

FILED

NORTH CAROLINA

WAKE COUNTY

2010 NOV 10 AM 7:25  
IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO.: 08 Cvd 1667  
WAKE COUNTY, O.S.C.

RITA [REDACTED]

Plaintiff

BY \_\_\_\_\_

Vs.

EQUITABLE DISTRIBUTION JUDGMENT

SAMUEL [REDACTED]

Defendant.

THIS CAUSE, coming on to be heard and being heard before the undersigned District Court Judge of Wake County, North Carolina; Rita [REDACTED] appeared pro se and the Defendant, Samuel [REDACTED], was represented by Attorney George [REDACTED], and the court having heard the evidence and the testimony of both parties and based on the arguments of the parties, the court makes the following Findings of Fact, Conclusions of Law, and entry of its Order:

**FINDINGS OF FACT**

1. Plaintiff and Defendant were married on June 30, 1995.
2. Plaintiff and Defendant separated on May 31, 2008.
3. The parties were divorced on July 31, 2009.
4. A permanent Order for child custody, permanent child support and alimony was entered in this cause on the 21<sup>st</sup> day of May, 2009.
  - a) That the minor child, Leah [REDACTED], age 15 years, resides primarily with the Plaintiff;
  - b) Two other children born of the marriage, S [REDACTED], age 21 years, works part-time and is a part-time student at UNC Chapel Hill and C [REDACTED], age 20 years, is a full time student at UNC Chapel Hill. Plaintiff and Defendant assist the child, S [REDACTED], with his college tuition. C [REDACTED] attends college on a scholarship, but both parties provide nominal financial assistance for her.
  - c) Defendant was ordered to pay monthly alimony to Plaintiff in the amount of \$1,000, for 84 months, beginning April 20, 2009.
  - d) Defendant was ordered to pay monthly child support to Plaintiff in the amount of \$1,047.

e) Defendant was also ordered to pay \$6,591 toward Plaintiff's support arrearage, for which he pays \$300 per month.

5 Defendant attended Northland College and NC State University.

6 Defendant is currently employed as a Senior Applications Chemist with Scott B█████, Inc. His current salary is \$109,204 per year. As of the date of this hearing, he had earned bonus income in 2010 totaling \$1,075.90. He currently contributes \$728.03 per month to his retirement plan associated with this employment.

7. Plaintiff is a graduate of Durham Tech, graduated from paralegal school in 2002 and worked as a paralegal for a brief period of time.

8. Plaintiff is currently employed with Macy's in Durham, North Carolina, where she works part-time and earns \$10 per hour. As of May 15, 2010, her year to date income was \$7,533.

9. After the parties separated, Plaintiff was granted a divorce from bed and board, and she remained in the former marital residence as part of the child support.

10. The Plaintiff and Defendant received a divorce from bed and board, temporary child support in the amount of \$1,552 from June 8 until July 20, 2008 and thereafter in the amount of \$1,000, post separation support in the amount of \$260 for June 2008 and effective July 2008, the amount of \$620. The Defendant was required to pay attorney fees in the amount of \$2,270 on June 9, 2008. The Defendant was held in contempt of court by Order entered May 15, 2009 and the Contempt Order was suspended on the condition that Defendant pay \$6,591 in post separation support arrearage in the amount of at least \$300 per month with the first payment to be due on May 20, 2009 and subsequent payments due on the first of each month beginning June 1, 2009. Defendant was further ordered to pay reasonable attorney fees to Attorney Miles ██████ in the amount of \$1,649.50 and to Alyscia ██████ in the amount of \$2,148.75.

11. Since the parties separated, both parties have made payments on the mortgage encumbering the former marital residence.

12. Although Plaintiff lived in the former marital residence after the PSS order was entered, Plaintiff did not consistently make the mortgage payment. The PSS order obligated neither party to pay the mortgage. There were times when Defendant paid the mortgage and offset the mortgage payment from his PSS obligation.

13. Plaintiff continues to reside in the former marital residence with the parties' minor child, L ██████

14. In June 2010, Defendant received notification from BB&T, the mortgage holder on the former marital residence, that the home owner's insurance had been cancelled. As a result,

BB&T provided insurance for the residence at a high premium. This insurance costs the parties \$2,445 per year.

15. Defendant began working for Reichhold, Inc. at the end of October 1989, prior to the parties' marriage (June 30, 1995). He continued to work for Reichhold until August 2000. He worked for Reichhold for 130 months before leaving this employment. He accrued retirement benefits while married to Plaintiff for 62 months of the 130 months that he worked at Reichhold.

16. A portion of Defendant's pension benefits was acquired during the marriage and existed on the date of separation. The coverture fraction is 62/130 (or 48%), which represents the portion of Defendant's Reichhold retirement benefits that are marital property.

17. The former marital residence was damaged by water around November 21, 2008. State Farm paid on this claim, and Plaintiff received \$16,945.68 net proceeds. She used this money to repair the house and make various upgrades. The evidence is insufficient to find that the insurance payment was divisible property. The funds have been consumed, and there is no evidence that the use of these funds to repairs and/or upgrade the former marital residence.

18. Plaintiff was not aware of the extent of Defendant's credit card usage. She does not believe in using revolving credit accounts unless they are paid off each month. Plaintiff was shocked and dismayed once she learned of the amount of Defendant's credit card debt.

19. Sometime after the parties separated, Defendant reached an agreement with Expert Settlement Professional to consolidate the debt in his name. In February 2010, he added his FAIA BOA credit card #7811 to this agreement. After this addition, his consolidated debt total was \$105,664.10 for which he is obligated to pay \$1,262.34 per month.

20. The distribution of marital and divisible property is as follows:

a) The house and lot located at [REDACTED], Cary, North Carolina, is marital property and the value of the former marital residence on the date of separation and current value is \$197,000 and is credited to the Plaintiff,

The balance of the BB&T mortgage was \$104,859 on the date of separation and the current balance is \$87,389.77. Each party made payments to decrease the mortgage on the former marital property. Plaintiff receives this marital debt balance of \$87,389.77.

The decrease in principal mortgage balance is classified as divisible with a value of \$17,470.06 on the date of separation.

b) Defendant negotiated the purchase of the Ghana lot, located in West Africa, for \$19,000, without Plaintiff's knowledge. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

Defendant's lost investment, is divisible property in the amount of \$19,000 on the date of separation.

c) Prior to the date of separation, the parties paid \$30,000 toward the purchase of residential property in Ghana. The purchase contract was terminated and the deposit was refunded with each party receiving one-half, or \$15,000 each as divisible property. Due to insufficient evidence, the court was unable to determine the fair market value of this property on the date of separation.

d) Plaintiff had primary use of the 1998 E 320 Mercedes, titled in Defendant's name, which was marital property that was totaled on or about February 6, 2009. Plaintiff received \$11,080.70 in insurance proceeds credited to Plaintiff.

e) The 1992 Toyota Camry, titled in Defendant's name, is not classified in that it was totaled and the proceeds were used to purchase a vehicle for the parties' son. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

f) Defendant owns a 2005 ML 350 Mercedes, which is marital property, titled in his name, and the court finds that the value of the vehicle on the date of separation and current is \$19,000.

The encumbrance on the 2005 ML 350 Mercedes on the date of separation and current is \$6,000 and is credited to the Defendant.

g) Plaintiff acquired a 2007 E-350 Mercedes after the parties separated and the court finds that the vehicle is Plaintiff's separate property with a current value of approximately \$29,000.

The encumbrance on the 2007 E 350 Mercedes is Plaintiff's separate debt in that it was acquired by the Plaintiff after the date of separation.

h) The Plaintiff was employed by Macy's had earned retirement benefits during the marriage with a value as of the date of separation and current of \$4,262. This item is Plaintiff's and is classified as marital property.

i) The IPS Retirement Plan (401K) managed by John H. [REDACTED] is marital property that had a date of separation value of \$67,527. The account has been equally divided by the parties pursuant to a QDRO entered on January 13, 2010.

j) Defendant's Reichhold Chemicals Retirement Plan is part marital, separate and divisible property. The asset has not been valued. On the date of separation, it was projected that Defendant would receive, upon his retirement, benefits in the amount of \$674 per month. Although there is no current value, the marital portion of this asset can be divided between the

parties by way of a QDRO. The marital portion of this account is represented by the coverture fraction 62/130 (48%). The rest of this account (52%) is Defendant's separate property.

k) Defendant was employed with Cargill Chemical prior to the marriage of the parties and the Cargill Chemical Pension Plan is Defendant's separate property. Although the parties were living together during some of the time that Defendant was employed with Cargill, any retirement benefits he earned through this employment are his separate property. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

l) Defendant began his employment with Scott B [REDACTED] on September 8, 2008, after the date of separation. Any retirement accounts or benefits he has arising out of his employment with Scott B [REDACTED] did not exist on the date of separation and are Defendant's separate property.

m) There is not sufficient evidence to find that Defendant has any ownership interests on any of the IPS patents which bear his name and they are not classified. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

n) Defendant's life insurance policy is classified as marital property with no value in that it was a term policy and had no cash value on the date of separation, and has been canceled. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

o) Defendant's Bank of America checking account [REDACTED] is marital property with a date of separation and current value of \$3,975, credited to the Defendant.

p) Defendant's Bank of America checking account #9230 was not classified in that it was closed on February 13, 2008, prior to the parties' separation. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

q) Both the Plaintiff and Defendant contributed to Wachovia CD [REDACTED] prior to the separation. After the parties separated, Plaintiff withdrew \$14,099 from this CD classified as marital and divisible property and valued on the date of separation and currently at \$14,099 and credited to the Plaintiff.

r) Wachovia CD [REDACTED], jointly titled in Plaintiff's name with one of the children, is classified as marital property and valued on the date of separation and currently at \$2,312.03 and credited to the Plaintiff.

s) Wachovia CD [REDACTED], jointly titled in Plaintiff's name with one of the children, is classified as marital property and valued on the date of separation and currently at \$1,082 and credited to the Plaintiff.

t) After the parties separated, Plaintiff withdrew \$8,453 from Wachovia CD [REDACTED], classified as marital and divisible, and it was closed out on or about July 16, 2008. The date of separation and current value is \$8,483 and credited to the Plaintiff.

u) Plaintiff's Crown Banking account [REDACTED] is classified as marital and the date of separation and current value is \$960.92 and credited to the Plaintiff.

v) Evidence is insufficient to support Plaintiff's contention that the 2008 Taxes for claiming dependency exemption has value. The right to claim a dependency exemption is not property and it is not classified in that it is not subject to equitable distribution. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

w) Evidence is insufficient to support Plaintiff's contention that her right to Defendant's social security benefits is an asset and has value. Plaintiff's right, if any, to Defendant's social security benefits is not property that is subject to equitable distribution and item is not classified. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

x) Evidence is insufficient to support Plaintiff's contention that Defendant received a bonus from IPS in 2008 and item is not classified. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

y) Plaintiff's living room furniture is marital and the date of separation and current value is \$1,700 and credited to the Plaintiff.

z) Defendant's bed, mattress and box springs are classified as marital and the date of separation and current value is \$400 and credited to the Defendant.

aa) Defendant's basement furnishings are classified as marital and the date of separation and current value is \$900 and credited to the Defendant.

bb) The dining room furnishings were left at the former marital residence when the Defendant vacated the property and Plaintiff has had possession of the property since that time. It is marital property and the date of separation and current value is \$100 and credited to the Plaintiff.

cc) The kitchen furnishings were left at the former marital residence when the Defendant vacated the property and Plaintiff has had possession of the property since that

time. It is marital property and the date of separation and current value is \$300 and credited to the Plaintiff.

dd) Evidence is insufficient to classify the Plaintiff's Macy's credit card debt, value or distribute this debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

ee) The date of separation balance of Defendant's Chase credit card [REDACTED] was \$11,020.30. The parties did not live within their means. This credit card was used to pay household living expenses. Defendant may have charged some of attorney's fees to this card. This debt is classified as marital and Defendant's separate debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

ff) The date of separation balance of Defendant's Wachovia FIA credit card [REDACTED] was \$19,603.69. Defendant continued to use this card after the parties separated. Only the date of separation balance of \$19,603.69 shall be dealt with in this order and it is Defendant's marital debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

gg) The date of separation balance on Defendant's Wachovia FIA credit card [REDACTED] was \$14,170.21. The debt was consolidated into Wachovia credit card account [REDACTED]. Only the date of separation balance shall be dealt with in this order and it is Defendant's marital debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

hh) Defendant's Capital One credit card [REDACTED] had a date of separation balance of \$17,567.26. Defendant continued to use this card after the parties separated. Only the date of separation balance shall be dealt with in this order and it is Defendant's marital debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

ii) Defendant's Best Buy credit card [REDACTED] had a date of separation balance of \$2,384.81. Defendant continued to use this card after the parties separated. Only the date of separation balance shall be dealt with in this order and it is Defendant's marital debt. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

jj) The evidence is insufficient for the court to distribute the Defendant's Circuit City credit card [REDACTED] debt; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property. The evidence is insufficient for the court to distribute this property; therefore, the trial court makes no further findings of fact, conclusions of law, or an equitable distribution of this property.

kk) Defendant's Bank of America credit card [REDACTED] had a date of separation balance of \$15,995 and was used by Defendant prior to the date of separation for his attorneys' fees. This debt is Defendant's separate debt.

ll) The IRS Income Tax liability for the 2007 tax year is a marital debt and the date of separation and current balance is \$3,100. This is Defendant's marital debt.

21. The court gave due consideration to the evidence presented by the parties in support of the factors enumerated in N.C. Gen. Stat. §50-20 (c) including:

a) N.C. Gen. Stat. §50-20 (c) (1): The income, property, and liabilities of each party at the time the division of property is to become effective;

b) N.C. Gen. Stat. §50-20 (c) (3): The duration of the marriage and the age and physical and mental health of both parties;

c) N.C. Gen. Stat. §50-20 (c) (4): The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects.

d) N.C. Gen. Stat. §50-20 (c) (5): The expectation of pension, retirement, or other deferred compensation rights that are not marital property.

e) N.C. Gen. Stat. §50-20 (c) (6): Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker.

f) N.C. Gen. Stat. §50-20 (c) (7): Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse.

g) N.C. Gen. Stat. §50-20 (c) (9): The liquid or nonliquid character of all marital property and divisible property.

h) N.C. Gen. Stat. §50-20 (c) (11a): Acts of either party to maintain, preserve, develop, or expand during the period after separation of the parties and before the time of distribution; and

\*Since DOS Plaintiff made mortgage payments resulting in a \$14,801 reduction in the mortgage balance.



\*Since DOS Defendant made mortgage payments resulting in a \$3,342 reduction in the mortgage balance.

i) N.C. Gen. Stat. §50-20 (c) (12); Any other factor which the court finds to be just and proper.

22. An equal distribution of marital and divisible property is not equitable in this matter.

23. The marital and/or divisible property have a combined date of separation and date of distribution value of \$145,438.02. An equitable distribution of the date of separation values will result in Plaintiff receiving property totaling \$109,078.52 and Defendant receiving property totaling \$36,359.51.

24. In order to accomplish the distribution of the marital and divisible property determined equitable by the Court, it is necessary and equitable that the Plaintiff be ordered to pay a distributive award to Defendant in the amount of \$59,911.37 and that this distribution award be paid as follows:

\*Within ninety (90) days of the entry of this Order, Plaintiff shall refinance the former marital residence such that she receives net proceeds in the amount of at least \$59,911.37. Plaintiff shall arrange for the closing attorney to pay Defendant \$59,911.37 from the proceeds of the refinance less one half of the usual and customary costs (e.g., appraisal, closing costs) associated with the refinance.

25. In the event that Plaintiff fails to refinance the former marital residence in the time frame and in such a manner as outlined above, then in order to accomplish the distribution of the marital and divisible property determined equitable by the Court, it is necessary and equitable that the former marital residence be sold, and the net sales proceeds shall be equally divided between the parties subject to further distribution below:

a) At the time of the closing, Plaintiff shall pay Defendant an additional \$32,508.81 from her share of the net sales proceeds to accomplish the distribution of the marital and divisible property determined equitable by the Court.

26. If the marital residence must be sold as provided above, the following will apply:

a) Within one-hundred twenty (120) days of the entry of this Order, Plaintiff and Defendant shall list the home for sale with a mutually agreed upon realtor. If the parties cannot agree as to a realtor, Plaintiff shall timely select the realtor.

b) If the parties are unable to reach agreement as to issues relating to the sales price and acceptance of offers: The parties shall follow the recommendations of the realtor with regard to: the original list sales price; when and how much to lower the list price; and when to accept an offer.

c) Plaintiff, as the party in possession of the home, must timely follow the recommendations of the realtor with regard to readying the house for sale. The cost, if any, associated with the implementation of the realtor's recommended maintenance/improvements shall be born equally by the parties, and each party must timely make payment so that the maintenance and improvements will be finished in a reasonable period of time.

d) Plaintiff shall make the home available for showings at reasonable times, and she shall keep the property in a clean and showable condition.

e) The parties shall cooperate in the listing and sale of the residence, including the signing of any and all documents required.

### CONCLUSIONS OF LAW

1. The Plaintiff and Defendant are the legal owner of the separate property as shown in Paragraph 20 of the Findings of Fact. The marital property and distribution of the marital property is set forth in Paragraph 20 of the Findings of Fact to both the Plaintiff and Defendant. The marital debts assumed by the Plaintiff and by the Defendant are as set forth in Paragraph 20 of the Findings of Fact.

2. Based upon the Court's findings pursuant to N.C. G.S. § 50-20 (c) and the subsections thereof, the court determines that an equal division would not be equitable and that a division of the marital property should be 75% to the Plaintiff and 25% to the Defendant as set forth in the decretal portion of this Order.

3. The Court concludes that a distributive award is necessary by reason of the Defendant assuming the \$23,551.86 of debt over and above his marital assets received in this division. Therefore, the Plaintiff should make a distributive award to the Defendant in the amount of \$59,911.37 as set forth in Paragraph 24 of the Findings of Fact and the decretal portions of this Order.

4. The Defendant's Reichhold retirement fund is 52% separate property and 42% marital property and the 48% marital portion has been divided equally by a QDRO.

5. The Plaintiff will be liable for the debt set forth in subparagraphs a, ee and ff of Paragraph 20 of the Findings of Fact and the Defendant will be liable for the debt set forth in subparagraphs f, hh, ii and ll of Paragraph 20 of the Findings of Fact.

Based upon the forgoing Findings of Fact and Conclusions of Law, and by the consent of the parties hereto,

It is, therefore, **ORDERED, ADJUDGED AND DECREED** as follows:

1. There shall be an equitable division of the marital and divisible property and debts as hereinafter set forth.

2. The marital and/or divisible property have a combined date of separation and date of distribution value of \$145,438.02. An equitable distribution of the date of separation values shall result in Plaintiff receiving property totaling \$109,078.52 and Defendant receiving property totaling \$36,359.51.

3. In order to accomplish the distribution of the marital and divisible property determined equitable by the Court, Plaintiff is ordered to pay a distributive award to Defendant in the amount of \$59,911.37 as follows:

\*Within ninety (90) days of the entry of this Order, Plaintiff shall refinance the former marital residence such that she receives net proceeds in the amount of at least \$59,911.37. Plaintiff shall arrange for the closing attorney to pay Defendant \$59,911.37 from the proceeds of the refinance less one half of the usual and customary costs (e.g., appraisal, closing costs) associated with the refinance.

4. A division of the marital and divisible property is as follows:

**REAL PROPERTY:** The Plaintiff shall receive the former marital residence located at [REDACTED] Oxford Place, Cary, North Carolina, valued at \$197,000. Plaintiff shall refinance the home within ninety (90) days of the entry of this Order such that she receives \$59,911.37. Plaintiff shall arrange for the closing attorney to pay Defendant \$59,911.37 from the proceeds of the refinance less one half of the usual and customary costs, (appraisal, closing costs) associated with the refinancing.

The former marital residence shall be sold in the event the Plaintiff is unable to refinance it in the time frame outlined above, and the net sales proceeds shall be equally divided between the parties subject to the following distribution. At the time of the closing, the Plaintiff shall pay the Defendant an additional \$32,508.81 from her share of the net sales proceeds to accomplish the distribution of the marital and divisible property determined equitable by the Court.

a) Should the former marital residence have to be sold, Plaintiff and Defendant shall list the home for sale within one-hundred-twenty (120) days of the entry of this Order, with a mutually agreed upon realtor. If the parties fail to agree on a realtor, Plaintiff shall timely select the realtor.

b) If Plaintiff and Defendant are unable to agree on the sales price and acceptance of offers, the parties shall follow the recommendations of the realtor with regard to the original list sales price; when and how much to lower the list price; and when to accept an offer.

c) Plaintiff shall timely follow the recommendations of the realtor and any cost resulting from recommended maintenance/improvements by the realtor shall be born equally

by the parties and each party shall make payments so that the maintenance and improvements will be finished in a reasonable period of time.

d) Plaintiff shall make the former marital residence available for showings at reasonable times and she shall keep the property clean and in showable condition.

e) Plaintiff and Defendant shall cooperate in the listing and sale of the residence and shall sign any and all documents required.

Unless the parties agree otherwise, Plaintiff shall arrange for a quit claim or general warranty deed to be prepared that conveys Defendant's interest in this property to Plaintiff to facilitate the refinancing of the home. Defendant shall sign upon receipt of the deed and timely return the fully executed deed to the Plaintiff.

Plaintiff shall be responsible for the current balance of the BB&T mortgage in the amount of \$87,389.77 and shall hold the Defendant harmless thereof. The decrease in the principal mortgage balance shall be classified as divisible with a value of \$17,470.06 on the date of separation.

The Ghana Lot in West Africa shall not be considered for equitable distribution.

**(Once Plaintiff determines that she is eligible to refinance the home: Unless the parties agree otherwise, Plaintiff will arrange for a quit claim or general warranty deed to be prepared that conveys Defendant's interest in this property to Plaintiff to facilitate the refinance of the home. Defendant is to sign upon receipt of the deed and timely return the fully executed deed to plaintiff.)**

Proceeds from a refund of deposit on the Ghana residential property in Ghana are divisible property and Plaintiff and Defendant shall each be credited with \$15,000.

**VEHICLES:** Plaintiff shall be credited with \$11,000 received from insurance proceeds when the 1198 E320 Mercedes was totaled.

Defendant shall be the sole exclusive owner of the 2005 ML 350 Mercedes, which is marital property, valued at \$19,000, and titled in his name. The Defendant will execute and deliver such instruments as may be necessary to effectuate the transfer of title/registration to the aforesaid vehicle within seven (7) days of documents being presented. The Defendant shall be responsible for payment of the balance owed on said vehicle, shall maintain insurance on the vehicle in his possession and hold the Defendant harmless of any liability thereon said vehicle.

Plaintiff's 2007 E 350 Mercedes is separate property and Plaintiff shall be the sole exclusive owner of said vehicle. The Plaintiff shall be responsible for payment of the balance owed on said vehicle, shall maintain insurance on the vehicle in his possession and hold the Defendant harmless of any liability thereon said vehicle.

The 1992 Toyota Camry shall not be classified for equitable distribution.

**(Vehicles: each party will timely execute and return (within 7 days of documents being presented) all documents necessary to convey ownership to the other party.)**

**FINANCIAL ACCOUNTS, INVESTMENTS AND RETIREMENT ACCOUNTS:** Plaintiff shall receive her Macy's retirement benefits valued at \$4,262.

Defendant's IPS Retirement Plan had a separation value of \$67,527 and has been equally divided by the parties.

Defendant's Cargill Chemical Pension Plan and Scott B. [REDACTED] 401(k) Retirement are separate property of the Defendant.

Defendant's attorney shall prepare a QDRO to divide the marital portion of Defendant's Reichhold retirement benefits using a coverture fraction of 62/130 (or 48%), which represents. The marital portion shall be evenly divided between the parties and Defendant shall retain all of his separate interest.

The patents and term life insurance, marital property, shall have no equitable distribution value.

**(Reichhold: The coverture fraction is 62/130 (or 48%), which represents the portion of Defendant's Reichhold retirement benefits that are marital property. Defendant's attorney shall arrange to have a QDRO prepared equally dividing the marital portion of the Reichhold retirement benefits. The marital portion shall be evenly divided between the parties and Defendant shall retain all of his separate interest.)**

Bank of America Checking Account [REDACTED] shall be classified as marital and credited to Defendant in the amount of \$3,975. Defendant's Bank of America Checking Account [REDACTED] shall not be considered for equitable distribution.

Wachovia CD [REDACTED] shall be classified as marital and divisible and shall be credited to the Plaintiff in the amount of \$14,099.

Wachovia CD [REDACTED] with a date of separation value of \$2,312.03 and Wachovia CD [REDACTED] valued at \$1,082 shall be classified as marital assets and credited to the Plaintiff.

Wachovia CD [REDACTED] is marital property and shall be credited to the Plaintiff in the amount of \$8,483.

Plaintiff's Crown Banking Account [REDACTED] shall be Plaintiff's and valued at \$960.92.

The 2008 Taxes for claiming dependency exemption, Social Security benefits and IPS Bonus shall not be considered for equitable distribution.

**(Financial account: each shall retain the bank, investment, and retirement accounts in his or her name unless distributed otherwise per this order.)**

**HOUSEHOLD FURNISHINGS:** Plaintiff shall keep the living room furniture, valued at \$1,700, dining room furnishings at \$100 and kitchen furnishings valued at \$300.

The Defendant shall keep the bed, mattress, box springs valued at \$400 and the basement furnishings valued at \$900.

**DEBTS:** Defendant shall be responsible for and shall pay his Wachovia FIA credit card [REDACTED] in the amount of \$19,603.69, his Wachovia FIA credit card [REDACTED] in the amount of \$14,170.21, the Capital One credit card in the amount of \$17,567.26, and Best Buy credit card [REDACTED] in the amount of \$2,384.81.

Plaintiff's Macy's credit card, and Defendant's Chase credit card [REDACTED]; Circuit City VISA credit card [REDACTED] and Bank of America credit card [REDACTED] shall not be considered in equitable distribution.

**(Debts: each is responsible for debts in his/her separate name unless distributed otherwise per this order.)**


**IRS INCOME TAX:** Defendant shall be credited with the \$3,100.89 income tax liability.

2. Except as set forth herein, all property now or hereafter in the name of the Plaintiff or in her possession, shall be the sole and separate property of the Plaintiff, free of any claim of the Defendant.

3. Except as set forth herein, all property now or hereafter in the name of the Defendant or in his possession, shall be the sole and separate property of the Defendant, free of any claim of the Plaintiff; and

4. The entry of this Order shall constitute a full and final settlement of all property.

This judgment <sup>reduced on Appt.</sup> entered in open Court on October 3, 2010 and signed this the 4<sup>th</sup> day of Nov, 2010.

  
\_\_\_\_\_  
THE HONORABLE [REDACTED]  
DISTRICT COURT JUDGE PRESIDING

## Distribution of Marital and Divisible Property

ASSET DESCRIPTION	CLASSIFICATION	DOS VALUE	CURRENT VALUE	PLAINTIFF	DEFENDANT
House and Lot at [REDACTED], Cary, NC (former marital residence - FMR)	MARITAL	197,000.00	197,000.00	197,000.00	0.00
BB&T mortgage #0581 on FMR	MARITAL	-104,859.83	-87,389.77	-87,389.77	0.00
Decrease in principal mortgage balance	DIVISIBLE	17,470.06			
Ghana lot - West Africa	MARITAL	19,000.00	0.00	0.00	0.00
Decrease in value of Ghana lot - West Africa	DIVISIBLE	-19,000.00	0.00	0.00	0.00

The parties bought this property prior to their marriage. The residence/lot was deeded to them jointly on April 16, 1992. Title to the home is in both of their names. During litigation, the parties agreed to a joint appraisal, and they agreed to use the appraiser selected by Plaintiff. Plaintiff refused to pay her share of the appraisal, which was done on November 16, 2009. Plaintiff retained another appraiser to appraise the home, and this appraisal was done on November 13, 2009. Each appraiser used the same appraisal methodology, and they used the same comps. The appraiser jointly agreed to by both parties appraised the property at \$197,000, and the appraiser separately selected by Plaintiff appraised the property at \$190,000. Neither appraiser appeared at trial. The Court finds that the value of the former marital residence on the date of separation and current is \$197,000.

Each party made payments to decrease the mortgage on the former marital residence.

Each party made payments to decrease the mortgage on the former marital residence.

Defendant negotiated the purchase of this lot without Plaintiff's knowledge. The evidence is insufficient to determine the fair market value of this property either on the DOS or currently. See \*\* footnote below.

Defendant failed to make the ongoing payments for this lot, and he lost his entire investment.

## Distribution of Marital and Divisible Property

ASSET DESCRIPTION	CLASSIFICATION	DOS VALUE	CURRENT VALUE	PLAINTIFF	DEFENDANT
Ghana residential property- West-Africa Proceeds from refund of deposit on Ghana residence	MARITAL				
1998 E320 Mercedes (Titled in Def's name)	DIVISIBLE	30,000.00	30,000.00	15,000.00	15,000.00
1992 Toyota Camry (Titled in Def's name)	MARITAL	11,080.70	11,080.70	11,080.70	0.00
2005 ML 350 Mercedes (Titled in Def's name)	NOT CLASSIFIED				
Encumbrance 2005 ML 350 Mercedes	MARITAL	19,000.00	19,000.00	0.00	19,000.00
Pit's 2007 E 350 Mercedes	MARITAL	-6,000.00	-6,000.00	0.00	-6,000.00
Encumbrance 2007 ML 350 Mercedes	SEPARATE - PLT				
Pit's Macy's Retirement Plan	SEPARATE - PLT				
	MARITAL	4,262.00	4,262.00	4,262.00	0.00

Prior to the date of separation, the parties paid \$30,000 deposit toward the purchase of a residence in Ghana. The purchase contract was terminated, and the deposit was refunded with each party receiving one-half, or \$15,000. The evidence is insufficient for the Court to determine the fair market value of this property on the date of separation or currently.

See note above.

Plaintiff had primary use of this vehicle, which was totaled on or about February 6, 2009. Plaintiff received \$11,080.70 in insurance proceeds

This vehicle was totaled. Insurance proceeds were used to purchase a vehicle for the parties' son. See \*\* footnote below.

Plaintiff acquired this vehicle after the parties separated. This vehicle is Plaintiff's separate property and has a current value of approximately \$29,000.

Plaintiff acquired this debt after the parties separated. This debt is Plaintiff's separate property.

Plaintiff was employed at Macy's and earned retirement benefits during the parties' marriage. G22



**ASSET DESCRIPTION: Distribution of Marital and Divisible Property**

ASSET DESCRIPTION	CLASSIFICATION	DOS VALUE	CURRENT VALUE	PLAINTIFF	DEFENDANT
IPS Retirement Plan (401(K) managed by John H. [REDACTED])	MARITAL				This asset had a date of separation value of \$67,527. The account has been equally divided by the parties pursuant to a QDRO entered on January 13, 2010.
Reichold Chemicals Retirement Plan (Sam Osae)	MARITAL/ DEF's SEPARATE/ DIVISIBLE				This asset has not been valued. On the date of separation, it was projected that Defendant would receive, upon his retirement, benefits in the amount of \$674 per month. Although there is no current value, the marital portion of this asset can be divided between the parties by way of a DRO. The marital portion of this account is represented by the coverage fraction 62/130 (48%). The rest of this account (52%) is Defendant's separate property.
Def's Cargill Chemical Pension Plan	SEPARATE - DEF				Defendant was employed with Cargill prior to the parties' marriage (October 1984 - October 1989). Although the parties were living together during some of the time that Defendant was employed with Cargill, any retirement benefits he earned through this employment are his separate property. The evidence is insufficient to find that this asset existed on the date of separation or currently. See ** footnote below.
Scott B. [REDACTED] 401 (K) Retirement	DEF's SEPARATE NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED				Defendant began his employment with Scott Bader on September 8, 2008, after the parties' separated. Any retirement accounts or benefits he has arising out of his employment with Scott B. [REDACTED] did not exist on the date of separation, and are Defendant's separate property.
Patents	DEF's SEPARATE NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED				The evidence is insufficient to find that Def has any ownership interests on any of the IPS patents which bear his name. See ** footnote below.

**ASSET DESCRIPTION: Distribution of Marital and Divisible Property**

ASSET DESCRIPTION	CLASSIFICATION	DOS VALUE	CURRENT VALUE	PLAINTIFF	DEFENDANT	
Term Life Insurance Policy on Defendant	MARITAL	0.00	0.00	0.00	0.00	This life insurance policy was a term policy. It existed on the date of separation, but had no cash value. Defendant quit paying the premiums in March 2010, and the policy has been cancelled. At the time it was cancelled, this policy had no cash value. See ** footnote below.
Def's Bank of America Checking Account	MARITAL	3975.00	3975.00	0.00	3975.00	
Def's Bank of America Checking Account	NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED					This account was closed on February 13, 2008, prior to the parties' separation, and therefore did not exist as "property" on the date of separation. See ** footnote below
Wachovia CD	MARITAL/DIVISIBLE	14,099.00	14,099.00	14,099.00	0.00	Both Plaintiff and Defendant contributed to the CD prior to the date of separation. After the parties separated, Plaintiff withdrew \$14,099 from this CD. This CD was closed out on or about July 16, 2008.
Wachovia CD	MARITAL	2312.03	2312.03	2312.03	0.00	This CD was jointly titled in Plaintiff's name with one of the children.
Wachovia CD	MARITAL	1082.00	1082.00	1082.00	0.00	This CD was jointly titled in Plaintiff's name with one of the children.
Wachovia CD	MARITAL/DIVISIBLE	8483.00	8483.00	8483.00	0.00	After the parties separated, Plaintiff withdrew \$8453 from this CD. This CD was closed out on or about July 16, 2008.
Pit's Crown Banking account	MARITAL	960.92	960.92	960.92	0.00	
2008 Taxes for claiming dependency exemption	NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED					Plaintiff contends this is an asset that has value. The evidence is insufficient to support her contention. The right to claim a dependency exemption is not property, and it is not subject to equitable distribution. See ** footnote below.

## Distribution of Marital and Divisible Property

ASSET DESCRIPTION	CLASSIFICATION	DOS VALUE	CURRENT VALUE	PLAINTIFF	DEFENDANT
Social security benefits	NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED				Plaintiff contends that her right to Defendant's social security benefits is an asset that has value. The evidence is insufficient to support her contention. Plaintiff's right, if any, to Defendant's social security benefits is not property that is subject to equitable distribution. See ** footnote below.
IPS Bonus	NOT MARITAL, NOT SEPARATE; NOT CLASSIFIED				Plaintiff contends that Defendant received a bonus from IPS in 2008. The evidence is insufficient to find that Defendant received any such bonus. See ** footnote below.
Living Room Furniture	MARITAL	1700.00	1700.00	1700.00	0.00
Bed, mattress, box springs from master bedroom FMR	MARITAL	400.00	400.00	0.00	400.00
Basement furnishings	MARITAL	900.00	900.00	0.00	900.00
Dining room furnishings	MARITAL	100.00	100.00	100.00	0.00
Kitchen furnishings	MARITAL	300.00	300.00	300.00	0.00
Plt's Macy's credit card *	NOT CLASSIFIED				The evidence is insufficient to classify, value or distribute this debt. See ** footnote below.
Def's Chase credit card	MARITAL/DEF's SEPARATE				The date of separation balance on this account was \$11,020.30. The parties did not live within their means. This credit card was used to pay household living expenses. Defendant may have charged some of attorneys' fees to this card. See ** footnote below.



