

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 08 CVD #####

HENRY MAGNOLIA,
Plaintiff

V.

EQUITABLE DISTRIBUTION
JUDGMENT

WILMA LEE MAGNOLIA,
Defendant

THIS MATTER coming on to be heard and being heard before the Honorable Always DoRight, District Court Judge Presiding over the April 10, 2009 session of Civil District Domestic Relations Court for Harnett County, North Carolina; and the Plaintiff being present with counsel, Abe L. Attorney, and the Defendant being present with counsel, Sue Per Lawyer; and the Court having heard the testimony of the Plaintiff, the Defendant, and other witnesses, having heard the evidence presented by the parties, and having heard the arguments of counsel, and upon the record and file herein;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECREE OF ITS JUDGMENT:

FINDINGS OF FACT

1. The Plaintiff is a resident of Harnett County, North Carolina, and has been for more than six months preceding the commencement of this action.
2. The Defendant is a resident of Harnett County, North Carolina.
3. The parties were married to each other on July 4, 1987, and were subsequently separated on December 1, 2007. A judgment of absolute divorce was entered in a separate action on February 17, 2009.
4. There were two children born to these parties, namely: Henry Magnolia, Jr., age

17, and Rosa Lee Magnolia, age 14.

5. This matter is before the Court this date upon the issue of equitable distribution.

6. Equitable distribution was sought by the parties in their pleadings filed herein, prior to the entry of a judgment of absolute divorce.

7. The Defendant wife is 45 years old and is in good health. She earned a bachelor's degree from Greensboro College prior to the marriage. After the parties married, she returned to school to earn a nursing degree from Fayetteville Technical Community College. However, she has not worked since the date of marriage except to assist her husband occasionally with the family business.

8. During the marriage and while the parties lived together, as well as since the parties separated, the Wife has been the primary custodian and caretaker of the day-to-day needs of the children. Further, following the birth of Henry Jr., the Wife has been the primary caregiver for his mental and physical disabilities, which has limited her ability to work outside of the home. Her nursing degree and training have assisted her in providing appropriate care for Henry Jr., and she is better suited than Husband by temperament, experience, and training to provide care for the children (especially Henry Jr.) for the foreseeable future. Henry Jr. is expected to continue to need specialized care throughout his life.

9. The Plaintiff husband is 49 years old and is in good health. He graduated from high school but does not have any advanced education beyond high school. He has been involved in the textile industry since before the parties' marriage. Currently he operates the family business, Magnolia Knitting Mill. He also works for Super Sewing, Inc., a business that opened after the separation of the parties. From both businesses, he receives a current income of \$75,000.00 per year.

10. Prior to the marriage, the husband's father gave him a five-acre tract of land located in Erwin, North Carolina. No evidence of the value of this land on the date of marriage or at the date of separation or at the time of trial was presented, except as included in the value of property located on the land. Prior to the marriage, husband built a house on a two-acre portion of the land. He borrowed \$80,000.00 to build the house.

11. On the date of marriage, the land and house had a fair market value of \$95,000.00 and the loan balance was 75,000.00. Title to the two-acre tract has remained continuously in the husband's name. During the marriage, the mortgage, taxes, insurance and maintenance costs for the residence were paid from marital funds.

12. The parties stipulated that, on the date of separation, the house and two-acre tract had a fair market value of \$200,000.00, and that the mortgage balance was \$15,000.00. Since the date of separation, Henry has made the mortgage payments, including taxes and insurance, pursuant to an order of post separation support. The parties also stipulated that, on the date of trial, the house and two-acre tract have a fair market value of

\$210,000 and the mortgage has been reduced to \$13,000.00.

13. Wilma and the children have lived in the house since the date of separation and continue to do so at the time of trial.

14. The house and two-acre tract have both marital and separate property components. Henry's separate estate contributed \$20,000.00 before the marriage and the marital estate contributed \$60,000.00 during the marriage toward the \$80,000.00 cost of acquiring the property. Therefore, as of the date of separation, one-fourth (\$46,250.00) of the value of the house and two-acre tract was Henry's separate property, and three-fourths (\$138,750.00) of the value of the house and two-acre tract was marital property.

15. The net value of the house increased between the date of separation and the date of trial in the amount of \$12,000. This increase is the result of an increase in the fair market value of the property after the date of separation and prior to the date of trial of \$10,000.00 and as a result of a decrease in the mortgage balance of \$2,000.00 during the same period. The court finds that the mortgage is not marital debt, as it was incurred by Plaintiff Husband before the date of marriage. Further, payment of the mortgage by Plaintiff husband during separation will not be considered by the court because the debt was paid pursuant to an order of postseparation support. As three-fourths of the total value of the house on the date of separation is marital, the court finds the same proportion of postseparation appreciation should be attributed to the marital component of the asset. Therefore, \$9,000 of the total postseparation appreciation in market value is divisible property. The remaining \$3,000 is appreciation of the separate property component of this asset, and is therefore Plaintiff Husband's separate property.

16. On the other three-acre tract carved from the original five-acre tract, the parties built and opened Magnolia Knitting Mill one year after the marriage. On the date of separation, the three-acre tract of land was titled in the name of Magnolia Knitting. The court concludes that Magnolia Knitting is marital property. The mill and three-acre tract is completely enclosed by a chain link fence. Plaintiff husband has been the manager of the mill since it opened and he has worked long days and most weekends to build the business. Defendant wife occasionally helped out at the mill but devoted most of her time to maintaining the home and caring for Henry Junior and Rosa Lee.

17. During the marriage, the mill operated steadily with three shifts of workers. Approximately two months after the separation of the parties, Super Sewing, Inc. was established about one mile from Magnolia Knitting Mill. It is also a knitting mill. Plaintiff husband sold a number of pieces of equipment from Magnolia Knitting Mill to Super Sewing, Inc. No evidence was presented as to the sale price of the equipment or as to what funds were received by Magnolia Knitting Mill for the equipment. Also after the date of separation, Henry reduced the number of shifts of workers at Magnolia from three to two, causing a reduction in the productivity of the mill.

18. Both parties presented testimony as to the value of Magnolia Knitting Mill on the date of separation and on the date of trial. Randy Whitt, CPA, valued the business at

\$300,000.00 on the date of separation and at \$260,000.00 on the date of trial. The reduction in value during separation was based on the reduction in productivity. In determining the value of the business, Mr. Whitt used the capitalization of earnings method. The Court finds that Mr. Whitt's testimony was credible and was the most credible evidence presented as to the value of the property. Therefore, the Court finds that the value of the business on the date of separation was \$300,000.00. The Court also finds that the reduction in the value of the business between the date of separation and the date of trial resulted from the actions of the Plaintiff husband and therefore is not divisible property.

19. After the establishment of Super Sewing, Inc., the Plaintiff husband acquired 25% of the stock of that corporation. No evidence was presented as to the value of that stock or as to how he acquired the stock. The Court therefore finds that it is not marital property.

20. Prior to the separation, the Internal Revenue Service assessed a tax debt against the parties individually and against Magnolia Knitting Mill. This followed an audit of the tax records of the business. On the date of separation, the debt had a remaining balance of \$18,000.00. During the separation, Plaintiff husband made payments on the debt, and by trial, the balance had been reduced to \$17,000.00. All of the funds from the business during the marriage were used for expenses of the business and of the family. The debt therefore was incurred for the joint benefit of the parties and was a marital debt. The \$1,000.00 decrease in the value of the marital debt during separation is divisible property.

21. Five years prior to the marriage, Plaintiff husband established a 401K account through a previous employer. He made deposits to that account and on the date of marriage, it had a balance of \$10,000.00. Throughout the marriage, he continued to make deposits to the account and on the date of separation, it had a value of \$50,000.00. Three months before the parties separated, he withdrew \$15,000.00 from the account to pay for a vacation with a female friend. This action on the part of plaintiff husband led directly to the separation of the parties. Therefore, the court considers this dissipation of assets to be a distribution factor. After the separation, plaintiff made additional deposits of \$800.00 to the account and on the date of trial, the account had a balance of \$51,000.00 in it. The account was acquired over a period of 25 years prior to the separation, five years before the marriage and 20 years during the marriage. Therefore, the court finds that twenty percent of the account is the husband's separate property and eighty percent is marital property. Of the \$1,000.00 increase in value after the date of separation, \$800 was due to contributions from plaintiff while \$200.00 was the result of accumulated interest on the account. As eighty percent of the date of separation value of the account is marital property, eighty percent of the postseparation passive appreciation, or \$160.00, is divisible property.

22. After the marriage and establishment of the business, the parties also established a 401K account in the wife's name. During the marriage, contributions were made to the account and on the date of separation, it had an account balance of \$22,000.00. No additional contributions were made after the date of separation and on the date of trial,

the balance was \$21,000.00. The decrease in value was not the result of the actions of either spouse. This entire account is marital property, and the decrease in value following the separation of \$1,000.00 is divisible property.

23. One month prior to the separation, the husband purchased a new Mustang convertible for the wife as a birthday present. The court finds and concludes that the car is marital property. The wife has continued to drive the vehicle since its purchase. On the date of separation, the loan used to purchase the car had a balance of \$28,000.00. The loan was a debt incurred to acquire marital property for the joint benefit of the parties and was therefore a marital debt. Although there is no evidence of the purchase price of the car, there was credible evidence that on the date of separation the car had a fair market value of \$22,000.00, and the Court so finds. Additionally, there was credible evidence that on the date of trial the car had a fair market value of \$18,500.00 based on the general decline in value of vehicles as they are normally used. As the \$3,500 decrease in value of the car was not due to the postseparation actions of either spouse, the court concludes that said \$3,500 decrease in value of the car is divisible property.

24. Subsequent to the date of separation, the husband made all payments on the Mustang; these payments totaled \$3,200.00 and they reduced the loan balance to \$26,000.00 as of the date of trial. The postseparation reduction in the value of the car loan in the amount of \$2,000 is divisible property. The remaining payments made by plaintiff totaling \$1,200 represented interest and financing charges on marital debt that accrued after separation. Therefore, the court concludes that those charges were divisible debt paid by plaintiff.

25. Prior to 1989 but during the marriage, the parties established a joint savings account. The parties stipulated that in 1989, the husband received \$8,000.00 as an inheritance from his maternal uncle. Those funds were deposited in the joint savings account. On the date of separation, the account had a balance of \$24,000.00. Throughout the marriage, there were deposits to and withdrawals from the account. There is insufficient evidence of what happened to the \$8,000.00 after it was deposited. Therefore, the Court finds that the entire balance on the date of separation was marital property. The Court, by previous interim distribution order, has equally divided those funds between the parties.

26. Located in Coats, North Carolina, relatively near the five-acre tract of land, is a 37-acre tract which was titled in both parties' names by the wife's aunt. Wife's aunt testified that she did not intend plaintiff to take any individual interest in the land at the time of the conveyance. However, the court does not find that testimony to be credible. Instead, the court finds that the land was given to both parties during the marriage, and therefore is marital property. The fair market value on the date of separation was \$20,000.00 and there was no evidence presented as to its value on the date of trial.

27. On the 37-acre tract are two barns which contain various items collected by the husband during the marriage. These items include old farm machinery and old sewing machines. The Court entered an order upon request of the wife for the property to be

inventoried and appraised. John Jones, owner of Jones Auctions, inventoried the property in the two barns on January 15, 2003. Mr. Jones regularly buys and sells similar property. He appraised the property then in the two barns at \$25,000.00 and indicated that the value would not have changed between the date of separation and the date of his appraisal. There was some evidence that the husband had removed other items from the barns after the date of separation, but there was no competent evidence as to the value of the items removed.

28. Both parties had a Bank of America Visa card in his/her individual name that each used throughout the marriage. As of the date of separation, the wife's card that was used for household expenses, including clothing for the children, had a balance of \$1,500.00. Subsequent to the separation, the wife continued to use the card and charged an additional \$500.00 on the card. She also made monthly minimum payments of \$15.00 for a total of \$240.00 after separation. At the date of trial, the balance on the card was \$2,500.00. The date of separation balance of \$1,500.00 is debt incurred for the joint benefit of the parties and is marital debt. However, there was no evidence that the payments made by wife during separation reduced the marital portion of the debt, so the payments do not constitute divisible property and/or debt. The increase in the balance not attributable to postseparation charges is attributable to interest and finance charges on the marital debt and therefore is divisible property. The value of the divisible debt is \$500.00.

29. The husband's Bank of America Visa card had a balance owed on the date of separation of \$300.00 that had been incurred for clothes for himself and the children. As that was debt incurred for the joint benefit of the parties, it is marital debt. After the date of separation, plaintiff continued to make purchases totaling \$500.00 on the card for his living expenses. He also made minimum monthly payments of \$15.00, for a total of \$240.00, after the separation. At the date of trial, the balance on the card was \$1,000.00. The postseparation increase in the balance owed not attributable to new charges by Husband (that is, \$200.00) constitutes interest and finance charges, and is divisible property. However, there is no evidence that the postseparation payments made by plaintiff reduced the marital portion of the debt, so the payments do not constitute divisible property and/or debt.

30. The Court finds that the net value of the marital estate on the date of separation was \$543,950.00. The net value of the divisible property on the date of distribution is \$6,260.00.

31. The Defendant mother has custody of the minor children pursuant to a prior order of the court. Henry, Jr. is, and has been since birth, mentally and physically disabled.

32. In considering whether an equal distribution would be equitable, the Court has considered all of the evidence presented by the parties relating to the statutory factors set out in Chapter 50-20(c) of the North Carolina General Statutes (as more particularly set out in others of the findings of facts contained in this Judgment), and specifically

including the following:

- A. The income and earning abilities of each of the parties.
- B. The length of the marriage (20 years prior to the date of separation, 22 years prior to the date of divorce).
- C. The nursing degree earned by the wife during the marriage.
- D. The Defendant wife's need as the custodial parent for the marital residence for the use of the minor children.
- E. The Plaintiff husband's separate ownership interest in Super Saving Inc and the decrease in productivity by sale of equipment and reduction of shifts at Magnolia Knitting Mill, and the continued operation of the mill by the husband and his income from it.
- F. The Plaintiff husband's separate interest in his 401K account and the dissipation of the account by him prior to the separation.
- G. The fact that the mill is not a liquid asset and the need to maintain it intact in the Plaintiff husband's ownership.
- H. The homemaker contributions of the Defendant wife.
- I. The removal of additional property by Plaintiff husband from the two barns.
- J. The husband's contribution of separate property to marital assets and the gift of land from wife's aunt to the marital estate.
- K. The use by the wife of the marital residence and maintenance of the residence by her after separation and the use of the vehicle by the wife. While husband paid the mortgage on the residence during separation, he did so as the result of an order of postseparation support. Therefore, the court does not credit plaintiff husband for those payments.

33. Based on the foregoing, the Court has determined and finds as a fact that an unequal division of marital and divisible assets and debts would be equitable and that the assets and debts should be divided as follows:

Plaintiff

Magnolia Knitting Mill
\$12,000.00 from joint savings account

IRS Debt and the \$1,000 postseparation payment made on the debt
\$1,200 postseparation payment on car loan
His 401K account
His credit card debt

Defendant

Marital Residence
Mustang Convertible and car loan
\$12,000.00 from joint savings account
37-acre tract
Personal property in 2 barns
Her 401K account
Her credit card debt

34. It is necessary to distribute Plaintiff's separate property interest in the marital residence to defendant in order to effectuate a fair and equitable distribution. The court has given plaintiff appropriate credit for his separate property.

35. The Plaintiff should make a distributive award of \$38,000.00 to the Defendant wife.

36. The presumption that an in-kind division is equitable is rebutted by, among other reasons, the fact that the most valuable marital asset is Magnolia Knitting Mill, a closely-held corporation. In addition, the Court finds that each party should retain ownership of his/her individual 401(k) accounts.

37. The Plaintiff husband has the ability to pay the distributive award from the assets distributed to him herein. In addition to the \$12,000 in the joint account, Magnolia Knitting Mill owns equipment and machinery valued in excess of the amount of the distributive award.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES
THE FOLLOWING**

CONCLUSIONS OF LAW

1. This court has jurisdiction over the parties and the subject matter herein.
2. The real and personal property and the debts described in the above paragraphs are the marital, separate, and divisible property and debts of the parties as defined in North Carolina General Statutes 50-20 (b) (1).
3. An unequal division of the property as provided below is equitable and fair, considering all of the evidence and the statutory factors.

4. The presumption that an in-kind division is equitable has been rebutted by the greater weight of the evidence. A complete distribution in-kind is not practical, and the distributive award granted herein to the Defendant wife facilitates the distribution and is necessary to achieve equity between the parties.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. That the court decrees an equitable distribution and that the party awarded property hereinafter set forth shall have all right, title and interest in such property except as otherwise provided.
2. That the Plaintiff husband shall be the sole owner of the \$12,000.00 from the joint savings account that he has previously received and the sole owner of his 401K account.
3. That ownership and title to the business known as Magnolia Knitting Mill, located in Erwin, North Carolina is transferred to Plaintiff husband as his sole property hereafter. Plaintiff shall be solely responsible for any debt, taxes and insurance or other liability associated with this property and shall hold defendant harmless from said debt. The Defendant is hereby divested of any interest she may have had in that business. The Defendant is further ordered to execute and deliver, within 30 days hereafter, any and all documents reasonably necessary to effectuate a transfer of this business to the Plaintiff.
4. That Plaintiff husband shall be solely responsible for the marital debt to the Internal Revenue Service and for the Bank of America Visa Credit card in his name and shall hold Defendant harmless from such debts.
5. That the Defendant wife shall be the sole owner of the \$12,000 from the joint savings account that she has previously received and the sole owner of her 401K account.
6. That the Defendant wife shall hereafter be the sole owner of the Mustang Convertible. Further, Defendant shall be solely responsible for the remaining balance of the loan on said vehicle, as well as the taxes and insurance associated with said vehicle, and she shall hold Plaintiff harmless from said debt. The Plaintiff is further ordered to execute and deliver, within 30 days hereafter, any and all documents reasonably necessary to effectuate a transfer of this vehicle to the Defendant.
7. The title to the real property known as the marital residence located in Erwin, North Carolina, and more particularly described in the deed which was introduced into evidence as Plaintiff's Exhibit No. 5 (which legal description is incorporated herein by reference) is transferred to Defendant wife and shall be

her sole property hereafter. Plaintiff is ordered to transfer his interest to the Defendant through the execution of a quitclaim deed within 10 days of the filing of this judgment. Should Plaintiff fail to comply with such order, Plaintiff shall be divested of title to said real property pursuant to North Carolina General Statute 1A, Rule 70, and title to that property shall be vested in Defendant, and in said event the Clerk of Superior Court of Harnett County is directed to sign the deed in his stead. Defendant shall be solely responsible for the mortgage, taxes and insurance associated with said property and shall hold Plaintiff harmless from said debt.

8. That title to the real property known as the 37-acre tract of land located in Coats, North Carolina, received from Defendant's aunt, and more particularly described in the deed which was introduced into evidence as Defendant's Exhibit No. 12 (which legal description is incorporated herein by reference) is transferred to Defendant wife as her sole property hereafter. The Defendant shall be the sole owner of all personal property located in the barns on said property. Plaintiff is ordered to transfer his interest in the real property to Defendant through the execution of a quitclaim deed within 10 days of the filing of this judgment. Should Plaintiff fail to comply with this order, Plaintiff shall be divested of title to such real property pursuant to North Carolina General Statute 1A, Rule 70, and title to that property shall be vested in Defendant, and in said event the Clerk of Superior Court of Harnett County is directed to sign the deed in his stead. Defendant shall be solely responsible for the taxes and insurance associated with said property and shall hold Plaintiff harmless from said debt.
9. Defendant wife shall be solely responsible for the marital debt on the Bank of America Visa Card in her name and shall hold Defendant harmless from such debt.
10. That the Plaintiff husband shall pay to Defendant wife a distributive award of \$38,000 within six months of the filing of this judgment. If the Plaintiff fails to pay the award within six months of the filing of this judgment, it shall carry interest at the rate of eight percent (8%) per annum from the filing of the judgment until paid in full.
11. That this order shall be and is hereby a full and final settlement of the claims of the parties for equitable distribution. This cause is retained for such further orders as may be necessary to effect the equitable distribution that is herein ordered, otherwise, this judgment is a final judgment.

Dated this 23rd day of May, 2009.

District Court Judge