information or fill out this worksheet for you. If you need assistance, you may contact an attorney or apply for assistance at the IV-D agency within your county.*

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 13255

MARSHA [REDACTED],)
Plaintiff,)
)
v.)
)
RICHARD [REDACTED],)
Defendant.)
)

**TEMPORARY CHILD SUPPORT ORDER
AND
NOTICE OF HEARING**

THIS CAUSE coming to be heard before the Honorable [REDACTED], District Court Judge, Tenth Judicial District, Wake County, North Carolina, presiding over the regular domestic session beginning September 17, 2010, on Defendant's motion filed on June 8, 2010 seeking a modification of child support.

IT APPEARING TO THE COURT that both parties were present, and neither party was represented by counsel.

THE COURT having reviewed the record and considered the evidence makes the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Wake County, North Carolina.
2. Defendant is a citizen and resident of Wake County, North Carolina.
3. The parties were married to each other on June 22, 1985 and separated from each other on or about January 22, 2007.
4. Two children were born of the parties' marriage, both of which were minors when the Complaint was filed in this action: N [REDACTED], born January 2, 1990, and N [REDACTED], born October 11, 1994.
5. On February 27, 2008, a Consent order for Support and Custody was entered in this matter. This order shall be referred to herein as the "Child Support Order".
6. At the time the Child Support Order was entered, N [REDACTED] and N [REDACTED] were both minors, and the children resided primarily with Plaintiff, spending less than 123 overnights each year with Defendant. Sometime after the Child Support Order was entered, N [REDACTED] turned 18 (and is now 20 years old) and graduated from high school. N [REDACTED] continues to reside with Plaintiff, and his custodial time with his father has not increased.
7. Pursuant to the terms of the Child Support Order, Defendant was ordered to pay child support in the amount of \$1,300 per month from December 1, 2007 until

June 30, 2008. From July 1, 2008, Defendant is ordered to pay \$1,000 per month in child support. The parties are to share all unreimbursed health care costs for the minor children with Defendant paying 65% and Plaintiff paying 35%.

8. At the time the Child Support Order was entered, Plaintiff was providing health insurance for the minor children. She continues to provide health insurance coverage (medical and dental) for N[REDACTED] at a cost of \$249.56 (this represents N[REDACTED]' share only).
9. At the time the Child Support Order was entered:
 - a. Plaintiff was employed part-time at American Airlines;
 - b. Defendant was employed by Amherst Industries, Incorporated, a sub-chapter "S" corporation that he owned. He was earning between \$54,000 and \$55,000 per year at that time;
 - c. Neither party incurred any child care expenses;
 - d. Plaintiff was providing health insurance for the minor children, which was available through her employment.
10. Amherst Industries ceased operation on or about December 31, 2009. Defendant's last pay check from Amherst was in November 2009. In 2009, Defendant earned \$54,331 from Amherst. Amherst declared a loss of \$40,578 in 2009.
11. Since the end of 2009, Defendant has been unemployed. He started receiving unemployment benefits in February 2010, and he continues to receive these benefits. The benefits have been extended, and he expects to receive them for another eighteen weeks. He currently earns \$530 per week (or \$2,297 per month) in unemployment benefits.
12. In addition to his unemployment benefits, he earns income from doing odd jobs. He also has received reductions in his rent in exchange for doing odd jobs for his landlord. He estimates that he earned \$1,000 this year from these jobs. However, some of the work he has done is seasonal work (yard maintenance) and he no longer has the opportunity for reduced rent.
13. Defendant has consistently paid the full amount of his child support obligation, and of the date of this Order, he does not have any child support arrears.
14. Defendant has not applied for any jobs in the last three months. He has had only one job interview this year. He has focused his job search on sales jobs, disregarding other areas of employment. Defendant has not made sufficient efforts to obtain employment, ignoring jobs that would provide the same or more income than his unemployment benefits (but less income than he earned from Amherst). Defendant has disregarded his child support obligation by failing to take sufficient steps to locate full-time employment.

15. At this time, Defendant's current documented income is limited to his unemployment benefits - \$2,297 per month.
16. N[REDACTED] continues to primarily reside with Plaintiff, with Defendant having less than 123 overnights with the child per year. There are currently no work related child care costs.
17. Plaintiff remains employed part-time with American Airlines, and she earns \$2,193.59 per month.
18. Plaintiff has health insurance coverage available for the minor children through her employment, and she pays \$259 per month for his coverage.
19. The parties' combined income falls within the North Carolina Child Support Guidelines. Child support should be calculated pursuant to Schedule A. The appropriate amount of child support pursuant to the Guidelines is for Defendant to pay \$522 per month to Plaintiff (see attached Worksheet A).
20. Defendant has the ability to pay the support ordered herein.
21. It is appropriate under the circumstances to enter a temporary modification to the Child Support Order.
22. Plaintiff indicated at the call of the calendar that Alice [REDACTED] is no longer representing her and asked that she be released as her attorney of record.

Based upon the foregoing findings of fact, the court **CONCLUDES AS A MATTER OF LAW:**

1. Plaintiff and Defendant are properly before the Court, and the Court has jurisdiction over the parties and subject matter herein.
2. There exist facts justifying this Court to temporarily modify the amount of child support paid by Defendant to Plaintiff.
3. The temporary child support provisions herein are appropriate given the reasonable needs and expenses of the minor children and each parent's respective ability to provide support for the maintenance of the minor children.
4. It is appropriate to make this a temporary reduction, subject to further court review, in order to see if Defendant will be able to secure employment.
5. The parties are able to comply with the terms of the Order as set forth hereafter.
6. The above Findings of Facts are incorporated herein to the extent that they represent Conclusions of Law.

Based upon the foregoing findings of fact and conclusion of law, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Consent Order for Support and Custody entered on February 27, 2008 remains in full force and effect except as expressly modified herein.

2. Effective with October 1, 2010, Defendant is ordered to pay temporary child support to Plaintiff in the amount of \$522 per month. Other than the change in the amount of child support, the child support payments will continue to be made as provided in the Child Support Order.

3. The pro-rata split of unreimbursed healthcare expenses for N [REDACTED] is modified so that plaintiff pays 49% and Defendant pays 51% of these costs.

4. For the 2010 tax year, Plaintiff shall be entitled to claim N [REDACTED] as a dependent on her income tax returns. She will continue to be entitled to claim N [REDACTED] as a dependent on her income tax returns.

5. Although the Court orally ordered Defendant to participate in the Working for Kids program established by Wake County Human Services, this program is no longer in service. Therefore, Defendant must fully utilize the Capital Area JobLink Career Center. The link for this website is <http://www.joblinkccc.com/>. Defendant must utilize all appropriate services offered through the JobLink Career Center at Swinburne.

4. This matter shall be heard on a review of the temporary child support order on **January 5, 2011 at 9:00 am in Courtroom 9B, Wake County Courthouse**. Each party must bring copies of their paystubs for the last 3 months. In addition, Defendant must bring three (3) copies of all of his bank statements from January 2010 through December 2010, documentation for all income he has earned since the entry of this Order, and he must bring documentation of his job search and his participation with JobLink since the entry of this Order.

5. Alice [REDACTED] and the law firm of Tharrington Smith, LLP are hereby released as attorney of record for Plaintiff.

This the 17th day of September, 2010.

The Honorable [REDACTED]

NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 07 CVD 13255

MARSHA [REDACTED],)
Plaintiff,)
)
v.)
)
RICHARD [REDACTED],)
Defendant.)
)

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the foregoing Order was served on Plaintiff and Defendant by mailing a copy thereof first class mail, postage prepaid, addressed as follows:

Ms. Marsha [REDACTED]
[REDACTED]
Cary, NC [REDACTED]

Mr. Richard [REDACTED]
[REDACTED]
Raleigh, NC [REDACTED]

A courtesy copy is also served on:
Ms. Alice [REDACTED]
Tharrington Smith, LLP
[REDACTED]
Raleigh, NC [REDACTED]

This the ___ day of September, 2010.

Laura [REDACTED], Family Court Case Coordinator