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660 SE 2d 274  
660 SE 2d 278

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY  
Family Court of the Third Judicial Circuit

Francis Segars-Andrews, Family Court Judge

Case No. 2004-DR-14-243 & 315

William Robert Simpson, Jr. ....Appellant,

v.

Becky H. Simpson and Wade Ingle, Defendants,

of Whom Becky H. Simpson is , .....Respondent.

**RECORD ON APPEAL**  
(Simpson I)

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February 24, 2007

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Attorneys for the Respondent

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EXHIBIT

12.2.09

SB





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Defendant.

## DECREE OF SEPARATE MAINTENANCE AND SUPPORT

CRYSTAL JACKSON

BEULAH C. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
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as and

Prior to the taking of any testimony, the parties indicated to the Court that they had reached

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an agreement as to all matters properly before the Court. The parties have entered into a Property and Separation Agreement, dated July 30, 2004, and are requesting that the Court review said Agreement and if approved, to incorporate the Agreement into this Decree of Separate Maintenance and Support.

Both parties advised the Court that the Property and Separation Agreement was read by each of the parties before signing, that the agreement was entered into freely and voluntarily with no force, threats or pressure from either party. Both parties assured the Court that they had enough time to consider the agreement and that this was the only agreement before the Court at this time.

The Plaintiff presented his Financial Declaration and the Defendant testified that she was familiar with the financial situation of the parties. The Defendant did not file a Financial Declaration and the Plaintiff testified that he did not need to see it, that he was aware of her financial situation.

Both parties testified to the Court that they understood the consequences and contents thereof, and agreed with it in each and every particular. Both parties advised the Court that they felt the agreement was fair and just under the circumstances and that they intended said agreement to be a full, final and binding agreement as to all issues addressed therein. Both parties advised the Court that they had entered into the agreement freely and voluntarily. The Plaintiff advised the Court that he was satisfied with the agreement and with the work that his attorney had done for him. The Defendant advised the Court that she had discussed this matter with an attorney, but did not retain him or review this Agreement with him, but that she was satisfied with the agreement and that she had the opportunity to discuss the agreement with an attorney if she had so desired and that she did not need more time to review said agreement with an attorney.

Both parties are aware that certain portions of the Agreement are final and complete at this

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time. They are also aware that the issues of custody, child support and visitation are never final and are subject to change.

Both parties assured the Court that they understood that the alimony paid by the Plaintiff to the Defendant is for 40 months and thereafter ends forever and is not modifiable. They each further understand that it is taxable as income to the Defendant and deductible by the Plaintiff.


Both parties believe the agreement to be fair to themselves and to their children.

I have reviewed the pleadings that have been filed in this matter, the Agreement that has been entered into between the parties, and have heard the statements from the parties. Based on the pleadings filed, the arguments of the parties, and the testimony received, I make the following findings of fact and conclusions of law:

1. This Court has continued jurisdiction over the parties and subject matter herein, and this matter is properly before the Court.

2. The Plaintiff and Defendant are husband and wife and last resided as husband and wife in the County of Clarendon, State of South Carolina. At the time of filing, the Plaintiff and Defendant were both citizens and residents of Clarendon County, South Carolina, and had been for more than one (1) year prior to the commencement of this action.

3. That the Plaintiff and Defendant are Husband and Wife have been duly married on September 3, 1989, and lived as husband and wife until their separation. I also find that the parties separated on July 27, 2004, and have lived separate and apart since that time and have expressed their intention to continue to reside separate and apart from one another. The parties have two (2) children, to wit: William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 26, 1995. No other children have been born and none are expected.

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4. This Court has jurisdiction to grant a Decree of Separate Maintenance and Support pursuant to § 20-7-420 of the Code of Laws of South Carolina (1976).

5. I find that the Property and Separation Agreement, dated July 30, 2004, entered into by the parties and attached hereto has been entered into knowingly and freely and voluntarily by the parties, and is reasonable under the circumstances, and should be approved by this Court and made a part of the order of this Court.

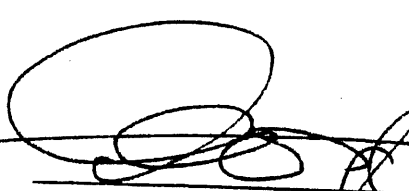
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Property and Separation Agreement of the parties, dated July 30, 2004, and attached hereto, is hereby approved and made an Order of this Court, enforceable by this Court or any law enforcement officer.

2. That a Decree of Separate Maintenance and Support be, and hereby is, granted between the Plaintiff and Defendant.

**AND IT IS SO ORDERED.**

Sumter, South Carolina  
August 20, 2004

  
George M. McFaddin, Jr. Presiding Judge  
Third Judicial Circuit Family Court



STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR., )

Plaintiff, )

vs. )

BECKY H. SIMPSON, )

Defendant, )

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT

DOCKET NUMBER: 2004-DR-14-243

PROPERTY AND SEPARATION

AGREEMENT

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 8-2-04

Beulah S. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

2004 AUG 2 PM  
CLARENDON COUNTY, SC  
BEULAH S. ROBERTS  
CLERK OF COURT

This Agreement is entered into this 30th day of July, 2004, by and between WILLIAM R. SIMPSON, JR., hereinafter referred to as the HUSBAND, and BECKY H. SIMPSON, hereinafter referred to as the WIFE. The wife resides in Clarendon County, South Carolina, and the husband resides in Clarendon County, South Carolina.

1. The husband and wife were duly married at a time when both parties were capable of entering into a contract of marriage on September 3, 1989, in Clarendon County, South Carolina, and have thereafter lived together as husband and wife.

2. Two children have been born of this marriage, to wit: William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 26, 1995. No other children have been born and none are expected.

3. The marital differences between the husband and wife are as such that they are no longer living together and they never intend to reside together again. The husband and wife last resided together as husband and wife on or about July 27, 2004.

4. The husband and wife intend, and it is the purpose of this Property and Separation Agreement, to make a complete and final settlement of all claims that the parties may have against

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each other, alimony and/or support, or any maintenance, and to finalize their agreement as to division of property, of every nature and description, owned by them jointly, or either of them individually, and the settlement of all issues arising out of the marital relationship of the parties and/or all matters dealt with in this Agreement.

5. The husband is presently represented by counsel, Scott L. Robinson, of the Clarendon County Law Firm of Johnson, McKenzie & Robinson. The wife is not represented, however, she realizes she has the right to retain counsel and she waives her right to counsel. Further, the wife asserts that she has had ample opportunity to review this Property and Separation Agreement with an attorney if it was her desire, however, she does not desire to review it with counsel, and she fully understands the ramifications of same. The wife understands that Mr. Robinson represents only the husband and the wife has the right to counsel should she so desire.

6. The husband and wife both affirmatively assert that in the negotiation and execution of this Agreement, each has made a full financial disclosure, one to the other, of all aspects of the entire marital situation, and it is based upon the full financial disclosures on which the husband and wife each have relied, that this Agreement is entered into.

7. This Agreement is intended by the husband and wife to be a binding determination of the issues set forth herein, and the husband and wife each fully realize their respective rights and obligations hereunder.

8. The husband and wife each hereby acknowledge that this Agreement was entered into freely and voluntarily by and between them, without duress or threat to the husband or wife.

9. The husband and wife request that this Agreement be submitted to the Family Court for the Third Judicial Circuit for approval, and that if same be approved, then the said Agreement

is to be made an Order of the Court. It is the intention of the parties that the Family Court of the Third Judicial Circuit retain jurisdiction hereof, including the jurisdiction to enforce the affirmative acts required of the husband and wife, or either of them, by Contempt or by such other proceedings as may be necessary to insure enforcement hereof. Should a Decree of Divorce or Separate Maintenance be granted to either the husband or wife by this Court, or any other Court of competent jurisdiction, the Agreement, if approved, shall vest said Court with full jurisdiction for all purposes.

NOW, THEREFORE, in consideration of the mutual and binding covenants and agreements of the parties, which are set forth hereinafter, and in addition thereto of the good and valuable considerations, receipt of which is hereby acknowledged by each party with adequacy of the consideration set forth in the terms of this Agreement, the parties hereto do hereby agree as follows:

1. LIVING SEPARATE: The parties may and shall hereafter live separate and apart. Each party shall hereafter reside at such place or places as he or she may select.
2. NO MOLESTATION OR INTERFERENCE: Neither party shall molest nor interfere with the other, nor compel or attempt to compel the other to cohabit or dwell with him or her by any means whatsoever by legal action or otherwise.
3. CUSTODY: The parties shall share joint custody of their children. The parties' daughter will reside with the mother and the parties' son will reside with the father. The children will be allowed to visit the other parent freely and liberally and come and go between the residences of the parents as they please.
4. CHILD SUPPORT: The husband shall be responsible for payment of all school expenses and clothing for the parties' children for a period of 12 months commencing on August 1, 2004 and continuing through July 31, 2005. In addition, the Husband shall pay the Wife the sum

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of \$300.00 per month in child support for the support of the parties' minor daughter until such time as the daughter attains the age of 18. The husband shall also be responsible for payment of the private school tuition for the parties' minor children so long as they are enrolled in a private school.

5. REHABILITATIVE ALIMONY: The husband shall pay rehabilitative alimony to the wife in the amount of \$450.00 per month for 40 months, beginning August 1, 2004 and payable directly to the Wife on the 1st day of each month thereafter until January 31, 2008. Both parties waive their right to receive any additional alimony of and from the other party upon the expiration of the period of rehabilitative alimony.

6. PERSONAL PROPERTY: All property will be divided between the parties to their mutual satisfaction. Each party shall keep their own personal property. The wife will receive whatever furniture and personal property she desires from the marital home and the remainder will stay with the husband. The parties shall retain the possession of the vehicles currently in their possession. The husband shall be responsible for payment of 1 tank of gas per week for the wife's GMC Yukon, payment of taxes, insurance, payments and maintenance on said vehicle for a 12 month period, beginning August 1, 2004. At the end of the 12 month period, the wife shall receive the title to the vehicle and will then be responsible for the taxes, insurance, maintenance and payments thereon.

7. TAXES: The parties shall file separate income tax returns for the 2004 tax year. The parties will each claim one child as a dependant for the 2004 tax year and for every year to follow.

8. REAL PROPERTY:

A. MARITAL HOME: The wife will enjoy the exclusive use and possession of the marital home for a period of 12 months, beginning on August 1, 2004. During this 12

month period, the husband will be responsible for payment of the house payment, light bill, phone bill, hazard insurance on the home and property taxes on the home. At the end of the 12 month period the wife shall receive the sum of \$22,500.00 within 10 days of the expiration of the 12 month period. In addition, the wife shall receive annual payments of \$5,000.00 beginning November 1, 2006 and continuing on the first of November of each year through November 1, 2008. These payments represent the value of any interest or equity the wife may claim in the marital home. Thereafter, the husband shall have the exclusive use, ownership and possession of the marital home and shall be responsible for all indicia of ownership for the home and shall indemnify and hold the wife harmless therefrom.

B. FARM LAND: Each child of the parties shall receive 25% interest in the following farm property when they attain the age of 18: Clarendon County tax map parcel numbers: 128-00-00-34, 090-00-03-016-00, 089-00-00-017, 089-00-00-018, 089-00-00-019, 089-00-00-014, 089-00-00-025, and 089-00-00-026; Sumter County tax map parcel numbers: 257-00-03-2-020, 258-00-01-003, and 214-00-01-007. The wife waives any and all other interest in the farm property.

C. HOME SPOT: The husband shall provide the wife with a one acre tract of land upon which to build a home and reside with the parties' minor daughter. Provided, however that should the wife re-marry or co-habitate with another man, the wife shall sell her home to the husband at appraised value and shall immediately move to another location. The parties agree that this home spot shall be on Home Branch Road where Robbie Giddens currently resides if available. In the event said location is not available, husband will make every effort to provide a one acre site as close to that location as is possible.

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9. **DEBTS AND OBLIGATIONS:** Each party shall pay all debts in their name incurred by him or her before or after the date of this Agreement and shall indemnify and hold harmless the other party against any responsibility or liability therefor.
10. **EXECUTION OF NECESSARY INSTRUMENTS:** The parties in each and every event shall hereafter execute all instruments necessary to carry out the terms of this Agreement.
11. **RELEASE:** Both parties hereby release and discharge the other for themselves, their heirs, their personal representatives and assigns, as well as any known or potential third parties, of and from all manner of actions, causes of actions, suits, debts, counts, judgments, claims and demands whatsoever in law or equity (except any debts or obligations specifically assumed by either party pursuant to these agreements) which occurred or may have occurred at any time during the marriage and through the date of the approval of these agreements.
12. **COURT APPROVAL OF AGREEMENT:** The parties hereto agree that this Agreement shall be submitted to the Court for approval, and if approved, shall be incorporated and merged with the Order of the Court.
13. **BINDING EFFECT:** This Agreement shall be binding upon the parties, their respective heirs, executors administrators, and assigns, and shall in any event be governed by the laws of the State of South Carolina.
14. **EFFECT OF DIVORCE:** This Agreement shall not be construed in any measure as a consent or condemnation for divorce in favor of either party, nor shall it be a bar to any action or proceeding for divorce to be hereinafter instituted; it is a Property and Separation Agreement, which is contractual in nature and intended as a binding settlement of the parties rights, duties, and responsibilities regarding all matters dealt with herein. Should a judgment or Decree of Divorce for

separate maintenance be entered in any Court with competent jurisdiction in any proceeding currently pending or in the future, then this Agreement shall be submitted to the Court as a Property, Separation and Support Agreement and Stipulation to be incorporated and merged with any judgment for Decree of Divorce or separate maintenance entered between the parties.

15. WAIVER OF REVIEW OF THE PROPERTY AND SEPARATION

AGREEMENT: The husband and wife acknowledge that according to the S. C. Code Ann. (1976, as amended), the Court has a right, duty, and/or obligation to review the Property and Separation Agreement at a hearing on the merits of an action for divorce between the parties; both parties specifically waive the right, duty and/or obligation for the Court to review this Property and Separation Agreement at a hearing on the merits of an action for divorce, which may be later instituted between the parties, and both parties specifically consent to being bound by the Property and Separation Agreement without further review, modification, and/or scrutiny by the Court.

16. RELEASE OF ESTATE RIGHTS: Each party waives the right to share in the estate of the other party and specifically waives the right to any elective share of the estate of the party to which they otherwise may be entitled.

17. MODIFICATION OF AGREEMENT: The provisions of this Agreement shall not be modified or changed except by mutual consent and agreement of the parties expressed in writing or by Court Order. Nothing in this paragraph is to be construed to prohibit either party from petitioning the Court for an increase or decrease in the child support obligations of the parties as permitted pursuant to the statute and case laws of the State of South Carolina.

18. SEVERABILITY: Should one or more provisions of this agreement become null and void, all remaining provisions shall remain in full force and effect.

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Jr.

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19. ATTORNEYS FEES: Each party shall be responsible for any and all attorney's fees and costs incurred by that party pursuant to this matter.

WHEREFORE, we subscribe our names to the end of this instrument consisting of 8 typewritten pages on one side only of each page and for the purpose of identification, we have subscribed our initials on the bottom of each preceding page on the date as herein below indicated.

DATED AT MANNING, SOUTH CAROLINA THIS 30TH DAY OF JULY, 2004.

WITNESSES:

Deanna B. Nally  
Ed S. S. S.

William R. Simpson Jr.  
WILLIAM R. SIMPSON JR.

WITNESSES:

Deanna B. Nally  
Ed S. S. S.

Becky H. Simpson  
BECKY H. SIMPSON



STATE OF SOUTH CAROLINA BEULAH G. ROBERTS IN THE FAMILY COURT  
COUNTY OF CLARENDON CLERK OF COURT THIRD JUDICIAL CIRCUIT  
CLARENDON COUNTY, SC

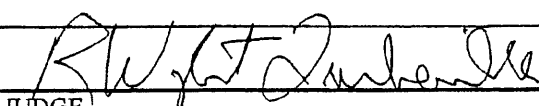
Daisy Wallace Simpson, 2004 DEC 31 AM 10 53 CASE NO. 2003-DR-14-128  
☐ Plaintiff,

v.

William R. Simpson, Sr., et al.

☐ Defendant.

**MOTION INFORMATION FORM  
AND COVER SHEET**

<b>Plaintiff's Attorney:</b> Jan L. Warner Bar No. Address: PO Box 2628 Columbia, SC 29202-2628 Phone: 803.779.0554 Fax: 803.779.2517 E-mail: Other:	<b>Defendant's Attorney:</b> Steven S. McKenzie Bar No. Address: 16 N. Brooks Street Manning, SC 29102 Phone: 803.435.0909 Fax: 803.435.2858 E-mail: Other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>SECTION II: Motion Type</b> <input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion - - I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date Submitted _____	
<b>SECTION III: Motion Fee</b> <input type="checkbox"/> PAID - AMOUNT: _____ <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter(s): Carol Hanna, Janice Hinds, Crystal Jackson <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.  <input type="checkbox"/> Other: _____	 JUDGE  CODE: _____ Date: 12/31/04
<b>CLERK'S VERIFICATION</b> Collected by: _____ Date Filed: _____  <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

DAISY WALLACE SIMPSON,

Plaintiff,

vs.

WILLIAM ROBERT SIMPSON,  
individually and as shareholder/  
member of Simpson Farms, L.L.C.  
and WILLIAM R. SIMPSON, JR., as a  
shareholder/member of  
Simpson Farms, L.L.C.

Defendants.

# 1486  
IN THE FAMILY COURT FOR  
THE THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2003-DR-14-128

**FINAL DECREE OF DIVORCE**

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 DEC 31 AM 10 53

**DATES OF HEARINGS:**

July 7, 8, & 9 2004  
September 29 & 30, 2004  
October 22 & 26, 2004

**TRIAL JUDGE:**

R. Wright Turbeville

**PLAINTIFF'S ATTORNEYS:**

James T. McLaren

Jan L. Warner

**DEFENDANTS' ATTORNEYS:**

Steven S. McKenzie

Simpson, Sr., Simpson, Jr., &  
Simpson Farms, LLC

Scott L. Robinson

**COURT REPORTERS:**

Carol Hanna, Janice Hinds, &  
Crystal Jackson (In Order)

This matter came before the Court for merits hearings on July 7, 8 & 9, 2004; September 29 & 30; and October 22 & 26, 2004. This is an action for divorce, alimony, equitable division, attorneys' fees, and related relief.

Present and appearing at the appointed times and places were the parties, together with their respective counsel. Plaintiff is represented by James T. McLaren and Jan L. Warner of Columbia; Defendants William R. Simpson, Sr., William R. Simpson, Jr., and Simpson Farms, LLC are collectively represented by Steven S. McKenzie and Scott L. Robinson of Manning.

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I have heard and considered the testimony of parties and their witnesses and have been able to judge their credibility and demeanor. I have reviewed the exhibits introduced by each party and have assessed the weight of the evidence.

All findings herein are based upon my view of the preponderance or greater weight of the evidence unless otherwise stated.

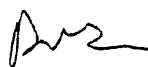
Based upon the preponderance of the evidence, I find and conclude as follows:

### **BACKGROUND AND PROCEDURAL HISTORY**

1. Plaintiff Daisy Wallace Simpson ("Plaintiff", "Wife", or "Mrs. Simpson") and Defendant William Robert Simpson ("Husband", "Simpson, Sr.", or "Defendant Simpson, Sr.") were legally married on October 6, 1968 in Scranton, South Carolina. Three (3) children were born of this marriage: William R. Simpson, Jr., born on August 8, 1969, who is emancipated and is a Defendant in this action as a shareholder in Simpson Farms, L.L.C. ("Son", "Simpson, Jr.", or "Defendant Simpson, Jr."); Dayline Michelle S. Feagin, born on April 21, 1974, was emancipated; and Charley Diane Simpson born on October 8, 1981, who attends college. No other child was born of this marriage, and none is expected.

2. The parties to this action are citizens and residents of Clarendon County, State of South Carolina and have been so for more than three (3) months prior to the commencement of this action.

3. This action was commenced by the filing of Summons and Complaint, together with a Notice of Motion and Motion for *Pendente Lite* Relief, dated February 24, 2003 in the Office of the Clerk of Court for Clarendon County, South Carolina on March 4, 2003.



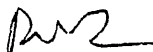
4. Ray E. Chandler, prior counsel for Husband, Son, and the LLC accepted service of the foregoing on behalf of Simpson, Sr., Simpson, Jr., and the Corporate Defendant on March 6, 2003.

5. Plaintiff's Complaint seeks, a divorce on the ground of adultery, or in the alternative a Decree of separate support and maintenance; temporary and permanent alimony; continued health care and hospitalization coverage and medical expenses; continued life insurance with Plaintiff as beneficiary; discovery; equitable apportionment of all assets; restraining orders as to transfer or hypothecation of insurance and all assets, as well as personal contact; and attorney fees and costs.

6. Defendant Simpson, Sr., individually and as owner of the Simpson Farms LLC, and Simpson, Jr., as shareholder of Simpson Farms, L.L.C., timely filed and served responsive pleadings dated April 28, 2003 which were filed in the Office of the Clerk of Court for Clarendon County, South Carolina. The responsive pleadings sought dismissal of the Complaint and denied Plaintiff's entitlement to relief.

7. Plaintiff Wife timely served and filed a Reply dated June 3, 2003 that generally denied the relief requested in Defendants' responsive pleadings.

8. A *pendente lite* hearing was held on March 28, 2003, that resulted in the issuance of a *Pendente Lite* Order dated April 3, 2003. The *Pendente Lite* Order, in pertinent part, required Simpson, Sr. to pay Plaintiff \$1,000.00 per month as temporary spousal support; to advance \$15,000.00 to Plaintiff as temporary attorney fees and suit money; to maintain hospital and health coverage for Wife and to pay 60% of her non-covered medical expenses. That Order also required that each party retain temporary possession of property in his/her possession and to be responsible for the debts listed on his/her Financial Declarations, restrained and enjoined all



parties from encumbering or disposing of any assets; ordered that Husband maintain the status quo on all life insurance policies including beneficiary designations and amounts of coverage; and required Husband to maintain health insurance on the youngest daughter Charley and to be responsible for Charley's non-covered medical expenses and college expenses.

9. Discovery was authorized by the *Pendente Lite* Order, and depositions of Husband, Wife, Son, and Husband's CPA's were taken. Discovery requests were submitted and records were subpoenaed. Wife moved to compel discovery and for sanctions, but never scheduled a hearing on the Motion. A Pre-Trial Order was issued on April 2, 2004 that held in abeyance Wife's Motion to Compel discovery, which will be considered in the attorneys' fees phase of the trial.

10. During the course of the hearings, Defendant and Plaintiff called numerous witnesses. Plaintiff introduced ninety-one (91) exhibits; Defendants introduced thirty (30) exhibits.

11. By consent, Wife filed and served a Supplemental Complaint dated April 28, 2004 wherein she sought a divorce upon the ground of one-year continuous separation.

12. Wife moved to retroactively increase alimony and to require Simpson, Sr. to pay outstanding medical bills by Motion dated June 9, 2004 that was duly filed and served. Determination of those issues was withheld pending the issuance of this Order. Husband filed a Motion for a retroactive decrease in alimony and disgorgement of attorneys' fees and costs awarded to Wife at the Temporary Hearing. These issues are determined herein.

13. During the latter stages of the trial on September 30, 2004, counsel for Defendants moved to dismiss Simpson Farms, LLC as a party because it was initially referred to as "W. R. Simpson Farms, Inc." in the caption of the case, rather than "Simpson Farms, LLC".

Plaintiff moved to amend the caption. I granted Plaintiff's Motion to amend by Order dated October 29, 2004 *nunc pro tunc* March 5, 2003.

14. Plaintiff moved to hold Defendant Simpson, Sr. and one of his bankers in contempt for providing false testimony to the Court. I issued my Order dated October 29, 2004 in that regard.

15. Husband and Wife were previously involved in litigation in 1999 (1999-DR-14-450) that resulted in a reconciliation and Dismissal Order dated March 2, 2000 and filed March 16, 2000.

16. After a careful review of all matters of record, all evidence, and after having had the opportunity to hear and judge the credibility of the parties and their respective witnesses, I make the following findings and fact, conclusions of law, and dispositions regarding the matters now before the Court:

#### CREDIBILITY

17. As with most domestic relation cases, the issue of credibility of the parties and their witnesses plays a major part in the Trial Judge's determination of the weight given to the evidence presented.

18. Both Parties have attempted in their testimony and presentation of certain evidences to show themselves in the best possible light.

19. The Plaintiff as a real estate agent can control her income and expenses and the Court finds she has attempted to minimize her income and maximize her expenses throughout this litigation.

20. Simpson, Sr.'s Financial Declaration is not an accurate reflection of his spendable income which is approximately \$150,000 per year.

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21. It has been very difficult for the Court to determine the income, expenses, and wealth of these parties.

22. Husband's witness, Tracey Amos, a CPA and Certified Valuation Analyst (CVA), admitted that information provided by her client Simpson, Sr. undervalued assets. She admitted that Simpson, Sr. did not report to her his collection of antique cars. Simpson, Sr. told her that he intended to gift an interest in the farm property to Simpson, Jr., while taking the position before this Court that he had transferred a 50% interest in the LLC to his son in consideration of Simpson, Jr. working on the farm and taking less salary over a period of years.

23. Although Defendant Simpson, Sr. told Ms. Amos that the LLC owned the farming operation, bank accounts, and farm equipment, the evidence before the Court is clear that the LLC owns only real property. In fact, land was purchased in the name of the LLC in May 2002, but paid for by Simpson, Sr. as the LLC never opened a bank account.

24. Ms. Amos confirmed that Simpson, Sr. told her there were sixty (60) items of equipment listed on his general ledger that he no longer owned, but none were reported on his tax return as having been sold or otherwise disposed of.

25. Ms. Amos confirmed that Simpson, Sr. did not report the sale of timber on certain Kershaw County property although the evidence clearly shows he sold it in 2000. The land values of (\$750.00 per acre), used by Ms. Amos were values proffered by Simpson, Sr. and were not based upon Ms. Amos' independent knowledge or appraisals.

26. At the same time, the testimony of Plaintiff's expert, Beth Linhardt, is less than complete and accurate, and the Court cannot rely upon it completely to arrive at a value of the marital estate. She admitted she would need to do further research to tell the Court exactly what Simpson, Sr. owned at the date of filing.



27. Ms. Linhardt used only one valuation method, the comparable sales method, and appraised all property as if Simpson, Sr. owned 100% fee simple title even though there are numerous pieces he owns with other persons.

28. Defendant Simpson, Jr. admitted that he relied pretty much on his father to determine his income in any year. He admitted that his monthly expenses exceeded his income by more than \$2,500.00, but he could not explain how he paid the same.

29. Each year, Simpson, Sr. and Simpson, Jr. pool their crops, which are then sold by Simpson, Sr. The proceeds are deposited into Simpson, Sr.'s bank account. Simpson, Jr. admitted that the division of the crop sales proceeds is based upon which of them needed what that year, all of which is controlled by Defendant Simpson, Sr. Neither of them followed any corporate formalities nor did they pay debts or distribute income based on their purported 50-50 shares in the LLC.

30. Based thereon, it has been difficult for this Court to make a firm determination of Defendant Simpson, Sr.'s assets and income and the Court has had to attempt to cross reference the testimony of all parties and witnesses as no one presented a clear and precise picture of the identification and valuation of the marital assets. Simpson, Sr. testified on numerous occasions that he did not know what he owned, and his responses to interrogatories and other discovery indicate to the Court he made little effort to clarify what he owned during the course of this litigation.

#### DIVORCE AND MARITAL FAULT

31. I find that on or about March 1, 2003, the parties separated and have been living separate and apart since that time.

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32. After due inquiry of Plaintiff and Defendant Simpson, Sr., I find and certify that no possibility of reconciliation exists at this time and that further efforts in that regard would be unavailing. I find that there has not been any collusion between the parties.

33. I find that Husband and Wife have lived separate and apart without intervening marital cohabitation for a period of time in excess of one (1) year. I therefore find and conclude that Plaintiff should be granted a complete and final divorce on the statutory ground of one (1) year of continuous separation.

34. The Court does, however, find it necessary and relevant to address the fault grounds alleged.

35. Plaintiff and Defendant were previously involved in litigation in this Court (99-DR-14-450).

36. Plaintiff alleged in those proceedings that Defendant Simpson, Sr. had been involved in one or more adulterous relationships and, based upon those relationships, she sought a divorce upon the grounds of adultery.

37. Plaintiff alleged in this action that Defendant Simpson, Sr. was guilty of adultery and that his prior actions were revived. She also alleged that Defendant Simpson, Sr. had demeaned her, mentally abused, and denigrated her by referring to her in derogatory terms despite her health problems. Plaintiff offered no proof of Defendant's adultery and no corroboration to her testimony of mental abuse and denigration.

38. Subsequent to the filing and service of pleadings in 1999, the parties reconciled. Plaintiff contends that Simpson, Sr., promised her that he would not dispose of marital assets and that he would not have extra-marital affairs.



39. Plaintiff's concerns about Defendant Simpson, Sr.'s transferring marital property are set forth in a letter from her former counsel, Harry C. Wilson, Jr., dated December 14, 1999 to Defendant Husband's former counsel, Ray E. Chandler, and Mr. Chandler's response. Both of these writings were introduced into evidence as Plaintiff's Exhibit 9.

40. Mr. Wilson's letter, that was responded to by Mr. Chandler on the same date, advised Mr. Chandler that Plaintiff "had heard something to the effect that Defendant Husband might be moving towards establishing a corporation or making business decisions that might affect the assets." Mr. Wilson added, "If that is the case, then we will have to go to Court and get an Order of Protection." Mr. Wilson also stated that he was hopeful that the parties would reconcile, but that rumors of Simpson, Sr. transferring marital assets sent the wrong message to Plaintiff.

41. Mr. Chandler responded on December 14th, stating, "Mr. Simpson has no plans, expressed to me, about forming a corporation. He farms with his son. I think they have some informal written agreement that goes back several years, but there is no corporation, nor have I authorized him to do one. I believe that the farming corporation is the last thing on Mr. Simpson's mind. He would like to focus on reconciling with his wife and putting his family back together."

42. Plaintiff dismissed her action without prejudice by Order of the Honorable Ruben L. Gray, former Judge of the Family Court of the Third Judicial Circuit, dated March 2, 2000.

43. Yet, on April 28, 2000, Defendants Simpson, Sr. and Simpson, Jr. signed an LLC Operating Agreement (Plaintiff's Exhibit 12), and substantial property acquired during this marriage was transferred by Simpson, Sr. into the LLC owned half by each Defendant Simpson. This was less than two (2) months after the reconciliation between Plaintiff and Defendant

Simpson, Sr. However, as early as Mother's Day 2000, the Plaintiff was aware of this transaction and took no action to protect her interest.

44. According to testimony by Defendants' witnesses, William C. Coffey, Jr., and Ray E. Chandler, Mr. Coffey prepared the LLC documents for Defendants Simpson, without Mr. Chandler's knowledge.

45. One week after this action was filed and served, Defendant Simpson, Sr. transferred his half interest in S&T Land Development, another marital asset, to Ray Tidwell for \$5.00 and no other consideration.

46. While Defendant Simpson, Sr. attempted to assert misconduct on the part of Plaintiff, I find the same was uncorroborated, not pleaded and in no way rose to the level of being relevant as to the issues of alimony and equitable division.

#### ALIMONY

47. The other findings made in this Decree are incorporated by reference.

48. I find that Wife is entitled to an award of permanent periodic alimony in the amount of \$1,000.00 per month in accordance with the provisions of §20-3-130 (B)(1), South Carolina Code of Laws, 1976, as amended, until she dies or remarries.

49. In making this award of permanent periodic alimony, I make the following specific findings pursuant to §20-3-130(C) (1)-(13), South Carolina Code of Laws, 1976, as amended, and I have considered the equitable division award made to the Plaintiff/Wife hereunder:

- (1) The duration of the marriage together with ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties:

- (a) Plaintiff and Simpson, Sr. were married on October 6, 1968. They last lived together on March 1, 2003. I find that this is a long-term marriage.
- (b) Wife was born on October 8, 1950, and, at the time of the marriage, was seventeen (17) years of age. Wife is now 54 years of age.
- (c) Husband was born on June 5, 1950, and, at the time of the marriage was eighteen (18) years of age. Husband is also 54 years of age.

(2) **The physical and emotional condition of each spouse:**

- (a) Wife has recently undergone surgery for female problems that will persist for the rest of her life, and takes medication for rapid heartbeat and high cholesterol. Wife is currently employed as a realtor, and is paid on a commission basis. There is no evidence her health problems interfere with her ability to work.
- (b) Husband is in good health and physically capable of working full time and is gainfully employed as a farmer and real estate investor.

(3) **The educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential:**

- (a) Wife is a high school graduate who took some courses during the marriage when the children were older, but she did not complete her post high school schooling. Wife received her real estate license in 2001. Previously, Wife was a homemaker, raised three (3) children, and made other contributions to the marriage as set forth hereafter.
- (b) Husband is a high school graduate, a farmer, a good businessman, and has invested in real estate and other assets.
- (c) Neither Husband nor Wife will benefit from future education other than wife's continuing education requirements as a realtor.

(4) **The employment history and earning potential of each spouse:**

- (a) Wife is currently employed as a realtor, works on a commission basis. During the marriage, wife was primarily at home with the children and took care of and improved the property. She did work outside the home, but was asked to quit so she could take care of Simpson, Sr.'s mother.

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- (b) Husband worked in a gas station and farmed part-time. He is now a self-employed farmer and real estate investor.
- (c) Husband and Wife each filed two (2) Financial Declarations, one in March of 2003 at the time of the temporary hearing, and the other at the time of the final hearing.
- (d) Husband's initial Financial Declaration reflects rents and farm income of \$3,602.00 per month, after taxes, and expenses of \$3,602.00 per month. Husband's preliminary marital assets addendum asserts total net assets of \$412,289.00.
- (e) Wife's initial Financial Declaration of March of 2003 reflects gross income after normal and ordinary business expenses of \$2,140.00, and net after tax income of \$1,302.00 monthly. Her expenses were \$4,463.99. She asserted assets at that time of \$18,209.00, and estimated Husband's assets at \$2,000,000.00.
- (f) Husband's current Financial Declaration claims monthly income of \$4,902.00 after taxes, expenses of \$3,602.00, and marital assets (net of expenses and adjustments) of \$462,889.00.
- (g) Wife's current Financial Declaration reflects gross monthly income after normal and ordinary business expenses of \$1,129.25, and a monthly net after tax income of \$1,116.50. She asserts expenses of \$7,348.00 monthly, including significant debt that she has incurred since the temporary hearing. Wife's assets are listed as \$15,059.00, and she estimates Husband's assets at \$3,000,000.00. Wife asserts husband has not paid \$16,734.00 in medical bills for which she is being billed, \$5,029.04 of which are attributable to Charley.
- (h) At the time of the temporary hearing, this Court made a finding that "Defendant's attorney concedes that the parties lived, to a great extent, out of the farming operation." After hearing the evidence, I reiterate that finding herein.
- (i) It is now clear to the Court that the Husband's income and assets greatly exceed that which has been reported on his Financial Declarations. I find from the testimony and evidence, for example, that Husband, on a discretionary basis, determines the amount of distributions to his son from the farming operation each year. These distributions vary from year to year and are without any type of written agreement or supervision. Thus, Husband can and has adjusted his income and his son's as he deemed fit.

- (j) I find that Simpson, Sr. has obfuscated his true income and assets. For example, there are significant checks written to third persons, including his real estate partners, as "loans" which do not appear to have been repaid, and the funds that have been distributed to Simpson, Jr., (referred to as "loans" or "advances") have been expensed by Husband. Based upon the evidence before me, I find that Husband's available spendable income is near \$150,000.00 annually. Husband reported this amount to banks and lending institutions as late as January 2004, and I find that his representations to lending institutions in support of applications to borrow money are relevant in determining Husband's true income.
- (k) I find as a matter of fact that Husband's annual income is \$150,000.00, and that Husband is well capable of paying alimony and support to Wife.
- (l) Husband's Financial Declaration does not report his gross income from his farming operation nor his expenses (some of which are non-cash deductions and other of which are questionable but what he considers to be his net income from which he asserts he pays no income taxes).
- (m) Attached to Plaintiff's most recent Financial Declaration is her Schedule C and correspondence dated May 11, 2004 from C. Boyd Loadholt to Plaintiff's counsel that explains wife's compensation. This was confirmed by Mr. Loadholt's sworn testimony. However, it is equally clear to the Court that the Plaintiff can manipulate her spendable income and that some of her expenses claimed for tax purposes (i.e., depreciation) do not in fact decrease her spendable income.
- (n) Wife works solely on a commission basis. Her gross revenue reported to Agent Owned Realty was \$30,555.00 from January 1, 2004, to June 15, 2004. From that amount, Wife paid \$10,928.92 in expenses to the franchise that she never received. Therefore, Plaintiff received \$19,621.08, in gross commissions for this time period. Mr. Loadholt testified (Plaintiff's Exhibit 23) how these computations were made. Her 2003 gross income before expenses was \$50,454. It was \$62,215 in 2002.
- (o) The Financial Declaration of Simpson, Jr. is also before the Court (Plaintiff's Exhibit 68). According to the testimony of Mark Hobbs, CPA, and the exhibits, Simpson, Jr. never had adjusted gross income of more than \$18,000.00 annually. Mr. Hobbs testified that Simpson, Jr. had improperly expensed more than



\$14,000.00 used to purchase real property on his income tax return. Simpson, Jr.'s Financial Declaration reflects income of \$1,730.76, per month, more than he has reported, after taxes, on any prior income tax return. His expenses are \$4,250.00 monthly. Simpson, Jr.'s assets shown on the 3<sup>rd</sup> page of his August 3, 2004 Financial Declaration show real estate values of \$272,900.00 and other property of \$300,835.00. His total indebtedness for his home, farm, land, and equipment loans is \$125,000.00. The addendum to his Financial Declaration was prepared by Ms. Amos using Simpson, Sr.'s values and reflects total LLC assets of \$1,325,164.00, of which Simpson, Jr. owns his \$662,582.00. The LLC liabilities according to his Financial Declaration are \$530,224.00, one-half of which he allocates to himself. He asserts that his total interest in the LLC is \$397,470.00. There is no breakdown of the "liabilities".

- (p) The addendum to Simpson, Jr.'s Financial Declaration asserts LLC real estate values at \$937,500.00, farm equipment at \$209,000.00, and the balance in investments, checking accounts, and other assets including crops, while the only evidence before the Court is that the LLC holds only real estate.
- (q) Simpson, Sr. testified that he purchased property with cash so that sellers could avoid taxation. He also testified he did not know the value of his assets. He admitted that he made decisions of how much to pay his son from the sale of the crops. Thereby making the consideration shown on the face of deeds unreliable.
- (r) Based upon the swapping of money and property between Defendants Simpson, Sr. and Simpson, Jr., the discovery process has been significantly extended and confusion has reigned supreme.
- (s) Plaintiff's Exhibit 65 (the January 2004 financial statement given to National Bank of South Carolina by Defendant Simpson, Sr.) reflects \$150,000.00 in income, land value of \$1,000,045.00, and farm equipment of \$275,000.00, and total assets of \$1,470,000.00.
- (t) One month earlier, Simpson, Sr. filed a Financial Statement dated December 9, 2003 at the Bank of Greeleyville, showing \$1,226,122.00 in assets, \$278,500.00 in liabilities, and net worth of \$947,623.00. This value apparently includes only one-half of the LLC property.
- (u) Simpson, Sr. transferred his one-half interest in S&T Property Development to the brother of Kenneth Tidwell only days after this

action was commenced. Despite this transfer, and while he purportedly was not a partner in S&T, Simpson, Sr. continued to buy property in the name of S&T (Plaintiff's Exhibits 86 & 87). He also signed a Financial Statement and note in January 2004 at the National Bank of South Carolina (Plaintiff's Exhibits 64 & 65) wherein he declared that the net value of S&T exceeded \$200,000.00. Yet he transferred his half interest for \$5.00 days after the filing of this action to avoid the debt, which was never done.

- (v) I find as a fact that the credibility of the Defendant's Simpson, Jr., and Simpson, Sr. are subject to significant question.
- (w) I find Defendant Simpson, Sr. has income in excess of \$150,000.00 annually.

(5) **The standard of living established during the marriage:**

- (a) I find that during the marriage of these parties, they had an upper middle class family lifestyle. All of the children went to Clarendon Hall, a private school, and participated in athletics and other activities. The parties lived in a significantly improved residence. Photographs of the interior of the residence and Simpson, Sr.'s farm office (Plaintiff's Exhibit 50) reflect extremely nice accommodations. Simpson, Sr. owns significant farm equipment (Plaintiff's Exhibit 51), and an antique car collection (Plaintiff's Exhibit 52, 53, and 54). Simpson, Sr. has a number of grain bins, the contents of which are unknown (Plaintiff's Exhibit 55).
- (b) I find that these parties maintained an upper middle class farming lifestyle and were affluent.

(6) **The current and reasonably anticipated earnings of both spouses:**

- (a) As stated hereinabove, I find that Simpson, Sr., if his assets and expenditures were properly recorded, would produce more than the \$150,000.00 annually, that I attribute to him. Although he valued his net assets at \$468,889.00 excluding the home property and including only one-half of his value of the LLC, he testified that he would not sell his assets for that amount. Defendant Simpson, Sr. has loaned money to a number of individuals including Ken and Ray Tidwell, his son, his banker, Mr. Jonte, and others. Mr. Jonte testified that he and Simpson, Sr. had owned other property together, including property in Columbia, South Carolina, that was purchased during the marriage. He said that on occasion, he would assume the entire debt even though the property was titled in the

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name of Simpson, Sr. He also testified that the Kershaw property, which is owned half by him, is subject to a note totally owed by Simpson, Sr. of in excess of \$21,000.00. He admitted that, on paper, Simpson, Sr. is "upside down" in the property and that it would be impossible to determine what Mr. Simpson owned and his equity based just on the public records.

- (b) In being as generous as possible to Simpson, Sr., I conclude that his earnings are well in excess of the \$150,000.00 he reported to the banks.
- (c) As stated above, I find and conclude that Wife has not worked outside the home during most of the marriage which she did based on Simpson, Sr.'s insistence. She attempted to go to school, but Simpson, Sr. disapproved. She finally secured a real estate license in 2001, and works on a commission basis. She has no other skills. Despite the fact that she had a real estate license, Defendant Simpson, Sr. would go to other real estate agents to give them the business rather than give it to the Plaintiff. Based thereon, I find that Plaintiff is capable of earning more than she is reporting, and that her gross earning capacity after normal and ordinary business expenses is \$30,000.00 per year going forward. Wife's earning capacity was less during the earlier years in her profession, and it should grow in the future.

(7) **The current and reasonably anticipated expenses and needs of both spouses:**

- (a) Wife's current Financial Declaration indicates she incurred significant debt between March of 2003 and now. I find that, excluding payment on indebtedness of \$1,548.00 per month, which should be paid off from her equitable division, Plaintiff has monthly needs of \$3,800.00 monthly. I find her March 27, 2003 financial declaration to be a more honest reflection of her needs.
- (b) I find that after considering her gross income, Wife's needs are approximately \$1,300.00 monthly after taxes. I find, based upon her earning capacity that Plaintiff does not have the ability to pay her expenses without permanent periodic alimony payment from husband. However, the Court must take into account what she receives in equitable distribution.
- (c) On the other hand, Defendant Simpson, Sr.'s Financial Declaration was prepared with the assistance of Tracey Amos, CPA, CVA, who testified on his behalf that she was not provided with all information from him.



- (d) I find that based on Defendant Simpson, Sr.'s income, capacity to earn, and financial standing, he has the ability to pay his expenses and to contribute to Plaintiff's support as set forth below.

(8) The marital and non-marital properties of the parties including those apportioned him or her in the divorce or separate maintenance action:

- (a) I find that Wife has no non-marital property as set forth in the Equitable Division Section of this Decree.
- (b) I find that Husband has no non-marital property as set forth in the Equitable Division Section of this Decree.
- (c) While Husband inherited some property from his father, improvements to that property during the marriage were made from marital funds and efforts, and the acquisitions of all other assets during the marriage are marital.
- (d) I have taken into consideration the apportionment of marital properties in setting Plaintiff's alimony as set forth in the Equitable Division provisions of this Decree which are incorporated herein by reference.

(9) Custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature:

- (a) I find that the daughter of parties, Charley, has been in school. There is a dispute as to who is paying her expenses. Defendant Simpson, Sr. testified that he has been paying her expenses; however, Plaintiff's Financial Declaration and testimony reflects that she had spent in excess of \$9,000.00 in paying for her daughter's clothing and miscellaneous expenses. There is no dispute between the parties that Charley should complete her college education. Charley is emancipated and the issue of college support is not before me.

(10) Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with

regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement between the parties:

(a) I find that Husband has neither alleged nor proved or produced any credible evidence that Wife has had any material fault in the cause of the breakdown of this marriage. I have heard no credible evidence that paints Wife other than a helpful spouse, helpmate, and partner. I find that the Plaintiff is without material fault in the cause of the breakup.

(b) The demeanor of Simpson, Sr. while testifying before this Court and his own admissions as to some of his financial transactions raise questions in the Court's mind as to how open and honest he has been with the Plaintiff and the Court regarding his economic transactions. His transfer of S&T Development five (5) days after filing is direct evidence of his attempt to minimize his assets.

(11) The tax consequences to each party as a result of the particular form of spousal award:

(a) The alimony herein awarded will be taxable to Wife and deductible to Husband.

(12) The existence and extent of any support obligation from a prior marriage or for any other reason of either party:

(a) There are no support obligations before the Court although Simpson, Sr. testified he is paying for Charley's education.

(13) Such other factors the court considers relevant:

(a) I have also considered the fact that while Defendant Simpson, Sr. pleads that he does not have sufficient funds to support the Plaintiff, he has had the funds to continue to purchase assets in the name of S&T, even though he says he did not own an interest therein. As a matter of fact, Defendants' witness, Kenneth Tidwell testified that Simpson, Sr. had secured money from him (Tidwell), and asked permission to have the property titled in the name of S&T, even though it was Simpson, Sr.'s property. This is another example of Defendant Simpson, Sr.'s hiding of assets and income.

50. Based upon the foregoing, I find and conclude that the Defendant William R. Simpson, Sr. shall pay to Plaintiff Wife permanent periodic, alimony in the sum of \$1,000.00 per



month payable on the fifth (5<sup>th</sup>) day of each month until Plaintiff's death or remarriage, commencing with the first calendar month following the issuance of this Decree. All payments shall be paid through the Clerk of the Family Court for Clarendon County, South Carolina. In addition to that amount, Defendant Simpson, Sr. shall pay the Court costs of five (5%) percent.

51. I further find and conclude that Defendant Simpson, Sr. has not paid all of medical expenses for Plaintiff and Charley not covered by insurance as required by the Temporary Order. I find that he should be required to pay all of the same now due within ten (10) days of the date of this Decree, namely \$16,734.00.

#### **EQUITABLE APPORTIONMENT**

52. The other findings made in this Decree are incorporated by reference.

53. In South Carolina, equitable apportionment is essentially a three-step process. First, the Court must identify and value the marital assets to be divided. Second, the Court must consider the statutory factors to determine the appropriate apportionment. Third, the Court must apportion the assets.

54. S.C. Code Ann. § 20-7-473 (Supp. 2002) defines marital and non-marital property for the purpose of equitable division in this State and provides:

**§ 20-7-473. Marital and non-marital property; non-marital property as not subject to judicial apportionment.**

The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in § 20-7-472 regardless of how legal title is held, **except the following, which constitute non-marital property:**

- (1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;
- (2) property acquired by either party before the marriage and property acquired after the happening of the earliest of (a) entry of a

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pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

- (3) property acquired by either party in exchange for property described in items (1) and (2) of this section;
- (4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;
- (5) any increase in value in non-marital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

The court does not have jurisdiction or authority to apportion non-marital property. (emphasis added)

55. Prior to making findings and conclusions relative to the issue of equitable division, I find it necessary to reiterate my prior findings that the testimony and evidence in this case was confusing and contradictory. Other than the unaudited "marital property addendum" prepared by Tracey Amos, CPA, CVA which admittedly was in error, Defendants presented no summarization of properties or credible evidence of valuation other than statements by Defendants themselves. No clear and concise identity and valuation of the marital property was offered by the Defendants. The Court can only conclude that the Defendants intentionally resisted discovery and any effort to accurately disclose the exact nature of their holdings.



56. Ms. Linhardt's asset listing is inaccurate and values are based only on one method, comparable sales, and none of them are in the record for the Court to review. She testified that she would have to do more research to tell the Court exactly what Simpson, Sr. owned.

57. Tracy Amos, Certified Public Accountant and Certified Valuation Analyst, was hired by Defendant Simpson, Sr. for the sole purpose of preparing his Financial Declaration and marital asset addendum. She took the figures and information from Defendant Simpson, Sr. without review or audit of any kind. In the final analysis, Ms. Amos' testimony did little more than parrot Defendant Simpson, Sr. Ms. Amos admitted that Defendant Simpson, Sr.'s reporting was inconsistent and, in some instances he had undervalued assets. She testified that while Defendant Simpson, Sr. reported to her that he did not have sixty (60) pieces of farm equipment, she did not audit his representation. Simpson, Sr. did not offer an independent inventory of his farm equipment. Although her marital asset addendum reflects the LLC as owning bank accounts, farm equipment, and land, the only evidence before the Court is that the LLC owns only land. Simpson, Sr. offered no documentary evidence of debts. He listed them on his financial declaration and Mr. Tidwell and Mr. Jonte testified to some of them.

58. According to uncontradicted testimony of William C. Coffey, a corporate attorney retained by Simpson, Sr. to form the LLC, Simpson, Sr. and Simpson, Jr. did not follow his instructions about the operation of the LLC. In fact, no LLC bank account was ever opened. However, the Plaintiff was aware of the discussions regarding the LLC before it happened, knew it occurred as soon as Mother's Day 2000, and allowed her son, Simpson, Jr. to continue to work on the family farm thinking he owned 50% of the property in the LLC, without any action on her part, until this litigation was filed in March 2003.

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59. Defendant Simpson, Jr. testified both in deposition and at the trial that he worked on the farm from 1981 to 1989 at a reduced wage of \$120.00 per week (and sometimes did not make anything at all) in order to get an interest in the property. Simpson, Jr. testified that he could not put a value on his hard work and sweat, but he farmed the marital land so he could earn an interest in the property. This arrangement is not unusual in family farming operations, according to W.C. Coffey, Jr. Even though Simpson, Sr.'s conduct in this transaction is suspect, the Court finds that the Plaintiff was aware of this arrangement all along and should not at this point come in and defeat the interest of her son.

60. Despite the fact that Simpson, Sr., and Simpson, Jr. denied the existence of a joint bank account, the evidence before the Court reflects that a joint account was opened on July 19, 1999, and that remains in existence today. At the time the account was opened, \$139,349.00 was deposited by Defendant Simpson, Sr. and \$115,000.00 was written out of the account during the first month. Simpson, Jr. testified that this money belonged to his father, not to him. Defendant Simpson, Sr. did not report this account on his sworn Financial Declaration, and any balance as of the date of filing is marital property.

61. Simpson, Jr. testified that each year he turns all of his crops over to Simpson, Sr. who sells all crops, collects all monies from the sales, and places the proceeds into his Simpson Farm account. From this account, Simpson, Sr. pays all the farm expenses and then divides the remaining balance with Simpson, Jr. in a non-descript manner. Simpson, Jr. testified that, on occasion, Simpson, Sr. loaned him money and, when he did not pay it back, Simpson, Sr. would repay the loan from the proceeds of the sale of the next year's crops. Simpson, Jr. confirmed the Court's concern that no one could tell from year to year who will get what, because he and his father sit down every year and "work out" what the respective families needs may be. I find that



Simpson, Sr. and Simpson, Jr. are and have been shifting income to suit their purposes so that it is practically impossible to trace.

62. I also find as a fact that it is literally impossible for me to determine by which means the Defendants Simpson divided income because Simpson, Sr. makes the ultimate decision of who gets what amount each year.

63. Mr. Hobbs testified that Simpson, Sr. sometimes calls distributions to his son as "loans" and sometimes as "payments". When he claims the same to be payments, Simpson, Sr. deducts them.

64. Plaintiff moved to compel discovery in this case because she claimed she had not received all Defendant Simpson, Sr.'s records. I find that full and complete records were not provided to Plaintiff. I find this matter should have been pursued earlier in the litigation by the Plaintiff in the form of scheduling a hearing on her Motion to Compel Discovery.

65. I find that the transfer by Simpson, Sr. to Simpson, Jr. of 50% ownership in Simpson Farms LLC was either income to Simpson, Jr. (which was not reported by Simpson, Jr.) or a gift (no gift tax return was filed). Based upon Simpson, Jr.'s testimony, he was paid for taking less salary, and, therefore, the value of the transfer should have been reported on his income tax returns. This was corroborated by Defendant Simpson, Sr., but Ms. Amos testified that Simpson, Sr. told her that the transfer was a gift. I find that the transfer of marital property into the LLC is effective as to Simpson, Jr., and Defendant Simpson, Sr. should be charged with 50% of the value of the property held by the LLC. The manner in which Simpson, Sr. and Simpson, Jr. resolve their tax issues is between them, their accountant, and the Internal Revenue Service. For the purposes of this proceeding, I find the transfer of certain assets into the LLC



was well known to the Plaintiff prior to its being done, and the Plaintiff acquiesced in the plan for some three (3) years after the transfer.

66. Beth Linhardt, Plaintiff's appraiser who was qualified as an expert witness explained the various valuation methods and testified that it was difficult to determine what property had been acquired and sold because there were no income or expense records maintained by Simpson, Jr. or Simpson, Sr. She was engaged on March 6, 2003 and did seventy-nine (79) separate appraisals. Ms. Linhardt testified that she spent in excess of 1,200 hours (excluding her trial testimony) in finding and valuing the property. She described her difficulty in determining the ownership of property because no lists were provided by Defendant Simpson, Sr. Ms. Linhardt was required to look in several counties; there were multiple purchasers with other persons, and Simpson, Sr. was not named first in a number of the deeds. She testified that where there were multiple purchasers, she would have to do further investigation to determine Simpson, Sr.'s interest. She found some assets only because she saw transfers out of that property. Therefore, her valuation at best is incomplete and the Court must try to make adjustments based on the evidence before it.

67. Ms. Linhardt's testimony regarding the confusion in dealing with assets of Simpson, Sr. and Simpson, Jr. was corroborated by Simpson, Sr.'s business partner, Robert Jonte, also his banker. Mr. Jonte testified that based on the way that he and Mr. Simpson did business when they acquired property, it would be impossible to determine from the public records what Simpson, Sr. owned and what he owed on any particular property.

68. Ms. Linhardt testified that she visually inspected each of the properties and also reviewed contracts of sale and other records with regard to S&T Property Developers, a partnership between Simpson, Sr. and Kenneth Tidwell. S&T was valued by Simpson, Sr. in

excess of \$400,000.00 on a financial statement given to National Bank of South Carolina in January of 2004 when Simpson, Sr. signed a new note, even though, based on his sworn testimony, he had transferred his interest in S&T to Ray Tidwell, his partner's brother, for \$5.00 shortly after the filing of this action. I find that Simpson, Sr.'s interest in S&T is marital property and should be charged to him in this proceeding.

69. Through Ms. Linhardt, Plaintiff introduced Exhibit # 25 (a summary of Ms. Linhardt's opinion of the values of property owned 100% by Simpson, Sr., property owned 100% by the LLC, and one-half of the property titled in the name of S&T Land Developers Partnership). According to Ms. Linhardt, the total value of all real estate owned by Simpson, Sr., excluding the Kershaw property, is \$2,655,150.00.

70. The following property on Plaintiff's Ex. 25 are owned by Simpson, Sr. and Tidwell, but are not included in Plaintiff's Ex. 27 as property transferred to S&T Developers (Compare to Defendant's Ex. 27):

Item No.	Fair Mkt Value
(15) House and Lot	\$47,500
(28) 211 Brabham	65,000
(31) 3.14 acres	17,500
(32) 1.31 acres	25,000
(33) 1.31 acres	17,500
(34) 1.26 acres	17,500
(35) 1.24 acres	17,500
(36) 1.25 acres	17,500
(37) 1.23 acres	17,500
(38) 1.29 acres	17,500
(39) 1.3 acres	17,500
(40) .69 acres	15,000
(41) .69 acres	25,000
(42) .69 acres	15,000
(43) .69 acres	15,000
(44) .69 acres	15,000
(45) .69 acres	15,000
(46) .69 acres	15,000

00038

(47) .69 acres	15,000
(66) 1.4 acres	17,500
	<b>\$425,000</b>

The Court values the above property at \$425,000.00, and the 50% interest of Simpson, Sr. at \$212,500.00.

71. Plaintiff's Exhibit # 27 reflects Ms. Linhardt's opinion of the value of S&T (\$637,000.00). Item #52 was transferred to a Garneau on 11/20/2001 deducting \$15,000.00 leaving a balance of \$622,000.00. When Simpson, Sr. transferred his half-interest on March 10, 2004, the gross value of his half-interest was \$311,000.00. Ms. Linhardt found no mortgages of record as to any of the S&T properties, and no mortgages on record in the name of Simpson, Sr. Mr. Tidwell testified that the debt as of the date of filing was \$184,457.00. The net value at transfer was \$437,543.00 (\$622,000 - \$184,457), and Simpson, Sr.'s 50% interest had a value of \$218,772.00.

72. Plaintiff's Exhibit #26 reflects Ms. Linhardt's opinion of the value of the property transferred into the LLC (\$844,650.00).

The following property from Plaintiff's Ex. 25 was transferred into the LLC:

Item No.	Description	Value
(6)	52 acres	\$62,400
(7)	12 acres	25,000
(10)	151 acres	151,000
(11)	40.5 acres	245,000
(14)	21 acres	36,750
(19)	56.8 acres	65,000
(20)	Mobile Home	3,500
(48)	157.6 acres	173,500
(53)	5 acres	30,000
(63)	12.96 acres	25,000
(65)	13.5 acres	27,500
	<b>Total</b>	<b>\$844,650</b>

*The marital home (Item 11), \$245,000 is dealt with separately, leaving other property in the LLC valued at \$599,650.*

Simpson, Sr.'s 50% interest in the LLC is valued at \$299,825.00. It is not clear to the Court that the marital home was ever transferred into the LLC, and it will be considered separately.

73. The following items on Plaintiff's Ex. 25 were owned by Simpson, Sr. with Mr. Jonte and others in varying percentages:

1.	Item 4	Mobile Home	\$4,000.00	FMV	50%	=	\$2,000.00
2.	Item 8	Front Yard	\$3,000.00	FMV	50%	=	\$1,500.00
3.	Items 23-27		\$155,000.00	FMV			
			<u>-80,000.00</u>	Debt			
			\$ 75,000.00	Net	25%	=	\$18,750.00
4.	Item 50	1 Acre	\$7,500.00	FMV	50%	=	\$3,750.00
5.	Item 67	Wilson Street Prop.	\$55,000.00	FMV			
			<u>-41,800.00</u>	Debt			
			\$13,200.00	Net	25%	=	\$3,300.00
6.	Item 68	5.54 Acres	\$37,000.00	FMV	50%	=	\$18,500.00
7.	Bethune Property	Not listed on Plaintiff's 25	\$26,900.00	FMV			
			<u>-20,000.00</u>	Debt			
			\$6,900.00	Net	50%	=	\$3,450.00
Simpson's Int. Total							\$51,250.00

74. The following items on Plaintiff's Ex. 25 have been transferred or duplicated:

- (3) Ires
- (12) Geddings
- (13) Watson
- (16) Watson
- (22) Charley's House
- (52) Garneau
- (56) Lamb
- (57) Same as 18

00040

75. The following property on Plaintiff's Ex. 35 is owned individually by Simpson, Sr.:

(1)	2.1 acres	\$7,500
(5)	1.4 acres	5,000
(21)	161.1 acres	175,000
(51)	1.3 acres	15,000
(54)	6.7 acres	35,000
(62)	133.2 acres	150,000
(64)	House & 16 acres	50,000
		<b>\$437,500</b>

76. Ms. Linhardt testified that she had attempted to secure six (6) individuals to appraise Simpson, Sr.'s farm equipment, but none of them would do so because it belonged to Simpson, Sr. The Court finds this explanation for failure to appraise the farm equipment somewhat weak. This situation should have been brought to the attention of the Court prior to trial when arrangements could have been made to inventory and appraise the farm equipment. However, Simpson, Sr. could have and should have provided an inventory of his equipment.

77. Mark Hobbs, a Certified Public Accountant retained by Plaintiff, was qualified as an expert. Mr. Hobbs testified that the bulk of the material he had received from Defendant Simpson came in "dribbles and drabs", but most of the information came over the weekend before trial. He corroborated Plaintiff's position that she could not secure appropriate records from Defendant Simpson, Sr.

78. Through Plaintiff's Exhibit # 33, Mr. Hobbs' produced a summary of Simpson, Sr.'s general ledger that was prepared by Mr. Gibbons. As of December 31, 2002, Simpson, Sr.'s records showed advances or loans to Simpson, Jr. of \$44,100.00, yet there were no 1099's issued to Simpson, Jr. On Simpson, Sr.'s income returns, these advances were deducted from his income as miscellaneous expenses. On Simpson, Jr.'s tax return, there was no entry for the \$44,100.00.



79. According to Mr. Hobbs, the large "miscellaneous expenses" portion of the general ledger heightened his "fraud alert". He testified that if loans were forgiven, this was the equivalent of a gift, but he saw no gift tax returns being filed.

80. Although Simpson, Jr. testified that loans to him by Simpson, Sr. in one year might be offset against crop sales the next, Mr. Hobbs found nothing to support that. For 2003, there were more than \$50,000.00 in "expenses" paid by Simpson, Sr. to Simpson, Jr., and more than \$40,000.00 in loans to Tidwell and others. Simpson, Sr.'s general ledger reflects a \$78,500.00 account receivable that is not shown on his Financial Declaration, and I find receivable to be an asset of the marriage.

81. Mr. Hobbs testified that the fixed assets (equipment) shown on the depreciation schedule on Simpson, Sr.'s general ledger (\$258,793.00) did not match the schedules on his tax returns which show nearly \$1,000,000.00 as the cost basis of equipment. Based upon Mr. Hobbs' testimony and Plaintiff's Exhibit # 37 (summary of Simpson, Sr.'s equipment for the tax returns), Mr. Hobbs gave three (3) different valuations for the equipment which had a cost basis of \$923,630.00. He valued the equipment at \$329,536.00.

82. Plaintiff's Exhibit # 38, prepared by Mr. Hobbs shows a \$64,509.00 cost basis of Simpson, Jr.'s equipment as reported on his tax returns; however, Simpson, Jr. reported that he owned \$150,000.00 in equipment on his financial statement to banks.

83. Plaintiff's Exhibit # 39, also prepared by Mr. Hobbs, compares Simpson, Jr.'s financial statements given to banks from 1999 through March of 2003. The value of farm equipment increased from \$24,000.00 in 1999 to \$35,000.00 in 2000, from \$41,000.00 in 2001 to \$150,000.00 in 2002, and stayed at \$150,000.00 each year thereafter. According to Mr. Hobbs,

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there is no evidence of sufficient income or indebtedness in Simpson, Jr.'s tax returns that explain how he acquired this farm equipment.

84. According to Mr. Hobbs, Simpson, Jr.'s home mortgage in 1999 at \$53,900.00 had been paid down to \$23,933.00 in 2003. This reduction was not justified by the income reported on his tax returns.

85. Plaintiff's Exhibit # 40, a summary of bank financial statements filed by Simpson, Sr. from January 1990 through January 2004, reflect net worth of in excess of \$1,000,000.00 each year as opposed to \$462,000.00 on his Financial Declaration.

86. Plaintiff's Exhibit # 44, Simpson, Sr.'s application for Farmer of the Year, showed a net worth of \$1.2 million and that stated Simpson, Sr. was farming 2,600 acres.

87. Simpson, Sr.'s January 6, 2004 bank filed financial statement represents income of \$150,000.00 per year. I find as a matter of fact that bank filed financial statements are relevant to show his assertion of the value of assets. In this case, the value of assets shown on bank filed financial statements, are significantly more than Simpson, Sr. reported on his Financial Declaration as prepared by Ms. Amos, but significantly less than testified to by Ms. Linhardt, the only real estate appraiser who testified in this case.

#### **Claim by Simpson, Sr. of Non-Marital Property**

88. Simpson, Sr. asserts that the farm property and house in which the parties and their children lived since 1971 after his father died is non-marital property because it was inherited by him at the time his mother died. He values this property at \$175,000.00 and asserts that it should be excluded from consideration by the Court. I disagree.

89. Simpson, Sr.'s father left his mother a life estate in this property with the remainder to Simpson, Sr. Simpson, Sr.'s mother remarried, and Simpson, Sr., Wife, and their family moved into the residence and used the land during the lifetime of Simpson, Sr.'s mother.

90. The clear preponderance of the evidence reflects that from the time the Simpson Family moved into that residence and began using that land, they looked upon it and intended for it to be their family home. Funds earned and saved during the marriage, not to mention Wife's labor and efforts and decorating skills, were contributed to this property; ponds were put on this property; the residence was expanded and improved over the years; the yard was landscaped by Plaintiff to become a showplace, and the parties and their children looked upon this property as their home.

91. While the evidence conclusively demonstrates that Husband received certain land from inheritance during the marriage, significant marital expenditures of time, labor, and money were contributed to this property both prior to the death of Simpson, Sr.'s mother and after. Wife made significant financial and other contributions into these properties. Even in the light most favorable to Husband, Wife's efforts were significant, and income earned during the marriage, which is marital property, was used to improve these assets and increase the value thereof.

92. "Transmutation is a matter of intent to be gleaned from the facts of each case." *Jenkins vs. Jenkins*, 345 S.C. 88, 98, 545 S.E.2d 531, 536 (Ct. App.2001); *Widman vs. Widman*, 348 S.C. 97, 557 S.E.2d 693 (Ct. App. 2001).

93. Here, Wife has proved not only by her testimony, but by photographs of the property taken over the years, that this otherwise non-marital asset was converted to marital



property, and since before Simpson, Sr.'s mother died the parties regarded the home and surrounding land as family property.

94. Plaintiff presented clear and convincing evidence that she made "direct" financial contributions towards the improvement and expansion of the farmhouse and surrounding property that resulted in significant increase in the value of the property

95. In addition, and alternatively, I find that Wife is entitled to a special equity in said property. As stated by the South Carolina Court of Appeals in *Webber vs. Webber*, 285 S.C. 425, 330 S.E.2d 79 (Ct. App.1985):

Under the special equity doctrine, "Where a Wife has made a material contribution to the Husband's acquisition of property during coverture, she acquires a special equity in the property." *Wilson v. Wilson*, 270 S.C. 216, 241 S.E.2d 566, 568 (1978) (quoting 27B C.J.S. Divorce Sec. 293 (1950)). **Therefore, one spouse acquires a special equity in the property of the other if (1) the property was acquired during coverture, (2) the spouse contributed to the acquisition of the property, and (3) the spouse's contribution was material.** (emphasis added)

96. Also see, *Eagerton vs. Eagerton*, 285 S.C. 279, 328 S.E.2d 912 (Ct.App.1985), "In order to be entitled to an award of special equity in property or equitable distribution of a marital estate, the spouse seeking it must show that he or she has made a material contribution to the acquisition of the property; this is the threshold prerequisite of both doctrines."

97. Wife proved that she is entitled to a "special equity" interest in the farmhouse and surrounding land. There is uncontradicted objective evidence that Wife "made a material contribution" to the property and has met her burden of showing a special equity. Husband presented no evidence to the contrary.

98. I find that Wife contributed substantially to this marriage. While the birth and raising of three (3) children is certainly a material contribution, her other contributions to this marriage were otherwise significant. She had no nanny or maid, kept house, and improved these

properties. She made some direct financial contributions to this property, although most direct financial contributions were made by the Husband, and was not at fault in the breakup of this marriage.

99. Income received during the marriage is ordinarily marital property. *Brandi vs. Brandi*, 302 S.C. 353, 396 S.E.2d 124 (Ct. App.1990). Property acquired with that income becomes "marital property". The Court is not required to divide assets using the same percentage. *Marsh vs. Marsh*, 313 S.C. 42, 437 S.E.2d 34 (1993).

100. Based upon the foregoing findings and conclusions, I hereby identify the marital assets and assess net values as follows:

- a. **The marital home** and 40.5 acres (Item 11 on Plaintiff's Exhibit 25) is marital property as discussed above. I find that Simpson, Sr.'s value of \$175,000 is low, and the value of \$245,000 given by Ms. Linhardt is a more accurate value.
- b. **Property in the LLC**, less the marital home and 40.5 acres, is 481.86 acres (Plaintiff's 26). Ms. Linhardt values that property at \$599,650 which is an average of \$1,244.00 per acre. Simpson, Sr.'s value of \$750.00 per acre would place a value of \$361,395 on that property.

The Court finds the \$599,650 value to be more reasonable, and the marital portion of that property is \$299,825.

The Court has considered Defendant's Exhibit 25 which shows property purchased by Simpson, Jr. during the marriage. Deleting Items 5 and 6 (.92 acre and mobile home) and Item 8 (2 acres and home spot), Simpson, Jr. has a total of 205.7 acres shown on Defendant's Exb. 25 for which he reports having paid \$105,250. However, according to Defendant's Exb. 25 those 205.7 acres have an appraised value of \$299,000 which is \$1,453.57 per acre. This exhibit supports the Court's conclusion that Ms. Linhardt's appraisal of acreage is more accurate than Simpson, Sr.'s value of \$750.00 per acre across the board.

- c. **S&T Land Developers** was owned 50% by Simpson, Sr. at the date of filing and that is marital property.

00046



The gross value at the date of filing I find to be \$622,000 with a debt of \$184,457.00. The net value is \$437,543.00 with Simpson, Sr.'s 50% being valued at \$218,772.00.

The Court compared Ms. Linhardt's appraisal to the values given by Mr. Tidwell, Simpson's partner in S&T, and if one were to accept Mr. Tidwell's testimony, it would appear that S&T had property valued at \$86,100 with a debt of \$184,457.00. The Court does not find those values credible.

Simpson, Sr. and Tidwell signed a financial statement with the National Bank of South Carolina (Plaintiff's Exb. 71) which is undated showing property valued at \$406,000 with liabilities of \$114,615 and a net worth of \$291,385.00.

- d. Property owned by Simpson, Sr. and Tidwell, not included in S&T above, valued at \$425,000 with Simpson's 50% interest being valued at \$212,500.00 (*See Paragraph 70*).
- e. Property on Plaintiff's Exb. 25 owned 50% with Jonte or 25% with others: \$51,250.00 (*See Paragraph 73*).
- f. Charley's house – All parties agree that Charley's house valued at \$30,000 is a gift to her. While not clearly identified in the evidence, it appears to be Item 22 on Plaintiff's Exb. 25 (1.9 acres – value \$30,000).
- g. Property owned individually by Simpson, Sr. and valued at \$437,500.00 (*See Paragraph 75*).
- h. **The farm equipment** purchased during the marriage is marital property. I value it at \$329,536.00 (Defendant's Exb. 19).
- i. **W. R. Simpson Farms Checking Account** – As of date of filing (\$53,000).
- j. **Joint Checking Account with son** – I value at (\$16,000). 50% of this account is \$8,000.00.
- k. Two *Edward R. Jones* accounts are marital property which I value at (\$80,884 + 2,558) \$83,442.
- l. Simpson, Sr. crops in ground are valued at \$26,470.



- m. Other assets, alluded to but not valued, are valued at \$16,055 (Autos & collectibles) (Defendant's Exb. 18).
- n. Employee Account Receivable (\$78,095)
- o. Buck and Bull (\$250,000). Ms. Linhardt valued the property (not the business) at \$250,000. Simpson, Jr. testified he did not think this was worth \$250,000. Simpson, Sr. testified it was of little or no value before Simpson, Jr. started making improvements. Having no other value, the Court has no choice but to value the property at \$250,000.
- p. The Plaintiff had the following accounts at filing which are marital property:

1.	NBSC Checking	\$5,500
2.	Money Market	4,209
3.	Certificate of Dep.	7,000
4.	Bank stock	1,500
		<b>\$18,209</b>

**Total Marital Estate      \$2,327,654.00**

101. I find that the operating loans are paid from current earnings as an expense of the business prior to Simpson, Sr. determining his personal income and as such are not debts of the marital estate. There is no documentary evidence as to debts and no evidence as to how to separate debts of father from son.

Where there was credible testimony regarding a specific debt related to specific property, the Court has allowed that debt.

102. **Total Value of Marital Assets:** Based upon the foregoing, I find that the total marital estate subject to division has a value for equitable apportionment purposes of \$2,327,654 after debt.

00048



103. The statutory facts considered by the Court in making the equitable apportionment pursuant to §20-7-472 (1) - (15), South Carolina Code of Laws, 1976, as amended, are as follows:

(1) The duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties:

(a) The findings in the Alimony Section are incorporated by reference.

(2) Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support of a permanent order approving a property or marital settlement agreement between the parties:

(a) The findings in the Alimony Section are incorporated by reference.

(3) The value of the marital property, whether the property be within or without the state. The contribution of each spouse to the acquisition, preservation, depreciation or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence:

(a) The values of the marital property are as set forth above and are incorporated by reference. There is no non-marital property to be considered as all property is marital and the inherited property has been transmuted. This is a typical farm family. The Farmer of the Year award is as much an award to the family as to Simpson, Sr. This was a partnership where Husband worked in the fields and Wife took care of and improved the home and raised the children. It is obvious to the Court that the Parties were frugal as there would not have been funds with which these parties could have amassed over \$2,000,000.00 in net assets when, admittedly, they started with nothing.

- (4) The income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets:
- (a) The findings in the Alimony Section are incorporated by reference.
- (5) The health, both physical and emotional, of each spouse:
- (a) The findings in the Alimony Section are incorporated by reference.
- (6) The need of each spouse or either spouse for additional training or education in order to achieve that spouse's income potential:
- (a) The findings in the Alimony Section are incorporated by reference.
- (7) The non-marital property of each spouse:
- (a) The Court's findings as to the identification and valuation of non-marital property above is incorporated by reference. There is no non-marital property to be considered.
- (8) The existence or nonexistence of vested retirement benefits for each or either spouse:
- (a) Neither Husband nor Wife has any known retirement accounts.
- (9) Whether separate maintenance or alimony has been awarded:
- (a) Wife has been awarded periodic alimony of \$1,000.00 per month herein.
- (10) The desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children:
- (a) These parties last lived together in the family home in March 2003 when the Wife left. Throughout this litigation, Wife and Charley have resided in a separate home that is rented by Wife. There is no custody issue. Husband has been using the residence and has an office behind it which is necessary for his farming operation. I find and conclude that as a part of the equitable division, Husband should be granted ownership of this property and the use and possession of the same.

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(11) The tax consequence to each or either party as a result of any particular form of equitable apportionment:

- (a) I find and conclude that in connection with transfers between the spouses, and the manner in which equitable division is determined herein, there are no immediate tax consequence to be considered and none were presented to the Court.

(12) The existence and extent of any support obligations from a prior marriage or for any other reason or reasons, of either party:

- (a) I find and conclude that there are no support obligations on the part of either party by the reason of any prior marriage or otherwise.

(13) Liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage:

- (a) In making the equitable apportionment, as set forth below, the Court has considered all liabilities in coming up with the marital estate which is after liabilities based on my view of the evidence.

(14) Child custody arrangements and obligations at the time of the entry of the Order:

- (a) There is no minor child or custody dispute.

(15) Such other relevant factors as the trial court shall expressly enumerate in its Order:

- (a) The Court incorporates herein the other findings and conclusions set forth throughout this Decree and as set forth hereinafter in making an equitable claim.
- (b) I find the stock the Plaintiff owns in Agent-Owned Realty is, according to the owner of the company, a marketing tool that is non-voting and has no value. There is no market for the same, and Plaintiff cannot sell it.

104. Based upon the foregoing, I find and conclude that Defendant Simpson, Sr. is a well-known farmer in Clarendon County, South Carolina and elsewhere. There is a preference

for division in kind. While division in kind is possible to some degree, the nature of Simpson, Sr.'s holdings commingled with other parties requires a partial cash payment by Simpson, Sr.

105. I find that the marital estate should be apportioned as follows:

	WIFE	HUSBAND
a. Marital Home (\$245,000)	\$85,750 (35%)	\$159,250 (65%)
b. Property in LLC (299,825)	149,912 (50%)	149,913 (50%)
c. S&T Developers (\$218,772)	54,693 (25%)	164,079 (75%)
d. Property owned w/others (\$51,250)	12,813 (25%)	38,437 (75%)
e. Property owned individually (\$437,500)	153,125 (35%)	284,375 (65%)
f. Owned with Tidwell (\$212,500)	53,125 (25%)	159,375 (75%)
g. Farm equipment (\$329,536)	115,338 (35%)	214,198 (65%)
h. Edward R. Jones Accts. (\$83,442)	29,205 (35%)	54,237 (65%)
i. Autos and Collectibles (\$16,055)	5,619 (35%)	10,436 (65%)
j. Employee Acct Receivable (\$78,095)	19,524 (25%)	58,571 (75%)
k. Buck and Bull (\$250,000)	62,500 (25%)	187,500 (75%)
<i>(Court has considered son's work in improving it, though no one put a value on it.)</i>		
l. Wife's accounts at filing (\$18,209)	11,836 (65%)	6,373 (35%)
m. Farm account (\$53,000)	18,550 (35%)	34,450 (65%)
n. Account with son (\$8,000)	2,800 (35%)	5,200 (65%)
o. Growing Crops (\$26,470)	9,265 (35%)	17,205 (65%)
<b>Totals to Each (\$2,327,654.00)</b>	<b>\$784,055.00</b> <b>(34%)</b>	<b>\$1,543,599.00</b> <b>(66%)</b>

00052





106. Within thirty (30) days of the date of this Decree, Simpson, Sr. shall transfer to Plaintiff the following:

a. Plaintiff retains her accounts at filing	\$18,209
b. Edward R. Jones Accounts	83,442
c. 2.1 acres (Item 1, Paragraph 75)	7,500
d. 1.4 acres (Item 5, Paragraph 75)	5,000
e. 161.1 acres (Item 21, Paragraph 75)	175,000
f. 1.3 acres (Item 51, Paragraph 75)	15,000
g. 6.7 acres (Item 54, Paragraph 75)	35,000
h. 133.2 acres (Item 62, Paragraph 75)	150,000
i. House and 16 acres (Item 64, Paragraph 75)	50,000
	<b>\$539,151</b>

107. In addition, within thirty (30) days of the date of this Decree, Simpson, Sr. will pay to the Plaintiff the sum of \$244,904.00. Interest shall accrue at the legal rate from the date of this Decree until paid.

108. I direct that judgment liens be recorded as a matter of record in all counties in which Simpson, Sr., S&T Land Developers, and Simpson Farm, LLC own property, and that said judgment be against Simpson, Sr., individually; Simpson, Sr. and Simpson, Jr. as owners of Simpson Farms, LLC, Simpson Farms, LLC, and Simpson, Sr. as partner in S&T Land Developers. Defendant Simpson, Sr. is restrained in all capacities from disposing of, pledging, or hypothecating any property except to pay this judgment and then only after notification to and agreement of Plaintiff's counsel.

109. Wife previously sold a truck of minimal value during these proceedings, and has purchased another vehicle on which she makes payments.

110. The personal property of the parties has heretofore been divided, and I find said division is final. Plaintiff shall retain her stock in Agent-Owned Real Estate.





111. I have considered income from the award of equitable division herein that with the alimony should provide the Wife with the ability to pay her monthly expenses.

112. The matter of attorneys fees, costs and expenses has been reserved and shall hereafter be determined by this Court pursuant to notice to counsel for the parties in the manner previously determined.

**THEREFORE**, based upon the foregoing findings and conclusions, it is accordingly  
**ORDERED:**


1. Plaintiff be, and she hereby is, granted a divorce, *a vinculo matrimonii*, upon the statutory grounds of one (1) year of continuous separation;

2. Defendant Simpson, Sr. shall pay Plaintiff permanent periodic alimony in the sum of \$1,000.00 per month until her death or remarriage, whichever first occurs. These payments shall be made through the Clerk of this Court by the fifth of each month hereafter, commencing on the 5th of January 2005 and continuing until Plaintiff's death or remarriage. Defendant Simpson, Sr. shall pay in addition to this amount the court costs and handling fees that are currently Five (5%) Percent. The alimony payments herein are intended to be taxable to Plaintiff and tax deductible to Defendant Simpson, Sr.

3. Defendant Simpson, Sr. shall pay Plaintiff past due medical obligations totaling \$16,734.00, for herself and Charley as ordered in the Temporary Order within ten (10) days of the date of this Decree.

4. Plaintiff is hereby granted a judgment against Simpson, Sr., individually and as fifty percent owner of Simpson Farms, LLC and as fifty percent partner in S&T Land Developers, and against Simpson, Jr. as fifty percent owner of Simpson Farms, LLC, and against

00054



Simpson Farms, LLC, and against S&T Land Developers in the sum of \$244,904.00 which Simpson, Sr. is required to satisfy as follows:

a. Simpson, Sr. shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above and valued at \$539,151.00.

b. Simpson, Sr. shall pay to Plaintiff within thirty (30) days of the date of this Decree \$244,904.00.

5. The judgment liens created in favor of Plaintiff hereunder shall be recorded as a matter of record in all counties in which Simpson, Sr., S&T Land Developers, and Simpson Farm, LLC own property, and that said judgment shall be against Simpson, Sr., individually; Simpson, Sr. and Simpson, Jr. as owners of Simpson Farms, LLC, Simpson Farms, LLC, and Simpson, Sr. as fifty percent partner in S&T Land Developers.

6. Defendant Simpson, Sr. is restrained in all capacities from disposing of, pledging, or hypothecating any property except to pay this judgment and then only after notification to and agreement of Plaintiff's counsel.

7. The personal property of the parties has heretofore been divided, and I find said division is final. Plaintiff shall retain her stock in Agent-Owned Real Estate.

8. The matter of attorneys fees, costs and expenses has been reserved and shall hereafter be determined by this Court pursuant to notice to counsel for the parties in the manner previously determined.

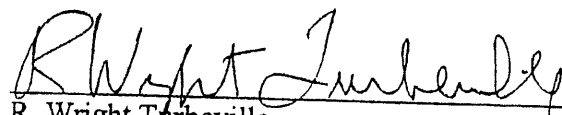
9. The matter of attorney's fees, costs, and expenses is hereby reserved, and counsel for both Plaintiff and Defendants shall submit to this Court affidavits regarding their respective fees, costs, and expenses along with copies of all settlement negotiations not later than January



15, 2005. Should this Court determine a hearing is necessary before ruling on these matters, the same shall be set by the Court.

10. The other findings, conclusions, and determinations set forth above are hereby incorporated by reference and rendered the Order of the Court.

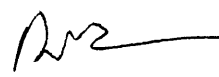
**AND IT IS SO ORDERED.**

  
R. Wright Turbeville  
Family Court Judge  
Third Judicial Circuit

Manning, South Carolina

December 31, 2004

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Page 43 of 43

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
WILLIAM SIMPSON, JR. )  
Plaintiff, )  
Vs. )  
BECKY H. SIMPSON )  
Defendant. )

IN THE FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2004-DR-14-243

**ORDER**

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2005 JAN 10 AM 11 39

**DATE OF HEARING:** DECEMBER 28, 2004  
**TRIAL JUDGE:** GEORGE M. MCFADDIN, JR.  
**PLAINTIFF'S ATTORNEY:** JAN L. WARNER  
**DEFENDANT'S ATTORNEYS:** STEVEN MCKENZIE  
SCOTT L. ROBINSON  
**COURT REPORTER:** CRYSTAL JACKSON

This matter came before me for a hearing pursuant to notice on December 28, 2004 at Chambers, Sumter, South Carolina.

Present and appearing were the Plaintiff and his attorneys, Scott L. Robinson and Steven McKenzie, along with the Defendant and her attorney, Jan L. Warner.

This matter is before the Court upon Defendant's Notice of Motion and Motion to Vacate Order and Set Aside Agreement pursuant to Rule 60(b)(1), (2) and (3), South Carolina Rules of Civil Procedure, which is dated September 19, 2004. This Motion was duly served on Plaintiff's counsel as were supporting affidavits and exhibits.

On the date of the hearing both Plaintiff and Defendant submitted Memoranda and additional exhibits and affidavits in support of their respective positions.

I have heard and considered the argument of counsel for both parties and have reviewed the Motion, the affidavits and exhibits, and applicable law.

Based thereon, I make the following



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### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. An action for Separate Maintenance and Support and for Approval of an Agreement between these parties was commenced by Plaintiff on the 30<sup>th</sup> day of July 2004 by the filing of a Summons and Complaint, service of which was accepted by the Defendant on the same day (July 30, 2004).

2. Simultaneously, Defendant signed a "Pro Se Answer" prepared by Plaintiff's counsel, and she also signed an Acceptance of Service and Waiver of Notice.

3. A hearing was held before me on August 3, 2004 at which time the Plaintiff and his counsel appeared seeking approval of the Agreement. I directed that Defendant likewise appear, she was called, and was later present before the Court. At this hearing, I asked the standard questions of both Plaintiff and Defendant.

4. Subsequent to that hearing, I issued my Order dated August 20, 2004 that approved the Agreement between the parties dated July 30, 2004, and made the same an Order of this Court.

5. At the hearing before the Court, Plaintiff filed a Financial Declaration, but Defendant did not.

6. Defendant asserted that Agreement should be set aside and the Order Approving it be vacated upon a number of grounds, including (1) her mental condition/status when the Agreement was executed and approved was such that she was not capable of either entering or understanding the Agreement or appearing at before this Court at the approval hearing and understanding the proceedings; (2) Plaintiff failed to make a full and timely Financial Declaration as his Financial Declaration was dated August 3, 2004 while the Agreement was

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dated July 30, 2004, and (3) there had been frauds perpetrated against both the Defendant and the Court.

7. Based upon my review of the applicable law and Rule 60, SCRCP, I find and conclude that if Defendant Wife carries the burden of proving any one (1) of her allegations, such would be sufficient to set aside the Agreement and to vacate Order. Therefore, if I find one (1) reason exists to set aside the Agreement and vacate the Order, there is no need for me to address the remaining issues.

8. Based upon all of the Affidavits and filings before me as applied to applicable law, I find the Order Approving the Agreement dated August 20, 2004 should be vacated, and that the Agreement dated July 30, 2004 should be set aside for the following reasons:

(1) It is difficult, if not impossible, for the Court to ignore the Affidavits of Dr. Robert Eagerton, who was Defendant's personal physician, and Dr. Donna Orvin, who is Defendant's psychiatrist at the Santee Wateree Mental Health Clinic. Based upon these Affidavits, it is clear that Defendant had been diagnosed with a bipolar and panic disorders, and had been experiencing anxiety attacks and depression well before the Agreement was signed on July 30, 2004 and presented to the Court for approval on August 3, 2004.

(2) Dr. Orvin specifically states that "...in my professional opinion...Becky Simpson did not appreciate or understand the documents she signed or the effect of the same," while Dr. Eagerton states he would be shocked if Defendant understood the documents. Both also state that Wife was taking medications that were mind-altering.

(3) I have reviewed the transcript of the approval hearing before this Court on August 3, 2004, and while I did question Defendant about whether or not she was



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under the influence, of drugs, when she stated that she was taking prescription drugs. When I asked if she was taking mind altering drugs like Valium or Prozac, Defendant replied that she was not. A precise reading of the transcript reveals that Defendant, in fact, never really answered my question as to whether she was under the influence of any medication.

(4) Based upon the physician's affidavits, Defendant had been prescribed Depakote, Millaril, and Wellbutrin, all of which can have serious and mind-altering side effects.

(5) The question asked during the approval process – "whether an individual is under the influence of drugs or alcohol" – is one that begs a review of its actual effectiveness. While all judges use this question in one form or another during approval hearings relating to agreements and also during guilty pleas, should an individual be under the influence of a medication or drug, or have a mental disorder – such as bipolar disorder, anxiety disorder, depression, etc., then the answer to this question, in my opinion, is inherently unreliable.

(6) Another focal point of Defendant's position is that she was not capable of entering into an agreement due to her severe mental disorders as corroborated by her physicians. I did not explore this possibility at the hearing, and, while perhaps I should have, there are limits to the number of questions that judges can and should ask when approving Agreements.

(7) Knowing what I know now about the Wife's mental disorders and the medications she was taking at the time of the execution of the Agreement and at the approval hearing, I would not have approved the Agreement had I been informed of the

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same. At a minimum, I would have probably appointed a Guardian *ad Litem* for Defendant at that time and set a hearing for another day.

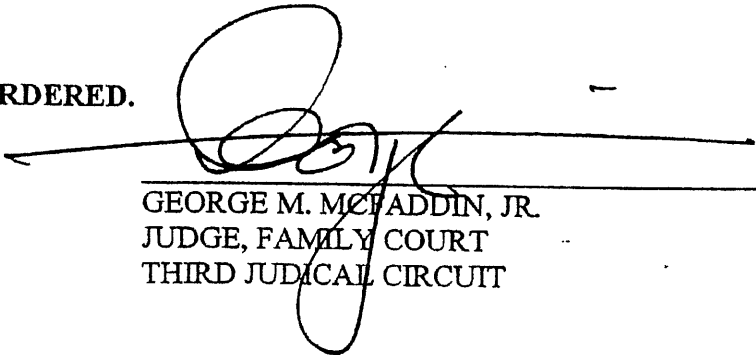
(8) Based upon all of the foregoing, I find that it would be an abuse of my discretion to not vacate my Order dated August 20, 2004 and the underlying Agreement dated July 30, 2004 in the face of the medical information that has been presented to me, information that was not before me at the time of the hearing.

(9) Based upon the foregoing findings and conclusions, I see no need to address the remaining issues raised by Defendant in support of her application to vacate the Order and set aside the Agreement.

**THEREFORE**, based upon the findings and conclusions, it is accordingly

**ORDERED** that the Order of this Court dated August 20, 2004 that approved the Agreement dated July 30, 2004, be, and the same hereby is, vacated, and the underlying Agreement executed by Plaintiff and Defendant on July 30, 2004, be, and the same hereby is, set aside

**AND IT IS SO ORDERED.**



GEORGE M. MCFADDIN, JR.  
JUDGE, FAMILY COURT  
THIRD JUDICIAL CIRCUIT

At Chambers  
Sumter, South Carolina

January 6, 2005

00061

STATE OF SOUTH CAROLINA )  
 COUNTY OF CLARENDON )  
 WILLIAM SIMPSON, JR. )  
 Plaintiff, )  
 Vs. )  
 BECKY H. SIMPSON )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE FAMILY COURT FOR THE  
 THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2004-DR-14-243 and 315

**CONSENT ORDER**

This matter came before me for a pretrial hearing on March 7, 2005.

Present and appearing were Scott Robinson and Steve McKenzie for the Plaintiff, and Jan L. Warner for Defendant. James T. McLaren did not appear for Defendant as he was out of town.

At that hearing, Mr. Warner indicated that he was in the process of preparing a Motion for this Court to appoint an independent appraiser for the purpose of identifying and valuing marital assets. Plaintiff's counsel consented to the Court issuing such an Order.

I find this Court has continuing jurisdiction over the parties and the subject matter.

I find this Court has authority to appoint independent appraisers outside of Clarendon County for the purpose of identifying and evaluating marital assets.

Plaintiff and Defendant have each provided me with three (3) names of proposed appraisers.

Based thereon, I have chosen the below named individual who lives outside of Clarendon County, South Carolina and has no connections with either of the parties hereto to conduct the Court's inventory and evaluation.

Therefore, with consent of the parties, it is accordingly

**ORDERED** that William (Bill) Elliot be, and hereby is appointed as the independent appraiser by the Court to identify and value all marital property including real estate, timber, farm equipment, and other assets; it is further

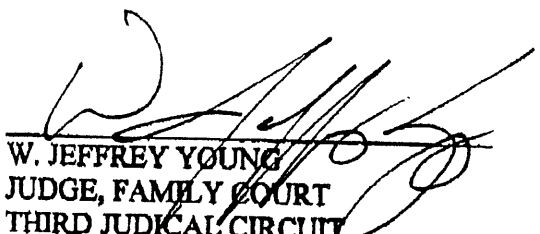
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**ORDERED** that the above individual is authorized to engage such other individuals with specific expertise as may be necessary to present the Court with an independent valuation of the assets of this marriage; and it is further

**ORDERED** that counsel for Plaintiff and Defendant shall provide to that the above individual, with copies to each other, a list of the assets they have each identified, and the Court's appraiser shall identify and value of all real estate, timber, and other assets titled in the names of Plaintiff, Defendant, and Simpson Farms, L.L.C.

**AND IT IS SO ORDERED.**

At Chambers  
Sumter, South Carolina  
March 10, 2005

  
W. JEFFREY YOUNG  
JUDGE, FAMILY COURT  
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

DAISY WALLACE SIMPSON,

Plaintiff,

vs.

WILLIAM ROBERT SIMPSON, SR.  
individually and as shareholder/  
member of Simpson Farms, L.L.C.  
and WILLIAM R. SIMPSON, JR., as a  
shareholder/member of  
Simpson Farms, L.L.C.

Defendants.

IN THE FAMILY COURT FOR  
THE THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2003-DR-14-128

**ORDER REGARDING  
ATTORNEY'S FEES**

CLARENCE G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2005 FEB 17 AM 11 18

**DATES OF HEARINGS:**

July 7, 8, & 9 2004  
September 29 & 30, 2004  
October 22 & 26, 2004  
February 4, 2005

**TRIAL JUDGE:**

**PLAINTIFF'S ATTORNEYS:**

R. Wright Turbeville  
James T. McLaren  
Jan L. Warner  
Steven S. McKenzie  
Scott L. Robinson

**DEFENDANTS' ATTORNEYS:**

Simpson, Sr., Simpson, Jr., &  
Simpson Farms, LLC

**COURT REPORTERS:**

Carol Hanna, Janice Hinds,  
Crystal Jackson & Deborah Thomas  
(In Order)

The issue now before the Court is the Plaintiff's request for attorney's fees and costs. Neither Defendant seeks attorney's fees and costs, but both take the position that the Plaintiff should be responsible for her own fees and costs. The Court notes that while Simpson, Jr. was successful in defending the transfer of certain property into the LLC, he seeks no reimbursement for his fees and costs. However, the Court of Appeals has held that beneficial results obtained are only one of several factors to be considered by the family court in deciding whether or not to award fees. *Wooten vs. Wooten*, 358 S.C. 54, 594 S.E. 2d 854 (Ct. App. 2003).

00064

The Plaintiff asserts that the grand total of her fees and costs is \$361,220.97. Of that total, \$51,000.00 are charges by Beth Lindhart, and \$23,458.88 are charges by Mark Hobbs. \$61,300.00 are 153.25 hours billed by James T. McLaren at \$400.00 per hour, and \$172,540.00 are 431.35 hours billed by Jan L. Warner at \$400.00 per hour. \$11,420.00 are 57.10 hours of associate attorney time at \$200.00 per hour. There are 179.95 paralegal hours billed at \$100.00 per hour (total \$17,995.00), and the balance is reflected as costs.

In deciding whether to award attorney's fees, the family court should consider: (1) the parties' ability to pay their own fees; (2) the beneficial results obtained by counsel; (3) the respective financial conditions of the parties; and (4) the effect of the fee on each party's standard of living. *E.D.M vs. T.A.M.*, 307, S.C. 471, 415 S.E. 2d 812 (1992); *Shirley v. Shirley*, 342 S.C. 324, 536 S.E. 2d 427 (Ct. App. 2000). Our Supreme Court has identified the following factors for determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E. 2d 313 (1991). *Lache v. Lache*, (Court of Appeals Opinion No. 3920, Heard December 7, 2004, Filed January 10, 2005).

#### FACTORS CONSIDERED IN WHETHER TO AWARD A FEE

1. **The parties ability to pay their own fees:** The Plaintiff is a licensed real estate agent. She has the ability to earn at least \$30,000.00 per year, and her earning capacity is more likely to improve than is that of Simpson, Sr.

While Simpson, Sr. has the ability to earn \$150,000.00 per year, his farming operation will be affected by the in kind division of property. Simpson, Sr. offered no

00065

The Plaintiff received approximately 34% of the total marital estate which is less than the 50% she sought.

The Plaintiff failed in her effort to have Simpson, Sr. and his banker, Mr. Jonte, held in contempt of court.

The Court found the Plaintiff's earning ability and annual income to be more than she claimed on her financial declaration.

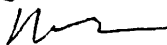
Simpson, Sr. did not prevail in his desire to deny the Plaintiff all alimony or in his identification and valuation of the marital estate, including his effort to exclude the marital home.

On May 14, 2004, the Plaintiff offered to settle for \$3,750.00 per month retroactive alimony (with a formula for some reduction depending upon cash she received in equitable division), 50% of all marital assets (no value set forth in offer), health insurance on the Plaintiff, and \$75,000.00 attorney's fees and costs.

On May 21, 2004, the Defendants responded claiming assets of \$1,107,700.00, debts of \$646,831.00, with net assets of \$460,869.00. They offered \$1,000.00 per month for ten (10) years (\$120,000) towards marital property plus \$8,000.00 per year for ten (10) years (\$80,000), no attorney's fees and no alimony.

On July 8, 2004, the Plaintiff offered to settle for \$750,000.00 cash payment within thirty (30) days, \$2,000.00 per month alimony, with the Wife paying her own fees and costs.

00066



In a July 13, 2004 letter Plaintiff restated the above agreement as well as her willingness to accept \$900,000 tax free (\$400,000 to \$500,000 up front with the balance paid over 7-10 years), no alimony and no attorney's fees.

All offers by the Plaintiff required a total cash payment with very little in kind division.

On July 7, 2004, the Defendants offered to settle for \$825,000.00 paying \$25,000.00 within thirty (30) days, \$75,000.00 at \$7,500.00 per year over ten (10) years and two pieces of property which the Plaintiff's expert valued at \$725,000.00. The Plaintiff in her attorney fee affidavit failed to mention this offer by the Defendant.

It appears to the Court that at that point the parties were fairly close in value, the Plaintiff wanting \$750,000.00 plus \$2,000.00 per month in alimony or \$900,000.00 with no alimony, and the Defendants offering \$825,000.00 mostly in property and no alimony.

Under the facts of this case, considering the nature of the property involved, it was unreasonable for the Plaintiff to demand an all cash settlement. The Plaintiff could be awarded some parcels of property, as the Court ultimately did, without running the risk of leaving her in business with the Defendants. The land in question is severable from the farming operation.

Likewise, it was unreasonable for Simpson, Sr. not to offer some alimony and/or a larger up front cash payment.

On June 6, 2004, Mr. McKenzie wrote the Plaintiff's attorney confirming the fact that the Defendants offered to mediate and the Plaintiff's attorney refused. Even though



the letter indicated Plaintiff's attorney said no counteroffer would come, the Court notes that in July 2004 other offers were made by both parties.

In July 2004, the parties were only \$75,000.00 apart in their offers; the Court is not aware of either party exploring other settlement options after that point.

3. **The respective financial conditions of the parties:** The Plaintiff's annual income is substantially less than that of Simpson, Sr., and the total value of her property is slightly more than one-half that of Simpson, Sr. However, a greater portion of her assets are liquid than those of Simpson, Sr. Either party will have to borrow some money to pay fees, but both will receive property which could be used to secure such a loan.

This factor was discussed more fully in Number 1 above.

4. **The effect of the fee on each party's standard of living:** Any fee required to be paid by Simpson, Sr. will have to be borrowed by him adding more debt to his operation. He is already required to make a substantial cash payment to the Plaintiff.

The Plaintiff would have to use up all of available cash and/or sell some of her property to pay her fees. This event would reduce the availability of those funds and/or income from her property which she could otherwise apply to her living expenses.

#### **FACTORS CONSIDERED IN DETERMINING A REASONABLE FEE**

1. **The nature, extent, and difficulty of the case:** The Court begins by acknowledging that the valuation of a family farming operation is a difficult process. As W.C.

00068

Coffey, Jr., long-time Clarendon County attorney, indicated in his testimony, much of it has to do with just the customary way family farmers do business.

The process is made easier and less expensive by the free exchange of information. In this case, the process was made more difficult by Simpson, Sr.'s failure to respond timely and fully to discovery requests.

The Plaintiff's first set of interrogatories were served January 19, 2004. The Defendants' Answers are dated April 2, 2004. Of thirty-two (32) questions, "this information is not available at this time" was given as an answer to ten (10). Question 16 asked for certain specific information regarding real property, and the answer was: "Enclosed please find copies of all real estate titles in our possession, all farm equipment titles will be made available prior to hearing".

Question 15 regarding financial records received the same general answer in spite of having asked for specific information regarding each account.

The Court believes Simpson, Sr. could have simplified matters, and possibly strengthened his own position, if he had presented a concise schedule of all real property, personal property, and debts (with supporting documents). While admittedly that requires a lot of work, that is precisely what litigation of this sort requires.

However, Ms. Lindhart's appraisal and schedule is admittedly incomplete and inaccurate. It is difficult for the Court to value that work at \$51,000.00 when it leaves so many questions regarding property unanswered.

Also, by July 6, 2004, an affidavit by Mary Gales in Defendants' attorney's office indicates that person's in Plaintiff's attorney's office indicated they had all the documents they had requested. The Court notes that the first day of trial was July 7, 2004.

2. **Time necessarily devoted to the case:** Lack of responsiveness in discovery certainly increases the amount of time required by attorneys or paralegals. While it is unclear exactly how much additional time was required as a result of Defendants slow and incomplete discovery responses, it is clear that conduct increased the time required by Plaintiff's counsel and experts.
3. **Professional standing of counsel:** It is undisputed that both attorneys for the Plaintiff are well respected domestic lawyers in South Carolina.
4. **Contingency of compensation:** The Plaintiff has received enough property that she could pay her attorney's fees, but it would deplete her equitable division award by about 50%. Her equitable division award was a factor considered by the Court in the award of alimony and that effect must be considered in determining attorney fees.
5. **Beneficial results obtained:** Discussed in detail above.
6. **Customary legal fees for similar services:** Both of Plaintiff's attorneys are billing at \$400.00 per hour. Their associate attorneys are billing at \$200.00 per hour. The paralegals are billing at \$100.00 per hour. J. Mark Taylor's affidavit asserts that these rates are comparable to rates of other family law experts who regularly take cases and try them in the Third Judicial Circuit as well as neighboring circuits.

00070



Based on the testimony of Ray E. Chandler, W.C. Coffey, Jr., and experience, I find that customary fees for similar work in this area is \$185-\$250 per hour. Hourly fees that exceed this amount in this area are unusual rather than customary.

Litigants are entitled to employ lawyers of their choice...and they are entitled to employ any number of lawyers they so choose. The Court is not bound by the contract between the Plaintiff and her lawyers, and one important factor to be considered in determining legal fees is customary legal fees for similar services. However, that is only one factor among many to be considered by the Court.

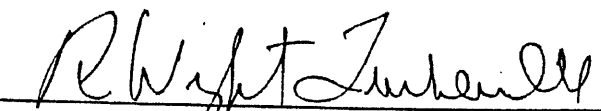
Considering and weighing all factors set forth above, I conclude that the Plaintiff is entitled to some contribution toward her attorney's fees. I find that in addition to the fees awarded at the temporary hearing, an additional contribution of \$85,000.00 would be reasonable.

**IT IS THEREFORE ORDERED** that the Defendant W. R. Simpson, Sr. pay to the Plaintiff the sum of \$85,000.00 within thirty (30) days of the date of this Order as a contribution towards her attorney's fees.

**AND IT IS SO ORDERED.**

At Chambers:

February 17, 2005



R. Wright Turbeville  
Family Court Judge  
Third Judicial Circuit



STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
WILLIAM R. SIMPSON, JR. )  
Plaintiff, )  
Vs. )  
BECKY H. SIMPSON, )  
Defendant. )

IN THE FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NO.'S: 2004-DR-14-315 & -  
2004-DR-14-243

**TEMPORARY ORDER**

**DATE OF HEARINGS:**

January 7, 2005

**TRIAL JUDGE:**

Marion D. Myers

**PLAINTIFF'S ATTORNEYS:**

Steven S. McKenzie

Scott L. Robinson

**DEFENDANTS' ATTORNEYS:**


James T. McLaren

Jan L. Warner

**COURT REPORTERS:**

None

BEULAH  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2005 JAN 1 PM 3:11

 This matter came before the Court for a hearing at chambers in Sumter, South Carolina, on the 7<sup>th</sup> day of January 2005.


Present and appearing at the appointed time and place were the parties, together with their respective counsel above-named.

Prior to this Court's determination of the temporary issues, the parties advised the Court that they had agreed that both pending actions (Docket No.'s 04-DR-14-243 and 315) will be consolidated for the purpose of proceeding, that parties should be granted full discovery, and that the Motion of the paternal grandmother, Daisy W. Simpson, to intervene would be granted in both actions.

For the purpose of this hearing, I have received from counsel for both parties, memoranda, affidavits, and other exhibits which I have reviewed.

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The issues before the Court are as follows:

- 
- (1) Temporary custody of the two (2) minor children of this marriage, namely William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 6, 1995..
  - (2) Visitation;
  - (3) Use of the marital residence;
  - (4) Restraining Orders as to personal contact and disposition of assets;
  - (5) Appointment of a Guardian ad Litem for the minor children;
  - (6) Appointment of a Guardian ad Litem for the Defendant;
  - (7) Economic relief requested by Defendant; and
  - (8) Child support requested by Plaintiff.

As with all Temporary Orders, the determinations set forth herein are not substantive or precedential findings of fact and shall not be binding upon either Plaintiff or Defendant at a hearing on the merits. The purpose of this Order is to address the asserted emergency issues and to issue an Order maintaining the status quo pending the initial report of the Guardian ad Litem for the minor children as set forth herein below, pending completion of discovery, and pending further Order of this Court.

I find that the Plaintiff and Defendant were duly and legally married on the 3<sup>rd</sup> day of September, <sup>1989</sup>~~1999~~. Two (2) children were born of this marriage, as above stated.

Plaintiff commenced 04-DR-14-243 on July 30, 2004 seeking the approval of an agreement of the same date that included joint custody. A hearing was held on August 3, 2004 before the Honorable George M. McFadden, Jr. who, on August 20, 2004, issued an Order approving the agreement and making the same an Order of the Court.

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That agreement also dealt with alimony, child support and asset division. Thereafter, pursuant to Defendant's Motion of September 21, 2004, Judge McFadden held a hearing on December 28, 2004, and by Order dated January 6, 2005, vacated his August 20, 2004 Order and set aside the agreement.

On September 23, 2004, Plaintiff brought 04-DR-14-315 seeking divorce, sole custody and related relief.

I find that this Court has jurisdiction over the parties and the subject matter.

On a prima facie basis, again without making precedential findings of fact that will bind either Plaintiff or Defendant hereafter, I find and rule as follows:


**Temporary Custody, Visitation, Child-Related Relief**

(1) Plaintiff is granted the temporary custody of the two (2) minor children subject to supervised visitation by Defendant with the children as follows:

(a) Beginning on Saturday, January 22, 2005, Defendant shall have supervised visitation with the children with the paternal grandmother, intervener, Daisy W. Simpson, from 10:00 a.m. until 7:00 p.m. On the next alternate Saturday, February 5, 2005, Defendant shall have supervised visitation in the presence of the paternal grandmother, Daisy W. Simpson, from Saturday at 10:00 a.m. until Sunday, February 6, 2005 at 6:00 p.m.

(b) Plaintiff shall deliver the children to the Clarendon County Sheriff's Department to commence each period of visitation and the Defendant shall return the children to the same location at the end of each visitation.

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- 
- (c) Defendant is authorized to communicate with the children by telephone, and shall specifically be entitled to call the children each Wednesday evening at 7:00 p.m. at their place of residence at which time Plaintiff will assure that the children are available to talk to Defendant.
  - (d) Each party shall provide prompt and timely notification to the other of any major illness of either minor child. For the purpose of this Order, major illnesses shall include any illness lasting more than 24 hours and/or requiring medical treatment.
  - (e) Each party shall be entitled to full access to all records concerning the minor children, including, but not limited to, school records, medical records, day care records, etc.

(2) James Stoddard, Esquire, by consent, is hereby appointed as the Guardian ad Litem for the two (2) minor children of this marriage. Pursuant to the South Carolina Code of Laws and the case law, Mr. Stoddard shall investigate this matter and shall make an interim report to the Court regarding his findings and visitation issues on or before March 1<sup>st</sup>, 2005.

(3) Plaintiff shall pay to Mr. Stoddard the sum of One Thousand Five Hundred (\$1,500.00) Dollars as an advance against Guardian ad Litem fees, with subsequent fees to be determined by the Court.

(4) Defendant shall not pay Plaintiff any temporary child support.

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**TEMPORARY USE OF RESIDENCE, REMOVAL OF DEFENDANT'S PERSONAL  
PROPERTY, AND VEHICLES**

In that Plaintiff is granted temporary custody, he is also granted the temporary exclusive use and possession of the formal marital residence subject to, however, Defendant entering that residence and being allowed to remove all of her clothing and personal items. A Deputy Sheriff for Clarendon County, South Carolina shall accompany Defendant to the residence, and Defendant shall be given sufficient time to pack and remove her clothing and personal property. Defendant is entitled to the continued temporary use and exclusive possession of the 1996 Chevrolet Suburban, and she shall be responsible for insurance and taxes thereon.

**IMMEDIATE PAYMENT TO THE DEFENDANT**

Based upon Financial Declarations herein, it appears that the Defendant has no assets, while Plaintiff has significant assets.

Defendant is entitled to be placed on a reasonably equal footing with Defendant in order to defend this matter, assert her rights, and pay temporary living expenses.

Defendant has requested attorney's fees and an advance on equitable division to accomplish this. This is a fifteen (15) year marriage, and it is alleged that all assets set forth on Plaintiff's Financial Declaration were acquired during the marriage.

I find that the Plaintiff shall pay to the Defendant, through her counsel, by February 1, 2005, the sum of Thirty-Seven Thousand Five Hundred (\$37,500.00) Dollars. For the purposes of this Order, I do not allocate said payment as an advance against equitable division, temporary attorney's fees, or suit money, and such shall be determined by the Trial Judge at a Hearing on the Merits.

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Upon on appropriate showing in the future, prior to the Merits Hearing, Defendant's entitlement to seek additional advances is reserved and shall otherwise be taken into consideration by the Court at a final hearing.

### RESTRAINING ORDERS

Plaintiff and Defendant are hereby restrained and strictly enjoined from transferring, giving away, disposing of, placing liens upon, or otherwise devaluing any assets acquired during this marriage and any assets shown on their respective Financial Declarations upon further Order of this Court.

Plaintiff and Defendant are hereby restrained and strictly enjoined from going back, contacting, bothering, molesting, threatening, calling, or interfering with each other in any way, directly or indirectly. The only telephone communication between the parties should be when the Defendant calls to speak to the children as set forth above. There is no reason for any other communication or contact whatsoever between the parties.

### PLAINTIFF'S MOTION TO APPOINT GUARDIAN AD LITEM FOR DEFENDANT

Defendant is now represented by counsel and this Motion is denied.

THEREFORE, based upon the foregoing findings, which are without prejudice to the rights of either Plaintiff or Defendant at future hearings before this Court, and are not precedential in nature, it is accordingly,

ORDERED:

(1) Plaintiff is granted temporary custody of the two (2) minor children of this marriage, subject to supervised visitation as set forth herein below.

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(2) Defendant shall have temporary supervised visitation with said children beginning on Saturday, the 22<sup>nd</sup> day of January, 2005, from 10:00 a.m. through 7:00 p.m. and on February 5, 2005 from 10:00 a.m. to February 6, 2005 at 6:00 p.m. and on alternate weekends thereafter pending further Order of this Court. Supervision shall be provided by Daisy Simpson, and therefore Supervision shall, for the purposes of this Order, count as Daisy Simpson's grandparent visitation with said children. Defendant is entitled to stay in contact with the children by phone, and is entitled to call the residence to speak with the children Wednesday at 7:00 p.m. Pick up and delivery for visitation shall be at the Clarendon Sheriff's Department.

(3) Plaintiff is entitled to the temporary use and exclusive possession of the residence and contents, except for Defendant's clothing and personal items.

(4) Defendant shall present a copy of this Order to the Sheriff of Clarendon County, and a deputy shall accompany the Defendant to the residence at which time the Defendant be entitled to pack and remove her clothing and personal items.

(5) James Stoddard, Esquire, is hereby appointed Guardian ad Litem for the two (2) minor children.

(6) Mr. Stoddard shall investigate this matter and make an interim report to the Court, with copies to all counsel, on or before March 1, 2005 regarding the issues of supervised visitation and other matters affecting the interest of the children.

00078

(7) Plaintiff shall pay the sum of One Thousand Five Hundred (\$1,500.00) Dollars as an advance against Guardian ad Litem fees.

(8) Defendant is not required to pay any temporary child support to the Plaintiff;

(9) Plaintiff shall pay to Defendant, through her counsel at Post Office Box 2628, Columbia, South Carolina, 29202, the sum of Thirty-Seven Thousand Five Hundred (\$37,500.00) Dollars as an initial advance by February 1, 2005. Defendant is entitled to apply to the Court, if she deems appropriate, in the future for additional advances against equitable division and/or attorney's fees which shall be considered by the Court upon an appropriate showing. At a final hearing in this matter, the trial judge shall allocate the advances as he/she deems appropriate.

(10) The purpose of this and all other proceedings (Docket No.'s 2004-DR-14-315 & 2004-DR-14-243), be, and the same is hereby consolidated, and both shall operate under 2004-DR-14-243. All pleadings filed in both actions shall be deemed relevant to both cases.

(11) Plaintiff and Defendant are entitled to full discovery in accordance with the Rule of Court.

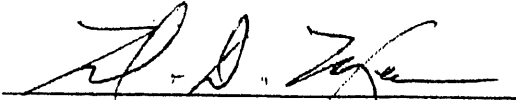
(12) Daisy Simpson, the maternal grandmother's Motion to Intervene, be, and hereby is granted.

(13) Both parties shall provide prompt and timely notification to the other of any major illness of either minor child and each is entitled access to each child's medical records.

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(14) Each party is entitled to full access to all records concerning the minor children, including, but not limited to, school records, medical records, day care records, etc.

**AND IT IS SO ORDERED.**

  
Marion D. Myers, Family Court Judge  
Third Judicial Circuit

Chambers.

Sumter, South Carolina

January 27, 2005



00080

\*1683  
~~#1683~~  
STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

WILLIAM SIMPSON, JR., )

Plaintiff, )

Vs. )

BECKY H. SIMPSON, )

Defendant. )

IN THE FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2004-DR-14-243 and 315

**BIFURCATED DECREE OF DIVORCE**

**DATE OF HEARING:**

March 23, 2005

**TIME OF HEARING:**

2:30 P.M.

**TRIAL JUDGE:**

Marion D. Myers

**PLAINTIFF'S ATTORNEY:**

Steven S. McKenzie

Scott Robinson

**DEFENDANTS' ATTORNEY:**

Jan L. Warner

(Neither appeared)

Jim McLaren

**COURT REPORTER:**

Virginia Rowland

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✓  
This matter is before the Court upon Plaintiff's application for a complete and final divorce from the Defendant with all other issues to be bifurcated and held in abeyance pending a final determination.

Present and appearing were the Plaintiff and his counsel stated above. Defendant is represented by counsel; however, neither Defendant nor her counsel appeared. All counsel have approved the form of this Decree.

Based upon the testimony of Plaintiff and his corroborating witness, and after review of the pleadings, I find and conclude the following:

1. Plaintiff and Defendant are husband and wife, having been married on September 3, 1989.
2. Two (2) children were born of this marriage, William Robert Simpson, III on July 30, 1991, and Lynda Kaitlin Simpson on June 26, 1995.

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3. Two actions have been filed and served by Plaintiff: case number 2004-DR-14-243 in July of 2004, and 2004-DR-14-315 in September 2004. In case number 2004-DR-14-315, Plaintiff seeks a complete and final divorce from the Defendant upon the ground of adultery.

4. I find that this Court has continuing jurisdiction over the parties and the subject matter.

5. I find that Defendant was duly and legally served with all pleadings herein, has filed responsive pleadings, and all matters are properly before the Court.

6. I also find that the venue of this matter is proper in Clarendon County, South Carolina, where the Plaintiff and Defendant last lived together as husband and wife.

7. Defendant admitted in her pleadings that she committed adultery after she signed an Agreement and she and Plaintiff separated in August of 2004. This Agreement was later set aside by Order of the Honorable George M. McFaddin, Jr., Judge of this Court, dated January 6, 2005.

8. I find that Plaintiff, with corroboration, has proved, by the preponderance of the evidence, that he is entitled to a complete and final divorce of and from the Defendant on the ground of Defendant's adultery which took place after the separation of the parties.

9. I do not make any finding regarding any issue that affects custody of the minor children, equitable division, counsel fees, suit money, or other issues which shall be litigated hereafter.

10. I find that the Temporary Order issued by The Honorable Marion D. Myers, Judge of this Court, dated February 8, 2005, shall continue in full force and effect, and the parties hereto shall fully comply with the same.

11. Based upon Motion of Defendant, I find that the merits hearings scheduled in Clarendon County, South Carolina on May 3<sup>rd</sup>, 5<sup>th</sup>, and 6<sup>th</sup>, of 2005 shall be continued, and that a

00082 hearing regarding the unlitigated matters of equitable division, counsel fees, custody,

visitation, marital fault, and related issues shall be scheduled upon joint application of counsel for the parties at a time suitable to counsel for all parties.

**ORDERED:**

1. Plaintiff be, and he hereby is, granted a complete and final divorce of and from the Defendant based upon Defendant's adultery which occurred subsequent to the separation of the parties in August 2004.
2. This Order shall not be construed as making any finding relative to the issues of fault of either party in this cause of the marital breakup as may affect equitable division, custody, visitation, counsel fees, suit money, or any other issue that remains open.
3. All issues raised in the pleadings other than the issue of divorce, are hereby held open and reserved pending final order of this Court after a hearing on the merits.
4. The terms and conditions of the Temporary Order issued by The Honorable Marion D. Myers, Judge of this Court, dated February 8, 2005, be, and the same hereby are, incorporated herein by reference as if the same were set forth verbatim and both parties are directed to continue to comply with the terms and conditions of that Order pending further Order of the Court.
5. The hearing scheduled for May 3, 2005, May 5, 2005 and May 6, 2005, be, and the same hereby is, continued, and merits hearing shall be scheduled upon joint application of the parties, through their counsel, on dates that are suitable to counsel for all parties.

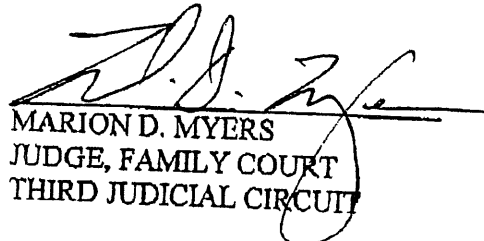
**AND IT IS SO ORDERED.**

*Court's efforts to  
reconcile were to no  
avail.*

At Chambers

*Sum Ter*, South Carolina

March 24, 2005

  
MARION D. MYERS  
JUDGE, FAMILY COURT  
THIRD JUDICIAL CIRCUIT

00083



STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR, )

Plaintiff, )

Vs. )

BECKY H. SIMPSON, )  
and WADE INGLE )

Defendant. )

IN THE FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NOS.: 2004-DR-14-315  
2004-DR-14-243

**ORDER**

CLARENDON COUNTY, SC  
2006 MAR 13 AM 11:11

**Date of Hearing:**

February 14 and 16, 2006

**Presiding Judge:**

F.P. ~~Charles~~ Segars-Andrews

**Attorney(s) for William R. Simpson:**

Scott L. Robinson & Steven S. McKenzie

**Attorney(s) for Becky H. Simpson:**

Jan L. Warner, James T. McLaren, &  
Carrie A. Warner

**Attorney for Wade Ingle:**

Pro Se

**Guardian ad Litem:**

James A. Stoddard, Esquire

**Court Reporter:**

Kathy A. Snelling, CCR

This matter came before the Court for a Final Hearing pursuant to the issues left open pursuant to Bifurcated Decree of Divorce rendered on the 24th day of March 2005 by The Honorable Marion D. Myers.

Prior to the hearing on these issues, Plaintiff and Defendant Simpson announced through their counsel and with the consent of the Guardian ad Litem, have reached an agreement with regard to custody and visitation.

The agreement of the parties was made in open Court, read into the record, all parties were sworn, and each confirmed the agreement which I hereby approve as set forth hereinafter.

I find that this Court has continuing jurisdiction over the parties and the subject matter, and all parties are properly before the Court.

00084

**THEREFORE**, based upon the agreement of the parties, it is accordingly,

**ORDERED**

1. Plaintiff is granted the custody of the two (2) minor children of this marriage, Cody and Katilyn, subject to reasonable rights of visitation by Defendant Simpson as set forth hereinafter.
2. Defendant Simpson is entitled to secure and be provided with copies of school records, school schedules, and other school materials so that she may keep up with the children's schooling and attend the children's events when possible. Further, Defendant Simpson is entitled to be provided with records and notice of the children's medical treatment.
3. Defendant Simpson is entitled to unsupervised visitation with the minor daughter of this marriage, Katilyn, as follows:
  - a. Defendant Simpson shall have visitation with Katilyn on the 1st and 3rd weekends of each month, from Saturday at 10:00 A.M. until Sunday at 5:00 P.M., during the school year. Plaintiff and Defendant Simpson shall resolve the pick-up and delivery issues with regard to Katilyn and, if they cannot resolve those issues, Defendant shall pick-up Katilyn at the Clarendon County Sheriff's Department as has been accomplished in the past. For as long as Defendant Simpson lives in her current one-room arrangement with Defendant Ingle, Defendant Ingle shall spend the night away from the premises with his mother when Defendant Simpson exercises the overnight portion of her visits with Katilyn. If and when a larger premises with sufficient bedrooms is acquired, Defendant Ingle will not be required to leave. Defendant Ingle is

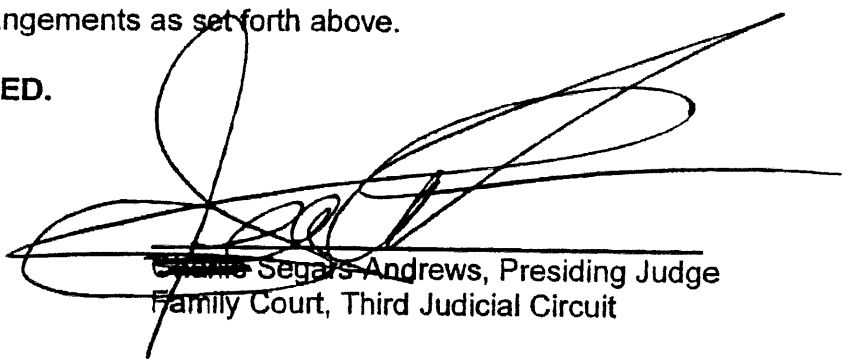
not restrained from being around Katilyn other than during the overnight portion of the visits in the current physical environment.

b. Based upon the fact that Defendant Simpson is currently working and has limited time off during the summer, she shall have visitation with Katilyn on the 1st, 2nd, and 4th weekends of each month from Saturday 10:00 A.M. until Sunday at 5:00 P.M., pick-up and delivery being as set forth above. Should Defendant Simpson be able to secure vacation time, she shall have the right to convert two (2) or more weekends into a four (4) or five (5) consecutive day stay. In this event, notice thereof shall be provided to the Plaintiff. Overnight arrangements shall be as set forth above.

c. Katilyn shall visit with Defendant Simpson from 12:00 noon on each Christmas Day until 6:00 P.M. on the day after Christmas with the same pick-up/delivery and overnight arrangements as set forth above.

d. Katilyn shall visit with Defendant Simpson from 12:00 noon on each New Year's day until 6:00 P.M. on the day after New Year's with the same pick-up/delivery and overnight arrangements as set forth above.

**AND SO IT IS ORDERED.**



~~Charles Segars Andrews~~, Presiding Judge  
Family Court, Third Judicial Circuit

At Chambers:

Manning, South Carolina  
~~February~~ 2006  
*March 7*

00086

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR )

Plaintiff, )

Vs. )

BECKY H. SIMPSON )

Defendant. )

IN THE FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NO: 2004-DR-14-315, 243

**CERTIFICATE OF SERVICE**

I, Adriane C. Livingston, a paralegal for the law firm of Warner, Payne & Black, L.L.P. attorneys for Becky H. Simpson, do hereby certify that on this date I caused a clocked-in copy of the **Order dated March 7, 2006** to be served upon the parties listed below by depositing a copy of same in the United States Mail, postage paid envelope and addressed to the following:

Scott L. Robinson, Esquire  
Steve McKenzie, Esquire  
16 North Brooks Street  
Manning, South Carolina 29102

James A. Stoddard, Esquire  
314-A Magnolia Street North  
Sumter, South Carolina 29150



Adriane C. Livingston

Columbia, South Carolina  
March 10, 2006

00087

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON  
WILLIAM R. SIMPSON, JR.,

Plaintiff,

vs.

BECKY H. SIMPSON  
and WADE INGLE,

Defendants.

) IN THE FAMILY COURT FOR THE  
) THIRD JUDICIAL CIRCUIT  
) DOCKET NO: 2004-DR-14-315, 243  
)

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 6/7/06

Beulah S. Roberts ORDER  
CLERK OF COURT  
CLARENDON COUNTY, SC

BEULAH S. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2006 JUN 5 PM 1 51

Hearing Date:	April 13, 2006
Presiding Judge:	Frances P. Segars-Andrews
Plaintiff's Attorneys:	Steven S. McKenzie Scott L. Robinson
Defendant Simpson's Attorneys:	Jan L. Warner James T. McLaren Carrie A. Warner
Guardian <i>ad Litem</i> :	James A. Stoddard
Court Reporter:	Sandra McGarry

This matter was heard before the undersigned at Sumter, South Carolina on April 13, 2006. Plaintiff was represented by his attorney Steven S. McKenzie. Defendant Simpson was represented by her attorneys Jan L. Warner and James T. McLaren. The hearing was conducted at Sumter rather than in Manning with the consent and agreement of counsel for both parties and as an accommodation to the Court which was sitting in Sumter on the hearing date.

This matter was before the Court for a hearing on Plaintiff's "*Notice of Motion and Motion for a New Trial Based Upon Failure of the Defendants' Counsel to Disclose the Court's Conflict of Interests*" dated March 28, 2006.

00088



At the hearing on April 13, 2006 the Court also raised, *sua sponte*, the question of whether the Court should disqualify itself and grant a new trial based upon the fact that Mr. McLaren, one of the Defendant's attorneys, had been co-counsel with Lon Shull, a partner in the Mt. Pleasant law firm of Andrews and Shull<sup>1</sup>, in a personal injury case settled in late 2004 which resulted in a six-figure contingency fee being paid to Andrews and Shull and then divided, per their partnership agreement, between Lon Shull and Mark Andrews. At the hearing the Court requested that each party submit any Memorandum or other documentation which they desired for the Court to consider on this issue.

Defendant has submitted a Memorandum of Law dated April 24, 2006 with an attached Affidavit from Nathan M. Crystal, a Professor at the University of South Carolina School of Law. Plaintiff has submitted a letter dated April 25, 2006. The Court has considered these submissions as well as the balance of the record before the Court in reaching its decision on the matters addressed in this Order. For the reasons set forth hereinafter the Court finds and concludes that there is no conflict of interests or other reason why it should disqualify itself or grant a new trial in this case and thus denies Plaintiff's Motion for a New Trial.

### BACKGROUND

Defendant Becky H. Simpson has been represented in this case by Jan L. Warner, James T. McLaren and Carrie A. Warner. Plaintiff William R. Simpson, Jr. has been represented by Steven S. McKenzie and Scott L. Robinson.

This case was heard on its merits on February 14 and 16, 2006. A bifurcated Decree of Divorce was entered on March 24, 2005. A Consent Order dated March 7, 2006 resolved the issues of custody and visitation. On March 13, 2006 the Court issued

<sup>1</sup> Mark Andrews, the other partner in Andrews and Shull, is the husband of the undersigned.

five (5) pages of written instructions for a Final Order on all remaining issues and requested that Mr. Warner and Mr. McLaren prepare and submit a proposed Order consistent with those instructions.

On March 28, 2006, after the Court's written instructions had been issued, Plaintiff filed his *Notice of Motion and Motion for a New Trial Based upon Failure of Defendant's Counsel to Disclose the Court's Conflict of Interests* asserting, in substance, that he should get a new trial because Lon Shull<sup>2</sup> had given an affidavit on the issue of attorneys fees in the case of "*Daisy Wallace Simpson vs. William Robert Simpson, Sr. individually and as shareholder/member of W.R. Simpson Farms, L.L.C. and William R. Simpson, Jr., as a shareholder/member of W.R. Simpson Farms, L.L.C.,*", Docket No. 2003-DR-14-128 (the "Simpson, Sr. case"). Daisy Wallace Simpson and William Robert Simpson, Sr. are the parents of William R. Simpson, Jr., the Plaintiff in this case. William R. Simpson, Jr. was named as a party defendant in the Simpson, Sr. case. Plaintiff's Motion contends that Mr. Shull having given an affidavit on the issue of attorneys fees in the Simpson Sr. case (heard and decided by Judge Turbeville) creates a conflict of interests preventing the Court from hearing this case and that Defendant Becky H. Simpson's attorneys should have disclosed this alleged conflict of interests to Plaintiff and his attorneys. Plaintiff's Motion did not allege any prejudice or bias resulting from the asserted conflict of interests nor was any evidence or argument of prejudice resulting from the asserted conflict of interests presented.

A hearing was conducted on Plaintiff's Motion for a New Trial at Sumter on April 13, 2006. At that hearing the Court, acting *sua sponte*, raised the question of whether it

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<sup>2</sup> As previously noted Mr. Shull is a partner in the Mt. Pleasant law firm of Andrews and Shull. Mark Andrews, the other partner in that law firm, is the undersigned's husband.

should disqualify itself and grant a new trial on the grounds the Court had not previously disclosed the fact that James T. McLaren had been co-counsel with Lon Shull in a personal injury case which concluded in late 2004 or early 2005<sup>3</sup>. As the Court stated at the April 13, 2006 hearing, the Court did not have a conscious awareness that Mr. McLaren had been co-counsel with Mr. Shull in that case prior to Plaintiff filing the Motion for a New Trial and, as a result, had not disclosed that fact previously.

### DISCUSSION

1. **Mr. Shull's Affidavit in the Simpson Sr. case.**

There is no contention by Plaintiff that Mr. Shull has been an attorney, witness or otherwise involved directly or indirectly in this case (*W. R. Simpson, Jr. vs. Becky H. Simpson*, Docket Nos. 2004-DR-14-243 & 315). Mr. Shull's sole involvement in the Simpson Sr. case, heard and decided by Judge Turbeville, was as a witness, via affidavit, on the single issue of attorney fees. Mr. Shull did not appear as an attorney in that case and had no other involvement in that case. The Court was completely unaware that Mr. Shull had given an affidavit in the Simpson Sr. case until that fact was presented to the Court as part of Plaintiff's "*Notice of Motion and Motion for a New Trial Based Upon Failure of the Defendants' Counsel to Disclose the Court's Conflict of Interests*".

The Court has carefully reviewed and considered Canon 3 the Code of Judicial Conduct and finds no basis in that Canon or elsewhere under the law of the State of South Carolina which would require the Court to disqualify itself in this case based upon Mr. Shull's limited involvement, as a witness, in the divorce case of Plaintiff's parents.

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<sup>3</sup> In approximately 2003 Mr. McLaren and Mr. Shull began representing a Plaintiff in a wrongful death case. That case was settled in December 2004. The settlement was paid in early 2005. At that time Andrews and Shull received a six figure contingency fee which was divided between Mr. Shull and Mr. Andrews per their partnership agreement.



Plaintiff does not argue or suggest or contend that the Court "...individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, "has an economic interest" in the subject matter in controversy or in a party to the proceeding or has any other more than *de minimis* "interest that could be substantially affected by the proceeding;". [Canon 3E(1)(c)]. There is no evidence or argument that Mr. Shull has any economic interest in the outcome of this case (the Simpson, Jr. case). Further, it appears that Mr. Shull was not paid or otherwise compensated for his affidavit in the Simpson, Sr. case, thus Mr. Shull neither has or had an economic interest in the outcome of either Simpson case.

Plaintiff does not suggest or contend that the Court ".....or the judge's spouse, or a person within the third degree of relationship" to either of them, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) is known "by the judge to have a more than *de minimis*" interest that could be substantially affected by the proceeding; (iv) is to the judge's knowledge "likely to be a material witness in the proceeding." [Canon 3E(1)(d)]. To the contrary there is no evidence or even a suggestion that Mr. Shull has had any involvement whatsoever in the Simpson, Jr. case.

Finally, there is no evidence, argument or even suggestion by Plaintiff that Mr. Shull's limited involvement in the Simpson Sr. case in any way resulted in the Court having a bias or prejudice against Plaintiff in this case. The Court heard and decided this case fairly and completely without bias or prejudice for or against either party. As stated previously, the Court was completely unaware that Mr. Shull had given an affidavit in the Simpson Sr. case until it received Plaintiff's "*Notice of Motion and Motion for a New*

*Trial Based Upon Failure of the Defendants' Counsel to Disclose the Court's Conflict of Interests*". That Motion was not made until March 28, 2006, more than a month after the Court heard the evidence in this case and almost two (2) weeks after the Court issued its memorandum ruling in this case.

Based on the foregoing the Court finds that Mr. Shull's limited involvement in the Simpson Sr. case was not something which either the Court or Defendant's attorneys were required to disclose to the Plaintiff nor does Mr. Shull's limited involvement in the Simpson Sr. case warrant granting a new trial in this case. Accordingly, the Court concludes that Plaintiff's "*Notice of Motion and Motion for a New Trial Based Upon Failure of the Defendants' Counsel to Disclose the Court's Conflict of Interests*" should be denied.

2.     **The "Duty to Sit"**

South Carolina law, like that of most other jurisdictions, imposes a "duty to sit" in cases where disqualification is not required.

South Carolina Appellate Court Rule 501, Canon 3B(1) expressly states:

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.** (emphasis added)

e.g. see *United States of America vs. Gary L. DeTemple*, 162 F.3d 279 C.A.4 (VA) 1998; *U.S. v. Snyder*, 235 F.3d 42 C.A.1 (Mass.) 2000 – "[a] trial judge must hear cases unless [there is] some reasonable factual basis to doubt the impartiality or fairness of the tribunal." *Blizard vs. Frechette*, 601 F.2d 1217, 1221 (1st Cir.1979). Thus, under § 455(a) a judge has a duty to recuse himself if his impartiality can reasonably be questioned; but otherwise, he has a duty to sit."]

2. The Court's disqualification is not required in this case.

*South Carolina Appellate Court Rule 501, Canon 3E governs those situations where judicial disqualification is required. That Rule states:*

*E. Disqualification.*

*(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:*

*(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;*

*(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;*

*(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;*

*(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:*

*(i) is a party to the proceeding, or an officer, director or trustee of a party;*

*(ii) is acting as a lawyer in the proceeding;*

*(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;*

*(iv) is to the judge's knowledge likely to be a material witness in the proceeding.*

*(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children*

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*residing in the judge's household.*

Here, there is no evidence whatsoever of any factual basis requiring the Court's disqualification in this case.

There is no evidence that the Court has "*a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts*" in this case nor has any bias or prejudice been suggested, alleged or argued.

There is no evidence, argument or suggestion that the Court has "*served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.*"

There is no evidence, argument or suggestion that the Court has "*individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding...*".

There is no evidence, argument or suggestion the Court or my husband "*...or a person within the third degree of relationship to either of them, or the spouse of such a person:*

*(i) is a party to the proceeding, or an officer, director or trustee of a party;*

*(ii) is acting as a lawyer in the proceeding;*

*(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;*

(iv) is to the judge's knowledge likely to be a material witness in the proceeding."

There is simply no factual basis in this case which requires or mandates the Court's disqualification as a judge in this case.

3. **The duty of disclosure.**

While there is a duty of disclosure under *South Carolina Appellate Court Rule* 501, Canon 3, in certain instances, none of those instances apply to the subject case or circumstances.

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. (*South Carolina Appellate Court Rule* 501, Canon 3B, Commentary.)

There is no duty or requirement to disclose attenuated relationships or other circumstances which do not reasonably form a basis for disqualification. No circumstances reasonably forming a basis for disqualification are present in this case.

For example, if the duty to disclose and/or disqualify was as broad as is suggested by Plaintiff, then Chief Justice Jean Toal of the South Carolina Supreme Court and Chief Judge Kay Hearn of the South Carolina Court of Appeals would be required to either disqualify themselves or make disclosure in all cases where their respective spouses or their spouse's law firms had previously been co-counsel with or shared fees with any attorney or law firm representing a litigant before those Courts, irrespective of the fact

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that the previous case or cases had been concluded and there was no continuing or ongoing relationship. Disqualification and/or disclosure does not occur in these circumstances because it is not required. Nor is it required under the circumstances presented in this case.

4. **Related South Carolina law.**

As stated in the Commentary to *South Carolina Appellate Court Rule 501*, Canon 3E(1)(d):

**The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge.** Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification. (emphasis added)

The circumstances presented here are far more remote than those described above. No lawyer in this proceeding is "affiliated with a law firm with which a relative of the judge is affiliated". Mr. McLaren was co-counsel with Mr. Shull (Mark Andrews' law partner) in one personal injury case which was settled and concluded well more than a year before this case was heard. No relative of the Court has any interest whatsoever in any law firm that could be "substantially [or even minimally] affected by the outcome of the proceeding". There is no ongoing relationship between Mr. McLaren and Andrews and Shull. To the contrary, Mr. McLaren has been opposing counsel in cases before and since that time to litigants represented by both Mr. Shull and Mr. Andrews.

While there are apparently no reported South Carolina cases dealing directly with facts similar to those presented in this case and the issue of judicial disqualification, there



are a plethora of analogous cases, all of which support the proposition that neither disqualification nor disclosure is required in this case.

In *Doe vs. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2002), Doe sued Howe for legal malpractice. The trial judge then granted summary judgment in favor of Howe. Two days after the summary judgment hearing the trial judge disclosed that he had contacted Howe to inquire about employment for his wife with the Charleston Law School (where Howe was on the Advisory Committee) and that the judge's law clerk had applied for employment with one of Howe's attorneys. Doe moved for disqualification of the trial judge. The trial judge denied that Motion. The Court of Appeal affirmed the denial of disqualification stating:

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." (FN7) "It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice."

Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself. If anything, the trial judge demonstrated sensitivity toward any concerns Doe might have had regarding his impartiality by voluntarily making full disclosure of his and his law clerk's contacts with Howe and Howe's counsel. 626 S.E.2d at 630.

In *Ness vs. Eckerd Corp.*, 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002), a case somewhat analogous to this case, Judge Harwell denied Eckerd's Motion to set aside a default judgment. Eckerd filed a Rule 59(e) Motion requesting reconsideration of that ruling.

*In an order dated July 13, 1998, Judge Harwell stated "[he] discovered that one of the [his] brothers has a relationship to the corporate defendant which was unknown [to me] at the time this Court heard the Motions in question and entered the Order of May 28, 1998." He then vacated his earlier order and recused himself from the case. 566 S.E.2d at 195*

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The case was assigned to Judge Smoak who then set aside the default. Ness appealed. The Court of Appeals reversed Judge Harwell setting aside his Order stating in relevant part:

.....On realizing there might be a problem, Judge Harwell properly declined to take any further action in the case, but he should not have vacated his earlier order. Rule 63, SCRPC, directs as follows: If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the resident judge of the circuit or any other judge having jurisdiction in the court in which the action was tried may perform those duties....

We construe the language "other disability" to include disqualification of the trial judge. Therefore, the Rule 59(e) motion should have been heard by another circuit judge. (emphasis added) 566 S.E.2d at 196

Here, like in *Ness vs. Eckerd Corp.*, the Court made a decision in this case before recalling the basis now asserted for the Court's disqualification. Even more compellingly, the grounds for disqualification in *Ness vs. Eckerd Corp.* mandated or required disqualification under Canon 3E(d)(iii) as Judge Harwell's brother had more than a *de minimus* interest in the defendant corporation that could be substantially affected by the proceeding. There is no basis for a required or mandatory disqualification in this case.

In *Murphy vs. Murphy*, 319 S.C. 324, 461 S.E.2d 39 (1995), the husband sought disqualification of the trial judge on the grounds that the judge has represented the wife's attorney in a prior legal matter. The trial judge denied disqualification. The Supreme Court affirmed the denial of disqualification noting there was "no evidence of judicial prejudice". 461 S.E.2d at 42



In *Lyvers vs. Lyvers*, 280 S.C. 361, 312 S.E.2d 590 (Ct. App.1984), after entry of the Order the wife moved for disqualification of the trial judge upon learning that the judge had represented the husband's attorney in his divorce case four years earlier. The trial judge denied the Motion. The Court of Appeals affirmed the denial of disqualification stating:

*Finally, Mrs. Lyvers argues that the court erred in denying her motion to reconsider its order after she learned the judge had represented counsel for Mr. Lyvers in a domestic action four years previously. She asserts that the judge should have disqualified himself under the dictates of Canon 3(C)(1) of the Code of Judicial Conduct.*

*Canon 3(C)(1) of the Code of Judicial Conduct provides:*

*(C) Disqualification.*

*(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned*

*In applying Canon 3(C)(1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge. Rogers v. Wilkins, 275 S.C. 28, 267 S.E.2d 86 (1980). As in Rogers, the record before us is totally devoid of any evidence of judicial prejudice against Mrs. Lyvers, or bias in favor of Mr. Lyvers. Thus, it was not error for the trial judge to deny Mrs. Lyvers's motion for reconsideration. 312 S.E.2d at 594*

Also see *Townsend vs. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996) affirming trial judge's denial of the father's disqualification motion where the judge was a childhood acquaintance of the mother.

South Carolina Judicial Advisory Opinion No. 2-1990:

*There is no conflict of interest or impropriety in a judge presiding over a trial in which one of the attorneys represented him in past litigation, provided that litigation is over, that their relationship was strictly an arms length lawyer-client relationship and there is no debt or financial obligation still outstanding.*

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South Carolina Judicial Advisory Opinion No. 28-1996:

*A Family Court Judge should recuse himself/herself from all cases involving the attorneys and their firms who are concurrently representing a judge's relatives in a divorce proceeding, particularly if the divorce case is expected to be highly confrontational.....However, upon termination of the divorce proceeding, the rules would not mandate that the judge recuse himself/herself. (emphasis added)*

Here, there is no basis asserted under Cannon 3 or otherwise in existence requiring or mandating the Court's disqualification in this case. Further, there is no reason the Court's impartiality can reasonably be questioned in the decision making process in this case. The Court was completely unaware that Mr. McLaren had been co-counsel with Mr. Shull in the subject personal injury case until after her husband reminded it of that fact several days before the April 13, 2006 Motion hearing..

The Court heard and decided this case fairly without any bias or prejudice for or against either party. The "duty to hear and decide" cases as is set forth in Canon 3B(1) controls the Court's decision to deny disqualification and a new trial.

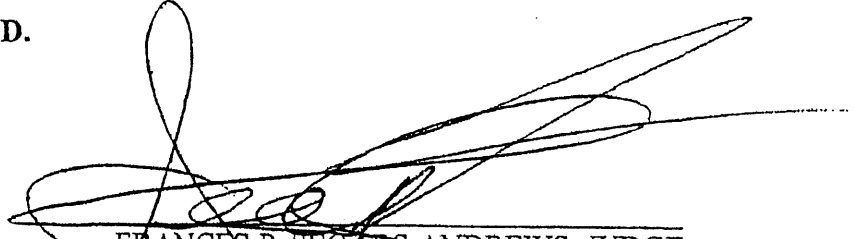
Based on the foregoing, it is, accordingly,

**ORDERED AS FOLLOWS:**

1. Plaintiff's "Notice of Motion and Motion for a New Trial Based Upon Failure of the Defendants' Counsel to Disclose the Court's Conflict of Interests" is hereby denied.

2. The foregoing findings and conclusions of the Court are hereby rendered  
the Order of the Court as to the issues addressed herein.

IT IS SO ORDERED.



FRANCES P. SEGARS-ANDREWS, JUDGE  
FAMILY COURT FOR THE  
THIRD JUDICIAL CIRCUIT

Charleston, South Carolina

Dated: May 22, 2006

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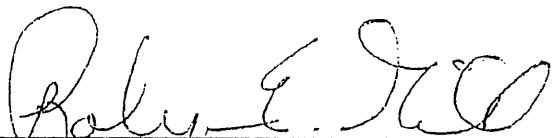
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PROOF OF SERVICE

The undersigned hereby certifies that on the 2<sup>nd</sup> day of **June 2006**, he/she did serve one (1) copy of the foregoing filed **ORDER** upon Plaintiff's attorneys, Steven S. McKenzie, Esquire and Scott L. Robinson, Esquire, by depositing the same in the United States mail with sufficient postage affixed thereto, addresses as follows:

Scott L. Robinson, Esquire  
Steven S. McKenzie, Esquire  
Johnson, McKenzie & Robinson, LLC  
16 North Brooks Street  
Manning, South Carolina 29102

  
\_\_\_\_\_  
ROBYN E. GILL

DATE

6-22-06

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON  
CLARENDON COUNTY, SOUTH CAROLINA  
CLERK OF COURT  
THIRD JUDICIAL CIRCUIT

WILLIAM R. SIMPSON, JR,

Plaintiff,

Vs.

BECKY H. SIMPSON,  
and WADE INGLE

Defendant.

DOCKET NOS.: 2004-DR-14-315  
2004-DR-14-243

FINAL ORDER FOR EQUITABLE  
DIVISION, CHILD SUPPORT,  
ATTORNEYS' FEES AND COSTS

DEULAN P. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2006 JUN 13 PM 1:00

Dates of Hearings:

Presiding Judge:

Attorney(s) for Plaintiff:

Attorney(s) for Defendant Simpson:

Attorney for Defendant Ingle:

Guardian ad Litem:

Court Reporter:

February 14 and 16, 2006

F. P. Segars-Andrews

Scott L. Robinson & Steven S. McKenzie

Jan L. Warner, James T. McLaren, &

Carrie A. Warner

Pro Se

James A. Stoddard, Esquire

Kathy A. Snelling, CCR

This matter came before the Court for a merits hearing on February 14 and 16, 2006. A Bifurcated Decree of Divorce was rendered in this matter on March 24, 2005. That order specifically reserved all other issues except for the divorce for this hearing. A Consent Order was issued by this Court on March 7, 2006 resolving the issues of custody and visitation leaving the issues of equitable division, child support, attorneys' fees and costs.

Present and appearing at the appointed times and places were Plaintiff and Defendant Simpson with their respective counsel. Defendant Ingle appeared pro se.

The Court heard and considered the testimony of parties and their witnesses and was able to judge their credibility and demeanor. The Court reviewed the exhibits introduced by each party and assessed the weight of the evidence. Based upon the

clear preponderance of the evidence, the Court makes the following

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FINDING OF FACT AND CONCLUSIONS OF LAW.

**BACKGROUND OF THE MARRIAGE AND PROCEDURAL HISTORY**

1. The parties are citizens and residents of Clarendon County, State of South Carolina, and this Court has jurisdiction over all the parties and subject matter herein.
2. Plaintiff ("Husband") and Defendant Simpson ("Wife") were legally married on September 3, 1989. At that time, Husband was 20 years of age, and Wife was 17 years of age. Two (2) children were born of this marriage: William Robert Simpson on July 30, 1991, and Lynda Kaitlin Simpson on June 26, 1995. The parties last lived together on or about August 4, 2004.
3. Wife graduated from high school after the marriage. Husband completed high school and had some college before going into the farming business with his father.
4. At the time of the marriage Husband and Wife lived in a trailer on Husband's parent's land. Wife had approximately Six Thousand Dollars (\$6,000.00) in a Certificate of Deposit that she had inherited. Husband had no assets. They used Wife's funds to purchase a larger mobile home.
5. Through out the marriage the Husband worked continuously with his father in the farming business. Husband was also able to acquired additional land without the help of his father in which he farmed as well.
6. The Wife worked various jobs for short periods of time but her clear responsibility and priority through out the marriage were the parties' home and their children. When the younger child began kindergarten at Clarendon Hall, the private school where both children attended, Wife began working at the school. She first

worked in the lunchroom and thereafter as a preschool teacher for three-year olds. Her employment resulted in not only income that went toward the marriage, but also a fifty percent (50%) reduction in the children's tuition. Her position was terminated in the summer of 2004, shortly before this action was commenced.

7. Wife made efforts to become educated during the marriage. She attended nursing school on two occasions but was unable to complete the programs.

8. Husband was made a party to his parent's marital litigation in this Court in early 2003 because of his 50% interest in the Simpson Farm, LLC, a portion of which was marital property in that case. The Honorable R. Wright Turbeville issued a decree on December 31, 2003 in that case, Daisy W. Simpson vs. William R. Simpson, Jr., et al", 2003-DR-14-128 (Defendant's Exhibit 10 herein). The litigation between Husband's parents caused much conflict and turmoil in the entire Simpson family.

9. In early 2004, Wife began exhibiting uncharacteristic behavior. Wife's emotional condition soon required medical treatment and prescription medications. The Husband terminated Wife's insurance coverage during her treatment and refused to pay her medical and pharmacy bills. This forced Wife to go to the Clarendon Mental Health Clinic and report that she was separated from Husband so she could be placed on a low-income program to get free medication.

10. Due to the mother's emotional problems she was unable to have custody of the children upon the parties separation. On one occasion the problems between Wife and the son ended in a physical altercation. In fact, the Wife still does not even visit with the son. Husband has maintained custody of both children since the separation.

11. On or about July 30, 2004, Husband took Wife, accompanied by her elderly grandfather, to his attorney who had prepared a separation agreement for Husband and Wife to sign. Wife signed the agreement. It was then approved by The Honorable George E. McFadden and made the order of the family court on August 20, 2004. Subsequently, Wife filed a motion to set aside the agreement. This motion was granted by Judge McFadden on January 6, 2005.

12. After Wife moved to set aside the agreement, on September 23, 2004, Husband brought an action for divorce in case # 04-DR-14-315 upon the ground of Wife's adultery.

13. A temporary hearing was held on January 7, 2005 after which The Honorable Marion D. Myers issued a Temporary Order dated February 8, 2005. This Order required as follows: Husband to immediately pay Wife Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00) as an advance against equitable division or attorneys' fees; restrained the parties from disposing of marital assets and from personal contact; appointed a Guardian *ad Litem* for the children; granted discovery; and granted the paternal grandmother's Motion to Intervene for the purposes of visitation.

14. On February 11, 2005, Husband motioned Judge Myers to reconsider and clarify his Temporary Order, alleging that the award of Thirty Seven Thousand, Five Hundred Dollars (\$37,500.00) was improper, and he refused to pay the award.

15. A Rule to Show Cause was issued by Judge Turbeville against Husband on February 15, 2005. This rule required Husband to show cause why he should not be held in contempt and asked the Court to enforce its temporary order.



16. On February 22, 2005, Husband filed a motion to amend his pleadings, seeking to have Wade Ingle, the Wife's paramour, made a party to the action, to require Wife to take a pregnancy test, and to require Wife to submit to a hair follicle drug test. Wife filed her response along with a request that the Court appoint an independent appraiser.

17. On March 9, 2005, Judge McFaddin issued another Rule To Show Cause against Husband due to his refusal to comply with the February 8, 2005 Order, including his efforts to auction property in violation of the restraining order.

18. Judge Myers denied Husband's Motion to Reconsider his February 8, 2005 Order, and Husband appealed this ruling to the South Carolina Court of Appeals on March 9, 2005. He still refused to pay Wife the Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00).

19. After a hearing on March 11, 2005 on the two (2) Rules to Show Cause, The Honorable Jeffrey Young issued an Order finding Husband in civil contempt and sentencing him to serve sixty (60) days. He was allowed to purge himself of the contempt by delivering a cashier's check for Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00) to Wife. Judge Young stopped the auction and ordered Husband to pay a portion of Wife's attorneys' fees and costs. Additionally, he appointed Burke Watson, Jr. as an independent appraiser to value the land, farm equipment, and the store inventory.

20. After a hearing on March 23, 2005, Judge Myers issued a Bifurcated Decree of Divorce granting Husband a divorce based upon Wife's adultery. The only evidence presented proved Wife's adultery took place subsequent to the separation of the parties in

August of 2004 and after they had signed the separation agreement that was later set aside.

21. On April 13, 2005, Husband filed a contempt action, alleging that Wife had failed to pay the taxes and insurance on a 1996 Chevrolet Suburban of which she had the temporary use and possession, and had failed to provide her physical and mental health records. At the hearing held on May 6, 2005 Wife denied the material allegations. Judge Young issued an order denying Husband's request for contempt, finding Wife's actions not to be willful, finding that Husband had unclean hands and leaving open the issue of the Suburban until a final hearing.

22. The Honorable Kinard Johnson issued an Order on April 22, 2005 allowing Husband to amend his pleadings to implead Wade Ingle as a party to the action, requiring Wife to submit a pregnancy test at a doctor of Husband's choice, and denying Husband's application to have Wife submit to a drug test. Husband never chose a doctor to give Wife the pregnancy test.

23. On July 27, 2005, Husband's Motion to Compel and motion for Child Support were heard by Judge Young. He issued an Order on August 9, 2005 requiring Wife to release her medical records under a protective order, and to pay Fifty-Seven Dollars and Seventy-Nine Cents (\$57.79) per week to Husband as child support.

24. During the course of this hearing, Husband testified, presented witnesses and introduced eleven (11) Exhibits. Wife also testified, presented her witnesses, excerpts from Husband's deposition, and introduced twenty-two (22) Exhibits, including her trial memorandum. There were six (6) joint Exhibits that embody the appraisals that

were conducted pursuant to prior Order. Defendant Ingle did not testify and presented no evidence.

### ALIMONY

25. Wife is barred from permanent periodic alimony based upon her conduct, which took place after the separation. Husband is not entitled to an award of alimony.

### CHILD SUPPORT

#### **PLAINTIFF'S INCOME**

26. The Court finds that Husband's financial declaration and financial disclosures have not been accurate depictions of his actual income and assets. It has been difficult for the Court to determine Husband's income due to the muddled manner in which Husband and his father commingle their farming income. Husband presented no CPA nor did he provide a reasonable financial declaration until after Wife's expert had completed his work.

27. Husband explained that he and his father would pool their crops each year, sell them together, deposit the proceeds into his father's bank account and then divide the proceeds. Husband was unable to articulate how the proceeds were divided between the two of them. He admitted receiving a lower salary or income from his father for years in order to acquire the equity he earned in the Simpson Farms, LLC.

28. Husband's first financial declaration disclosed a gross income of \$1730.76 per month. The latest financial declaration discloses an income of \$8,350.00 per month.

#### **DEFENDANT'S INCOME**

29. The wife has recently become employed in a hair salon and has an income of \$1,386 per month as shown on her financial declaration.

## **SUPPORT OBLIGATIONS**

30. I find and conclude that using the incomes of Husband and Wife on their most recent Financial Declarations, Wife's child support obligation is \$221.00 per month for both children. She shall pay this amount through the Court, together with five percent (5%) Court cost, for a total monthly payment of \$233.05.

31. Husband shall be responsible for the cost of health insurance for the minor children.

32. Wife shall be responsible for fifteen percent (15%) of the non-covered medical, dental, orthodontic, psychological, and psychiatric costs incurred on behalf of the minor children that are not covered by health insurance after Husband verifies that he has covered the first \$250.00 per year.

33. Wife shall have thirty days (30) to reimburse Husband fifteen percent (15%) of the son's orthodontic bill. Prospectively, Wife shall have thirty days (30) to reimburse Husband for these non-covered costs incurred by the Husband for the benefit of the children after Husband has provided Wife with the bill, and proof of what insurance has covered.

## **EQUITABLE APPORTIONMENT**

34. In South Carolina, equitable apportionment is essentially a three-step process: The Court must identify the marital assets; value the marital assets to be divided; then, apportion the assets according to the statutory factors.

35. S.C. Code Ann. § 20-7-473 (Supp. 2002) defines marital and non-marital property for the purpose of equitable division in this State:

**§ 20-7-473. Marital and non-marital property; non-marital property as not subject to judicial apportionment.**

The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in § 20-7-472 regardless of how legal title is held, except the following, which constitute non-marital property:

- (1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;
- (2) property acquired by either party before the marriage and property acquired after the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (3) property acquired by either party in exchange for property described in items (1) and (2) of this section;
- (4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;
- (5) any increase in value in non-marital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

The court does not have jurisdiction or authority to apportion non-marital property. (emphasis added)

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36. Mark Hobbs, CPA, was retained by Wife, and was qualified as an expert. Through him, Wife's Exhibits 11 through 19 were introduced into evidence. Mr. Hobbs' testimony and his exhibits were not contradicted by credible evidence.

### **THE MARITAL ASSETS**

#### **SIMPSON FARMS, LLC**

37. Husband has asserted that his interest in the Simpson Farms, LLC is a non-marital asset. In one breath, he claimed it was a gift, while in another, he asserted he received his interest in April 2000 based upon his hard work and sweat equity. The Court finds that Simpson Farms, LLC is a marital asset and that Husband was paid less salary for his farming efforts during the marriage because he was earning a fifty percent (50%) interest in this farming asset including the real property. This is clear since the Husband's father was careful to give his other children real property at the same time he gifted the land where the marital residence was built to Husband.

38. The LLC has yet to file an income tax return, and the Court finds that Husband and his father have engaged in creative bookkeeping that has obfuscated their financial picture.

39. The Court finds that the transfer to Husband by his father of a 50% ownership in Simpson Farms, LLC in April 2000 was payment to Husband for his labor during the marriage, that it was acquired during the marriage, and that it is a marital asset. The Court finds the value of Husband's 50% interest in Simpson Farms, LLC is \$299,825.00 as determined by Judge Turbeville's December 31, 2003 Order that

Husband did not appeal. In addition, the Court was presented with no other credible evidence regarding the value of this asset.

#### **FARM EQUIPMENT**

38. Five (5) pieces of farm equipment were appraised by Aaron Easters. They were valued at \$26,150.00. Husbands financial declaration filed in August 2004 valued his farm equipment at \$150,000. The expert, Mr. Easter, testified that there was more than ten (10) other pieces of farm equipment on the property but that Husband only told him to appraise those five (5) items. He had also placed the value of his farm equipment at \$150,000 in a financial statement to a lending institution. Husband explained that not all of the property was his personal equipment but that the other farm equipment was owned by his father or The Simpson Farm, LLC.

#### **1996 SUBURBAN**

39. There is a 1996 Suburban automobile that neither party wants. Wife has valued this vehicle at \$500.00 and Husband at \$10,000.00. I find and conclude that Husband shall be responsible for selling the vehicle and that the proceeds he receives therefrom should be divided giving the wife her forty percent (40%) share.

40. Wife should be responsible for the cost Husband incurred taking care of this vehicle while it was ordered into her temporary possession. Wife shall be responsible for \$250.00 in taxes and insurance and \$75.00 for towing. Her total cost is \$325.00.

00114

### **INVENTORY FROM THE BUCK AND BULL STORE**

41. John Odom appraised and testified that this inventory is worth \$4,345.00. He testified that the inventory was worth more at the time the Husband attempted to auction the property.

### **16,000 HUSBAND CLAIMS FROM PAYING WIFE UNDER THE UNFAIR AGREEMENT**

42. Husband claims credit for \$16,000.00 he says he paid Wife under the terms of the overturned consent order. The Court finds that the agreement was unconscionable and that Plaintiff would have otherwise been supporting Wife during this period. This Court concludes that the Husband should be given no credit for this.

### **\$37,500 ADVANCE TO WIFE**

43. Judge Myers' Order awarded the wife \$37,500 as an advance on her equitable distribution claim or as attorney's fees. This Court finds that this is an advance of her equitable distribution. Consequently, all the property purchased by wife with these monies including the Kia Sephis vehicle is her separate property.

### **HIGHWAY 15 PROPERTY**

44. This property was appraised by the court-appointed appraiser, Burke Watson. The fair market value of the property is \$50,000 and there is no lien on the property. This property was acquired during the marriage with marital funds.

### **GUNTER ROAD PROPERTY**

45. This property was appraised by the court-appointed appraiser, Burke Watson. The fair market value is \$14,000 and there is no lien on this property. This property was acquired during the marriage with marital funds.



### **BRADHAM ROAD PROPERTY**

46. This property was appraised by the court-appointed appraiser, Burke Watson. The fair market value is \$14,000 and there is no lien on this property. This property was acquired during the marriage with marital funds.

### **BILLY ROAD PROPERTY**

47. This property was appraised by the court-appointed appraiser. The fair market value is \$95,000 and there is no lien on the property. This property was acquired during the marriage with marital funds.

### **MARITAL RESIDENCE (145 HERITAGE ROAD)**

48. Husband claims the residence is non-marital because his father gifted the land to him. The clear preponderance of the evidence reflects that from the time the Simpson Family moved into the residence and began using that land, they looked upon it and intended for it to be their family home. Funds earned and saved during the marriage, not to mention Wife's labor, efforts, decorating skills and landscaping efforts were used to maintain and increase the value of this property. In fact, they built the home on the property after they were married. The monies used to build the home were therefore, marital earnings.

49. "Transmutation is a matter of intent to be gleaned from the facts of each case." *Jenkins vs. Jenkins*, 345 S.C. 88, 98, 545 S.E.2d 531, 536 (Ct. App.2001); *Widman vs. Widman*, 348 S.C. 97, 557 S.E.2d 693 (Ct. App. 2001).

50. The Court finds that Wife proved not only by her testimony, but by photographs of the property taken over the years, that this property was transmuted into marital property.

00116

51. The husband is entitled to 20% more of all the marital property. The fact that this land was gifted to him is one of the reasons he is receiving more of the property than the Wife.

### **CROPS IN PRODUCTION**

52. Wife's expert argued that the crops planted in the field should be estimated and placed in Husband's column as a marital asset. This Court finds that this is too speculative to be considered.

### **SUMMARY OF MARITAL ASSETS:**

53. Based upon the foregoing findings and conclusions, the Court hereby identify the marital assets and their values as follows:

#### **ASSETS:**

Cash on hand and in the bank	\$2,435.00
Simpson Farms, LLC	\$299,825.00
145 Heritage Road (the marital residence) (net of mortgage for which husband shall be responsible)	\$61,400.00
Farm equipment	
Inventory from Buck and Bull Store	\$26,150.00
Highway 15 property	\$4,345.00
Cash on hand and in checking account	\$50,000.00
Gunter Road property and trailer on that property	\$51.00
Bradham Road property	\$14,000.00
Cash paid to Wife during litigation pursuant to Judge Myers	\$14,000.00
Order	\$37,500.00
Billy Road property	
Cost Husband paid on the Suburban	\$95,000.00
Huckabee Road property	\$325.00
Poole Road property	\$61,000.00
<b>TOTAL</b>	<b>\$ 111,000.00</b>
	<b>\$777,031.00</b>

#### **DEBTS OF THE MARRIAGE:**

54. The court has been provide documentation for the following debts of the marriage.

Pee Dee Federal Loan	(\$133,500.00)
Bank of Greeleyville Loans	(\$101,000.00)
Bank of America Credit Card	(\$8,000.00)

#### **PEE DEE FEDERAL LOAN**

55. The evidence presented indicates that this is a marital debt. It was borrowed during the marriage.

#### **BANK OF GREELEYVILLE LOANS**

56. The evidence presented indicates that this is a marital debt. It was all borrowed during the marriage.

#### **BANK OF AMERICA CREDIT CARD**

57. The evidence indicates that this is a marital debt. It was borrowed during the marriage.

#### **OTHER DEBTS:**

58. Husband asserted other significant debt to his father, but offered no documentary evidence. Based upon the arbitrary way Husband and his father conduct their business, this Court assumes that much of these debts are a part of their LLC and/or other farming business that they will pay out of the proceeds from the crops in production. This court finds the crops in production and the debts acquired to produce them to be too speculative to include in the marital estate.

#### **THE DIVISION OF THE ABOVE MARITAL PROPERTY**

57. The statutory facts considered by the Court in making the equitable apportionment pursuant to § 20-7-472 (1) - (15), South Carolina Code of Laws, 1976, as amended, are as follows:

- (1) The duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties:

This is a fifteen (15) year marriage. The wife was 17 years of age at the time of the marriage and the Husband was 20 years of age. At the separation the Wife was 32 and the Husband was 35.

- (2) Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support of a permanent order approving a property or marital settlement agreement between the parties:

There is no evidence of marital misconduct from either party that would rise to the level to effect the division of property. The wife's adultery took place only after the parties' separation and there is no evidence to prove the physical abuse allegations against the Husband.

- (3) The value of the marital property, whether the property be within or without the state. The contribution of each spouse to the acquisition, preservation, depreciation or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence:

The values of the marital property are set forth above and incorporated by reference. There is no non-marital property to be considered as all property is marital, and the wife's inherited property and the husband's gifted property has been transmuted.

During this marriage, the Husband worked hard in the fields and the Wife worked hard raising the children and taking care of the home and yard. These parties lived a frugal life style while amassing nearly \$800,000 in net assets.

Much of the property accumulated was do to the Husband's family. He was able to acquire a 50% interest in the Simpson Farm, LLC through his sweat equity and his father gifted him the land upon which the marital home was built. This is part of the reason that the Husband received 20% more of the marital estate than did the wife.

(4) The income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets:

The Husband has now disclosed a monthly income of \$8,350 per month. The Wife earns \$1,730.76 per month. Husband has the ability to accumulate additional assets whereas that is unlikely for Wife.

(5) The health, both physical and emotional, of each spouse:

Husband and Wife are both healthy. Wife's demeanor reflects she is in good emotional health at this time.

(6) The need of each spouse or either spouse for additional training or education in order to achieve that spouse's income potential:

I have considered that Wife began this proceeding unemployed and is now working in a hair salon. She may seek additional training. Husband has no further need of any additional training to maximize his earning potential.

(7) The non-marital property of each spouse:

There is no non-marital property to be considered.

(8) The existence or nonexistence of vested retirement benefits for each or either spouse:

Neither Husband nor Wife has any known retirement accounts.

(9) Whether separate maintenance or alimony has been awarded:

No periodic alimony has been awarded to Wife or Husband. The Wife is barred from alimony and the Husband is not entitled to alimony.

(10) The desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children:

The Court incorporates herein the other findings and conclusions set forth throughout this Decree and as set forth hereinafter in making an equitable claim.

60. Based upon the foregoing, I find and conclude that Husband is a well-known farmer in Clarendon County, South Carolina. There is a preference for division in kind, and I find a division in kind to be practical in this case. Since much of the property was acquired only because of the husband's family and for other reasons as indicated above, this court determines that he is entitled to 60% of the assets and the Wife only 40% of the assets. This also takes into consideration that the husband was hard working and creative in the acquisition of property.

60. I find that the marital estate should be apportioned as follows:

**Marital property and debts Allocated To Husband (net values:)**

Cash on hand and in the bank	\$ 2,435.00
Simpson Farms, LLC	\$ 299,825.00
145 Heritage Road (the marital residence) (net of mortgage for which he shall be responsible)	\$ 61,400.00
Farm equipment	\$ 26,150.00
Inventory from Buck and Bull Store	\$ 4,345.00
Highway 15 property	\$ 50,000.00
Poole Road property	\$ 111,000.00
<b>TOTAL</b>	<b>\$555,155.00</b>
<b>LESS</b>	
Pee Dee Federal Loan	(\$133,500.00)
Bank of Greeleyville Loans	(\$101,000.00)

**Total to Husband \$ 320,655.00 (60%)**

**Husband shall pay any debt to his father without credit.**

**1. Marital Property and Personal Debts Allocated To Wife:**

Cash on hand and in checking account	\$51.00
Gunter Road property and trailer on that property	\$14,000.00
Bradham Road property	\$14,000.00

~~Cash on hand and in checking account~~

~~Cash on hand and in checking account~~

Billy Road property	\$95,000.00
Cost Husband paid on the Suburban	\$325.00
Huckabee Road property	\$61,000.00
<b>TOTAL</b>	<b>\$221,876.00</b>

**LESS**

Bank of America Credit Card	(\$8,000.00)
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<b><u>Total to Wife</u></b>	<b><u>\$ 213,876.00 (40%)</u></b>
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61. Within thirty (30) days of the date of this Decree, Husband shall transfer to Wife the following assets, free and clear of lien or encumbrances:

Gunter Road property and trailer on that property	\$14,000.00
Bradham Road property	\$14,000.00
Billy Road property	\$95,000.00
Huckabee Road property	\$61,000.00

62. I direct that judgment liens shall be recorded as a matter of record in all counties in which land allocated to Wife is situated, and that said judgments be against Husband, individually, as co-owner of Simpson Farms, LLC, and Simpson Farms, LLC. Husband is restrained in all capacities from disposing of or pledging any property allocated to Wife except to pay this judgment and then only after notification to and agreement of Wife's counsel.

**ATTORNEY'S FEES AND COST**

**SHOULD ATTORNEY'S FEES BE AWARDED**

63. **THE ABILITY TO PAY:** The Wife in this case does not have the ability to earn a living and pay her fees. In the near future it is unlikely that she will earn more than 25,000 a year. On the other hand, the Husband has been farming successfully for years. He has the ability to earn \$100,000 in any given year. He was also awarded substantially more assets in the above equitable apportionment. Consequently, he has

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the borrowing ability to acquire the funds and take care of this debt with little effect on his lifestyle.

64. **BENEFICIAL RESULTS:** In considering the initial agreement the Husband had the Wife sign, the Wife has received beneficial results from the efforts of her attorneys and experts. She may only be receiving 40% of the entire marital estate but this is substantially more than she was to receive before her attorney's became involved.

65. **THE FINANCIAL CONDITIONS OF THE PARTIES:** As discussed above, the Husband's earning ability and borrowing capacity is substantially more than the Wife's. In addition, the Husband was awarded over \$100,000 more than the Wife in the above equitable distribution.

66. **THE EFFECT OF THE FEE ON EACH PARTY'S STANDARD OF LIVING:** Either party required to pay these fees will have to borrow the funds or sale property to cover them. The Husband is the only party with the earning and borrowing capacity to do this.

**THE AMOUNT OF ATTORNEY'S FEES TO BE AWARDED**

67. At the close of Defendant's case, Defendant presented an affidavit and testimony with regard to attorneys' fees. There was no reply testimony from the Plaintiff, and Defendant's testimony and exhibits in this regard are uncontradicted.

69. **The nature, extent, and difficulty of the case:** This court has considered the fact that Husband attempted to obfuscate the facts of this case. His financial declaration did not paint an accurate picture of the assets nor his income. He did not change his financial declaration as to his income until Defendant's counsel and expert had accomplished their work. In addition, he never provided the Court with a completed



asset addendum until after the Court demand him to do so after the trial. He initially complicated the case by having the Wife sign an unconscionable agreement which had to be subsequently set aside. He further complicated the case by insisting that his interest in the Simpson Farm, LLC was not a marital asset. All of these assertions by Husband caused the Wife's attorney's considerably more work.

70. **The time necessarily devoted to the case:** The Court finds from the testimony and the exhibits, that the time Wife's counsel devoted to this case was reasonable. The Court did not order the Husband to pay all of the Wife's fees and cost because some of the work done in Husband's father's marital litigation could have been utilized in both of the cases. However, Husband caused the hours to run up substantially by filing so many motions, attempting to appeal a temporary order, failing to obey the court orders and because of Husband's and his father's lack of customary accounting methods in their farming business.

71. **Professional standing of counsel:** I find that Wife's attorneys are experienced matrimonial lawyers with long track records of handling difficult cases. This is a difficult case based upon the manner in which Husband and his father conducted their farming operations. Defendant's counsel herein previously represented the Husband's mother. While this should have given them a "leg up" so to speak with regard to how the parties did business, substantial work in this case was still required because of the lack of cooperation by the Husband.

72. **Contingency of compensation:** There is no contingency of compensation in this case.

00124

73. **Beneficial results obtained:** The Court finds that counsel for the Defendant did an excellent job in representing their client. The agreement that the Husband initially had Wife sign gave her virtually nothing. Because of the work done by her counsel and expert she now has an equitable share of the marital property.

74. **Customary legal fees for similar services:** While attorneys in Clarendon County, South Carolina may not charge the rates charged by Defendant's counsel, this Court finds as a matter of fact that due to the complexity of this case, Wife could not have received the results she received without the representation of experienced attorneys. To go one step further, Wife testified that she did not have funds with which to hire an attorney when she signed the initial agreement prepared by Husband's lawyers in July 2004. She did not have funds with which to hire counsel when her attorneys agreed to represent her. She did not have funds with which to hire the Certified Public Accountant, Mr. Hobbs. Seeing that Wife required good representation, her counsel and Mr. Hobbs handled the case without a retainer. The Court finds and concludes that the hourly rates asserted by counsel for the Defendant and the hours were necessary and customary for similar services.

75. The following fees and costs were asserted:

Cost of Private Investigator	
Appraisal for Five (5) tracts of farmland (Burke Watson)	\$5,500.00
Appraisal for Marital Residence	\$350.00
Appraisal for Gunter Road property	\$350.00
Appraisal for Buck and Bull Inventory	\$300.00
Appraisal for Farm Equipment	\$300.00
Cost of Cancelled Auction (H)	\$838.37
Defendant's CPA	\$ 10,000.00
Defense Attorney's fees as set forth below	\$156,079.82

76. The Court finds that Husband should pay the cost of the appraisals to Burke Watson, and he shall pay the same along with the appraisals for the farm equipment, Buck and Bull inventory, and the other appraisals within fifteen days (15) of the date of this Order. Those payments total \$7,638.37.

77. The Court further finds Husband should pay fifty percent (50%) of the cost of Wife's Certified Public Accountant (\$5,000.00) and fifty percent (50%) of Wife's attorneys' fees and costs (\$78,039.91) within one hundred and twenty (120) days of the date of this Order. Those payments total \$83,039.91.

**THEREFORE**, based upon the foregoing findings and conclusions, it is accordingly

**ORDERED:**

1. Within thirty (30) days of the date of this Decree, Husband shall transfer to Wife the following assets, free and clear of lien or encumbrances:

Gunter Road property and trailer on that property	\$14,000.00
Bradham Road property	\$14,000.00
Billy Road property	\$95,000.00
Huckabee Road property	\$61,000.00

2. The Husband shall have possession and ownership of all the other properties listed above both real and personal.

3. The Husband shall be responsible for the Pee Dee Federal loan and The Bank of Greeleyville loan. He shall hold the wife harmless from these debts.

4. Wife shall be responsible for Bank of America Credit Card and hold the Husband harmless.

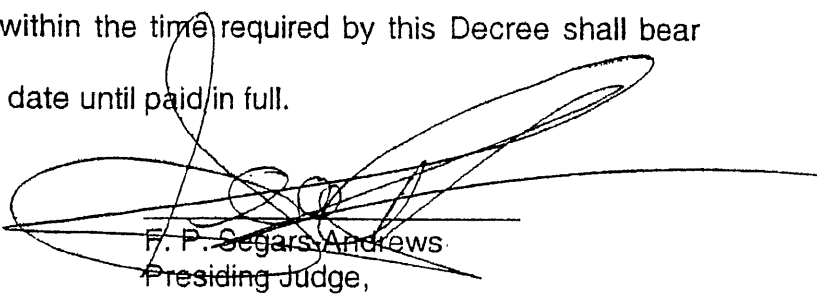
5. Husband should pay the cost of the appraisal to Burke Watson, and he

inventory, and the other appraisals within fifteen (15) days of the date of this Order, with said payments totaling \$7,638.37.

6. Husband should pay 50% of the cost of Wife's Certified Public Accountant (\$5,000.00) and 50% of Wife's attorneys' fees and costs (\$78,039.91) within one hundred and twenty (120) days of the date of this Order, with said payments totaling \$83,039.91.

7. Any payment not paid within the time required by this Decree shall bear interest at the statutory rate from due date until paid in full.

AND IT IS SO ORDERED



F. P. Segars Andrews  
Presiding Judge,  
Family Court, Third Judicial Circuit

At Chambers  
Charleston, South Carolina

June 8, 2006

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

WILLIAM R. SIMPSON, JR.  
PLAINTIFF

VS.

BECKY H. SIMPSON,  
DEFENDANT

) IN THE FAMILY COURT OF THE  
) THIRD JUDICIAL CIRCUIT  
) DOCKET #: 04-DR-14-243  
)

) ORDER FROM TELEPHONE  
) CONFERENCE HELD ON THE  
) PLAINTIFF'S NOTICE OF MOTION AND  
) MOTION FOR COURT TO RECONSIDER,  
) SET ASIDE, ALTER AND/OR AMEND OR  
) CLARIFY THE COURT'S ORDER DATED  
) FEBRUARY 14 AND 16 2006 AND SIGNED,

JUNE 8, 2006

OF COURT FILED IN THIS OFFICE

DATE

8/23/06

*Beulah B. Roberts*

CLERK OF COURT  
CLARENDON COUNTY, SC

\*\*\*\*\*  
This matter came before the court on July 26, 2006 wherein a telephone conference was held. Present for said conference was Steven S. McKenzie, attorney for William R. Simpson, Jr together with the Jan L. Warner and James McLaren .

The attorney for the Plaintiff filed a Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend or Clarify the Court's Order Dated February 14 and 16, 2006 and signed June 8, 2006. Said motion was heard before the court through a telephone conference.

The court denied Plaintiff's Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend Clarify the Court's Order Dated February 14 and 16, 2006 and signed June 8, 2006.

It is therefore,

ORDERED:

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2006 AUG 23 PM 2 32  
CLARENDON COUNTY, SC

August , 2006

---

FRANCIS SEAGARS-ANDREWS  
JUDGE OF THE FAMILY COURT

00129

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

WILLIAM R. SIMPSON, JR.  
PLAINTIFF

VS.

BECKY H. SIMPSON,  
DEFENDANT

\*\*\*\*\*

) IN THE FAMILY COURT OF THE-  
) THIRD JUDICIAL CIRCUIT  
) DOCKET #: 04-DR-14-243  
)  
) ORDER FROM TELEPHONE  
) CONFERENCE HELD ON THE  
) PLAINTIFF'S NOTICE OF MOTION AND  
) MOTION FOR COURT TO RECONSIDER,  
) SET ASIDE, ALTER AND/OR AMEND OR  
) CLARIFY THE COURT'S ORDER DATED  
) APRIL 13, 2006 AND SIGNED MAY 22, 2006  
) CERTIFIED TRUE COPY  
) OF ORIGINAL FILED IN THIS OFFICE  
) DATE 8/23/06  
) Beverly S. Roberts  
) CLERK OF COURT  
) CLARENDON COUNTY, SC

This matter came before the court on July 26 , 2006 wherein a telephone conference was held. Present for said conference was Steven S. McKenzie, attorney for William R. Simpson, Jr together with the Jan L. Warner and James McLaren .

The attorney for the Plaintiff filed a Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend. Said motion was heard before the court through a telephone conference.

The court denied Plaintiff's Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend.

It is therefore,

**ORDERED:**

1. That Plaintiff's Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend is denied.

**IT IS SO ORDERED.**

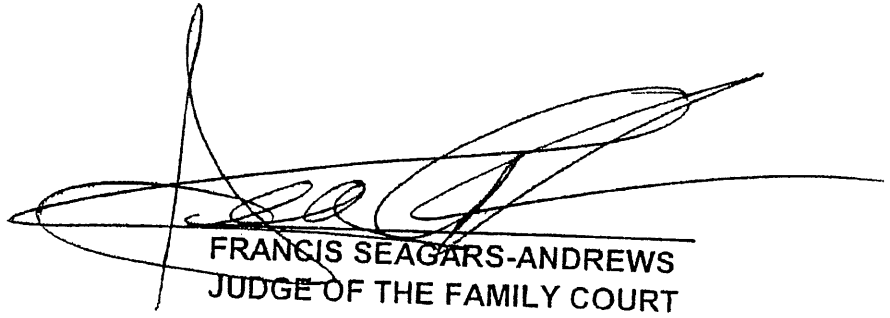
00130

2006 AUG 23 PM 2 32  
CLARENDON COUNTY, SC

1. That Plaintiff's Notice of Motion and Motion for Court to Reconsider, Set Aside, Alter and/or Amend or Clarify the Court's Order Dated February 14 and 16, 2006 and signed June 8, 2006. is denied.

**IT IS SO ORDERED.**

August 21, 2006



FRANCIS SEAGARS-ANDREWS  
JUDGE OF THE FAMILY COURT



E

INSTRUCTIONS FOR ORDER

HEARD FEB. 14, 2006

DATE: 5-3-06

SIMPSON, JR. V SIMPSON AND INGLE

04-243

PL:	STEVEN MCKINZIE	FAX: 803-435-2858
	SCOTT ROBINSON	FAX: 803-435-2858
DF:	IAN WARNER	FAX: 803-799-2517
	CARRIE WARNER	FAX: 803-799-2517
	JIM McLAREN	FAX: 803-252-3548
GAL:	JAMES STODDARD	FAX: 803-773-6995

After reviewing the memorandum provided from the defendant's counsel in this matter and the cannons, this court determines that it has a duty to rule in this case and that there was no duty to disclose the working relationship between McLaren and Andrews and Shall.

Mr. McLaren, please prepare an order to this effect. Send a copy to opposing counsel twenty-four hours prior to sending it to my office

00132

STATE OF SOUTH CAROLINA )

COUNTY OF SUMTER )

FAMILY COURT

TRANSCRIPT OF HEARING  
04-243 and 315

SIMPSON )

versus )

SIMPSON )  
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Sumter, South Carolina  
April 14, 2006

**BEFORE:**

THE HONORABLE F. SEGARS-ANDREWS  
FAMILY COURT JUDGE

APPEARANCES:

STEVEN MCKENZIE, ESQUIRE

JAMES MCLAREN, ESQUIRE  
JAN WARNER, ESQUIRE

Sandra L. McGarry  
7208 Sunview Drive  
Columbia, S.C. 29209

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(NO EXHIBITS)

00134

1 THE COURT: OKAY; THIS IS SIMPSON VERSUS SIMPSON, CASE  
2 NUMBER 04-243 AND 315 -- I THINK IT'S BEEN CONSOLIDATED. THIS STARTED  
3 OUT AS A MOTION FILED BY THE PLAINTIFF ASKING ME TO RECUSE MYSELF  
4 BECAUSE MY HUSBAND'S LAW PARTNER WAS INVOLVED IN ANOTHER,  
5 ARGUABLY, RELATED CASE.

6 I DENIED THAT MOTION; HOWEVER, ONCE IT WAS -- I MENTIONED THIS  
7 TO MY HUSBAND, I WAS TOLD THAT--SOMETHING THAT I HAD FORGOTTEN--  
8 MR. MCLAREN AND MY HUSBAND'S LAW FIRM HAS ALSO BEEN INVOLVED IN  
9 ANOTHER MATTER TOGETHER THAT DOES -- NOT INVOLVING A SMALL AMOUNT  
10 OF MONEY, AND IT IS SOMETHING THAT IF I HAD REMEMBERED THAT I WOULD  
11 HAVE DISCLOSED AND ASKED YOU INITIALLY IF YOU WANTED ME TO RECUSE  
12 MYSELF.

13 I DID NOT THINK ABOUT THAT, SO I'M GOING TO HAVE TO RECUSE  
14 MYSELF. YOU ALL HAVE TO RETRY THE CASE.

15 MR. MCKENZIE: THANK YOU, YOUR HONOR. DO YOU WANT ME  
16 TO PREPARE AN ORDER, OR WILL THE COURT PREPARE ONE? OR--

17 THE COURT: I'LL PREPARE ONE.

18 MR. MCKENZIE: THANK YOU, YOUR HONOR.

19 MR. MCLAREN: DO YOU WANT US TO ADDRESS THIS?

20 THE COURT: IF YOU ALL WANT TO MAKE ANY KIND OF MOTION  
21 ON THERE, I JUST DON'T THINK THERE IS ANYTHING I CAN DO, BECAUSE I  
22 DID NOT THINK ABOUT THAT BEFORE THE TRIAL. I WILL SAY THIS -- WE DON'T  
23 NEED TO GO ON THE RECORD FOR THIS--

24 (THERE WERE SOME COMMENTS  
25 MADE OFF THE RECORD)

1 MR. MCLAREN: YOUR HONOR, IF I UNDERSTAND THE RULES, THEY  
2 HAVE TO SHOW BIAS OR PREJUDICE, AND THEY HAVE SHOWN NEITHER. YOUR  
3 HONOR HAS INDICATED THAT YOU DIDN'T KNOW -- HAVE A CONSCIOUSNESS  
4 OF ANY DEALINGS I HAD WITH YOUR HUSBAND OR HIS PARTNER WHEN YOU  
5 TRIED THE CASE.

6 OBVIOUSLY, YOU DID SO WITHOUT BIAS OR PREJUDICE, NONE HAS BEEN  
7 ALLEGED OR PROVEN, AND I WOULD RESPECTFULLY QUESTION -- WHEN  
8 YOU CONSIDER WE TRIED THIS CASE AT GREAT COST TO THE PARTIES, AND  
9 THE RULING HAS BEEN -- THE INSTRUCTIONS FOR THE RULING HAVE BEEN  
10 ISSUED, AND I WOULD RESPECTFULLY ASK THAT YOU RECONSIDER THAT.

11 IT'S -- YOU HAD A CONSCIOUSNESS OF IT, MAYBE, BUT THERE WAS  
12 NO BIAS OR PREJUDICE, NOR HAVE THEY ALLEGED ANY, AND MY UNDER-  
13 STANDING OF THE LAW, WHICH IS CITED IN OUR MEMO, THEY'VE GOT TO SHOW  
14 BIAS AND PREJUDICE, WHICH THEY HAVEN'T. NOR HAVE THEY ALLEGED IT.

15 MR. WARNER: THE PROBLEM IS THAT THEY MADE A MOTION  
16 FOR 59, 50 AND 60--

17 THE COURT: WELL, I'M NOT GRANTING THEIR MOTION.

18 MR. WARNER: I UNDERSTAND.

19 THE COURT: BUT, AS I AM NOT SUPPOSED TO -- I MEAN, I  
20 UNDERSTAND THE CANONS, AND IF I HAD THOUGHT ABOUT THIS ON THE  
21 FIRST DAY OF TRIAL, I WOULD HAVE DISCLOSED IT AND SAID, YOU ALL  
22 NEED TO FIND ANOTHER JUDGE.

23 I DID NOT THINK ABOUT IT. I HEARD THE CASE, I DECIDED THE CASE.  
24 WHEN YOU SENT ME THAT MOTION, I THOUGHT IT WAS A FRIVOLOUS MOTION,  
25 AND I WAS TALKING TO MY HUSBAND ABOUT IT AND HE SAID, DID YOU THINK

1 ABOUT THIS? YOU KNOW, AND I JUST -- I MEAN, I JUST DO NOT THINK IN  
2 GOOD CONSCIENCE -- I MEAN, THAT IS NOT A SMALL AMOUNT OF MONEY, AND  
3 IT WAS A FEW YEARS AGO, BUT, STILL -- AND IT'S SOMETHING THAT I DON'T  
4 THINK WOULD PREJUDICE ANY JUDGE, BUT IT STILL SHOULD HAVE BEEN  
5 DISCLOSED; AND, I CAN'T, AT THIS POINT, REMEDY THAT.

6 IT SHOULD HAVE BEEN DISCLOSED, I DIDN'T THINK ABOUT IT, SO I  
7 DIDN'T DISCLOSE IT. I DON'T SEE HOW I CAN REMEDY IT.

8 MR. WARNER: WELL, JUDGE, I THINK THE ISSUE IS WHETHER  
9 THAT AFFECTED YOUR DECISION OF THIS CASE. I MEAN, THERE'S A LOT OF  
10 THINGS THAT GO ON IN THE WORLD THAT MAYBE SHOULD HAVE DISCLOSED;  
11 BUT, NOBODY HAS ALLEGED THAT ANY OF THIS HAS AFFECTED YOUR OPINION.  
12 THEY HAVE NOT -- NO AFFIDAVIT WAS FILED -- I UNDERSTAND YOU DENIED  
13 THEIR MOTION, BUT THE FACT IS IF YOU HADN'T -- BEFORE THE FACT, IF IT  
14 DID NOT AFFECT YOUR DECISION, WE'VE GOT A THREE-DAY CASE HERE THAT,  
15 IF WE NEED TO REDO, I MEAN, IT'S GOING TO BE AN EXTREMELY -- I MEAN  
16 OUR CLIENT HAS NOW MOVED TO COLORADO, AND IT IS A SUPER HUGE  
17 PROBLEM.

18 IF WE NEED TO RETRY IT, WE'LL RETRY IT, BUT, IF YOUR HONOR TOOK  
19 THIS CASE ON AND DECIDED IT WITHOUT THAT IN THE BACK OF YOUR MIND,  
20 I DON'T KNOW WHERE THERE IS AN ISSUE ABOUT DISQUALIFICATION. I  
21 DON'T KNOW WHETHER THERE IS AN ISSUE ABOUT DISCLOSURE, TO BE VERY  
22 FRANK WITH YOU.

23 THE COURT: I MEAN, IF YOU ALL WANT TO DO SOME RESEARCH  
24 ON IT, I'LL BE GLAD TO LOOK AT SOME RESEARCH, BUT I JUST DON'T THINK --  
25 I THINK IT SHOULD HAVE BEEN DISCLOSED; I DIDN'T THINK ABOUT IT, I DIDN'T

1 DISCLOSE IT, AND I DON'T SEE HOW I CAN REMEDY THAT.

2 I THINK THAT -- YOU KNOW, I MEAN, FRANKLY, I THINK THAT I'M DOING  
3 THE WRONG THING FOR BOTH OF YOUR CLIENTS. I THINK IT WAS AN UNBIASED  
4 RULING, AND IT'S GOING TO END UP COSTING BOTH OF YOUR CLIENTS MORE.  
5 AND, I FEEL -- YOU KNOW, I FEEL BAD ABOUT IT, BUT I'VE GOT TO FOLLOW THE  
6 RULES, AND I JUST--

7 MR. WARNER: I'M JUST--

8 THE COURT: I UNDERSTAND THAT, PERHAPS, IF -- IN OTHER  
9 WORDS, IF YOU ALL APPEALED IT, YOU ALL WOULD HAVE TO SHOW BIAS.

10 MR. MCKENZIE: RIGHT.

11 THE COURT: I DON'T THINK YOU COULD. I MEAN, I THINK IT'S  
12 A RULING THAT BASICALLY ANY JUDGE WOULD MAKE, BUT I CAN'T GO BACK  
13 AND DISCLOSE THIS.

14 MR. MCKENZIE: YES, MA'AM. AND, YOUR HONOR, HAD MY  
15 CLIENT KNOWN ABOUT THIS -- WE DIDN'T KNOW THERE WAS ANY ASSOCIATION  
16 AT ALL -- I DIDN'T KNOW YOUR HUSBAND EVEN PRACTICED LAW, AND DIDN'T  
17 KNOW YOUR HONOR; AND, YOU KNOW, HAD WE KNOWN THAT, ANY  
18 ASSOCIATION WITH MR. MCLAREN, WE WOULD HAVE ASKED THAT YOU RECUSE  
19 YOURSELF.

20 THE COURT: AND, I THINK THEY HAVE THAT RIGHT.

21 MR. MCKENZIE: THANK YOU, YOUR HONOR.

22 MR. MCLAREN: YOUR HONOR, IN OUR MEMO THAT I HANDED  
23 UP -- AND I WOULD APPRECIATE IT IF YOU WOULD TAKE THE TIME TO READ  
24 IT BEFORE YOUR HONOR MAKES UP YOUR FINAL MIND -- MAKE YOUR FINAL

00138 25 DECISION IN THAT -- I THINK AT THE BOTTOM OF PAGE 10 AND 11, CITING

1 THE ARNELL (PHONETIC) CASE, IT'S NOT ENOUGH FOR A PARTY SEEKING  
2 DISQUALIFICATION TO SIMPLY ALLEGE BIAS, THEY MUST SHOW SOME  
3 EVIDENCE OF BIAS; AND, IN HERE THEY HAVEN'T.

4 THE COURT: BUT, YOU UNDERSTAND, I'VE DENIED THEIR  
5 MOTION?

6 MR. MCLAREN: RIGHT; I UNDERSTAND THAT.

7 THE COURT: AND I'M--

8 MR. MCKENZIE: THIS IS A MOTION FROM THE COURT, YOUR  
9 HONOR; IS THAT CORRECT?

10 THE COURT: CORRECT.

11 MR. MCKENZIE: SUA SPONTE.

12 MR. MCLAREN: THIS HAS, OBVIOUSLY, A DIFFERENT TWIST TO IT,  
13 AND IF WE COULD HAVE THE OPPORTUNITY TO BRIEF THAT--

14 THE COURT: I'LL BE GLAD TO LOOK AT ANYTHING, BUT I'LL  
15 TELL YOU, I'VE BEEN -- I HAVE LOOKED AT THE RULES OVER AND OVER,  
16 BECAUSE I FEEL LIKE I REALLY HAVE DONE A DISSERVICE BY NOT DISCLOSING  
17 THIS AND CAUSING YOUR CLIENTS TO HAVE TO GO THROUGH ANOTHER TRIAL.  
18 I WISH--

19 MR. MCLAREN: AND, THE CASE YOU ARE REFERRING TO WAS --  
20 YOUR HUSBAND WAS NOT DIRECTLY INVOLVED IN, THAT WAS HIS LAW  
21 PARTNER.

22 THE COURT: I KNOW.

23 MR. MCLAREN: LON SHULL, AND THAT WOULD CERTAINLY  
24 BE AN INDIRECT BENEFIT AS A MEMBER OF THE FIRM, BUT I JUST THINK THAT'S  
25 AN UNRELATED ISSUE.



1 THE COURT: IT CERTAINLY IS UNRELATED. I MEAN, IF YOU  
2 CAN SHOW ME SOMETHING THAT WOULD MAKE ME FEEL LIKE THAT I SHOULD  
3 SIGN THIS ORDER, I'LL DO IT, BUT--

4 MR. MCLAREN: CAN WE HAVE A WEEK OR SO TO GET TOGETHER  
5 ANOTHER MEMO FOR YOU? WE'RE CLOSED TOMORROW.

6 THE COURT: SURE; I'M ON VACATION NEXT WEEK, BUT--

7 MR. WARNER: WILL A WEEK FROM MONDAY BE ALL RIGHT?

8 THE COURT: UM-HUM.

9 MR. MCKENZIE: THANK YOU, YOUR HONOR.

10 (THEREUPON, THE FOREGOING  
11 HEARING WAS ADJOURNED.)

00140

CERTIFICATE OF REPORTER

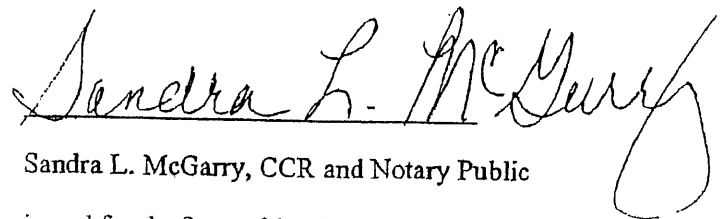
STATE OF SOUTH CAROLINA )

COUNTY OF SUMTER )

I, Sandra L. McGarry, official Court Reporter for the State of South Carolina and Notary Public in and for the State of South Carolina at Large, hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the requested proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Sumter County, South Carolina, on the 14th day of April 2006.

**I FURTHER CERTIFY** that I am neither kin, counsel, nor interest to any party hereto, nor am I financially interested in said cause.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and Seal at Columbia, South Carolina, this 9th day of May 2006.



Sandra L. McGarry, CCR and Notary Public

in and for the State of South Carolina.

My Commission expires 09/26/15.

00141

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

WILLIAM R. SIMPSON, JR.,

Plaintiff,

vs.

BECKY H. SIMPSON,

Defendant.

) IN THE FAMILY COURT OF THE

) THIRD JUDICIAL CIRCUIT

) DOCKET NUMBER: 2004-DR-14 - 243

S U M M O N S

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 AUG 2 PM 3 00


TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the Plaintiff, or his/her attorney(s) Johnson, McKenzie & Robinson, at their offices, 16 N. Brooks Street, Manning, South Carolina 29102, within thirty (30) days after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Complaint.

Dated at Manning, South Carolina

this 29<sup>th</sup> day of July, 2004

JOHNSON, MCKENZIE & ROBINSON, LLC

  
SCOTT L. ROBINSON  
ATTORNEY FOR PLAINTIFF  
16 NORTH BROOKS STREET  
MANNING, SC 29102  
(803) 435-0909

00142

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NUMBER: 2004-DR-14-243

WILLIAM R. SIMPSON, JR., )  
Plaintiff, )

vs. )

BECKY H. SIMPSON, )  
Defendant, )

COMPLAINT

BEULAH C. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, S.C.  
2004 AUG 2 PM 3 00

That the Plaintiff by this his complaint would respectfully show unto this Honorable Court as follows:

1. The Plaintiff is a citizen and resident of the County of Clarendon, State of South Carolina and has been for more than one year prior to the commencement of this action. The Defendant is a citizen and resident of the County of Clarendon, State of South Carolina and has been for more than one year prior to the commencement of this action.
2. The Plaintiff and Defendant are husband and wife having been married on September 3, 1989, in Clarendon County. This Court has jurisdiction over the parties and the subject matter.
3. The parties have two (2) children, to wit: William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 26, 1995. No other children have been born and none are expected.
4. The parties separated on July 27, 2004, and intend to live separate and apart hereafter. The Plaintiff is informed and believes that he is entitled to a Decree of Separate Maintenance and Support.
5. The Plaintiff is informed and believes that the parties have entered into a written Property and Separation Agreement dated July 30, 2004 that resolves all issues arising out of the

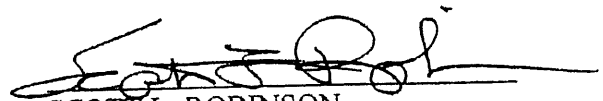
00143

marriage, save and except the issue of Divorce, and requests that said Agreement be approved by this Court and incorporated into the Decree of Separate Maintenance and Support.

WHEREFORE, having fully set forth his grounds for relief, the Plaintiff prays that this Court inquire into the matters alleged herein and issues its Order granting the following relief:

1. For the written Property and Separation Agreement of the parties dated July 30, 2004 be approved by this Court and that a Decree of Separate Maintenance and Support be granted incorporating said agreement of the parties.
2. For such other and further relief as the Court deems just and proper.

JOHNSON, MCKENZIE & ROBINSON



SCOTT L. ROBINSON  
ATTORNEYS FOR PLAINTIFF  
16 NORTH BROOKS STREET  
MANNING, SC 29102  
TEL: (803) 435-0909

Manning, South Carolina  
July 29, 2004

STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

VERIFICATION

Personally appeared before me, WILLIAM R. SIMPSON, JR., who, being duly sworn, says:

(a) That this Deponent has read the allegations contained in the attached pleadings consisting of \_\_\_\_ pages.

(b) That the attached pleadings were prepared by this Deponent's attorney based upon information this Deponent has personally furnished to said attorney.

(c) That the allegations contained in the attached pleadings are true and correct; and are based upon the personal knowledge of this Deponent, except for those allegations which are based upon this Deponent's information and belief and, as to those, this Deponent verily believes the same to be true.

(d) That this Deponent has authorized said attorney to file the attached pleading, to present the same to the Court, and secure any necessary Orders based thereon, and to secure service upon the adverse party of the attached pleading and necessary process based thereon.

SWORN TO before me this  
29th day of July, 2004.

Donna B. Nalley

NOTARY PUBLIC FOR THE  
STATE OF SOUTH CAROLINA

My Commission Expires:

3/29/05

William R. Simpson, Jr.  
WILLIAM R. SIMPSON, JR.

00145

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NO.: 04-DR-14- 243

WILLIAM R. SIMPSON, JR.,

Plaintiff,

vs.

BECKY H. SIMPSON,

Defendant.

PRO SE ANSWER

The Defendant, responding to the allegations of the Plaintiff's Complaint, states as follows:

1. The Defendant admits each and every allegation contained in the Plaintiff's Complaint.

2. The Defendant joins in the Plaintiff's prayer for relief.

WHEREFORE, having fully responded to the Plaintiff's allegations, the Defendant respectfully prays that the Court hold a hearing and issue its Order granting the relief sought in the Complaint and for such other and further relief as the Court deems just and proper.

  
BECKY H. SIMPSON

July 30<sup>th</sup>, 2004.

BEULAH G. FORTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 AUG 2 PM 3 02

00146

Defendant,

# PROPERTY AND SEPARATION AGREEMENT

BEULAH G. MCINTOSH  
CLERK OF DISTRICT COURT  
CLARENDON COUNTY, S.C.  
2009 AUG 2 2 PM  
N, hereinafter

4. The husband and wife intend, and it is the purpose of this Property and Separation Agreement, to make a complete and final settlement of all claims that the parties may have against

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00147



each other, alimony and/or support, or any maintenance, and to finalize their agreement as to division of property, of every nature and description, owned by them jointly, or either of them individually, and the settlement of all issues arising out of the marital relationship of the parties and/or all matters dealt with in this Agreement.

5. The husband is presently represented by counsel, Scott L. Robinson, of the Clarendon County Law Firm of Johnson, McKenzie & Robinson. The wife is not represented, however, she realizes she has the right to retain counsel and she waives her right to counsel. Further, the wife asserts that she has had ample opportunity to review this Property and Separation Agreement with an attorney if it was her desire, however, she does not desire to review it with counsel, and she fully understands the ramifications of same. The wife understands that Mr. Robinson represents only the husband and the wife has the right to counsel should she so desire.

6. The husband and wife both affirmatively assert that in the negotiation and execution of this Agreement, each has made a full financial disclosure, one to the other, of all aspects of the entire marital situation, and it is based upon the full financial disclosures on which the husband and wife each have relied, that this Agreement is entered into.

7. This Agreement is intended by the husband and wife to be a binding determination of the issues set forth herein, and the husband and wife each fully realize their respective rights and obligations hereunder.

8. The husband and wife each hereby acknowledge that this Agreement was entered into freely and voluntarily by and between them, without duress or threat to the husband or wife.

9. The husband and wife request that this Agreement be submitted to the Family Court for the Third Judicial Circuit for approval, and that if same be approved, then the said Agreement

is to be made an Order of the Court. It is the intention of the parties that the Family Court of the Third Judicial Circuit retain jurisdiction hereof, including the jurisdiction to enforce the affirmative acts required of the husband and wife, or either of them, by Contempt or by such other proceedings as may be necessary to insure enforcement hereof. Should a Decree of Divorce or Separate Maintenance be granted to either the husband or wife by this Court, or any other Court of competent jurisdiction, the Agreement, if approved, shall vest said Court with full jurisdiction for all purposes.

NOW, THEREFORE, in consideration of the mutual and binding covenants and agreements of the parties, which are set forth hereinafter, and in addition thereto of the good and valuable considerations, receipt of which is hereby acknowledged by each party with adequacy of the consideration set forth in the terms of this Agreement, the parties hereto do hereby agree as follows:

1. **LIVING SEPARATE**: The parties may and shall hereafter live separate and apart. Each party shall hereafter reside at such place or places as he or she may select.

2. **NO MOLESTATION OR INTERFERENCE**: Neither party shall molest nor interfere with the other, nor compel or attempt to compel the other to cohabit or dwell with him or her by any means whatsoever by legal action or otherwise.

3. **CUSTODY**: The parties shall share joint custody of their children. The parties' daughter will reside with the mother and the parties' son will reside with the father. The children will be allowed to visit the other parent freely and liberally and come and go between the residences of the parents as they please.

4. **CHILD SUPPORT**: The husband shall be responsible for payment of all school expenses and clothing for the parties' children for a period of 12 months commencing on August 1, 2004 and continuing through July 31, 2005. In addition, the Husband shall pay the Wife the sum

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CBH

of \$300.00 per month in child support for the support of the parties' minor daughter until such time as the daughter attains the age of 18. The husband shall also be responsible for payment of the private school tuition for the parties' minor children so long as they are enrolled in a private school.

5. **REHABILITATIVE ALIMONY:** The husband shall pay rehabilitative alimony to the wife in the amount of \$450.00 per month for 40 months, beginning August 1, 2004 and payable directly to the Wife on the 1st day of each month thereafter until January 31, 2008. Both parties waive their right to receive any additional alimony of and from the other party upon the expiration of the period of rehabilitative alimony.

6. **PERSONAL PROPERTY:** All property will be divided between the parties to their mutual satisfaction. Each party shall keep their own personal property. The wife will receive whatever furniture and personal property she desires from the marital home and the remainder will stay with the husband. The parties shall retain the possession of the vehicles currently in their possession. The husband shall be responsible for payment of 1 tank of gas per week for the wife's GMC Yukon, payment of taxes, insurance, payments and maintenance on said vehicle for a 12 month period, beginning August 1, 2004. At the end of the 12 month period, the wife shall receive the title to the vehicle and will then be responsible for the taxes, insurance, maintenance and payments thereon.

7. **TAXES:** The parties shall file separate income tax returns for the 2004 tax year. The parties will each claim one child as a dependant for the 2004 tax year and for every year to follow.

8. **REAL PROPERTY:**

A. **MARITAL HOME:** The wife will enjoy the exclusive use and possession of the marital home for a period of 12 months, beginning on August 1, 2004. During this 12

month period, the husband will be responsible for payment of the house payment, light bill, phone bill, hazard insurance on the home and property taxes on the home. At the end of the 12 month period the wife shall receive the sum of \$22,500.00 within 10 days of the expiration of the 12 month period. In addition, the wife shall receive annual payments of \$5,000.00 beginning November 1, 2006 and continuing on the first of November of each year through November 1, 2008. These payments represent the value of any interest or equity the wife may claim in the marital home. Thereafter, the husband shall have the exclusive use, ownership and possession of the marital home and shall be responsible for all indicia of ownership for the home and shall indemnify and hold the wife harmless therefrom.

B. FARM LAND: Each child of the parties shall receive 25% interest in the following farm property when they attain the age of 18: Clarendon County tax map parcel numbers: 128-00-00-34, 090-00-03-016-00, 089-00-00-017, 089-00-00-018, 089-00-00-019, 089-00-00-014, 089-00-00-025, and 089-00-00-026; Sumter County tax map parcel numbers: 257-00-03-2-020, 258-00-01-003, and 214-00-01-007. The wife waives any and all other interest in the farm property.

C. HOME SPOT: The husband shall provide the wife with a one acre tract of land upon which to build a home and reside with the parties' minor daughter. Provided, however that should the wife re-marry or co-habitate with another man, the wife shall sell her home to the husband at appraised value and shall immediately move to another location. The parties agree that this home spot shall be on Home Branch Road where Robbie Giddens currently resides if available. In the event said location is not available, husband will make every effort to provide a one acre site as close to that location as is possible.

WRS  
JR

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9. **DEBTS AND OBLIGATIONS:** Each party shall pay all debts in their name incurred by him or her before or after the date of this Agreement and shall indemnify and hold harmless the other party against any responsibility or liability therefor.
10. **EXECUTION OF NECESSARY INSTRUMENTS:** The parties in each and every event shall hereafter execute all instruments necessary to carry out the terms of this Agreement.
11. **RELEASE:** Both parties hereby release and discharge the other for themselves, their heirs, their personal representatives and assigns, as well as any known or potential third parties, of and from all manner of actions, causes of actions, suits, debts, counts, judgments, claims and demands whatsoever in law or equity (except any debts or obligations specifically assumed by either party pursuant to these agreements) which occurred or may have occurred at any time during the marriage and through the date of the approval of these agreements.
12. **COURT APPROVAL OF AGREEMENT:** The parties hereto agree that this Agreement shall be submitted to the Court for approval, and if approved, shall be incorporated and merged with the Order of the Court.
13. **BINDING EFFECT:** This Agreement shall be binding upon the parties, their respective heirs, executors administrators, and assigns, and shall in any event be governed by the laws of the State of South Carolina.
14. **EFFECT OF DIVORCE:** This Agreement shall not be construed in any measure as a consent or condemnation for divorce in favor of either party, nor shall it be a bar to any action or proceeding for divorce to be hereinafter instituted; it is a Property and Separation Agreement, which is contractual in nature and intended as a binding settlement of the parties rights, duties, and responsibilities regarding all matters dealt with herein. Should a judgment or Decree of Divorce for

00152

WRS  
JR.      [Signature]

separate maintenance be entered in any Court with competent jurisdiction in any proceeding currently pending or in the future, then this Agreement shall be submitted to the Court as a Property, Separation and Support Agreement and Stipulation to be incorporated and merged with any judgment for Decree of Divorce or separate maintenance entered between the parties.

15. **WAIVER OF REVIEW OF THE PROPERTY AND SEPARATION AGREEMENT:** The husband and wife acknowledge that according to the S. C. Code Ann. (1976, as amended), the Court has a right, duty, and/or obligation to review the Property and Separation Agreement at a hearing on the merits of an action for divorce between the parties; both parties specifically waive the right, duty and/or obligation for the Court to review this Property and Separation Agreement at a hearing on the merits of an action for divorce, which may be later instituted between the parties, and both parties specifically consent to being bound by the Property and Separation Agreement without further review, modification, and/or scrutiny by the Court.

16. **RELEASE OF ESTATE RIGHTS:** Each party waives the right to share in the estate of the other party and specifically waives the right to any elective share of the estate of the party to which they otherwise may be entitled.

17. **MODIFICATION OF AGREEMENT:** The provisions of this Agreement shall not be modified or changed except by mutual consent and agreement of the parties expressed in writing or by Court Order. Nothing in this paragraph is to be construed to prohibit either party from petitioning the Court for an increase or decrease in the child support obligations of the parties as permitted pursuant to the statute and case laws of the State of South Carolina.

18. **SEVERABILITY:** Should one or more provisions of this agreement become null and void, all remaining provisions shall remain in full force and effect.

WRS  
Jr.

CHS

19. ATTORNEYS FEES: Each party shall be responsible for any and all attorney's fees and costs incurred by that party pursuant to this matter.

WHEREFORE, we subscribe our names to the end of this instrument consisting of 8 typewritten pages on one side only of each page and for the purpose of identification, we have subscribed our initials on the bottom of each preceding page on the date as herein below indicated.

DATED AT MANNING, SOUTH CAROLINA THIS 30TH DAY OF JULY, 2004.

WITNESSES:

Deanna B. Nally  
Eot S. B. S.

William R. Simpson Jr.  
WILLIAM R. SIMPSON JR.

WITNESSES:

Deanna B. Nally  
Eot S. B. S.

Becky H. Simpson  
BECKY H. SIMPSON

00154

WRS. BNS

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

IN THE FAMILY COURT, OR THE  
THIRD JUDICIAL CIRCUIT

DOCKET NO: 2004-DR-14-243

WILLIAM R. SIMPSON, JR.,  
Plaintiff,  
vs.  
BECKY H. SIMPSON,  
Defendant.

**MOTION INFORMATION AND  
COVER SHEET**

Defendant's Attorney: Jan L. Warner, Esquire  
Bar No: 5947  
Address: P. O. Box 2628, Cola, SC 29211  
Phone: 803-799-0554 Fax: 803-799-2517  
E-mail: janwarner@janwarner.com

Plaintiff's Attorney: Scott L. Robins  
Bar No:  
Address: P.O. Box 138  
Phone: 803-435-8894  
E-Mail:

BEULAH  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 SEP 21 PM 12 43

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I & III)  
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Vacate order Court Reporter Needed ☐ Yes / ☐ No

**SECTION II: Motion Type**

- ☒ Written motion attached  
☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

7/20/04  
Date Submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$25

- ☐ Exempt: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency vs. Indigent Party ☐ Sexually Violent Predator Act  
☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed Order submitted at request of Court or reduced to writing from motion made in open  
Court per judge's instructions. Name of Court Reporter: \_\_\_\_\_  
☐ Other: Petition for Guardian *ad Litem*

**JUDGE'S SECTION**

- ☐ Motion Fee to be paid upon filing of the  
attached Order  
☐ Other: \_\_\_\_\_

JUDGE

Code: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_



STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR )

Plaintiff, )

Vs. )

BECKY H. SIMPSON )

Defendant )

IN THE FAMILY COURT FOR THE  
ELEVENTH JUDICIAL CIRCUIT

DOCKET NO: 2004-DR-14-243

MOTION TO VACATE  
ORDER AND SET ASIDE  
AGREEMENT

BEULAH G. STANFORD  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 SEP 21 PM 12 43

To Scott L. Robinson, attorney for Plaintiff above named:

YOU WILL PLEASE TAKE NOTICE THAT pursuant to Rule 60 (b)(1), (2) and (3), South Carolina Rules of Civil Procedure, Defendant by and through the undersigned counsel, hereby moves for the issuance of an order relieving Defendant from and vacating the Decree of Separate Maintenance and Support dated August 20, 2004 and filed August 24, 2004 (Exhibit 1) and setting aside purported Property and Separation Agreement dated July 30, 2004 that was purportedly approved by that Order (Exhibit 2).

The grounds for this Motion are that the foregoing agreement and order were procured by and through fraud and misrepresentation on Defendant and this Court, together with other misconduct based upon which Defendant, through excusable neglect, signed an agreement while she was undergoing psychotherapy and taking medications and without receiving full financial disclosure, and likewise allowed an order to be issued for the same reasons. Defendant has now secured counsel and evidence of which she was not aware previously and which prevented her from moving for reconsideration under Rule

59. 00156

This Motion is also based upon the grounds that Rule 20, SCRFC was not complied with; that Plaintiff and Defendant were not physically separated and were cohabitating in the same home at the time the agreement was signed and at the time the order executed, together with the attached affidavit and Exhibits and such other grounds as may be apparent at the hearing of this matter.

### **PARTIES AND JURISDICTION**

1. Becky H. Simpson (Wife) married William R. Simpson, Jr., on September 3, 1989 when she was 17 years of age.

2. Two (2) children were born of this marriage, William Robert Simpson, III on July 30, 1991 and Lynda Kaitlin Simpson on June 26, 1995.

3. Wife and Husband physically separated on or about August 6, 2004, not on July 27, 2004 as fraudulently stated in that agreement.

4. In early 2004, Wife was diagnosed with a bipolar mental disorder which has been exacerbated over the years by Husband's continuous intimidation and placing stress on her. Wife has been taking a number of medications including, but not limited to Depocote, Risperdal and Welbutrin, and was taking the same at the time the agreement was signed and when she was before this Court.

5. Husband removed Wife from the family health insurance in early 2004, telling Wife she was "breaking him" because of her needs for treatment and medications.

6. Since that time, Wife has been going to the Mental Health Clinic in Manning, South Carolina where she is on a low-income plan that provides her with free medication because Husband would not pay for the same. Previous

00157

for the same reasons, her family physician was been getting samples of medication for her because Husband has failed and refused to provide insurance and funds for her to secure necessary treatment and medication.

7. Throughout the marriage, Husband has caused Wife to be totally dependent upon him, has not shared any information about his holdings, has berated her, intimidated her, placed undue stress upon her, and has made her life miserable. Early in the marriage he rubbed her face in chicken excrement to teach her who was boss, and the relationship continued in that fashion since that time.

8. Despite her efforts to become educated and employed (she married husband at age 17), Husband has refused to be supportive of her, in order to keep her under his thumb and dependent upon him financially and otherwise. She worked at Clarendon Hall, first in the lunchroom and then as a preschool teacher for three year olds.

9. Husband has taken control of both of the children of this marriage and turned them against the Wife, just as Husband directed Wife to turn the children against their paternal grandmother, Daisy Simpson, after Daisy Simpson brought a matrimonial action against the Husband's father and Husband that is pending in this Court, Docket Number 03-DR-14-128.

10. The situation between Wife and Husband reached intolerable limits on or about the 27<sup>th</sup> or 28<sup>th</sup> of July, 2004 at which time Wife told Husband she wanted him out of the house. Since Wife had no money and Husband refused to provide funds to her, she was unable to secure independent counsel. Husband told Wife his attorneys, who not only represent him in this action, but also



represent him and his father in the Daisy Simpson action, would prepare the agreement.

11. Therefore, while they were still living together in the same house as Husband and Wife, Husband caused Wife to go to his lawyer's office on or about July 30, 2004, knowing she was dependent, had no money with which to hire an attorney, was heavily medicated and vulnerable, and would sign anything to be out from under Husband's control. In addition, Husband's attorneys knew that Wife had been diagnosed with a bipolar mental illness and was heavily medicated as, when Daisy Simpson's lawyers attempted to depose her herein in 03-DR-14-128, Husband's attorneys secured a physician's statement attesting to her instability (Exhibit 3) and represented to counsel that Defendant could not appear at deposition on at least two occasions (Exhibit 4).

12. Despite Wife's condition, Husband and his lawyer met Wife and her grandfather at Husband's lawyer's office and, for three and a half (3.5) to four (4) hours, provided various drafts of agreements to Wife for her to sign and intimidated and threatened her.

13. Wife had absolutely no knowledge of Husband's holdings, income, or debts, even though she contributed her services and funds and efforts to the relationship since they married on September 3, 1989.

14. Husband's counsel also knew that Husband and Wife were still living together under the same roof at the time the Agreement was signed.

15. Page 1, Paragraph 3 of the Agreement, falsely states that Husband and Wife "...are no longer living together and they never intend to reside together again. The Husband and Wife last resided together as Husband and Wife on or



about July 27, 2004." This representation is false and was known by these parties and Husband's counsel to be false when the Agreement was prepared and signed by the vulnerable, unrepresented Wife.

16. Wife had no money with which to hire an attorney, and was never told that if she brought an action against Husband, based upon her economic and circumstances, the Court could award her temporary and permanent attorney's fees and suit money.

17. Paragraph 5, Page 2 of the Agreement falsely represents that Wife had an opportunity to review the Agreement with a lawyer of her choice but chose not to do so, as Wife did not have the funds to hire counsel and was not offered funds with which to do so. In addition, Wife asserts that Mr. Robinson knew about her medication and illness during the discovery process in the Daisy Simpson case when her deposition was put off twice because of "instability."

18. As of July 30, 2004, Wife had never seen a financial statement or financial declaration of her Husband. While she signed tax returns, she did not understand the same and was not given copies. Wife did not know her Husband's income, and did not know the extent of his holdings at the time the agreement was signed on July 30, 2004 or on when the Court held the approval hearing on August 3, 2004. Therefore, the assertion in Paragraph 6 that both Husband and Wife had full financial disclosures is false. Wife did not receive any financial disclosure and therefore could not have relied upon the same, and Wife never prepared or was furnished with a financial declaration that is mandatory pursuant to Rule 20, SCRFC.

19. Wife's mental condition, her medication, and the stress placed on her by Husband made it impossible for her to freely and voluntarily enter into Agreement. This is especially true in light of knowledge of Husband and his attorney who asserted Wife's mental instability just months before July 30, 2004 when they represented that Wife was not capable of testifying at a deposition because of her mental condition and that placing stress on Wife caused her condition to deteriorate. Wife's vulnerability made it impossible for Paragraph 8, -- which asserts that it was entered into freely and voluntarily -- to be accurate.

20. Wife was told that by Husband's attorney that she would not be required to complete any documents or appear before the Court if she signed a "Pro Se Answer" (Exhibit 5, prepared by Plaintiff's attorney) and accepted service and signed a Waiver of Notice on July 30, 2004 (Exhibit 6), by which she purportedly consented to the matter being heard as quickly as possible without her presence, and purportedly waived her thirty (30) day time period in which to file an answer.

21. Wife was told that Plaintiff's attorney, Mr. Robinson, had a hearing scheduled before Judge McFadden in Sumter, South Carolina on August 3, 2004, and that the agreement could be approved on that date without Wife being present. However, Wife was called in the early afternoon of August 3, 2004 by her Husband and told to come to Sumter, South Carolina, as the Judge wanted her at the hearing.

22. At the time of the hearing, Wife was handed a document entitled "Financial Declaration of William R. Simpson, Jr." dated August 3, 2004 (Exhibit 7) for the first time. This document reflects that Husband has holdings of

\$706,235.00, including a half-interest in W.R. Simpson Farms, LLC, which was valued at \$397,400.00 pursuant to "W.R. Simpson Farms, LLC from Tracy Amos Marital Addendum" as of March 14, 2003. This is the same document introduced in the Daisy Simpson trial earlier this year.

23. Wife did not know that her Husband's worth exceeded \$700,000.00, and is informed that the properties titled in W.R. Simpson Farms, LLC were transferred to Husband based upon his labor during the marriage that was not reported as income. Husband, whom wife has now learned never reported much income, was given property instead of income, and therefore W.R. Simpson Farms, LLC is marital property to which Wife is entitled to equitable division. Further, she believes that Husband was provided additional income and funds by his father, William R. Simpson, Sr., and used the same to purchase property titled in his name.

24. Wife did not know until she walked into the courtroom on August 3, 2004 -- and did not have time to digest the same -- that Husband was reporting income of only \$1,730.76 per month, while asserting expenses of \$4,250.00 per month, including \$790.00 for a house payment, \$750.00 for child support and temporary alimony, and \$400 for private school. These three (3) entries total \$1,840.00 and, in and of themselves, exceed Husband's asserted monthly income as stated, and which Wife believes is fraudulent. Based on information now in possession of Wife, she believes that assets and money are being moved from her father-in-law to her husband without being reported on tax returns.

25. The July 30, 2004 Property and Separation Agreement approved by the Court is not fair or equitable in any respect, and Wife was intimidated and

forced to execute the same due to her vulnerability. For example, Husband agreed for Wife to have a separate house only a stone's throw from their residence, so Husband could continue to keep her under his thumb. Of more than \$700,000.00 in assets acquired by Husband, Wife is to receive approximately 5 percent (5%) which is totally unreasonable and far from equitable.

26. Since the Agreement was signed, both children have been asking the Wife regularly where she was, what she had been doing, and whom she had been seeing, questions unlike they had ever asked before.

27. Knowing that the Honorable R. Wright Turbeville, Judge of this Court, has been hearing the case of "Daisy Simpson vs. William R. Simpson, Jr., William R. Simpson. Sr., W.R. Simpson Farms, LLC," Husband and his attorney knew they could not go to Judge Turbeville to secure an approval of this Agreement that affects assets at issue in that proceeding. The property that this Agreement purports to affect is subject to a restraining order issued by Judge Turbeville on April 3, 3003, which was well known to Husband and his attorney. . Specifically, on page 5 of a purported final agreement between Husband and Wife that was prepared by Mr. Robinson and approved by this Court, Husband agreed as follows:

B. FARM LAND: Each child of the parties shall receive 25% interest in the following farm property when they attain the age of 18; Clarendon County tax map parcel numbers: 128-00-00-34, 090-00-03-016-00, 089-00-00-017, 089-00-00-018, 089-00-00-019, 089-00-00-014, 089-00-00-025, and 089-00-00-026; Sumter County tax map parcel numbers: 257-00-03-2-020, 258-00-01-003, and 214-00-01-007. The wife waives any and all other interest in the farm property.



C. HOME SPOT: The husband shall provide the wife with a one acre tract of land upon which to build a home and reside with the parties' minor daughter. Provided, however that should wife re-marry or co-habitate with another man, the wife shall sell her home to the husband at appraised value and shall immediately move to another location. The parties agree that this home spot shall be on Home Branch Road where Robbie Giddens currently resides if available. In the event said location is not available, husband will make every effort to provide a one acre site as close as possible to that location as is possible..

28. The land in question was the subject of a restraining order issued in the Daisy Simpson Case. And therefore, instead of waiting for the hearing to be scheduled in Manning, South Carolina, Husband and his counsel caused the matter to be set on an emergency basis before the Honorable Judge George M. McFadden, Jr., not telling Judge McFadden that (1) Wife had mental disabilities, was unstable, and was taking medications, and (2) that the property listed in the Agreement as going to go to the children of this marriage when each attained age of 18 years was, in actuality, property in dispute in the Daisy Simpson case in which Husband is a party

29. When the matter was heard on August 3, 2004, Judge Turbeville was immediately down the hall from Judge McFadden, but was not told of this hearing, an effort by Husband and his counsel to get Judge McFadden to approve this Agreement that affects the outcome of other litigation now pending in this Court before Judge Turbeville without making such disclosure.

30. The Order and the Agreement were secured by fraud on the Court and fraud on the Wife, and should be set aside and vacated.

31. Wife demands that the Husband be required to reinstate her health insurance immediately, that Husband pay a reasonable sum of temporary

alimony, suit money, and attorneys fees in order for Wife to continue this action. Wife also requests that she be allowed to file and answer and counterclaim.

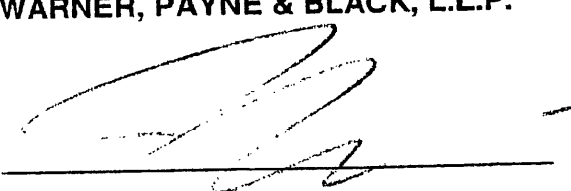
32. Wife should be granted discovery; Wife should be granted fees; and Wife should be granted access to her children as Husband has poisoned the minds of the children against her since. Wife requests access to the children at reasonable times, and requests that Husband be required to hire sitters for the children and not drop them off at the Buck-n-Bull Store where they are seen in the afternoons without appropriate supervision while Husband is working.

33. Due to the poisoning of these children against her, Wife insists that Husband be evaluated by a psychiatrist, and that the children be evaluated by a psychiatrist at the expense of the Husband.

34. Wife also requests that a Guardian ad Litem be appointed for the children by this Court.

35. Wife has no funds, and is entitled to an immediate hearing before this Court, and she requests that the hearing be held before Judge McFadden who issued the Order approving this Agreement.

**WARNER, PAYNE & BLACK, L.L.P.**



---

**Jan L. Warner**

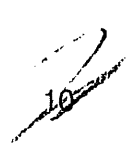
1122 Lady Street, Suite 1200

Post Office Box 2628

Columbia, South Carolina 29202

(803) 799-0554

Attorney for Plaintiff



00165

**McLAREN & LEE**

**James T. McLaren**  
1508 Laurel Street  
Columbia, South Carolina 29202  
(803) 799-3074  
Attorney for Defendant

Columbia, South Carolina  
September 19, 2004

**00166**

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

WILLIAM R. SIMPSON, JR.,

PLAINTIFF,

VS.

BECKY H. SIMPSON,

DEFENDANT.

) IN THE FAMILY COURT FOR THE  
) THIRD JUDICIAL CIRCUIT

) DOCKET NO.: 2004-DR-1-243

) AFFIDAVIT OF  
) BECKY H. SIMPSON

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Personally appeared before me Becky H. Simpson who, being duly sworn, says:

1. I am the defendant in this action

2. I have read the attached motion and each and every allegation stated therein is true and correct, and I incorporate the same into the terms of this affidavit

3. I had never known the specifics of my husband's holdings or finances as he did not discuss them with me. I have been subservient to my husband throughout our marriage.

4. Over the years, my husband has placed significant stress upon me which, I believe, has caused severe emotional upset to the extent that I am and have been undergoing treatment with my family doctor and with the local mental health center because my husband terminated my health insurance early this year, telling me that I was "breaking him." I have been diagnosed as being bipolar and have been getting my medications through a low-income program

00167

BJ  
9/19/04

with the local mental health center because my husband would not give me the money for my medications. Before getting on the free program, I received samples from my primary care physician.

5. My husband and I were not separated on July 27, 2004 as is set forth in the agreement, and I felt that if I didn't sign it, I would be forced continue to endure the threats and humiliation and intimidation from my husband, especially when I have been in a weak and vulnerable state and taking medications. Early in our marriage, my husband rubbed my face in chicken stool that was on the ground in our yard because I wanted to keep a small dog as a pet and he did not want me to have it, despite the fact that he has many hunting dogs.

6. My husband and I were residing in the same residence on the date the agreement was signed, and my husband was residing in the same residence with me on the date that I was called to come to court on August 3, 2004 in Sumter on very short notice by Scott Robinson, my husband's lawyer.

7. When I told my husband that I could not take it any more, he told me that I needed to get a lawyer, and I told him I could not afford to get a lawyer. He told me that we could go to his lawyer's office (Scott Robinson) and he would prepare an agreement for us. I married my husband at age 17. I have a high school diploma. I have no education after high school. I worked at Piggly Wiggly as a cashier for a year or year and a half when our son was a baby. After our daughter turned four, I went to work at Clarendon Hall in the lunchroom. I moved up to substituting as a preschool teacher, and finally became a preschool teacher

00168

UBB  
9/19/04

for three year olds at this private school which has no educational requirements for that level of instruction. I stopped at Clarendon Hall in May of this year, and have had no money since that time.

8. I had no money in my own name, and my husband did not offer me any money to get a separate opinion regarding the agreement his lawyer was preparing. I did not see a financial declaration from my husband on the day the agreement was signed. After the agreement was signed on Friday, my husband remained in the house with me until shortly before his birthday which was on August 8, 2004.

9. The agreement was prepared in my husband's lawyers' office, and I was there with my grandfather, a retired minister, for three and a half to four hours on Friday, July 30<sup>th</sup>. During the time the agreement was prepared, I was never given any financial disclosure regarding my husband's assets or income so my grandfather could advise me. My husband has kept me in the dark concerning finances throughout the marriage, and I had no idea that he owned more than \$700,000.00 in assets until I had a chance to see his financial declaration on August 3, 2004 in the court room when I did not even have a chance to review it.

10. I was told by Mr. Robinson, my husband's lawyer, that if I signed waivers and a pro se answer, I would not have to go to court. I was told by Mr. Robinson that he had a hearing in Sumter that had been put off and that he could get the agreement approved on August 3, 2004. I assumed that after the judge signed the papers, my husband would leave the house as he had not done so.

00169

CBH  
9/19/04

11. I did not plan to go to court on August 3, but received a telephone call from my husband at home that the Judge wanted me in court. I drove from my home to the hearing. For the first time, I was handed my husband's financial declaration dated August 3, 2004. I was taking my regular medication that day, and did not have the time to look at my husband's information and review it without legal help as I had no clue what the papers meant. For example, I had no idea that I could not buy a house for \$22,000.00 until I started to put two and two together and got legal help. I did not realize that I was receiving only five percent (5%) of the property that my husband and I acquired during the marriage.

12. When I was asked by the judge whether I knew what the finances were about and whether I had seen them before and understood them, (which I had not), my husband nodded his head affirmatively as if to tell me to say "yes." Which I did.

13. In truth, I did not know that my husband had acquired \$700,000.00 in assets during our marriage. I did not know that he was only claiming income of \$1,700.00 per month because with the private school for two children and our house payment alone almost all of that amount was spent.

14. Based upon the financial declaration that was given to me on August 3, I now know that I agreed to take less than 5% of my husband's worth, which I believe is patently unfair. I did not know that my mother in law had made claims against the property that was to be left to protect my children.

15. My husband always has had money to spend for what he wanted – purchasing land, fixing up the club house outside of our house, air conditioning it,

00170

CBH  
9/19/01

purchasing a new hunting truck after our court appearance, etc. – but when it came to my necessities such as medical care and prescription drugs, my husband always complained about providing those and refused to do so. He terminated me from the family health insurance early in 2004. My family doctor had been giving me samples of medication because I could not afford to buy the same. Now, as set forth above, I am on a low-income medication plan with the mental health center.

16. I feel I have been defrauded. I also feel the court has been defrauded because I have now learned that the land that is supposed to go to our children when they turn 18 is actually land that is involved in other litigation between my mother-in-law, my husband, and my father-in-law. I did not know that when I signed the agreement.

17. Further, my husband has told me since 2003 that since there is litigation pending between him and his mother, I should not allow my mother in law, Daisy Wallace Simpson, to see our children. Therefore, Daisy W. Simpson has been denied visits and access and communication with her grandchildren for more than a year and a half.

18. I have no objection to Daisy W. Simpson having visitation with my children. I also have no objection to Daisy W. Simpson being allowed to intervene in my action to get her visitation rights

19. I request that the court vacate the agreement and the Order approving it as being unfair.

00171

UBH  
a/19/04



20. I never filed a financial declaration. I feel that I have been taken advantage of throughout this marriage and now my husband has been turning my children against me. My husband has been physically abusive to me. He pushed me down and caused compressed vertebrae in my back years ago and I was by him to tell the hospital that I had fallen down some stairs.

21. I have residual injury because of this. My mother died of ovarian cancer when I was two years of age, and I am concerned about my health because I have had problems with my cervix in the past, but don't have the funds to afford to get a pap smear and other tests. I can't afford to get my new prescription for my contacts and glasses and an eye exam which will cost more than \$560.

22. I ask for a full hearing. I want my health insurance reinstated immediately. I want temporary alimony and an award of attorneys' fees and a reasonable equitable division of the assets. I want my husband to pay for my medical necessities.

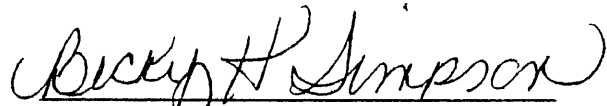
23. My husband has my son living with him and, since August 3, 2004, has move my daughter into the clubhouse with him also. I am being questioned by my children concerning my whereabouts which is very unusual. I believe my husband is saying negative things about me to my children as their attitude toward me has changed. I want a guardian ad litem appointed to represent my children; I want my husband to be evaluated by a psychiatrist. I also want a restraining order keeping my husband away from me as he came to the house the other day when I was there and also comes in when I am not there because I

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9/19/04  
BNS

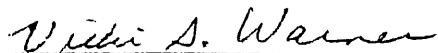
can not afford to change the locks. In that my husband has, I believe, turned my my children against me, I would want access to my children and restraining orders because of my fear for my husband.

24. I believe that Mr. Robinson has a conflict of interest because when I was to have had my deposition taken in the Daisy Simpson case, he and/or his partner got information from my physician on more than one occasion to present to Daisy's attorney so my deposition would not be taken. Therefore, my husband and his lawyers both knew that I was vulnerable and unable to protect myself. I request an expedited hearing in this matter.



**Becky H. Simpson**

SWORN to and subscribed before me  
this 19<sup>th</sup> day of September, 2004



Notary Public for South Carolina

My Commission expires: 11/20/10

00173

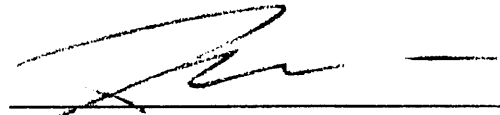


# **CERTIFICATION**

The undersigned hereby certify that they did not communicate orally or in writing with counsel prior to filing the attached motion because such would serve no useful purpose.

September 19, 2004  
Columbia, South Carolina

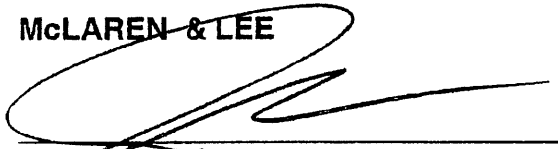
**WARNER, PAYNE & BLACK. LLP**



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Attorney for Defendant

and

**McLAREN & LEE**



James T. McLaren  
1508 Laurel Street  
Columbia, South Carolina 29202  
(803) 799-3074  
Attorney for Plaintiff

00174

00175

*Judge McFadden*

*8/31/04  
Tuesday*

1. 04-1387 DAVIS, JESSICA VS DAVIS, DANIEL 9:00 am  
PRO SE PRO SE  
COMMENTS: DOMESTIC ABUSE 15 MINUTES

2. 03-14-324 DOCTOR, ALFONZA VS HANNETT, MARQUITA 9:15 am  
*ALABAMA COUNTY* J. CALHOUN LAND IV PRO SE  
*CASE* COMMENTS: RTSC-CONTEMPT 15 MINUTES

3. 04-645 NESBITT, MARION DAVID VS NESBITT, ANNA BEASLEY 9:30 am  
PRO SE HARRY C. WILSON, JR.  
COMMENTS: DIVORCE 30 MINUTES

4. 04-220 BRAYBOY, J. T. VS BRAYBOY, VANESSA 10:00 am  
DWIGHT C. MOORE ANGELA R. TAYLOR  
COMMENTS: DIVORCE 30 MINUTES

5. 03-2258 JOHNSON, NANCY VS JOHNSON, BILLY 10:30 am  
DWIGHT C. MOORE THURMOND BOOKER  
COMMENTS: DIVORCE 30 MINUTES

6. 02-1993 SC DEPT OF SOC SVCS VS WILSON, QUEEN & GREGORY 11:00 am  
S. BRYAN DOBY  
COMMENTS: MOTION TO RESTORE 30 MINUTES

7. 04-978 BLACKMON, IDA MARIE VS BLACKMON, BRYAN JEFFREY 11:30 am  
ROBERT W. BURKETT PRO SE  
COMMENTS: DIVORCE 15 MINUTES

8. 04-825 FELDER-JOHNSON, GLORIA VS JOHNSON, JEFFREY E. 11:45 am  
JORDAN D. WHITE PRO SE  
COMMENTS: ANNULMENT/DIVORCE 15 MINUTES

9. 03-622 WILLIAMS, HILLARY VS WILLIAMS, CAREY 12:00 n  
GARRYL L. DEAS PRO SE  
COMMENTS: FINAL HEARING-DIVORCE 1 HOUR

04-142 *vs. Simpson, William R.* 2:00 pm  
*S. L. Robinson Approve Agreement 15"*

10. 02-1921 SUMTER COUNTY DSS VS ELMORE, DAVID ET AL 2:15 pm  
ANGELA R. TAYLOR DAVID C. HOLLER  
R. KIRK GRIFFIN (GAL)  
COMMENTS: PERMANENCY PLANNING 15 MINUTES

00176

108 N. Magnolia Street  
Sumter, SC 29150-4900  
803-438-2376

**Sumter County  
Family Court**

# Fax

To: <u>Jan Warner</u>	From: <u>Alex Bergeron</u>
Fax: <u>800-501-2663</u>	Pages: <u>2</u>
Phone:	Date: <u>9/14/04</u>
Re: _____	CC: _____
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

• Comments:

RECEIVED  
04 SEP 14 AM 10:00  
W.P. & B. LLP  
ELDERLAW SERVICES  
OF SC, PA

00177

STATE OF SOUTH CAROLINA  
2014 SEP 15 AM 11:55

COUNTY OF CLARENDON

WILLIAM R. SIMPSON, JR., SC, PA

Plaintiff,

**VS.**

BECKY H. SIMPSON,

**Defendant.**

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NO.: 2004-DR-14-243

DECREE OF SEPARATE MAINTENANCE  
CLARENCE COURT, 1985  
AND SUPPORT

TRIAL DATE: AUGUST 3, 2004  
TRIAL JUDGE: THE HONORABLE G  
PLAINTIFF'S ATTORNEY: SCOTT L. ROBINSON  
DEFENDANT'S ATTORNEY: PRO SE  
GUARDIAN *AD LITEM*: N/A  
COURT REPORTER: CRYSTAL JACKSON

BEULAH O ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
JUL 24 3 16 PM  
2009

This matter comes before me this 3<sup>rd</sup> day of August, 2004, pursuant to a Summons and Complaint whereby the Plaintiff is seeking a Decree of Separate Maintenance and Support and other relief from the Defendant. Present at the hearing were the Plaintiff, William R. Simpson, Jr., represented by Scott L. Robinson, of the Clarendon County Bar, and the Defendant, Becky H. Simpson. The Defendant appeared Pro Se and had filed a Pro Se Answer, Acceptance of Service and Waiver of Notice of Hearing.

Prior to the commencement of the hearing, the Court informed the Defendant of her right to have an attorney and inquired of her if she deemed one necessary and/or desired to represent herself. The Court is satisfied, based on the responses of the Defendant, that she is fully aware of her right to have an attorney present, that she wishes to proceed without one, and that she is capable of representing herself.

Prior to the taking of any testimony, the parties indicated to the Court that they had reached

00178




an agreement as to all matters properly before the Court. The parties have entered into a Property and Separation Agreement, dated July 30, 2004, and are requesting that the Court review said Agreement and if approved, to incorporate the Agreement into this Decree of Separate Maintenance and Support.

Both parties advised the Court that the Property and Separation Agreement was read by each of the parties before signing, that the agreement was entered into freely and voluntarily with no force, threats or pressure from either party. Both parties assured the Court that they had enough time to consider the agreement and that this was the only agreement before the Court at this time.

The Plaintiff presented his Financial Declaration and the Defendant testified that she was familiar with the financial situation of the parties. The Defendant did not file a Financial Declaration and the Plaintiff testified that he did not need to see it, that he was aware of her financial situation.

Both parties testified to the Court that they understood the consequences and contents thereof, and agreed with it in each and every particular. Both parties advised the Court that they felt the agreement was fair and just under the circumstances and that they intended said agreement to be a full, final and binding agreement as to all issues addressed therein. Both parties advised the Court that they had entered into the agreement freely and voluntarily. The Plaintiff advised the Court that he was satisfied with the agreement and with the work that his attorney had done for him. The Defendant advised the Court that she had discussed this matter with an attorney, but did not retain him or review this Agreement with him, but that she was satisfied with the agreement and that she had the opportunity to discuss the agreement with an attorney if she had so desired and that she did not need more time to review said agreement with an attorney.

Both parties are aware that certain portions of the Agreement are final and complete at this

 00179



time. They are also aware that the issues of custody, child support and visitation are never final and are subject to change.

Both parties assured the Court that they understood that the alimony paid by the Plaintiff to the Defendant is for 40 months and thereafter ends forever and is not modifiable. They each further understand that it is taxable as income to the Defendant and deductible by the Plaintiff.

Both parties believe the agreement to be fair to themselves and to their children.

I have reviewed the pleadings that have been filed in this matter, the Agreement that has been entered into between the parties, and have heard the statements from the parties. Based on the pleadings filed, the arguments of the parties, and the testimony received, I make the following findings of fact and conclusions of law:

1. This Court has continued jurisdiction over the parties and subject matter herein, and this matter is properly before the Court.
2. The Plaintiff and Defendant are husband and wife and last resided as husband and wife in the County of Clarendon, State of South Carolina. At the time of filing, the Plaintiff and Defendant were both citizens and residents of Clarendon County, South Carolina, and had been for more than one (1) year prior to the commencement of this action.
3. That the Plaintiff and Defendant are Husband and Wife have been duly married on September 3, 1989, and lived as husband and wife until their separation. I also find that the parties separated on July 27, 2004, and have lived separate and apart since that time and have expressed their intention to continue to reside separate and apart from one another. The parties have two (2) children, to wit: William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 26, 1995. No other children have been born and none are expected.



4. This Court has jurisdiction to grant a Decree of Separate Maintenance and Support pursuant to § 20-7-420 of the Code of Laws of South Carolina (1976).

5. I find that the Property and Separation Agreement, dated July 30, 2004, entered into by the parties and attached hereto has been entered into knowingly and freely and voluntarily by the parties, and is reasonable under the circumstances, and should be approved by this Court and made a part of the order of this Court.

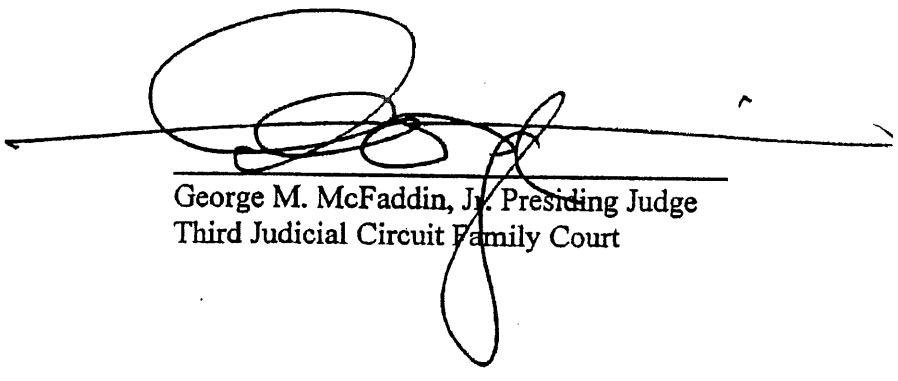
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Property and Separation Agreement of the parties, dated July 30, 2004, and attached hereto, is hereby approved and made an Order of this Court, enforceable by this Court or any law enforcement officer.

2. That a Decree of Separate Maintenance and Support be, and hereby is, granted between the Plaintiff and Defendant.

**AND IT IS SO ORDERED.**

Sumter, South Carolina  
August 20, 2004

  
George M. McFaddin, Jr. Presiding Judge  
Third Judicial Circuit Family Court

00182

STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR., )

Plaintiff, )

vs. )

BECKY H. SIMPSON, )

Defendant, )

IN THE FAMILY COURT OF THE

THIRD JUDICIAL CIRCUIT

DOCKET NUMBER: 2004-DR-14-243

9-13-04

CLARENDON COUNTY, SC

PROPERTY AND SEPARATION

AGREEMENT

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE  
DATE 8-2-04

Beulah D. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

BEULAH D. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 AUG 2 PM 00

This Agreement is entered into this 30th day of July, 2004, by and between WILLIAM R. SIMPSON, JR., hereinafter referred to as the HUSBAND, and BECKY H. SIMPSON, hereinafter referred to as the WIFE. The wife resides in Clarendon County, South Carolina, and the husband resides in Clarendon County, South Carolina.

1. The husband and wife were duly married at a time when both parties were capable of entering into a contract of marriage on September 3, 1989, in Clarendon County, South Carolina, and have thereafter lived together as husband and wife.

2. Two children have been born of this marriage, to wit: William Robert Simpson, III, whose date of birth is July 30, 1991; and Lynda Kaitlin Simpson, whose date of birth is June 26, 1995. No other children have been born and none are expected.

3. The marital differences between the husband and wife are as such that they are no longer living together and they never intend to reside together again. The husband and wife last resided together as husband and wife on or about July 27, 2004.

4. The husband and wife intend, and it is the purpose of this Property and Separation Agreement, to make a complete and final settlement of all claims that the parties may have against

WRS sr

BRH

0018

each other, alimony and/or support, or any maintenance, and to finalize their agreement as to division of property, of every nature and description, owned by them jointly, or either of them individually, and the settlement of all issues arising out of the marital relationship of the parties and/or all matters dealt with in this Agreement.

5. The husband is presently represented by counsel, Scott L. Robinson, of the Clarendon County Law Firm of Johnson, McKenzie & Robinson. The wife is not represented, however, she realizes she has the right to retain counsel and she waives her right to counsel. Further, the wife asserts that she has had ample opportunity to review this Property and Separation Agreement with an attorney if it was her desire, however, she does not desire to review it with counsel, and she fully understands the ramifications of same. The wife understands that Mr. Robinson represents only the husband and the wife has the right to counsel should she so desire.

6. The husband and wife both affirmatively assert that in the negotiation and execution of this Agreement, each has made a full financial disclosure, one to the other, of all aspects of the entire marital situation, and it is based upon the full financial disclosures on which the husband and wife each have relied, that this Agreement is entered into.

7. This Agreement is intended by the husband and wife to be a binding determination of the issues set forth herein, and the husband and wife each fully realize their respective rights and obligations hereunder.

8. The husband and wife each hereby acknowledge that this Agreement was entered into freely and voluntarily by and between them, without duress or threat to the husband or wife.

9. The husband and wife request that this Agreement be submitted to the Family Court for the Third Judicial Circuit for approval, and that if same be approved, then the said Agreement

is to be made an Order of the Court. It is the intention of the parties that the Family Court of the Third Judicial Circuit retain jurisdiction hereof, including the jurisdiction to enforce the affirmative acts required of the husband and wife, or either of them, by Contempt or by such other proceedings as may be necessary to insure enforcement hereof. Should a Decree of Divorce or Separate Maintenance be granted to either the husband or wife by this Court, or any other Court of competent jurisdiction, the Agreement, if approved, shall vest said Court with full jurisdiction for all purposes.

NOW, THEREFORE, in consideration of the mutual and binding covenants and agreements of the parties, which are set forth hereinafter, and in addition thereto of the good and valuable considerations, receipt of which is hereby acknowledged by each party with adequacy of the consideration set forth in the terms of this Agreement, the parties hereto do hereby agree as follows:

1. **LIVING SEPARATE:** The parties may and shall hereafter live separate and apart. Each party shall hereafter reside at such place or places as he or she may select.
2. **NO MOLESTATION OR INTERFERENCE:** Neither party shall molest nor interfere with the other, nor compel or attempt to compel the other to cohabit or dwell with him or her by any means whatsoever by legal action or otherwise.
3. **CUSTODY:** The parties shall share joint custody of their children. The parties' daughter will reside with the mother and the parties' son will reside with the father. The children will be allowed to visit the other parent freely and liberally and come and go between the residences of the parents as they please.
4. **CHILD SUPPORT:** The husband shall be responsible for payment of all school expenses and clothing for the parties' children for a period of 12 months commencing on August 1, 2004 and continuing through July 31, 2005. In addition, the Husband shall pay the Wife the sum

WRS  
Sr.

CBH

of \$300.00 per month in child support for the support of the parties' minor daughter until such time as the daughter attains the age of 18. The husband shall also be responsible for payment of the private school tuition for the parties' minor children so long as they are enrolled in a private school.

5. REHABILITATIVE ALIMONY: The husband shall pay rehabilitative alimony to the wife in the amount of \$450.00 per month for 40 months, beginning August 1, 2004 and payable directly to the Wife on the 1st day of each month thereafter until January 31, 2008. Both parties waive their right to receive any additional alimony of and from the other party upon the expiration of the period of rehabilitative alimony.

6. PERSONAL PROPERTY: All property will be divided between the parties to their mutual satisfaction. Each party shall keep their own personal property. The wife will receive whatever furniture and personal property she desires from the marital home and the remainder will stay with the husband. The parties shall retain the possession of the vehicles currently in their possession. The husband shall be responsible for payment of 1 tank of gas per week for the wife's GMC Yukon, payment of taxes, insurance, payments and maintenance on said vehicle for a 12 month period, beginning August 1, 2004. At the end of the 12 month period, the wife shall receive the title to the vehicle and will then be responsible for the taxes, insurance, maintenance and payments thereon.

7. TAXES: The parties shall file separate income tax returns for the 2004 tax year. The parties will each claim one child as a dependant for the 2004 tax year and for every year to follow.

8. REAL PROPERTY:

A. MARITAL HOME: The wife will enjoy the exclusive use and possession of the marital home for a period of 12 months, beginning on August 1, 2004. During this 12

month period, the husband will be responsible for payment of the house payment, light bill, phone bill, hazard insurance on the home and property taxes on the home. At the end of the 12 month period the wife shall receive the sum of \$22,500.00 within 10 days of the expiration of the 12 month period. In addition, the wife shall receive annual payments of \$5,000.00 beginning November 1, 2006 and continuing on the first of November of each year through November 1, 2008. These payments represent the value of any interest or equity the wife may claim in the marital home. Thereafter, the husband shall have the exclusive use, ownership and possession of the marital home and shall be responsible for all indicia of ownership for the home and shall indemnify and hold the wife harmless therefrom.

B. FARM LAND: Each child of the parties shall receive 25% interest in the following farm property when they attain the age of 18: Clarendon County tax map parcel numbers: 128-00-00-34, 090-00-03-016-00, 089-00-00-017, 089-00-00-018, 089-00-00-019, 089-00-00-014, 089-00-00-025, and 089-00-00-026; Sumter County tax map parcel numbers: 257-00-03-2-020, 258-00-01-003, and 214-00-01-007. The wife waives any and all other interest in the farm property.

C. HOME SPOT: The husband shall provide the wife with a one acre tract of land upon which to build a home and reside with the parties' minor daughter. Provided, however that should the wife re-marry or co-habitate with another man, the wife shall sell her home to the husband at appraised value and shall immediately move to another location. The parties agree that this home spot shall be on Home Branch Road where Robbie Giddens currently resides if available. In the event said location is not available, husband will make every effort to provide a one acre site as close to that location as is possible.

WRS  
Jr

CHB



9. **DEBTS AND OBLIGATIONS:** Each party shall pay all debts in their name incurred by him or her before or after the date of this Agreement and shall indemnify and hold harmless the other party against any responsibility or liability therefor.

10. **EXECUTION OF NECESSARY INSTRUMENTS:** The parties in each and every event shall hereafter execute all instruments necessary to carry out the terms of this Agreement.

11. **RELEASE:** Both parties hereby release and discharge the other for themselves, their heirs, their personal representatives and assigns, as well as any known or potential third parties, of and from all manner of actions, causes of actions, suits, debts, counts, judgments, claims and demands whatsoever in law or equity (except any debts or obligations specifically assumed by either party pursuant to these agreements) which occurred or may have occurred at any time during the marriage and through the date of the approval of these agreements.

12. **COURT APPROVAL OF AGREEMENT:** The parties hereto agree that this Agreement shall be submitted to the Court for approval, and if approved, shall be incorporated and merged with the Order of the Court.

13. **BINDING EFFECT:** This Agreement shall be binding upon the parties, their respective heirs, executors administrators, and assigns, and shall in any event be governed by the laws of the State of South Carolina.

14. **EFFECT OF DIVORCE:** This Agreement shall not be construed in any measure as a consent or condemnation for divorce in favor of either party, nor shall it be a bar to any action or proceeding for divorce to be hereinafter instituted; it is a Property and Separation Agreement, which is contractual in nature and intended as a binding settlement of the parties rights, duties, and responsibilities regarding all matters dealt with herein. Should a judgment or Decree of Divorce for

WRS  
JR.      [Signature]

19. ATTORNEYS FEES: Each party shall be responsible for any and all attorney's fees and costs incurred by that party pursuant to this matter.

WHEREFORE, we subscribe our names to the end of this instrument consisting of 8 typewritten pages on one side only of each page and for the purpose of identification, we have subscribed our initials on the bottom of each preceding page on the date as herein below indicated.

DATED AT MANNING, SOUTH CAROLINA THIS 30TH DAY OF JULY, 2004.

WITNESSES:

Danna B. Alley  
Ethel B. Alley

William R. Simpson, Jr.  
WILLIAM R. SIMPSON, JR.

WITNESSES:

Danna B. Alley  
Ethel B. Alley

Becky H. Simpson  
BECKY H. SIMPSON

WRS (B.A.)

00190

JOHNSON, MCKENZIE & ROBINSON, L.L.C.  
16 NORTH BROOKS STREET  
MANNING, SOUTH CAROLINA 29102  
TELEPHONE (803) 435-0909  
FACSIMILE (803) 435-2858

DATE: 4-22-04

TIME: \_\_\_\_\_

NUMBER OF PAGES: 2 including cover sheet

TO: \_\_\_\_\_

ATTENTION: Mr. Jan WarnerFACSIMILE NUMBER: 799-2517REGARDING: Simpson vs. SimpsonFROM: Steve McKenzieSENT BY: Mary

COMMENTS: \_\_\_\_\_

Following please find a doctor's  
excuse for Becky Simpson which  
states that she is not able to  
proceed with her scheduled  
deposition scheduled for tomorrow.

Thank you -

Mary.

RECEIVED  
APR 23 AM 8:42  
P & B, LLP  
ELDER LAW SERVICES  
OF SC, PA

00191

ROBERT S. EAGERTON, JR., M.D.

Family Practice

Phone 803-433-0439, 200 East Hospital Street, Manning, S.C.

State No. 11415

DEA AE 1764895

PATIENT'S  
NAME

Becky Simpson

ADDRESS

DATE

4/25/04

Rx 1

In my opinion this  
person is neither  
mentally or emotionally  
stable to undergo

Refill 0-1-2-3-4-5-PRN

Rx 2

a deposition

R. S. Eagerton, M.D.

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

Refill 0-1-2-3-4-5-PRN

00192

00193

**McLAREN & LEE**  
ATTORNEYS AT LAW  
1508 LAUREL STREET  
COLUMBIA, SOUTH CAROLINA

TELEPHONE (803) 799-3074  
FACSIMILE (803) 252-3548

JAMES T. McLAREN  
C. DIXON LEE, III\*

\*ALSO ADMITTED IN NC

PLEASE REPLY TO:  
POST OFFICE BOX 11809  
COLUMBIA, SOUTH CAROLINA  
29211-1809

October 11, 2003

**VIA FAX AND MAIL**

**803-435-2858**

Steven S. McKenzie, Esquire  
Scott L. Robinson, Esquire  
16 North Brookes Street  
Manning, South Carolina 29102

RE: ***Daisy Wallace Simpson v. William Robert Simpson,***  
*Individually and as shareholder/member of W.R. Simpson Farms,*  
*Inc. and William R. Simpson, Jr., as a shareholder/member of*  
*W.R. Simpson Farms, Inc.*  
Docket No: 03-DR-14-128

Gentlemen:

Following up with the depositions on September 29, 2003, during which Becky Simpson did not appear, I am writing to confirm that I have given you one (1) week to work out that situation and reschedule her deposition. If not, I will move the Court for appropriate relief. Please let me hear from.

With kindest regards, I am

Very Truly Yours,

McLAREN & LEE

James T. McLaren

JTM/kap

cc: Daisy W. Simpson  
Jan L. Warner, Esquire

00194

FILE COPY

Date: \_\_\_\_\_

**WARNER, PAYNE & BLACK, L.L.P.**  
ELDERLAW SERVICES OF SOUTH CAROLINA, P. A.

**JAN L. WARNER**  
ATTORNEY AT LAW  
[jlw@janwarner.com](mailto:jlw@janwarner.com)  
(REPLY TO COLUMBIA OFFICE)

L.L.M., Taxation  
Certified Fellow, American Academy of Matrimonial Lawyers  
Member, National Academy of Elder Law Attorneys

1122 LADY STREET, SUITE 1200  
POST OFFICE BOX 2628  
COLUMBIA, SOUTH CAROLINA 29202  
TELEPHONE (803) 799-0554  
FACSIMILE (803) 799-2517

113 EAST MAIN STREET, SUITE 100  
POST OFFICE BOX 10352  
ROCK HILL, SOUTH CAROLINA 29730  
TELEPHONE (803) 329-8656  
FACSIMILE (803) 325-2973

April 28, 2004

Steven S. McKenzie, Esquire  
Scott Robinson, Esquire  
16 North Brooks Street  
Manning, South Carolina 29102

RE: **Simpson v. Simpson et al.**  
**Docket Number 2003-DR-14-128**

Dear Gentlemen:

When I deposed Mr. Simpson Sr. this past Friday, we were provided some tax records and computer generated, general ledgers. We may want to look at the raw material after we submit the same to Mark Hobbs, CPA. Mr. Simpson's deposition has been left open.

We have received another doctor's statement from Becky Simpson. We therefore confirm your representation that Becky Simpson will not testify at trial.

Regarding Mr. Simpson Jr., we will need his 2003 tax returns and all schedules along with the general ledger information which we assume Mr. Gibbons (or Simpson Jr.'s tax preparer) utilized. Please provide us with this.

Mr. Simpson Sr. said he would get Steve his credit card statements (Platinum Plus at Wachovia) and we would request the monthly statements from March 2003 to date.

We would also request an up-to-date financial declaration as quickly as possible. We do not want to have this on the day of the trial. We will exchange the same with you.

I am enclosing herewith Notice of Motion and Motion for an Order Authorizing Supplemental Complaint alleging a ground for divorce on the basis of one-year continuous separation, a copy of the proposed complaint that is being filed with the notice, and consent order.



00195



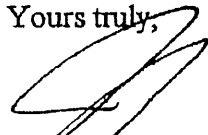
Steven S. McKenzie, Esquire  
Scott Robinson, Esquire  
April 28, 2004  
Page 2 of 2

I do not assume anyone would have an objection to this. If you do, please let me know so we can schedule a hearing prior to our merits hearing. If satisfactory, please return the Consent Order to me after the Judge has signed the same.

Please advise by letter or fax exactly what other information you are requesting from our client. This will confirm that on the date her deposition is taken, we will take the deposition of Mr. Gibbons. Enclosed herewith and served upon you is Notice of Taking his Deposition.

I have put a call in to Agent Owned Realty to try to get the document you have requested. Apparently, there is no such document in the Clarendon County office.

Yours truly,



Jan L. Warner  
JLW(sre  
Enclosures

cc: James T. McLaren, Esquire (w/encl.)  
Ms. Daisy Simpson (w/encl.)

00196

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

DAISY WALLACE SIMPSON,

PLAINTIFF,

VS.

WILLIAM ROBERT SIMPSON, SR.  
individually and as shareholder/  
member of W. R. Simpson Farms, Inc. and  
William R. Simpson, Jr., as a  
shareholder/member of  
W. R. Simpson Farms, Inc.,

DEFENDANTS.

CLERK OF THE FAMILY COURT FOR THE  
CLARENDON COUNTY, SC

DOCKET NO. 2003-DR-14-128

**PRETRIAL ORDER**

RECEIVED

2004 APR 26 PM 12:02

W.P. & B. LLP  
DELAWARE SERVICES  
OF SC, PA

**PRESIDING JUDGE:**

**R. WRIGHT TURBEVILLE**

**DATE OF HEARING:**

**APRIL 2, 2004**

**ATTORNEYS FOR PLAINTIFF:**

**JAN L. WARNER**

**JAMES T. MCLAREN**

**ATTORNEYS FOR DEFENDANTS:**

**STEVEN S. MCKENZIE**

**SCOTT L. ROBINSON**

**COURT REPORTER:**

**SUZIE NICHOLS**

This matter came before the undersigned on the 2<sup>nd</sup> day of April 2004 for a pretrial conference.

Present and appearing were the Plaintiff and one of her counsel, Jan L. Warner. All Defendants appeared through their counsel, Scott L. Robinson and Steven S. McKenzie.

I received a pretrial brief from Plaintiff's counsel which, as stated into the record, did not list all of the issues nor the witnesses, and the same will be updated.

Based upon the status of this matter and my review of the issues with counsel for the parties, I find that the following Pretrial Order should be issued:

Therefore, it is accordingly,

**ORDERED:**

**CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE**

DATE 5-4-04

*Berish B. ...*  
CLERK OF COURT  
CLARENDON COUNTY, SC

00197

*RWT  
127*

1. The hearing on the merits in this cause shall be held on June 10<sup>th</sup> and June 11<sup>th</sup> 2004, beginning each day at 9:30 A.M. at the Clarendon County Judicial Annex.

2. All discovery shall be completed not later than the close of business on May 15, 2004. If discovery has not been completed by that time, counsel for the aggrieved party or parties shall contact the Court.

3. The deposition of William Robert Simpson, Sr. shall be taken at the offices of his counsel on Friday, April 23, 2004 beginning at 10:00 A.M. The deposition of Becky Simpson, who previously submitted a doctor's certificate regarding her inability to appear, shall be taken at the offices of Defendants' counsel on the 23<sup>rd</sup> of April, 2004 at 3:00 P.M.; provided, however, that should Becky Simpson serve another physician's excuse for not attending the deposition, she shall not be allowed to testify at trial.

4. Pursuant to statements of Defendants' counsel, the discovery which Plaintiff asserts Defendants have not provided shall be provided to Plaintiff's counsel during the week of April 5, 2004.

5. Plaintiff and Defendant shall each submit settlement proposals, in writing, to the other by May 15, 2004.

6. The matter of attorneys' fees as requested by Plaintiff's counsel (no fees have been requested by Defendants) shall be handled by Affidavit and written submission to the Court at the end of trial on June 11, 2004. After issuing an Order in the main case and holding fees and expenses in abeyance, the Court will receive from counsel for the parties said offers of compromise and shall utilize the same in the establishment of counsel fees for Plaintiff.

7. Plaintiff and Defendant shall submit to each other a list of household personal property on or before May 1, 2004.

00198

2 RWT  
2 A3

8. Appraisers are in entitled to access to the farm equipment and other inventory and assets of the farming operation, at a time to be arranged with counsel for Defendants. The same to take place prior to May 1, 2004.

**AND IT IS SO ORDERED.**

s/R Wright Turbeville  
R. Wright Turbeville  
Presiding Family Court Judge  
Third Judicial Circuit

At Chambers  
Manning, South Carolina  
April 21, 2003

00199

27. Ms. Linhardt used only one valuation method, the comparable sales method, and appraised all property as if Simpson, Sr. owned 100% fee simple title even though there are numerous pieces he owns with other persons.

28. Defendant Simpson, Jr. admitted that he relied pretty much on his father to determine his income in any year. He admitted that his monthly expenses exceeded his income by more than \$2,500.00, but he could not explain how he paid the same.

29. Each year, Simpson, Sr. and Simpson, Jr. pool their crops, which are then sold by Simpson, Sr. The proceeds are deposited into Simpson, Sr.'s bank account. Simpson, Jr. admitted that the division of the crop sales proceeds is based upon which of them needed what that year, all of which is controlled by Defendant Simpson, Sr. Neither of them followed any corporate formalities nor did they pay debts or distribute income based on their purported 50-50 shares in the LLC.

30. Based thereon, it has been difficult for this Court to make a firm determination of Defendant Simpson, Sr.'s assets and income and the Court has had to attempt to cross reference the testimony of all parties and witnesses as no one presented a clear and precise picture of the identification and valuation of the marital assets. Simpson, Sr. testified on numerous occasions that he did not know what he owned, and his responses to interrogatories and other discovery indicate to the Court he made little effort to clarify what he owned during the course of this litigation.

#### **DIVORCE AND MARITAL FAULT**

31. I find that on or about March 1, 2003, the parties separated and have been living separate and apart since that time.

21. It has been very difficult for the Court to determine the income, expenses, and wealth of these parties.

22. Husband's witness, Tracey Amos, a CPA and Certified Valuation Analyst (CVA), admitted that information provided by her client Simpson, Sr. undervalued assets. She admitted that Simpson, Sr. did not report to her his collection of antique cars. Simpson, Sr. told her that he intended to gift an interest in the farm property to Simpson, Jr., while taking the position before this Court that he had transferred a 50% interest in the LLC to his son in consideration of Simpson, Jr. working on the farm and taking less salary over a period of years.

23. Although Defendant Simpson, Sr. told Ms. Amos that the LLC owned the farming operation, bank accounts, and farm equipment, the evidence before the Court is clear that the LLC owns only real property. In fact, land was purchased in the name of the LLC in May 2002, but paid for by Simpson, Sr. as the LLC never opened a bank account.

24. Ms. Amos confirmed that Simpson, Sr. told her there were sixty (60) items of equipment listed on his general ledger that he no longer owned, but none were reported on his tax return as having been sold or otherwise disposed of.

25. Ms. Amos confirmed that Simpson, Sr. did not report the sale of timber on certain Kershaw County property although the evidence clearly shows he sold it in 2000. The land values of (\$750.00 per acre), used by Ms. Amos were values proffered by Simpson, Sr. and were not based upon Ms. Amos' independent knowledge or appraisals.

26. At the same time, the testimony of Plaintiff's expert, Beth Linhardt, is less than complete and accurate, and the Court cannot rely upon it completely to arrive at a value of the marital estate. She admitted she would need to do further research to tell the Court exactly what Simpson, Sr. owned at the date of filing.

Plaintiff moved to amend the caption. I granted Plaintiff's Motion to amend by Order dated October 29, 2004 *nunc pro tunc* March 5, 2003.

14. Plaintiff moved to hold Defendant Simpson, Sr. and one of his bankers in contempt for providing false testimony to the Court. I issued my Order dated October 29, 2004 in that regard.

15. Husband and Wife were previously involved in litigation in 1999 (1999-DR-14-450) that resulted in a reconciliation and Dismissal Order dated March 2, 2000 and filed March 16, 2000.

16. After a careful review of all matters of record, all evidence, and after having had the opportunity to hear and judge the credibility of the parties and their respective witnesses, I make the following findings and fact, conclusions of law, and dispositions regarding the matters now before the Court:

#### CREDIBILITY

17. As with most domestic relation cases, the issue of credibility of the parties and their witnesses plays a major part in the Trial Judge's determination of the weight given to the evidence presented.

18. Both Parties have attempted in their testimony and presentation of certain evidences to show themselves in the best possible light.

19. The Plaintiff as a real estate agent can control her income and expenses and the Court finds she has attempted to minimize her income and maximize her expenses throughout this litigation.

20. Simpson, Sr.'s Financial Declaration is not an accurate reflection of his spendable income which is approximately \$150,000 per year.

parties from encumbering or disposing of any assets; ordered that Husband maintain the status quo on all life insurance policies including beneficiary designations and amounts of coverage; and required Husband to maintain health insurance on the youngest daughter Charley and to be responsible for Charley's non-covered medical expenses and college expenses.

9. Discovery was authorized by the *Pendente Lite* Order, and depositions of Husband, Wife, Son, and Husband's CPA's were taken. Discovery requests were submitted and records were subpoenaed. Wife moved to compel discovery and for sanctions, but never scheduled a hearing on the Motion. A Pre-Trial Order was issued on April 2, 2004 that held in abeyance Wife's Motion to Compel discovery, which will be considered in the attorneys' fees phase of the trial.

10. During the course of the hearings, Defendant and Plaintiff called numerous witnesses. Plaintiff introduced ninety-one (91) exhibits; Defendants introduced thirty (30) exhibits.

11. By consent, Wife filed and served a Supplemental Complaint dated April 28, 2004 wherein she sought a divorce upon the ground of one-year continuous separation.

12. Wife moved to retroactively increase alimony and to require Simpson, Sr. to pay outstanding medical bills by Motion dated June 9, 2004 that was duly filed and served. Determination of those issues was withheld pending the issuance of this Order. Husband filed a Motion for a retroactive decrease in alimony and disgorgement of attorneys' fees and costs awarded to Wife at the Temporary Hearing. These issues are determined herein.

13. During the latter stages of the trial on September 30, 2004, counsel for Defendants moved to dismiss Simpson Farms, LLC as a party because it was initially referred to as "W. R. Simpson Farms, Inc." in the caption of the case, rather than "Simpson Farms, LLC".



4. Ray E. Chandler, prior counsel for Husband, Son, and the LLC accepted service of the foregoing on behalf of Simpson, Sr., Simpson, Jr., and the Corporate Defendant on March 6, 2003.

5. Plaintiff's Complaint seeks, a divorce on the ground of adultery, or in the alternative a Decree of separate support and maintenance; temporary and permanent alimony; continued health care and hospitalization coverage and medical expenses; continued life insurance with Plaintiff as beneficiary; discovery; equitable apportionment of all assets; restraining orders as to transfer or hypothecation of insurance and all assets, as well as personal contact; and attorney fees and costs.

6. Defendant Simpson, Sr., individually and as owner of the Simpson Farms LLC, and Simpson, Jr., as shareholder of Simpson Farms, L.L.C., timely filed and served responsive pleadings dated April 28, 2003 which were filed in the Office of the Clerk of Court for Clarendon County, South Carolina. The responsive pleadings sought dismissal of the Complaint and denied Plaintiff's entitlement to relief.

7. Plaintiff Wife timely served and filed a Reply dated June 3, 2003 that generally denied the relief requested in Defendants' responsive pleadings.

8. A *pendente lite* hearing was held on March 28, 2003, that resulted in the issuance of a *Pendente Lite* Order dated April 3, 2003. The *Pendente Lite* Order, in pertinent part, required Simpson, Sr. to pay Plaintiff \$1,000.00 per month as temporary spousal support; to advance \$15,000.00 to Plaintiff as temporary attorney fees and suit money; to maintain hospital and health coverage for Wife and to pay 60% of her non-covered medical expenses. That Order also required that each party retain temporary possession of property in his/her possession and to be responsible for the debts listed on his/her Financial Declarations, restrained and enjoined all

I have heard and considered the testimony of parties and their witnesses and have been able to judge their credibility and demeanor. I have reviewed the exhibits introduced by each party and have assessed the weight of the evidence.

All findings herein are based upon my view of the preponderance or greater weight of the evidence unless otherwise stated.

Based upon the preponderance of the evidence, I find and conclude as follows:

### **BACKGROUND AND PROCEDURAL HISTORY**

1. Plaintiff Daisy Wallace Simpson ("Plaintiff", "Wife", or "Mrs. Simpson") and Defendant William Robert Simpson ("Husband", "Simpson, Sr.", or "Defendant Simpson, Sr.") were legally married on October 6, 1968 in Scranton, South Carolina. Three (3) children were born of this marriage: William R. Simpson, Jr., born on August 8, 1969, who is emancipated and is a Defendant in this action as a shareholder in Simpson Farms, L.L.C. ("Son", "Simpson, Jr.", or "Defendant Simpson, Jr."); Dayline Michelle S. Feagin, born on April 21, 1974, was emancipated; and Charley Diane Simpson born on October 8, 1981, who attends college. No other child was born of this marriage, and none is expected.

2. The parties to this action are citizens and residents of Clarendon County, State of South Carolina and have been so for more than three (3) months prior to the commencement of this action.

3. This action was commenced by the filing of Summons and Complaint, together with a Notice of Motion and Motion for *Pendente Lite* Relief, dated February 24, 2003 in the Office of the Clerk of Court for Clarendon County, South Carolina on March 4, 2003.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

DAISY WALLACE SIMPSON,

Plaintiff,

vs.

WILLIAM ROBERT SIMPSON,  
individually and as shareholder/  
member of Simpson Farms, L.L.C.  
and WILLIAM R. SIMPSON, JR., as a  
shareholder/member of  
Simpson Farms, L.L.C.

Defendants.

IN THE FAMILY COURT FOR  
THE THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2003-DR-14-128

FINAL DECREE OF DIVORCE

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE

DATE 12-31-04

Beulah G. Roberts

CLERK OF COURT  
CLARENDON COUNTY, SC

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 DEC 31 AM 11 01

**DATES OF HEARINGS:**

July 7, 8, & 9 2004  
September 29 & 30, 2004  
October 22 & 26, 2004

**TRIAL JUDGE:**

R. Wright Turbeville

**PLAINTIFF'S ATTORNEYS:**

James T. McLaren

Jan L. Warner

**DEFENDANTS' ATTORNEYS:**

Steven S. McKenzie

Simpson, Sr., Simpson, Jr., &

Scott L. Robinson

Simpson Farms, LLC

**COURT REPORTERS:**

Carol Hanna, Janice Hinds, &  
Crystal Jackson (In Order)

This matter came before the Court for merits hearings on July 7, 8 & 9, 2004; September 29 & 30; and October 22 & 26, 2004. This is an action for divorce, alimony, equitable division, attorneys' fees, and related relief.

Present and appearing at the appointed times and places were the parties, together with their respective counsel. Plaintiff is represented by James T. McLaren and Jan L. Warner of Columbia; Defendants William R. Simpson, Sr., William R. Simpson, Jr., and Simpson Farms, LLC are collectively represented by Steven S. McKenzie and Scott L. Robinson of Manning.

00244

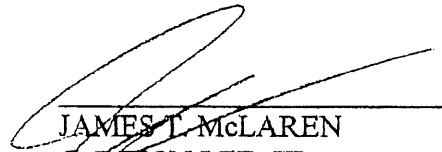
*RWT*  
Page 1 of 43

# **EXHIBIT A**

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## CONCLUSION

For the reasons set forth above, individually and collectively, Defendant Becky Simpson respectfully submits that Plaintiff W.R. Simpson, Jr.'s "Notice of Motion and Motion for a New Trial Based upon the Failure of Defendants' Counsel to Disclose the Court's Conflict of Interest" should be denied, and Defendant should be awarded attorney fees and costs for having to respond to Plaintiff's frivolous contentions.



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ATTORNEYS FOR DEFENDANT  
BECKY H. SIMPSON

Columbia, South Carolina

Dated: April 13, 2006

00242

evidence of bias. Furthermore, the alleged bias must be personal, as distinguished from judicial, in nature.

Also see *Patel vs. Patel*, 359 S.C. 515, 599 S.E.2d 114 (2004)

Plaintiff has offered no evidence whatsoever of bias by Your Honor in support of his Motion. Plaintiff's own argument suggest that you had no knowledge of Mr. Shull's involvement in the Simpson Sr. case and thus could not have been bias or prejudiced as a result.

Further, W.R. Simpson, Jr. has waived any right to seek Your Honor's disqualification.

As stated in *Patterson vs. Patterson*, 288 S.C. 282, 341 S.E.2d 819 (Ct.App.1986):

We hold Mr. Patterson waived any objection he may have had to the judge hearing the case. *Cf. Butler vs. Sea Pines Plantation Co.*, 282 S.C. 113, 317 S.E.2d 464 (Ct.App.1984) (failure to object to a judge hearing a case on the ground of bias or prejudice constitutes a waiver to raise the issue on appeal); *Moon vs. State*, 154 Ga.App. 312, 268 S.E.2d 366 (1980) (waiver of disqualification of trial judge may be effected expressly by agreement or implicitly by proceeding without objection with trial when fact asserted as disqualifying is known). Moreover, we have reviewed the findings of the trial judge and the record as a whole and can discern no bias or prejudice on the part of the judge. (emphasis added) 341 S.E.2d at 820.

The record in this case is clear and unequivocal that both W.R. Simpson, Jr. and his attorney knew of Mr. Shull's involvement as a witness in W.R. Simpson, Jr.'s parents divorce case and that Mr. Shull was a partner in Andrews and Shull in January 2005. Notwithstanding that knowledge, they did not object to Your Honor presiding in this case until after the case was heard and instructions for a decision issued. They simply proceeded without objection and now belatedly and after-the-fact seek to raise an objection. Under the decision in *Patterson vs. Patterson*, Supra, they have waived any right to object to Your Honor being the presiding judge in this case.

Plaintiff does not suggest or contend that Your Honor "...individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, "has an economic interest" in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis "interest that could be substantially affected by the proceeding;" [Canon 3E(1)(c)]. Mr. Shull was not paid or otherwise compensated for his affidavit in W.R. Simpson, Jr.'s parents divorce case.

Plaintiff does not suggest or contend that You Honor ".....or the judge's spouse, or a person within the third degree of relationship" to either of them, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) is known "by the judge to have a more than de minimis" interest that could be substantially affected by the proceeding; (iv) is to the judge's knowledge "likely to be a material witness in the proceeding." [Canon 3E(1)(d)]. To the contrary there is no evidence or even a suggestion that Mr. Shull has had any involvement whatsoever in the Simpson, Jr. case.

There is simply no reason under Canon 3 the Code of Judicial Conduct or elsewhere under the law of the State of South Carolina which would require Your Honor or even suggest that Your Honor should disqualify yourself in this case.

As stated in *Arnal vs. Arnal*, 363 S.C. 268, 609 S.E.2d 821 (Ct. App.2005):

The Code of Judicial Conduct requires a judge to 'disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned.' Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. It is not enough for a party seeking disqualification to simply allege bias. The party must show some

Plaintiff's claim that he "discovered" that Mr. Shull submitted an affidavit in his parents divorce case is at best stale. The captions of his parents divorce case shows and W.R. Simpson, Jr. admits that he was a party to that action. Not only was W.R. Simpson, Jr. a party to his parents divorce case he was represented by the same attorney (Steven S. McKenzie and Scott L. Robinson) in both cases. The January 18, 2005 letter from Mr. McLaren to Judge Turbeville providing Mr. Shull's affidavit to the Court in that case shows that a copy of the letter and affidavit were sent to Mr. McKenzie at that time. The fact is that both W.R. Simpson, Jr. and his attorney have known since January 2005 that Mr. Shull submitted the affidavit in W.R. Simpson, Jr.'s parents divorce case and that Mr. Shull is a partner in the law firm of Andrews and Shull. Mr. Shull's affidavit also plainly states "I am a partner in the firm of Andrews and Shull in Mt. Pleasant, South Carolina."

Until Mr. McKenzie provided Your Honor with a copy of Mr. Shull's affidavit there is no evidence you were aware that Mr. Shull had been a witness in that case. Nor is there any suggestion that you were aware of that fact. To the contrary, Mr. McKenzie's letter to Your Honor of March 26, 2006 plainly recognizes that Your Honor had no prior knowledge of Mr. Shull's involvement in the Simpson Sr. case (".....[H]ad you known about Mr. Shull's involvement in his father's case....").

W.R. Simpson, Jr. does not suggest or contend that Your Honor has "....a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts...." [Canon 3E(1)(a)] as a result of Mr. Shull having submitted a witness affidavit in W.R. Simpson, Jr.'s parents divorce case. To the contrary, Plaintiff's arguments suggest that you had no knowledge of that fact and thus there could not have been any possible resulting bias or prejudice.

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(2) A judge shall keep informed about the judge's personal and fiduciary\* economic interests,\* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

#### HISTORICAL NOTES COMMENTARY

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

The entire gist of Plaintiff's Motion seems to be directed at the fact that Your Honor married to Mark Andrews and that Mr. Andrews is a law partner with Lon Shull who gave a witness affidavit on the issue of attorney fees in Simpson Sr. case which was heard and decided by Judge Wright Turbeville in 2004 and early 2005.

Mr. Shull has not been an attorney or witness or otherwise involved directly or indirectly in this case (*W. R. Simpson, Jr. vs. Becky H. Simpson*, Docket Nos. 2004-DR-14-243 & 315). Mr. Shull's sole involvement in the Simpson Sr. case was as a witness, via affidavit, on the issue of attorney fees. Mr. Shull did not appear as an attorney in that case and had no other involvement in that case.

judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts concerning the proceeding;
- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

#### HISTORICAL NOTES COMMENTARY

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

- (c) the judge knows\* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,\* has an economic interest\* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis\* interest that could be substantially affected by the proceeding;
- (d) the judge or the judge's spouse, or a person within the third degree of relationship\* to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding, or an officer, director or trustee of a party;
  - (ii) is acting as a lawyer in the proceeding;
  - (iii) is known\* by the judge to have a more than de minimis\* interest that could be substantially affected by the proceeding;
  - (iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.

#### HISTORICAL NOTES COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

00237

Shull's affidavit "The fact that Simpson, Jr. never reported adjusted gross income of more than \$18,000.00 per year yet, according to his testimony, acquired assets in excess of \$850,000.00 with no explanation tells (sic) me as a lawyer that there was shifting funds and/or assets in between his father and him." The facts on which this opinion are based are drawn directly from the December 31, 2004 Final Decree of Divorce issued by Judge Turbeville in the Simpson Sr. case and do not in any way reflect an independent determination by Mr. Shull. That Final Decree of Divorce was issued before Mr. Shull gave his affidavit.

2. Mr. Shull giving an affidavit in the Simpson Sr. case does not disqualify Your Honor from hearing this case.

#### **E. Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

#### **HISTORICAL NOTES COMMENTARY**

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the

(d) For Motions--Affidavits. A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court. Such an order may for cause shown be made on ex parte application. When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences. In all cases where a motion shall be granted on payment of costs or on the performance of any condition, or where an order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have 20 days for that purpose, unless otherwise directed in the order. (emphasis added)

Rule 59, *South Carolina Rules of Civil Procedure*, mandates:

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits. (emphasis added)

There is nothing before the Court to support granting Plaintiff's Motion. The allegations of Plaintiff Motion (unverified) and the argument of Plaintiff's attorney are not evidence and do not form a basis for granting the Motion. As such, Plaintiff's Motion should be summarily denied. Further, Plaintiff should not be allowed to submit Affidavits or other supporting evidence at the April 13, 2006 hearing, as such violate the provisions of Rules 6(d) and 5(c), *SCRPC*.

**B. PLAINTIFF'S MOTION IS SUBSTANTIVELY WITHOUT MERIT.**

1. Plaintiff's Motion is factually inaccurate.

Plaintiff's Motion incorrectly asserts that Mr. Shull made conclusions adverse to Plaintiff in his affidavit. In support of this assertion, Plaintiff cites the statement in Mr.

As made unequivocally clear by the South Carolina Court of Appeals in *Bowers vs. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991):

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. See 49 C.J.S. Judgments § 297, at 545 (1947) ("The party who seeks to have a judgment opened or set aside must assume the burden of proving the facts essential to entitle him to the relief asked."); 46 Am.Jur.2d Judgments § 780, at 940 (1969) ("The general rule is that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends."); cf. 7 J. Moore & J. Lucas, Moore's Federal Practice ¶ 60.24[5], at 60-217 (1990) ("The moving party must show fraud, misrepresentation, or other misconduct within the intendment of 60(b)(3) and, normally, that he has a meritorious claim or defense, as the case may be. Fraud, misrepresentation, or other misconduct is not to be presumed; the burden of proof as to these charges is upon the moving party; and they must ordinarily be proved by clear and convincing evidence."). Such evidence is usually provided through affidavits. See 49 C.J.S. Judgments § 295, at 544 (1947) ("A motion to open or vacate a judgment should be supported by affidavits as to the facts on which the application relies."); cf. *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (Ct.App.1985) (where the court accepted verified pleadings as evidence). Mr. Bowers offered neither affidavits nor other proof.

Mr. Bowers, however, relies on the allegations contained in his unverified counterclaim and the arguments made by his attorney during the hearing on his motion. Mere allegations, denied by the other party, are not evidence. See *Griffin v. Van Norman*, 302 S.C. 520, ---, 397 S.E.2d 378, 379 (Ct.App.1990) ("Allegations in a [c]omplaint denied in answer are evidence of nothing."). (FN1) Arguments of counsel are also not evidence. See *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986) (the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence). (emphasis added)

Plaintiff's Motion is based solely on the allegations made in the Motion and is not supported by any affidavit of other evidence.

Rule 6(d), *South Carolina Rules of Civil Procedure*, expressly mandates:

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Lon H. Shull, III is a partner in the Mt. Pleasant law firm of Andrews & Shull. Mr. Shull's partner in that law firm is Mark O. Andrews. Mark Andrews is Your Honor's husband<sup>2</sup>.

Plaintiff's Motion contends that Mr. Shull having given an affidavit on the issue of attorneys fees in the Simpson Sr. case (heard and decided by Judge Turbeville) creates a conflict of interest preventing Your Honor from hearing this case and that Defendant Becky H. Simpson's attorneys should have disclosed this alleged conflict of interest to Plaintiff and his attorneys.

Defendant Becky H. Simpson disagrees with the arguments taken by Plaintiff in support of his Motion and submits that the Motion is completely without merit and should be denied.

## DISCUSSION

### A. PLAINTIFF'S MOTION IS PROCEDURALLY DEFECTIVE.

#### 1. Plaintiff's Motion is premature.

Plaintiff based his Motion on Rules 52, 50 and 60, *South Carolina Rules of Civil Procedure*. Each of these Rules governs post trial procedure and contemplates that an Order or judgment has been entered on which to base such a Motion. While Your Honor has issued instructions for preparation of an Order in this case, no Order or judgment has yet been entered thus any Motion made by Plaintiff under Rules 52, 50 and/or 60, *South Carolina Rules of Civil Procedure* is premature and should be summarily dismissed.

#### 2. Plaintiff has not submitted any evidence in support of his Motion.

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<sup>2</sup> This fact is a matter of common knowledge among attorneys practicing in the Family Court and is well publicized in legal directories such as the 2005-2006 South Carolina Lawyers Desk Book (at page 445) and on the South Carolina Judicial Department website.

William R. Simpson, Jr. was named as a party in his parents' divorce case due to joint titling and multiple transfers of property between William R. Simpson, Jr. and William R. Simpson, Sr. The Defendants in the Simpson Sr. case were represented by Steven S. McKenzie and Scott L. Robinson, who also represent Defendant William R. Simpson, Jr. in this case.

The Simpson Sr. case was heard on its merits by Family Court Judge R. Wright Turbeville on July 7, 8 & 9, 2004; September 29 & 30, 2004 and October 22 & 26, 2004. On December 31, 2004 Judge Turbeville issued a Final Decree of Divorce in the Simpson Sr. case resolving all issues except that of attorneys fees, which was reserved for future determination. A copy of the Final Decree of Divorce issued by Judge Turbeville in the Simpson Sr. case is attached hereto, incorporate herein by reference and designated **"EXHIBIT A"**.

Judge Turbeville conducted a hearing on the issue of attorneys fees in the Simpson Sr. case on February 4, 2005. At that hearing Daisy Wallace Simpson submitted, as evidence, an affidavit from attorney Lon H. Shull, III dated January 2005<sup>1</sup>. Copies of Mr. Shull's Affidavit and the transmittal letter sending the same to Judge Turbeville are attached to Plaintiff's Motion. On February 17, 2005, Judge Turbeville issued an Order Regarding Attorneys Fees in the Simpson Sr. case. A copy of the Order Regarding Attorneys Fees issued by Judge Turbeville in the Simpson Sr. case is attached hereto, incorporate herein by reference and designated **"EXHIBIT B"**.

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<sup>1</sup> This Affidavit was mailed to Judge Turbeville on January 18, 2005.

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	DOCKET NO: 2004-DR-14-315, 243
	)	
WILLIAM R. SIMPSON, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>RETURN AND</b>
	)	<b>MEMORANDUM OF LAW</b>
BECKY H. SIMPSON	)	
and WADE INGLE,	)	
	)	
Defendants.	)	

Defendant Becky H. Simpson, by and through her undersigned counsel, submits the following Return and Memorandum of Law in opposition to Plaintiff's "Notice of Motion and Motion for a New Trial Based upon Failure of Defendant's Counsel to disclose the Court's Conflict of Interests".

### BACKGROUND

Plaintiff William R. Simpson, Jr. has made a Motion for a new trial. Plaintiff bases that Motion on what he asserts was a "conflict of interest" by the Court in hearing this case and a failure by Defendant's counsel to disclose purported that conflict of interest. Plaintiff bases his Motion on the following facts.

Defendant Becky H. Simpson's attorneys represented Daisy Wallace Simpson in the case of "*Daisy Wallace Simpson vs. William Robert Simpson, Sr. individually and as shareholder/member of W.R. Simpson Farms, L.L.C. and William R. Simpson, Jr., as a shareholder/member of W.R. Simpson Farms, L.L.C.,*", Docket No. 2003-DR-14-128 ("the Simpson Sr. case"). Daisy Wallace Simpson and William Robert Simpson, Sr. are the parents of William R. Simpson, Jr., the Plaintiff in this case ("the Simpson, Jr. case").

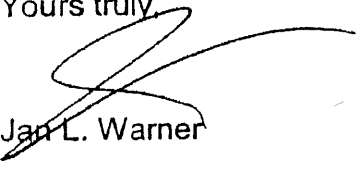
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Ms. Beulah G. Roberts  
April 24, 2006  
Page 2 of 2

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Yours truly,



Jan L. Warner

JLW/is

Enclosure(s): Memorandum of Law  
Affidavit of Nathan M. Crystal  
Self-Addressed Stamped Envelope

Cc: Steven McKenzie, Esquire (via fax)

00230

**WARNER, PAYNE & BLACK, L.L.P.**  
ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.

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Member, National Academy of Elder Law Attorneys  
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**CHARLES M. BLACK, JR.**

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PLEASE REPLY TO:  
COLUMBIA OFFICE

April 24, 2006

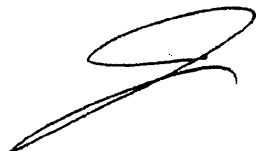
Beulah G. Roberts  
Clerk of the Family Court  
Third Judicial District  
Post Office Box 136  
Manning, South Carolina 29102-0136

**RE: William R. Simpson v. Becky Simpson**  
**Case No.: 2004-DR-14-243, 315**

Dear Ms. Roberts:

Please find enclosed herewith original and two (2) copies of Memorandum of Law, together with Affidavit of Nathan M. Crystal in the above-referenced matter.

I would appreciate your filing the original and returning the two copies to me in the enclosed self-addressed stamped envelope.

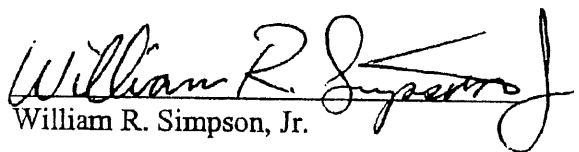


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matter was not disclosed to myself or to my attorneys prior to trial, and quite frankly, was not brought to the Court's attention by defense counsel. I believe that this situation creates a conflict of interest, or at least the appearance of impropriety which should have been brought not only to the Court's attention, but also to my attention or to that of my attorneys prior to the hearing in this matter so that we would have had full opportunity to have disclosure about that matter. Had I known this prior to this matter being filed, I would have filed a Motion asking Judge F. P. Segars-Andrews to recuse herself and ask that this case be reassigned to a different Judge. This information was not discovered until after the close of this case, and therefore I did not possess the requisite knowledge to waive this potential conflict at any time prior to or during the trial in this matter. For the reasons set forth hereinabove, I would request that Judge F. P. Segars-Andrews recuse herself from this matter and grant our Motion for a New Trial in front of another Judge.

RESPECTFULLY SUBMITTED,

  
William R. Simpson, Jr.

SWORN to before me this 12<sup>th</sup> day  
of April, 2006.

  
Notary Public for South Carolina  
My Commission Expires: 08-20-2011

00228

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

William R. Simpson, Jr.,

Plaintiff,

vs.

Becky H. Simpson,

Defendant.

IN THE FAMILY COURT OF THE

THIRD JUDICIAL CIRCUIT

DOCKET NO.: 04-DR-14-315

**AFFIDAVIT IN SUPPORT OF NOTICE OF  
MOTION AND MOTION FOR A NEW  
TRIAL BASED UPON FAILURE OF THE  
DEFENDANT'S COUNSEL TO DISCLOSE  
THE COURT'S CONFLICT OF INTEREST**

PERSONALLY appeared before me the undersigned, who after being duly sworn does state and depose as follows:

My name is William R. Simpson, Jr., and I am the Plaintiff in the above entitled action. I was named as a Defendant in Docket No: 03-DR-14-128 and 04-DR-14-128, my parent's divorce case in support of the Affidavit for Attorney's Fees prepared by Jan L. Warner, Esquire and James T. McClaren, Esquire, and Affidavit was submitted by Lon H. Shull, III, Esquire of the Charleston County Bar of the Law Firm of Andrews and Shull, PC. I did not realize until after the close of this case, that Mr. Shull was in fact the partner of Mr. Mark O. Andrews, Esquire, who is the husband of the Honorable F. P. Segars-Andrews, the trial Judge who heard the above captioned matter. I believe that this is a conflict of interest for Judge Segars-Andrews to have heard this matter in light of the involvement of her husband's firm in the prior action to which I was a party. This matter was well-known to defense counsel in this case, Jan L. Warner, Esquire and James T. McClaren, Esquire, as they represented my wife, Becky H. Simpson, in the above captioned matter as well as my mother, Daisy Simpson, in the prior divorce case to which I was a party and in which Mr. Shull submitted an Affidavit in support of their Affidavit for Attorney's Fees. This

00227



Transaction Report

Send

Transaction(s) completed

No.	TX Date/Time	Destination	Duration	P. #	Result	Mode
534	MAR-28 18:05	8032523548	0'03'48"	016	OK	N ECM

Johnson, McKenzie & Robinson, LLC

Attorneys at Law  
16 North Brooks Street  
Manning, South Carolina 29102

William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

Telephone 803.435.0909  
Facsimile 803.435.2858

March 28, 2006

The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

Dear Judge Segars-Andrews:

Prior to your Honor making any further decisions in this case, please read the attached Motion for a New Trial along with the accompanying affidavit.

It is my client's position that had you known about Mr. Shull's involvement in his father's case (in which my client and the LLC were parties) you would have recused yourself from the trial of this matter and that any further involvement by your honor in this matter would violate Canon 2 of the Code of Judicial Conduct.

Therefore, we would ask that you not render any further opinions or Orders in this matter until the Motion for a New Trial can be heard.

Sincerely yours,

Steven S. McKenzie

00226

## Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
532	MAR-28	18:00	18439584415	0'02'03"	016	OK	N ECM

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Sincerely yours,

Steven S. McKenzie

00225

Transaction Report

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Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P.#	Result	Mode
533	MAR-28	18:03	803 799 2517	0'01'50"	016	OK	N ECM

Johnson, McKenzie & Robinson, LLC

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Manning, South Carolina 29102

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March 28, 2006

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Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

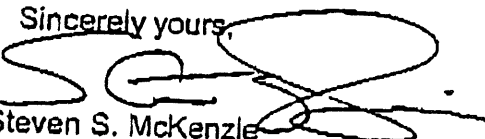
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Therefore, we would ask that you not render any further opinions or Orders in this matter until the Motion for a New Trial can be heard.

Sincerely yours,

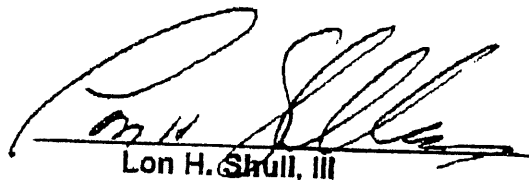
  
Steven S. McKenzie

00224



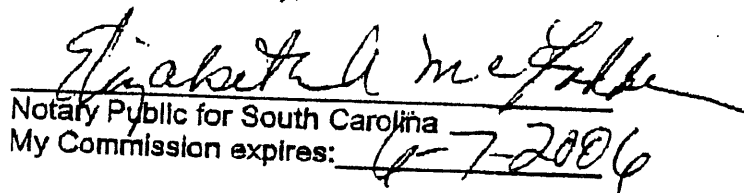
requiring Ms. Simpson to pay these fees would decimate her share of the marital estate, it is below signed's opinion that a full measure of attorney fees and costs should be awarded.

36. I have worked extensively with both Mr. McLaren and Mr. Warner and believe them to be marital litigators of the highest caliber and quality. They are both known throughout the state and are "fellow Fellows" in the American Academy of Matrimonial Lawyers. The hourly rate set forth in their attorney's fees affidavit is reasonable for lawyers of this stature and is customary in cases of this nature.



Lon H. Shull, III

SWORN to and subscribed before me  
this    day of January, 2005



Elizabeth A. McGhee  
Notary Public for South Carolina  
My Commission expires: 6-7-2006

with a combined legal cost of approximately 1/10 of the fees necessarily incurred by the Plaintiff. The Defendant caused her to incur these fees both in his conduct in hiding the marital estate and in the meritless positions taken by him at trial.

33. It further appears that to require the Plaintiff to be responsible for her own fees would decimate the equitable division received by her in this action. Given the length of this marriage and the resulting wealth of the Defendant, this would be a significant injustice. Even with the division ordered by the Court, the Defendant Simpson Sr., appears well able to afford to the penny, the fees set forth in Mr. McLaren and in Mr. Warner's affidavit.

34. The Court's findings at pages 23 and 24, with regard to the efforts required of Ms. Lindhart is absolutely incredible. Never has the below signed seen where the efforts of a real estate appraisal were required to this extent. Her efforts in discovering the existence of ownership interests are nothing short of amazing. That she was required to do so by the omission and representations of the Defendant Simpson Sr. is ludicrous. The Defendant, in my opinion, should be responsible for every penny of her fees and the fees of Mr. Hobbs.

35. The most amazing aspect of this claim is the effort, persistence, talent and experience that was required to discover what should have been disclosed in the Defendant's first financial declaration. It is admirable that this level of representation was rendered even though Ms. Simpson could not pay them for their work. Given the contingency of the compensation and the lengths to which they were required to use their not inconsequential talents and the fact that

necessary by the conduct of the Defendant Simpson, Sr. and/or his legal team.

Given the fact that the Court found that the Defendant Simpson:

- a. transferred marital assets into what he claimed to be a non-marital corporation;
- b. deliberately failed to list items of personal and real properties even to his own experts;
- c. refused even at trial to testify as to his opinion of "what he owned" and its value;
- d. completely misrepresented the value of the marital estate during discovery, the settlement process and through the trial in this matter;
- e. failed to pay \$16,734.00 in past due medical obligations;
- f. wasted the Court's time in arguments of separate inherited property for the marital home and attempt to value the stock in Agent Owned Realty;
- g. shifted assets and income to Mr. Simpson, Jr. in an effort to hide these assets and income from this Court, his wife and the Internal Revenue Service and engaged in other duplicitous and disingenuous acts and testimony

the Plaintiff should not have to pay for her own legal and trial expenses as they were caused by the above.

32. In my opinion, as a frequent litigator in the Family Courts of South Carolina, a frank disclosure of the assets and income, given the long marriage and contributions of the Wife, would have forced this case to an early settlement

found, the clear preponderance of evidence was that the home and acreage were transmuted to marital property. In fact, given the evidence cited by the Court in its Order, the position taken and prosecuted by the Defendant was specious and not in good faith yet Plaintiff and her lawyers were required to disprove it.

28. In reviewing correspondence of Plaintiff's counsel, it was their opinion that the marital assets were worth somewhere in the neighborhood of \$2,000,000.00 as of May of 2004. The Court found the total marital estate at \$2,327,654.00, which is very close to the early assessment of Plaintiff's counsel which, given the lack of discovery response from Defendant, must have been based upon their experience.

29. The Offer made by Plaintiff's counsel to take \$750,000.00 in cash or to take \$900,000.00 and no alimony or attorney fees is very close to what the Court awarded (\$780,000.00 in equitable division and \$1,000 a month in alimony).

30. Given the fact that when fees are assessed and the payments are made to the experts, Mrs. Simpson's award, excluding alimony, should exceed \$1,000,000.00, the May 13, 2004 offer to accept 50% of the assets and \$75,000.00 in fees is probably something that Mr. Simpson should have thought about.

31. Given my review of the Court's Order and the Attorneys Fees Affidavit of Mr. McLaren and Mr. Warner, it appears that the total expense of the Plaintiff's legal team is substantial. It further is my opinion that all of the efforts expended on the Plaintiff's behalf were absolutely necessary and indeed were made

22. Further, Mr. Simpson, Sr.'s testimony that he purchased property with cash so that sellers could avoid taxation and he didn't know the value of his assets made the consideration shown on the face of deeds unreliable.

23. The Court also found that the discovery process was significantly extended and obfuscated, which is exactly where Plaintiff's attorneys found themselves and complained about in their May 2004 letter.

24. From my review of the Order and Fee Affidavit, I believe that only stubbornly persistent representation resulted in the full disclosure of the Defendant's income and the marital assets. Less determined, or less experienced lawyers and experts would not have "gotten to the bottom" of Simpson's deception, delay and obfuscation. This is especially so, given the absence of contemporary compensation for their work.

25. In reviewing the summary of time expended by the Plaintiff's counsel, it does not seem at all inordinate. This is especially so given the actions of Defendant, the lengths to which the lawyers were required to go and the preparation for, travel to, and participation in seven days of trial.

26. It further appears to me that as competent as Mr. Warner and Mr. McLaren are, the attempted deceptions of the Defendant; his use of two lawyers, the late production of discovery and the apparent conspiracy of a father and son required the efforts of two lawyers and their staff to adequately represent the Plaintiff.

27. Further, Simpson, Sr. claimed that the residence and acreage that he had received at this mother's death was non-marital property. As this Court

property) in the year of 2000; that Simpson, Jr. and Simpson, Sr. basically divvied up income based on their respective needs without any corporate structure and/or explanation; that Simpson, Sr. testified on numerous occasions he didn't know what he owned and made very little effort to categorize or evaluate his assets, and the fact that Mr. Simpson's income and assets greatly exceed that which has been reported on his Financial Declarations.

18. The Court apparently suffered from the same difficulties as the Plaintiff's Counsel in not knowing what Simpson, Sr.'s true income and assets were.

19. Reviewing the Order and the lack of evidence from Simpson, it seems that the Court came very close to the figures determined by Ms. Lindhart as far as the real estate was concerned.

20. Of interest to me was that the Simpsons spent a lot of time and effort with regard to the value of the stock in Agent Owned Reality. On the face of a letter from Mr. Loadholt, it was obviously worth nothing to anyone other than to Mrs. Simpson and could not be sold. Despite this letter, the value of the stock continued to be contested by the Defendant. This caused Plaintiff to bring Mr. Loadholt to Court.

21. The fact that Simpson, Jr. never reported adjusted gross income of more than \$18,000.00 per year yet, according to his testimony, acquired assets of in excess of \$850,000.00, with no other explanation. tells me as a lawyer that there was a shifting of funds and/or assets in between his father and him.

with the same indemnifications, security, and life insurance. In that situation, she would also pay her own attorney's fees.

16. The Final Decree of December 31, 2004 awarded Mrs. Simpson \$1,000.00 per month as permanent periodic alimony, required Mr. Simpson to pay \$16,734.00 in past due medical obligations, required Mr. Simpson to transfer to Mrs. Simpson \$539,151.00 in real estate and other accounts plus cash of \$244,904.00. The equitable division awarded by the Court was \$120,000.00 less than Mrs. Simpson had offered to take (\$900,000.00) in July that included Mrs. Simpson's waiver of alimony and her payment of her own attorney's fees and costs. Therefore, it is obvious that the Court awarded quite a bit more than Mr. Simpson offered, and more than Mrs. Simpson had offered to settle considering the alimony and what further the Court is to award in attorney's fees to Mr. Warner and Mr. McLaren.

17. A large number of the Court's findings are consistent with the apparent problems that Plaintiff's attorneys had in securing discovery as an example. The Court's determination of Mr. Simpson, Sr.'s Financial Declaration was not accurate; that it had been difficult for the Court to determine the income, expenses and wealth of the parties; Mr. Simpson, Sr. took inconsistent positions regarding his transfer to Simpson, Jr. of the property in the LLC; that Mr. Simpson told Ms. Amos that the LLC owned the farming operations and the farm equipment when in fact it did not; that Mr. Simpson could not explain sixty items of equipment listed on his general ledger that he stated he no longer owned; that Mr. Simpson did not report the sale of Timber (a certain Kershaw County

action was commenced set the tone for him making her lawyers work for everything they got from him and about him.

13. The Offer of Compromise made on July 8, 2004 by Mr. Warner and Mr. McLaren was as follows:

1. Payment of \$750,000.00 tax-free within thirty (30) days.
  2. Payment of \$2,000.00 per month as alimony until Mrs. Simpson's death, Mr. Simpson's death, or Mrs. Simpson's remarriage.
  3. Both Simpsons would give tax indemnifications to Mrs. Simpson and hold her harmless from potential tax issues regarding prior joint tax returns.
  4. All parties would retain personal property in possession except for the Kawasaki Mule that would go to Mrs. Simpson.
  5. Mrs. Simpson would pay her own attorney's fees and her own expert's fees and there would be mutual releases.
  6. This Offer was based upon a down payment of \$400,000.00 to \$500,000.00 with a balance over a relatively short period of time secured by a mortgage and life insurance.
14. At this point in time, Mrs. Simpson was willing to accept \$750,000.00 tax-free and \$2,000.00 per month alimony, and she would pay her own attorney's fees.
15. Because Mr. Simpson Sr. did not wish to pay taxable alimony, Mrs. Simpson offered to take \$900,000.00 tax-free with \$400,000.00 to \$500,000.00 down and the balance of over seven to ten years at a reasonable interest rate



9. According to the Fee Affidavit, the offer of May 14, 2004 goes further to state " we also believe Simpson, Jr.'s income is significantly greater than he has reported. . . . We believed that funds have been siphoned off with the intent of hiding the same from our client and purchasing capital assets and real property in a secretive way to attempt to avoid detection . . . . Simpson, Jr. and Simpson, Sr. are in business together and are, with others, engaging in a concerted effort to reduce our client's share of the marital assets and interfere with the resolution of this case. Without wasting a lot of time, we believe that income figures reported by your clients of the income tax returns we have now seen are, at best, understated."

10. There was no substantive counteroffer; however, in July 2004, it appears that discussions took place during which Mr. Warner and Mr. McLaren offered to accept \$750,000.00 in equitable division and \$2,000.00 per month alimony with their client paying their fees. A few days later, they offered to accept \$900,000.00 with no alimony and their client paying their fees. .

11. Again, according to the Fee Affidavit, Mr. Simpson's lawyer never responded.

12. According to the Decree, this case was tried for the better part of seven days over a period of better than three months. During this trial, a significant number of exhibits were introduced by the Plaintiff (91) and the Defendant (30). As an attorney, I found this to be most confusing, and frankly did not understand how a successful farmer could not tell the Court what he owned and what he was worth. The fact the Mr. Simpson transferred assets a week or so after the

5. In most instances, I would require that attorneys provide me with their entire file for review; however, in this situation, I believe I have enough information on which to base an opinion about the value of legal services. The court's Decree and the offers of settlement in this case are most telling.

6. For example, Mr. Simpson, Sr.'s offer of paying \$200,000.00 over ten years with no alimony was based upon his assertion that the marital estate was worth approximately \$460,00.00 and that his income was much less than the Court ultimately determined.

7. The May 14, 2004 offer made by Mr. Warner and Mr. McLaren on behalf of their client was somewhat unusual due to the fact that, through the discovery process, neither was sure of the total value of the marital estate, or Mr. Simpson, Sr.'s income.

8. It almost seems that Mr. McLaren and Mr. Warner's letter of May 14, 2004 was prescient when it stated that coming up with the monetary values of the assets was difficult due to the way in which Mr. Simpson and his son did business and the failure of discovery responses. They cited a number of examples, including Simpson, Sr. running Simpson, Jr.'s farm income through Simpson, Sr.'s account; Simpson, Sr. not operating the LLC for the purposes stated for the formation of the LLC; Simpson transferring S&T property after the filing of the action, yet never being removed from the loan liability; and Simpson, Jr. earning a small income but acquiring substantial assets in paying down mortgages and managing a rather affluent lifestyle.

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
COUNTY OF CLARENDON	)	THIRD JUDICIAL CIRCUIT
DAISY W. SIMPSON,	)	DOCKET NO.: 2004-DR-14-128
	)	
PLAINTIFF,	)	AFFIDAVIT OF
	)	LON SHULL, III
VS.	)	
	)	
SIMPSON FARMS, LLC.,	)	
	)	
DEFENDANT.	)	

2006 APR 12 PM

PERSONALLY APPEARED BEFORE ME, Lon H. Shull, III, who, being duly sworn, says:

1. I am a member of the South Carolina Bar, having been admitted in November 1984. I have been a member of the Fee Resolution Committee of the Charleston County South Carolina Bar, and the Executive Committee of the Charleston County Bar.
2. Over the years, I have concentrated my practice in the matrimonial area and have presented various CLE topics for the South Carolina Bar, South Carolina Trial Lawyers Association, South Carolina Association of Certified Public Accountants and Charleston County Bar.
3. I am a partner in the firm of Andrews and Shull in Mt. Pleasant, South Carolina. I am a fellow of the American Academy of Matrimonial Lawyers.
4. At the request of Jan L. Warner and James T. McLaren, I have reviewed the court order of December 31, 2004 and the fee affidavit of Mr. McLaren and Mr. Warner (hereafter referred to as "Fee Affidavit").

McLAREN & LEE  
ATTORNEYS AT LAW  
1508 LAUREL STREET  
COLUMBIA, SOUTH CAROLINA

TELEPHONE (803) 799-3074  
FACSIMILE (803) 252-3548

JAMES T. McLAREN\*  
C. DIXON LEE, III\*\*

\*\*ALSO ADMITTED IN NC

January 18, 2005

PLEASE REPLY TO:  
POST OFFICE BOX 11809  
COLUMBIA, SOUTH CAROLINA  
29211-1809

VIA FAX AND MAIL

The Honorable R. Wright Turbeville  
Family Court Judge  
For The Third Judicial Circuit  
Post Office Box 696  
Manning, South Carolina 29102-0696

RE: *Daisy Wallace Simpson vs. William Robert Simpson, Sr., et al.*  
Docket No: 03-DR-14-128

Dear Judge Turbeville:

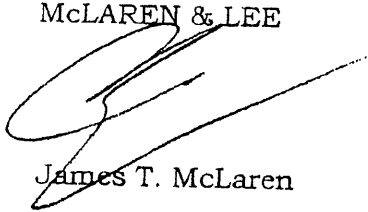
Please find enclosed the Affidavit of Lon H. Shull, III submitted in support of Plaintiff's request for attorney fees, suit money and costs in connection with the above matter.

By copy of this correspondence to opposing counsel, I am transmitting the enclosed Affidavit to each of them by FAX this date.

With kindest regards, I am

Very Truly Yours,

McLAREN & LEE

  
James T. McLaren

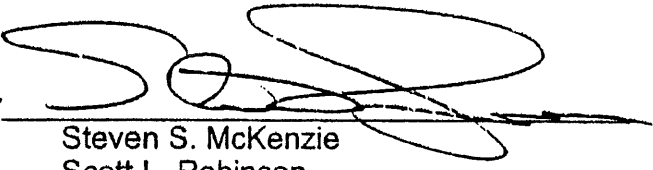
JTM/mms  
Enclosure

cc: Daisy W. Simpson w/enclosure  
Jan L Warner, Esquire w/enclosure (via FAX)  
Steven S. McKenzie, Esquire w/enclosure (via FAX)  
Scott L. Robinson, Esquire (via FAX)

00212

JOHNSON, MCKENZIE & ROBINSON, LLC

By



Steven S. McKenzie  
Scott L. Robinson  
Attorneys for Defendant  
16 North Brooks Street  
Manning, SC 29102  
(803) 435-0909

March 28, 2006

Warner and Mr. McLaren and because he was a member of Simpson Farms LLC. That Mr. Warner and Mr. McLaren knew or should have known that Mr. Shull was/is a partner in the law firm of Andrews and Shull, PC located at 755 Johnnie Dodds Blvd, Mt. Pleasant, South Carolina 29464.

2. The Plaintiff would show that Mr. Shull is a partner with the principal partner, Mark O. Andrews, Esquire, in said law firm. That Mr. Shull's affidavit (attached hereto and marked as Exhibit "A") goes into great detail regarding the assets and liabilities of the Plaintiff. By way of illustration the following is contained in Mr. Shull's affidavit at paragraph 36 page 11 "I have worked with both Mr. McLaren and Mr. Warner." On page 1 of his affidavit, Mr. Shull states: At the request of Jan I. Warner and James T. McLaren, I have reviewed the court order of December 31, 2004 and the fee affidavit of Mr. McLaren and Mr. Warner (hereinafter referred to as "Fee Affidavit"). As a result, Mr. Shull was asked to give a professional opinion as to the reasonableness of the attorney's fees in Simpson I. In paragraph 21, page 6, Mr. Shull makes the following conclusion:" The fact that Simpson, Jr. never reported adjusted gross income of more than \$18,000.00 per year yet, according to his testimony, acquired assets of in excess of \$850,000.00 with no explanation. tells (sic) me as a lawyer that there was shifting funds and/or assets in between his father and him."
3. The Plaintiff would show that he was not aware that Mr. Shull's partner in his law firm, Mark O. Andrews, is the husband of the Honorable F.P. Segars-Andrews. (Trial Judge in Simpson II in which Simpson Farms LLC was divided by the Court). This fact was not known until after the trial of the matter by the Plaintiff or his trial counsel. The Plaintiff would show that this fact was well known to the attorney's for the Defendant. That they failed to notify opposing counsel that Mr. Shull was the law partner of the husband of the trial judge. The Defendant's attorneys also failed to inform the Court of Mr. Shull's involvement in Simpson I and had a duty to inform the Court that her husband's law partner had rendered a legal opinion against the Plaintiff in another lawsuit that dealt with many of the same properties in Simpson II; e.g Simpson Farms, LLC.
4. The Plaintiff would ask for a new trial based upon a failure of the Defendant's Counsel to disclose to the Court Mr. Shull's work against the Plaintiff in the Simpson I matter and a failure of the Defendant's counsel to disclose that Mr. Shull was the law partner of the husband of the trial Court.



STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

William R. Simpson, Jr.,

PLAINTIFF

VS.

Becky H. Simpson,

DEFENDANT

IN THE FAMILY COURT

2006 APR 12 PM 3 54

FAMILY COURT COVER SHEET  
DOCKET #: 04-DR-14-315

SUBMITTED BY: Scott L. Robinson  
ADDRESS: 16 N. Brooks Street  
Manning, SC 29102

SC BAR #: 008651  
TELEPHONE #: 803-435-0909  
FAX #: 803-435-2858

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this cover sheet must be served on Defendant (s) along with the Summon and Complaint

**DOCKETING INFORMATION** (check one box below if filing in a mandatory meditation county)

- ☐ This case is subject to **MEDITATION** pursuant to the Family Court Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR (certificate attached)

**NATURE OF ACTION**  
(check one box below)

**Marital Dissolution**

- ☒ Divorce(110)  
☐ Annulment (120)  
☐ Sep. Support & Maintenance (13)  
☐ Reg. Foreign Decree of Divorce (190)  
☐ Other (199)

**Abuse and Neglect**

- ☐ Child Protective Services  
☐ Adult Protective Services  
☐ Other (299)

**Juvenile Delinquency**

- ☐ State offense(310)  
☐ Criminal Offense (320)  
☐ Other (399)

**Protection from Domestic Abuse**

- ☐ Intimate Partner (410)  
☐ Minor (420)  
☐ Reg. Foreign Order (490)  
☐ Other (499)

**Support**

- ☐ Child Support(510)  
☐ DSS Child Support (511)  
☐ Mod. of Child Support (515)  
☐ Mod. Of Alimony (525)  
☐ College Expenses (530)  
☐ Other (599)

**Custody/visitation**

- ☐ Child Custody Visitation(610)  
☐ Mod. of Custody/ Visitation (615)  
☐ Reg. Foreign Child Custody Order (690)  
☐ Other (699)

**Miscellaneous Actions**

- ☐ Name Change (710)  
☐ Correction/Birth Record (720)  
☐ Judicial Bypass (730)  
☐ Adoption (740)  
☐ Foreign Adoption (741)  
☐ Post Dissolution Equitable Distribution  
☐ Paternity (760)  
☐ Termination of Parental Rights  
☐ Other (799)

Submitting Party Signature: 

Date: April 12, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, SC Code Ann. § 15-36-10 *et. seq.*

00208



WR Simpson Farms, LLC  
From Tracy Amos Marital Addendum

As of March 14, 2003

Total Assets for WR Simpson Farms, LLC

Checking accounts	\$59,805.00	
Investments	\$92,324.00	
Real Estate	\$937,500.00	
Auto & Farm Equipment	\$209,065.00	
Crops in Ground	\$26,470.00	
<b>TOTAL ASSETS</b>	<b>\$1,325,164.00</b>	$\frac{1}{2} = \$662,582.00$

LLC Liabilities

Bank Notes	(\$228,948.00)	
Other Notes	(\$219,954.00)	
Mortgages	(\$81,322.00)	
<b>TOTAL LIABILITIES</b>	<b>(\$530,224.00)</b>	$\frac{1}{2} = \$265,112.00$

**TOTAL NET WORTH OF \$397,470.00**

All property of the parties known to me includes the following:

	Husband	Wife
Cash on hand .....	\$ 35.00	\$
Money in checking accounts .....	\$ 2,400.00	\$
Money in savings accounts .....	\$ 500.00	\$
Money in credit union .....	\$ 0.00	\$
Money in any other accounts or deposits...	\$ 0.00	\$
Retirement or pension fund .....	\$ 0.00	\$
Life insurance cash value .....	\$ 5,000.00	\$
Value of any stocks & bonds .....	\$ 0.00	\$
Value of real estate.....	\$ 272,900.00	\$
Value of all other property .....	\$ 20,000.00	\$
 TOTAL PROPERTY	 \$ 300,835.00	 \$

Sworn to and Subscribed before me )

this 3rd day of August, 2004 )

Doanna B. Mallery )  
Notary Public for South Carolina Signature )

My Commission expires 3/29/05 )

[Signature]  
Signature

Estimated monthly expenses:

(Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included)

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	Husband	Wife
Rent .....	\$ 0.00	\$
Note or mortgage payments (residence)...	790.00	
Real property taxes (residence) .....	0.00	
Real property insurance (residence) .....	65.00	
Maintenance (residence) .....	35.00	
Food and household supplies .....	180.00	
Utilities .....	375.00	
Telephone .....	75.00	
Laundry and cleaning .....	70.00	
Clothing .....	50.00	
Medical .....	100.00	
Dental .....	225.00	
Insurance (life,health,accident,etc).....	0.00	
Child Care .....	0.00	
Payment of child/spousal support .....	750.00	
School .....	400.00	
Entertainment .....	100.00	
Incidentals .....	50.00	
Auto expenses(insurance,gas,oil,repair).	150.00	
Auto payments .....	835.00	
Other Installment payment(s).....	0.00	
(Insert total here and itemize below)		

Creditor's Name	For	Monthly Payment	Balance
Pee Dee Farm Credit	home loan	\$ 0.00	\$ 80,000.00
Pee Dee Farm Credit	land loan	\$ 0.00	\$ 14,000.00
Pee Dee Farm Credit	land loan	\$ 0.00	\$ 16,000.00
Pee Dee Farm Credit	equipment loan	\$ 0.00	\$ 15,000.00
		\$	\$
		\$	\$

Other	For	Monthly Payment	Balance
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

TOTAL EXPENSES \$ 4,250.00 \$

Other debts and obligations NOT payable in monthly installments.

Creditor's Name	For	Date Payable	Balance
			\$
			\$
			\$
			\$
			\$

TOTAL OTHER DEBTS AND OBLIGATIONS

\$ 0.00

0020!

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF CLARENDON

THIRD JUDICIAL CIRCUIT

WILLIAM R. SIMPSON, JR.

Plaintiff

vs

BECKY H. SIMPSON

Defendant

FINANCIAL DECLARATION

OF WILLIAM R. SIMPSON, JR.

FILE NO. 2004-DR-14-243

Husband: William R. Simpson, Jr.

Wife: Becky H. Simpson

Address: 2827 Home Branch Road

Address: 2052 Billie Road

Manning, SC 29102

Manning, SC 29102

Age: 34 SSN: 251-61-9628

Age: 31 SSN:

Occupation: farmer/store owner

Occupation: homemaker

Employer:

Employer:

Address:

Address:

## PART A: INCOME AND EXPENSE STATEMENT

Husband

Wife

## (a) Gross monthly income from:

Salary and wages (including commissions, bonuses,  
and overtime) payable weekly/monthly/etc. ....

\$ 1,730.76

\$

Pensions and retirement .....

0.00

Social Security .....

0.00

Disability and unemployment insurance .....

0.00

Public assistance (AFDC payments, etc).....

0.00

Child/spousal support (prior marriage).....

0.00

Dividends and interest .....

0.00

Rents .....

0.00

Other

0.00

## TOTAL MONTHLY INCOME

\$1,730.76

## (b) Itemize deductions from gross income:

Income taxes (state and federal) .....

0.00

Social Security .....

0.00

Disability insurance .....

0.00

Medical or other insurance .....

0.00

Union or other dues .....

0.00

Retirement or pension fund .....

0.00

Savings plan .....

0.00

Other.....

0.00

TOTAL DEDUCTIONS

\$ 0.00

\$

## (c) NET MONTHLY INCOME

\$ 1,730.76

\$



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Defendant.

**PRO SE ANSWER**

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2004 AUG 2 PM 2:02

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32. After due inquiry of Plaintiff and Defendant Simpson, Sr., I find and certify that no possibility of reconciliation exists at this time and that further efforts in that regard would be unavailing. I find that there has not been any collusion between the parties.

33. I find that Husband and Wife have lived separate and apart without intervening marital cohabitation for a period of time in excess of one (1) year. I therefore find and conclude that Plaintiff should be granted a complete and final divorce on the statutory ground of one (1) year of continuous separation.

34. The Court does, however, find it necessary and relevant to address the fault grounds alleged.

35. Plaintiff and Defendant were previously involved in litigation in this Court (99-DR-14-450).

36. Plaintiff alleged in those proceedings that Defendant Simpson, Sr. had been involved in one or more adulterous relationships and, based upon those relationships, she sought a divorce upon the grounds of adultery.

37. Plaintiff alleged in this action that Defendant Simpson, Sr. was guilty of adultery and that his prior actions were revived. She also alleged that Defendant Simpson, Sr. had demeaned her, mentally abused, and denigrated her by referring to her in derogatory terms despite her health problems. Plaintiff offered no proof of Defendant's adultery and no corroboration to her testimony of mental abuse and denigration.

38. Subsequent to the filing and service of pleadings in 1999, the parties reconciled. Plaintiff contends that Simpson, Sr., promised her that he would not dispose of marital assets and that he would not have extra-marital affairs.

39. Plaintiff's concerns about Defendant Simpson, Sr.'s transferring marital property are set forth in a letter from her former counsel, Harry C. Wilson, Jr., dated December 14, 1999 to Defendant Husband's former counsel, Ray E. Chandler, and Mr. Chandler's response. Both of these writings were introduced into evidence as Plaintiff's Exhibit 9.

40. Mr. Wilson's letter, that was responded to by Mr. Chandler on the same date, advised Mr. Chandler that Plaintiff "had heard something to the effect that Defendant Husband might be moving towards establishing a corporation or making business decisions that might affect the assets." Mr. Wilson added, "If that is the case, then we will have to go to Court and get an Order of Protection." Mr. Wilson also stated that he was hopeful that the parties would reconcile, but that rumors of Simpson, Sr. transferring marital assets sent the wrong message to Plaintiff.

41. Mr. Chandler responded on December 14th, stating, "Mr. Simpson has no plans, expressed to me, about forming a corporation. He farms with his son. I think they have some informal written agreement that goes back several years, but there is no corporation, nor have I authorized him to do one. I believe that the farming corporation is the last thing on Mr. Simpson's mind. He would like to focus on reconciling with his wife and putting his family back together."

42. Plaintiff dismissed her action without prejudice by Order of the Honorable Ruben L. Gray, former Judge of the Family Court of the Third Judicial Circuit, dated March 2, 2000.

43. Yet, on April 28, 2000, Defendants Simpson, Sr. and Simpson, Jr. signed an LLC Operating Agreement (Plaintiff's Exhibit 12), and substantial property acquired during this marriage was transferred by Simpson, Sr. into the LLC owned half by each Defendant Simpson. This was less than two (2) months after the reconciliation between Plaintiff and Defendant

Simpson, Sr. However, as early as Mother's Day 2000, the Plaintiff was aware of this transaction and took no action to protect her interest.

44. According to testimony by Defendants' witnesses, William C. Coffey, Jr., and Ray E. Chandler, Mr. Coffey prepared the LLC documents for Defendants Simpson, without Mr. Chandler's knowledge.

45. One week after this action was filed and served, Defendant Simpson, Sr. transferred his half interest in S&T Land Development, another marital asset, to Ray Tidwell for \$5.00 and no other consideration.

46. While Defendant Simpson, Sr. attempted to assert misconduct on the part of Plaintiff, I find the same was uncorroborated, not pleaded and in no way rose to the level of being relevant as to the issues of alimony and equitable division.

#### ALIMONY

47. The other findings made in this Decree are incorporated by reference.

48. I find that Wife is entitled to an award of permanent periodic alimony in the amount of \$1,000.00 per month in accordance with the provisions of §20-3-130 (B)(1), South Carolina Code of Laws, 1976, as amended, until she dies or remarries.

49. In making this award of permanent periodic alimony, I make the following specific findings pursuant to §20-3-130(C) (1)-(13), South Carolina Code of Laws, 1976, as amended, and I have considered the equitable division award made to the Plaintiff/Wife hereunder:

- (1) The duration of the marriage together with ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties:

- (a) Plaintiff and Simpson, Sr. were married on October 6, 1968. They last lived together on March 1, 2003. I find that this is a long-term marriage.
- (b) Wife was born on October 8, 1950, and, at the time of the marriage, was seventeen (17) years of age. Wife is now 54 years of age.
- (c) Husband was born on June 5, 1950, and, at the time of the marriage was eighteen (18) years of age. Husband is also 54 years of age.

(2) **The physical and emotional condition of each spouse:**

- (a) Wife has recently undergone surgery for female problems that will persist for the rest of her life, and takes medication for rapid heartbeat and high cholesterol. Wife is currently employed as a realtor, and is paid on a commission basis. There is no evidence her health problems interfere with her ability to work.
- (b) Husband is in good health and physically capable of working full time and is gainfully employed as a farmer and real estate investor.

(3) **The educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential:**

- (a) Wife is a high school graduate who took some courses during the marriage when the children were older, but she did not complete her post high school schooling. Wife received her real estate license in 2001. Previously, Wife was a homemaker, raised three (3) children, and made other contributions to the marriage as set forth hereafter.
- (b) Husband is a high school graduate, a farmer, a good businessman, and has invested in real estate and other assets.
- (c) Neither Husband nor Wife will benefit from future education other than wife's continuing education requirements as a realtor.

(4) **The employment history and earning potential of each spouse:**

- (a) Wife is currently employed as a realtor, works on a commission basis. During the marriage, wife was primarily at home with the children and took care of and improved the property. She did work outside the home, but was asked to quit so she could take care of Simpson, Sr.'s mother.

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- (b) Husband worked in a gas station and farmed part-time. He is now a self-employed farmer and real estate investor.
- (c) Husband and Wife each filed two (2) Financial Declarations, one in March of 2003 at the time of the temporary hearing, and the other at the time of the final hearing.
- (d) Husband's initial Financial Declaration reflects rents and farm income of \$3,602.00 per month, after taxes, and expenses of \$3,602.00 per month. Husband's preliminary marital assets addendum asserts total net assets of \$412,289.00.
- (e) Wife's initial Financial Declaration of March of 2003 reflects gross income after normal and ordinary business expenses of \$2,140.00, and net after tax income of \$1,302.00 monthly. Her expenses were \$4,463.99. She asserted assets at that time of \$18,209.00, and estimated Husband's assets at \$2,000,000.00.
- (f) Husband's current Financial Declaration claims monthly income of \$4,902.00 after taxes, expenses of \$3,602.00, and marital assets (net of expenses and adjustments) of \$462,889.00.
- (g) Wife's current Financial Declaration reflects gross monthly income after normal and ordinary business expenses of \$1,129.25, and a monthly net after tax income of \$1,116.50. She asserts expenses of \$7,348.00 monthly, including significant debt that she has incurred since the temporary hearing. Wife's assets are listed as \$15,059.00, and she estimates Husband's assets at \$3,000,000.00. Wife asserts husband has not paid \$16,734.00 in medical bills for which she is being billed, \$5,029.04 of which are attributable to Charley.
- (h) At the time of the temporary hearing, this Court made a finding that "Defendant's attorney concedes that the parties lived, to a great extent, out of the farming operation." After hearing the evidence, I reiterate that finding herein.
- (i) It is now clear to the Court that the Husband's income and assets greatly exceed that which has been reported on his Financial Declarations. I find from the testimony and evidence, for example, that Husband, on a discretionary basis, determines the amount of distributions to his son from the farming operation each year. These distributions vary from year to year and are without any type of written agreement or supervision. Thus, Husband can and has adjusted his income and his son's as he deemed fit.

- (j) I find that Simpson, Sr. has obfuscated his true income and assets. For example, there are significant checks written to third persons, including his real estate partners, as "loans" which do not appear to have been repaid, and the funds that have been distributed to Simpson, Jr., (referred to as "loans" or "advances") have been expensed by Husband. Based upon the evidence before me, I find that Husband's available spendable income is near \$150,000.00 annually. Husband reported this amount to banks and lending institutions as late as January 2004, and I find that his representations to lending institutions in support of applications to borrow money are relevant in determining Husband's true income.
- (k) I find as a matter of fact that Husband's annual income is \$150,000.00, and that Husband is well capable of paying alimony and support to Wife.
- (l) Husband's Financial Declaration does not report his gross income from his farming operation nor his expenses (some of which are non-cash deductions and other of which are questionable but what he considers to be his net income from which he asserts he pays no income taxes).
- (m) Attached to Plaintiff's most recent Financial Declaration is her Schedule C and correspondence dated May 11, 2004 from C. Boyd Loadholt to Plaintiff's counsel that explains wife's compensation. This was confirmed by Mr. Loadholt's sworn testimony. However, it is equally clear to the Court that the Plaintiff can manipulate her spendable income and that some of her expenses claimed for tax purposes (i.e., depreciation) do not in fact decrease her spendable income.
- (n) Wife works solely on a commission basis. Her gross revenue reported to Agent Owned Realty was \$30,555.00 from January 1, 2004, to June 15, 2004. From that amount, Wife paid \$10,928.92 in expenses to the franchise that she never received. Therefore, Plaintiff received \$19,621.08, in gross commissions for this time period. Mr. Loadholt testified (Plaintiff's Exhibit 23) how these computations were made. Her 2003 gross income before expenses was \$50,454. It was \$62,215 in 2002.
- (o) The Financial Declaration of Simpson, Jr. is also before the Court (Plaintiff's Exhibit 68). According to the testimony of Mark Hobbs, CPA, and the exhibits, Simpson, Jr. never had adjusted gross income of more than \$18,000.00 annually. Mr. Hobbs testified that Simpson, Jr. had improperly expensed more than

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\$14,000.00 used to purchase real property on his income tax return. Simpson, Jr.'s Financial Declaration reflects income of \$1,730.76, per month, more than he has reported, after taxes, on any prior income tax return. His expenses are \$4,250.00 monthly. Simpson, Jr.'s assets shown on the 3<sup>rd</sup> page of his August 3, 2004 Financial Declaration show real estate values of \$272,900.00 and other property of \$300,835.00. His total indebtedness for his home, farm, land, and equipment loans is \$125,000.00. The addendum to his Financial Declaration was prepared by Ms. Amos using Simpson, Sr.'s values and reflects total LLC assets of \$1,325,164.00, of which Simpson, Jr. owns his \$662,582.00. The LLC liabilities according to his Financial Declaration are \$530,224.00, one-half of which he allocates to himself. He asserts that his total interest in the LLC is \$397,470.00. There is no breakdown of the "liabilities".

- (p) The addendum to Simpson, Jr.'s Financial Declaration asserts LLC real estate values at \$937,500.00, farm equipment at \$209,000.00, and the balance in investments, checking accounts, and other assets including crops, while the only evidence before the Court is that the LLC holds only real estate.
- (q) Simpson, Sr. testified that he purchased property with cash so that sellers could avoid taxation. He also testified he did not know the value of his assets. He admitted that he made decisions of how much to pay his son from the sale of the crops. Thereby making the consideration shown on the face of deeds unreliable.
- (r) Based upon the swapping of money and property between Defendants Simpson, Sr. and Simpson, Jr., the discovery process has been significantly extended and confusion has reigned supreme.
- (s) Plaintiff's Exhibit 65 (the January 2004 financial statement given to National Bank of South Carolina by Defendant Simpson, Sr.) reflects \$150,000.00 in income, land value of \$1,000,045.00, and farm equipment of \$275,000.00, and total assets of \$1,470,000.00.
- (t) One month earlier, Simpson, Sr. filed a Financial Statement dated December 9, 2003 at the Bank of Greeleyville, showing \$1,226,122.00 in assets, \$278,500.00 in liabilities, and net worth of \$947,623.00. This value apparently includes only one-half of the LLC property.
- (u) Simpson, Sr. transferred his one-half interest in S&T Property Development to the brother of Kenneth Tidwell only days after this

action was commenced. Despite this transfer, and while he purportedly was not a partner in S&T, Simpson, Sr. continued to buy property in the name of S&T (Plaintiff's Exhibits 86 & 87). He also signed a Financial Statement and note in January 2004 at the National Bank of South Carolina (Plaintiff's Exhibits 64 & 65) wherein he declared that the net value of S&T exceeded \$200,000.00. Yet he transferred his half interest for \$5.00 days after the filing of this action to avoid the debt, which was never done.

- (v) I find as a fact that the credibility of the Defendant's Simpson, Jr., and Simpson, Sr. are subject to significant question.
- (w) I find Defendant Simpson, Sr. has income in excess of \$150,000.00 annually.

(5) **The standard of living established during the marriage:**

- (a) I find that during the marriage of these parties, they had an upper middle class family lifestyle. All of the children went to Clarendon Hall, a private school, and participated in athletics and other activities. The parties lived in a significantly improved residence. Photographs of the interior of the residence and Simpson, Sr.'s farm office (Plaintiff's Exhibit 50) reflect extremely nice accommodations. Simpson, Sr. owns significant farm equipment (Plaintiff's Exhibit 51), and an antique car collection (Plaintiff's Exhibit 52, 53, and 54). Simpson, Sr. has a number of grain bins, the contents of which are unknown (Plaintiff's Exhibit 55).
- (b) I find that these parties maintained an upper middle class farming lifestyle and were affluent.

(6) **The current and reasonably anticipated earnings of both spouses:**

- (a) As stated hereinabove, I find that Simpson, Sr., if his assets and expenditures were properly recorded, would produce more than the \$150,000.00 annually, that I attribute to him. Although he valued his net assets at \$468,889.00 excluding the home property and including only one-half of his value of the LLC, he testified that he would not sell his assets for that amount. Defendant Simpson, Sr. has loaned money to a number of individuals including Ken and Ray Tidwell, his son, his banker, Mr. Jonte, and others. Mr. Jonte testified that he and Simpson, Sr. had owned other property together, including property in Columbia, South Carolina, that was purchased during the marriage. He said that on occasion, he would assume the entire debt even though the property was titled in the

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name of Simpson, Sr. He also testified that the Kershaw property, which is owned half by him, is subject to a note totally owed by Simpson, Sr. of in excess of \$21,000.00. He admitted that, on paper, Simpson, Sr. is "upside down" in the property and that it would be impossible to determine what Mr. Simpson owned and his equity based just on the public records.

- (b) In being as generous as possible to Simpson, Sr., I conclude that his earnings are well in excess of the \$150,000.00 he reported to the banks.
- (c) As stated above, I find and conclude that Wife has not worked outside the home during most of the marriage which she did based on Simpson, Sr.'s insistence. She attempted to go to school, but Simpson, Sr. disapproved. She finally secured a real estate license in 2001, and works on a commission basis. She has no other skills. Despite the fact that she had a real estate license, Defendant Simpson, Sr. would go to other real estate agents to give them the business rather than give it to the Plaintiff. Based thereon, I find that Plaintiff is capable of earning more than she is reporting, and that her gross earning capacity after normal and ordinary business expenses is \$30,000.00 per year going forward. Wife's earning capacity was less during the earlier years in her profession, and it should grow in the future.

(7) **The current and reasonably anticipated expenses and needs of both spouses:**

- (a) Wife's current Financial Declaration indicates she incurred significant debt between March of 2003 and now. I find that, excluding payment on indebtedness of \$1,548.00 per month, which should be paid off from her equitable division, Plaintiff has monthly needs of \$3,800.00 monthly. I find her March 27, 2003 financial declaration to be a more honest reflection of her needs.
- (b) I find that after considering her gross income, Wife's needs are approximately \$1,300.00 monthly after taxes. I find, based upon her earning capacity that Plaintiff does not have the ability to pay her expenses without permanent periodic alimony payment from husband. However, the Court must take into account what she receives in equitable distribution.
- (c) On the other hand, Defendant Simpson, Sr.'s Financial Declaration was prepared with the assistance of Tracey Amos, CPA, CVA, who testified on his behalf that she was not provided with all information from him.

- (d) I find that based on Defendant Simpson, Sr.'s income, capacity to earn, and financial standing, he has the ability to pay his expenses and to contribute to Plaintiff's support as set forth below.

(8) The marital and non-marital properties of the parties including those apportioned him or her in the divorce or separate maintenance action:

- (a) I find that Wife has no non-marital property as set forth in the Equitable Division Section of this Decree.
- (b) I find that Husband has no non-marital property as set forth in the Equitable Division Section of this Decree.
- (c) While Husband inherited some property from his father, improvements to that property during the marriage were made from marital funds and efforts, and the acquisitions of all other assets during the marriage are marital.
- (d) I have taken into consideration the apportionment of marital properties in setting Plaintiff's alimony as set forth in the Equitable Division provisions of this Decree which are incorporated herein by reference.

(9) Custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature:

- (a) I find that the daughter of parties, Charley, has been in school. There is a dispute as to who is paying her expenses. Defendant Simpson, Sr. testified that he has been paying her expenses; however, Plaintiff's Financial Declaration and testimony reflects that she had spent in excess of \$9,000.00 in paying for her daughter's clothing and miscellaneous expenses. There is no dispute between the parties that Charley should complete her college education. Charley is emancipated and the issue of college support is not before me.

(10) Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with

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regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement between the parties:

(a) I find that Husband has neither alleged nor proved or produced any credible evidence that Wife has had any material fault in the cause of the breakdown of this marriage. I have heard no credible evidence that paints Wife other than a helpful spouse, helpmate, and partner. I find that the Plaintiff is without material fault in the cause of the breakup.

(b) The demeanor of Simpson, Sr. while testifying before this Court and his own admissions as to some of his financial transactions raise questions in the Court's mind as to how open and honest he has been with the Plaintiff and the Court regarding his economic transactions. His transfer of S&T Development five (5) days after filing is direct evidence of his attempt to minimize his assets.

(11) The tax consequences to each party as a result of the particular form of spousal award:

(a) The alimony herein awarded will be taxable to Wife and deductible to Husband.

(12) The existence and extent of any support obligation from a prior marriage or for any other reason of either party:

(a) There are no support obligations before the Court although Simpson, Sr. testified he is paying for Charley's education.

(13) Such other factors the court considers relevant:

(a) I have also considered the fact that while Defendant Simpson, Sr. pleads that he does not have sufficient funds to support the Plaintiff, he has had the funds to continue to purchase assets in the name of S&T, even though he says he did not own an interest therein. As a matter of fact, Defendants' witness, Kenneth Tidwell testified that Simpson, Sr. had secured money from him (Tidwell), and asked permission to have the property titled in the name of S&T, even though it was Simpson, Sr.'s property. This is another example of Defendant Simpson, Sr.'s hiding of assets and income.

50. Based upon the foregoing, I find and conclude that the Defendant William R. Simpson, Sr. shall pay to Plaintiff Wife permanent periodic, alimony in the sum of \$1,000.00 per

month payable on the fifth (5<sup>th</sup>) day of each month until Plaintiff's death or remarriage, commencing with the first calendar month following the issuance of this Decree. All payments shall be paid through the Clerk of the Family Court for Clarendon County, South Carolina. In addition to that amount, Defendant Simpson, Sr. shall pay the Court costs of five (5%) percent.

51. I further find and conclude that Defendant Simpson, Sr. has not paid all of medical expenses for Plaintiff and Charley not covered by insurance as required by the Temporary Order. I find that he should be required to pay all of the same now due within ten (10) days of the date of this Decree, namely \$16,734.00.

#### EQUITABLE APPORTIONMENT

52. The other findings made in this Decree are incorporated by reference.

53. In South Carolina, equitable apportionment is essentially a three-step process. First, the Court must identify and value the marital assets to be divided. Second, the Court must consider the statutory factors to determine the appropriate apportionment. Third, the Court must apportion the assets.

54. S.C. Code Ann. § 20-7-473 (Supp. 2002) defines marital and non-marital property for the purpose of equitable division in this State and provides:

**§ 20-7-473. Marital and non-marital property; non-marital property as not subject to judicial apportionment.**

The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in § 20-7-472 regardless of how legal title is held, except the following, which constitute non-marital property:

- (1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;
- 00062 (2) property acquired by either party before the marriage and property acquired after the happening of the earliest of (a) entry of a

pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

- (3) property acquired by either party in exchange for property described in items (1) and (2) of this section;
- (4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;
- (5) any increase in value in non-marital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

The court does not have jurisdiction or authority to apportion non-marital property. (emphasis added)

55. Prior to making findings and conclusions relative to the issue of equitable division, I find it necessary to reiterate my prior findings that the testimony and evidence in this case was confusing and contradictory. Other than the unaudited "marital property addendum" prepared by Tracey Amos, CPA, CVA which admittedly was in error, Defendants presented no summarization of properties or credible evidence of valuation other than statements by Defendants themselves. No clear and concise identity and valuation of the marital property was offered by the Defendants. The Court can only conclude that the Defendants intentionally resisted discovery and any effort to accurately disclose the exact nature of their holdings.

56. Ms. Linhardt's asset listing is inaccurate and values are based only on one method, comparable sales, and none of them are in the record for the Court to review. She testified that she would have to do more research to tell the Court exactly what Simpson, Sr. owned.

57. Tracy Amos, Certified Public Accountant and Certified Valuation Analyst, was hired by Defendant Simpson, Sr. for the sole purpose of preparing his Financial Declaration and marital asset addendum. She took the figures and information from Defendant Simpson, Sr. without review or audit of any kind. In the final analysis, Ms. Amos' testimony did little more than parrot Defendant Simpson, Sr. Ms. Amos admitted that Defendant Simpson, Sr.'s reporting was inconsistent and, in some instances he had undervalued assets. She testified that while Defendant Simpson, Sr. reported to her that he did not have sixty (60) pieces of farm equipment, she did not audit his representation. Simpson, Sr. did not offer an independent inventory of his farm equipment. Although her marital asset addendum reflects the LLC as owning bank accounts, farm equipment, and land, the only evidence before the Court is that the LLC owns only land. Simpson, Sr. offered no documentary evidence of debts. He listed them on his financial declaration and Mr. Tidwell and Mr. Jonte testified to some of them.

58. According to uncontradicted testimony of William C. Coffey, a corporate attorney retained by Simpson, Sr. to form the LLC, Simpson, Sr. and Simpson, Jr. did not follow his instructions about the operation of the LLC. In fact, no LLC bank account was ever opened. However, the Plaintiff was aware of the discussions regarding the LLC before it happened, knew it occurred as soon as Mother's Day 2000, and allowed her son, Simpson, Jr. to continue to work on the family farm thinking he owned 50% of the property in the LLC, without any action on her part, until this litigation was filed in March 2003.

59. Defendant Simpson, Jr. testified both in deposition and at the trial that he worked on the farm from 1981 to 1989 at a reduced wage of \$120.00 per week (and sometimes did not make anything at all) in order to get an interest in the property. Simpson, Jr. testified that he could not put a value on his hard work and sweat, but he farmed the marital land so he could earn an interest in the property. This arrangement is not unusual in family farming operations, according to W.C. Coffey, Jr. Even though Simpson, Sr.'s conduct in this transaction is suspect, the Court finds that the Plaintiff was aware of this arrangement all along and should not at this point come in and defeat the interest of her son.

60. Despite the fact that Simpson, Sr., and Simpson, Jr. denied the existence of a joint bank account, the evidence before the Court reflects that a joint account was opened on July 19, 1999, and that remains in existence today. At the time the account was opened, \$139,349.00 was deposited by Defendant Simpson, Sr. and \$115,000.00 was written out of the account during the first month. Simpson, Jr. testified that this money belonged to his father, not to him. Defendant Simpson, Sr. did not report this account on his sworn Financial Declaration, and any balance as of the date of filing is marital property.

61. Simpson, Jr. testified that each year he turns all of his crops over to Simpson, Sr. who sells all crops, collects all monies from the sales, and places the proceeds into his Simpson Farm account. From this account, Simpson, Sr. pays all the farm expenses and then divides the remaining balance with Simpson, Jr. in a non-descript manner. Simpson, Jr. testified that, on occasion, Simpson, Sr. loaned him money and, when he did not pay it back, Simpson, Sr. would repay the loan from the proceeds of the sale of the next year's crops. Simpson, Jr. confirmed the Court's concern that no one could tell from year to year who will get what, because he and his father sit down every year and "work out" what the respective families needs may be. I find that

Simpson, Sr. and Simpson, Jr. are and have been shifting income to suit their purposes so that it is practically impossible to trace.

62. I also find as a fact that it is literally impossible for me to determine by which means the Defendants Simpson divided income because Simpson, Sr. makes the ultimate decision of who gets what amount each year.

63. Mr. Hobbs testified that Simpson, Sr. sometimes calls distributions to his son as "loans" and sometimes as "payments". When he claims the same to be payments, Simpson, Sr. deducts them.

64. Plaintiff moved to compel discovery in this case because she claimed she had not received all Defendant Simpson, Sr.'s records. I find that full and complete records were not provided to Plaintiff. I find this matter should have been pursued earlier in the litigation by the Plaintiff in the form of scheduling a hearing on her Motion to Compel Discovery.

65. I find that the transfer by Simpson, Sr. to Simpson, Jr. of 50% ownership in Simpson Farms LLC was either income to Simpson, Jr. (which was not reported by Simpson, Jr.) or a gift (no gift tax return was filed). Based upon Simpson, Jr.'s testimony, he was paid for taking less salary, and, therefore, the value of the transfer should have been reported on his income tax returns. This was corroborated by Defendant Simpson, Sr., but Ms. Amos testified that Simpson, Sr. told her that the transfer was a gift. I find that the transfer of marital property into the LLC is effective as to Simpson, Jr., and Defendant Simpson, Sr. should be charged with 50% of the value of the property held by the LLC. The manner in which Simpson, Sr. and Simpson, Jr. resolve their tax issues is between them, their accountant, and the Internal Revenue Service. For the purposes of this proceeding, I find the transfer of certain assets into the LLC



was well known to the Plaintiff prior to its being done, and the Plaintiff acquiesced in the plan for some three (3) years after the transfer.

66. Beth Linhardt, Plaintiff's appraiser who was qualified as an expert witness explained the various valuation methods and testified that it was difficult to determine what property had been acquired and sold because there were no income or expense records maintained by Simpson, Jr. or Simpson, Sr. She was engaged on March 6, 2003 and did seventy-nine (79) separate appraisals. Ms. Linhardt testified that she spent in excess of 1,200 hours (excluding her trial testimony) in finding and valuing the property. She described her difficulty in determining the ownership of property because no lists were provided by Defendant Simpson, Sr. Ms. Linhardt was required to look in several counties; there were multiple purchasers with other persons, and Simpson, Sr. was not named first in a number of the deeds. She testified that where there were multiple purchasers, she would have to do further investigation to determine Simpson, Sr.'s interest. She found some assets only because she saw transfers out of that property. Therefore, her valuation at best is incomplete and the Court must try to make adjustments based on the evidence before it.

67. Ms. Linhardt's testimony regarding the confusion in dealing with assets of Simpson, Sr. and Simpson, Jr. was corroborated by Simpson, Sr.'s business partner, Robert Jonte, also his banker. Mr. Jonte testified that based on the way that he and Mr. Simpson did business when they acquired property, it would be impossible to determine from the public records what Simpson, Sr. owned and what he owed on any particular property.

68. Ms. Linhardt testified that she visually inspected each of the properties and also reviewed contracts of sale and other records with regard to S&T Property Developers, a partnership between Simpson, Sr. and Kenneth Tidwell. S&T was valued by Simpson, Sr. in

excess of \$400,000.00 on a financial statement given to National Bank of South Carolina in January of 2004 when Simpson, Sr. signed a new note, even though, based on his sworn testimony, he had transferred his interest in S&T to Ray Tidwell, his partner's brother, for \$5.00 shortly after the filing of this action. I find that Simpson, Sr.'s interest in S&T is marital property and should be charged to him in this proceeding.

69. Through Ms. Linhardt, Plaintiff introduced Exhibit # 25 (a summary of Ms. Linhardt's opinion of the values of property owned 100% by Simpson, Sr., property owned 100% by the LLC, and one-half of the property titled in the name of S&T Land Developers Partnership). According to Ms. Linhardt, the total value of all real estate owned by Simpson, Sr., excluding the Kershaw property, is \$2,655,150.00.

70. The following property on Plaintiff's Ex. 25 are owned by Simpson, Sr. and Tidwell, but are not included in Plaintiff's Ex. 27 as property transferred to S&T Developers (Compare to Defendant's Ex. 27):

Item No.	Fair Mkt Value
(15) House and Lot	\$47,500
(28) 211 Brabham	65,000
(31) 3.14 acres	17,500
(32) 1.31 acres	25,000
(33) 1.31 acres	17,500
(34) 1.26 acres	17,500
(35) 1.24 acres	17,500
(36) 1.25 acres	17,500
(37) 1.23 acres	17,500
(38) 1.29 acres	17,500
(39) 1.3 acres	17,500
(40) .69 acres	15,000
(41) .69 acres	25,000
(42) .69 acres	15,000
(43) .69 acres	15,000
(44) .69 acres	15,000
(45) .69 acres	15,000
(46) .69 acres	15,000

00268

(47) .69 acres	15,000
(66) 1.4 acres	17,500
	<b>\$425,000</b>

The Court values the above property at \$425,000.00, and the 50% interest of Simpson, Sr. at \$212,500.00.

71. Plaintiff's Exhibit # 27 reflects Ms. Linhardt's opinion of the value of S&T (\$637,000.00). Item #52 was transferred to a Garneau on 11/20/2001 deducting \$15,000.00 leaving a balance of \$622,000.00. When Simpson, Sr. transferred his half-interest on March 10, 2004 the gross value of his half-interest was \$311,000.00. Ms. Linhardt found no mortgages of record as to any of the S&T properties, and no mortgages on record in the name of Simpson, Sr. Mr. Tidwell testified that the debt as of the date of filing was \$184,457.00. The net value at transfer was \$437,543.00 (\$622,000 – \$184,457), and Simpson, Sr.'s 50% interest had a value of \$218,772.00.

72. Plaintiff's Exhibit #26 reflects Ms. Linhardt's opinion of the value of the property transferred into the LLC (\$844,650.00).

The following property from Plaintiff's Ex. 25 was transferred into the LLC:

Item No.	Description	Value
(6)	52 acres	\$62,400
(7)	12 acres	25,000
(10)	151 acres	151,000
(11)	40.5 acres	245,000
(14)	21 acres	36,750
(19)	56.8 acres	65,000
(20)	Mobile Home	3,500
(48)	157.6 acres	173,500
(53)	5 acres	30,000
(63)	12.96 acres	25,000
(65)	13.5 acres	27,500
	<b>Total</b>	<b>\$844,650</b>

→ The marital home (Item 11), \$245,000 is dealt with separately, leaving other property in the LLC valued at \$599,650.

Simpson, Sr.'s 50% interest in the LLC is valued at \$299,825.00. It is not clear to the Court that the marital home was ever transferred into the LLC, and it will be considered separately.

73. The following items on Plaintiff's Ex. 25 were owned by Simpson, Sr. with Mr. Jonte and others in varying percentages:

1.	Item 4	Mobile Home	\$4,000.00	FMV	50%	=	\$2,000.00
2.	Item 8	Front Yard	\$3,000.00	FMV	50%	=	\$1,500.00
3.	Items 23-27		\$155,000.00	FMV			
			<u>-80,000.00</u>	Debt			
			\$75,000.00	Net	25%	=	\$18,750.00
4.	Item 50	1 Acre	\$7,500.00	FMV	50%	=	\$3,750.00
5.	Item 67	Wilson Street Prop.	\$55,000.00	FMV			
			<u>-41,800.00</u>	Debt			
			\$13,200.00	Net	25%	=	\$3,300.00
6.	Item 68	5.54 Acres	\$37,000.00	FMV	50%	=	\$18,500.00
7.	Bethune Property	Not listed on Plaintiff's 25	\$26,900.00	FMV			
			<u>-20,000.00</u>	Debt			
			\$6,900.00	Net	50%	=	\$3,450.00
Simpson's Int. Total							\$51,250.00

74. The following items on Plaintiff's Ex. 25 have been transferred or duplicated:

- (3) Ires
- (12) Geddings
- (13) Watson
- (16) Watson
- (22) Charley's House
- (52) Garneau
- (56) Lamb
- (57) Same as 18

00270

75. The following property on Plaintiff's Ex. 35 is owned individually by Simpson, Sr.:

(1)	2.1 acres	\$7,500
(5)	1.4 acres	5,000
(21)	161.1 acres	175,000
(51)	1.3 acres	15,000
(54)	6.7 acres	35,000
(62)	133.2 acres	150,000
(64)	House & 16 acres	50,000
		\$437,500

76. Ms. Linhardt testified that she had attempted to secure six (6) individuals to appraise Simpson, Sr.'s farm equipment, but none of them would do so because it belonged to Simpson, Sr. The Court finds this explanation for failure to appraise the farm equipment somewhat weak. This situation should have been brought to the attention of the Court prior to trial when arrangements could have been made to inventory and appraise the farm equipment. However, Simpson, Sr. could have and should have provided an inventory of his equipment.

77. Mark Hobbs, a Certified Public Accountant retained by Plaintiff, was qualified as an expert. Mr. Hobbs testified that the bulk of the material he had received from Defendant Simpson came in "dribbles and drabs", but most of the information came over the weekend before trial. He corroborated Plaintiff's position that she could not secure appropriate records from Defendant Simpson, Sr.

78. Through Plaintiff's Exhibit # 33, Mr. Hobbs' produced a summary of Simpson, Sr.'s general ledger that was prepared by Mr. Gibbons. As of December 31, 2002, Simpson, Sr.'s records showed advances or loans to Simpson, Jr. of \$44,100.00, yet there were no 1099's issued to Simpson, Jr. On Simpson, Sr.'s income returns, these advances were deducted from his income as miscellaneous expenses. On Simpson, Jr.'s tax return, there was no entry for the \$44,100.00.

79. According to Mr. Hobbs, the large "miscellaneous expenses" portion of the general ledger heightened his "fraud alert". He testified that if loans were forgiven, this was the equivalent of a gift, but he saw no gift tax returns being filed.

80. Although Simpson, Jr. testified that loans to him by Simpson, Sr. in one year might be offset against crop sales the next, Mr. Hobbs found nothing to support that. For 2003, there were more than \$50,000.00 in "expenses" paid by Simpson, Sr. to Simpson, Jr., and more than \$40,000.00 in loans to Tidwell and others. Simpson, Sr.'s general ledger reflects a \$78,500.00 account receivable that is not shown on his Financial Declaration, and I find receivable to be an asset of the marriage.

81. Mr. Hobbs testified that the fixed assets (equipment) shown on the depreciation schedule on Simpson, Sr.'s general ledger (\$258,793.00) did not match the schedules on his tax returns which show nearly \$1,000,000.00 as the cost basis of equipment. Based upon Mr. Hobbs' testimony and Plaintiff's Exhibit # 37 (summary of Simpson, Sr.'s equipment for the tax returns), Mr. Hobbs gave three (3) different valuations for the equipment which had a cost basis of \$923,630.00. He valued the equipment at \$329,536.00.

82. Plaintiff's Exhibit # 38, prepared by Mr. Hobbs shows a \$64,509.00 cost basis of Simpson, Jr.'s equipment as reported on his tax returns; however, Simpson, Jr. reported that he owned \$150,000.00 in equipment on his financial statement to banks.

83. Plaintiff's Exhibit # 39, also prepared by Mr. Hobbs, compares Simpson, Jr.'s financial statements given to banks from 1999 through March of 2003. The value of farm equipment increased from \$24,000.00 in 1999 to \$35,000.00 in 2000, from \$41,000.00 in 2001 to \$150,000.00 in 2002, and stayed at \$150,000.00 each year thereafter. According to Mr. Hobbs,

there is no evidence of sufficient income or indebtedness in Simpson, Jr.'s tax returns that explain how he acquired this farm equipment.

84. According to Mr. Hobbs, Simpson, Jr.'s home mortgage in 1999 at \$53,900.00 had been paid down to \$23,933.00 in 2003. This reduction was not justified by the income reported on his tax returns.

85. Plaintiff's Exhibit # 40, a summary of bank financial statements filed by Simpson, Sr. from January 1990 through January 2004, reflect net worth of in excess of \$1,000,000.00 each year as opposed to \$462,000.00 on his Financial Declaration.

86. Plaintiff's Exhibit # 44, Simpson, Sr.'s application for Farmer of the Year, showed a net worth of \$1.2 million and that stated Simpson, Sr. was farming 2,600 acres.

87. Simpson, Sr.'s January 6, 2004 bank filed financial statement represents income of \$150,000.00 per year. I find as a matter of fact that bank filed financial statements are relevant to show his assertion of the value of assets. In this case, the value of assets shown on bank filed financial statements, are significantly more than Simpson, Sr. reported on his Financial Declaration as prepared by Ms. Amos, but significantly less than testified to by Ms. Linhardt, the only real estate appraiser who testified in this case.

#### **Claim by Simpson, Sr. of Non-Marital Property**

88. Simpson, Sr. asserts that the farm property and house in which the parties and their children lived since 1971 after his father died is non-marital property because it was inherited by him at the time his mother died. He values this property at \$175,000.00 and asserts that it should be excluded from consideration by the Court. I disagree.

00273

89. Simpson, Sr.'s father left his mother a life estate in this property with the remainder to Simpson, Sr. Simpson, Sr.'s mother remarried, and Simpson, Sr., Wife, and their family moved into the residence and used the land during the lifetime of Simpson, Sr.'s mother.

90. The clear preponderance of the evidence reflects that from the time the Simpson Family moved into that residence and began using that land, they looked upon it and intended for it to be their family home. Funds earned and saved during the marriage, not to mention Wife's labor and efforts and decorating skills, were contributed to this property; ponds were put on this property; the residence was expanded and improved over the years; the yard was landscaped by Plaintiff to become a showplace, and the parties and their children looked upon this property as their home.

91. While the evidence conclusively demonstrates that Husband received certain land from inheritance during the marriage, significant marital expenditures of time, labor, and money were contributed to this property both prior to the death of Simpson, Sr.'s mother and after. Wife made significant financial and other contributions into these properties. Even in the light most favorable to Husband, Wife's efforts were significant, and income earned during the marriage, which is marital property, was used to improve these assets and increase the value thereof.

92. "Transmutation is a matter of intent to be gleaned from the facts of each case." *Jenkins vs. Jenkins*, 345 S.C. 88, 98, 545 S.E.2d 531, 536 (Ct. App.2001); *Widman vs. Widman*, 348 S.C. 97, 557 S.E.2d 693 (Ct. App. 2001).

93. Here, Wife has proved not only by her testimony, but by photographs of the property taken over the years, that this otherwise non-marital asset was converted to marital



property, and since before Simpson, Sr.'s mother died the parties regarded the home and surrounding land as family property.

94. Plaintiff presented clear and convincing evidence that she made "direct" financial contributions towards the improvement and expansion of the farmhouse and surrounding property that resulted in significant increase in the value of the property

95. In addition, and alternatively, I find that Wife is entitled to a special equity in said property. As stated by the South Carolina Court of Appeals in *Webber vs. Webber*, 285 S.C. 425, 330 S.E.2d 79 (Ct. App.1985):

Under the special equity doctrine, "Where a Wife has made a material contribution to the Husband's acquisition of property during coverture, she acquires a special equity in the property." *Wilson v. Wilson*, 270 S.C. 216, 241 S.E.2d 566, 568 (1978) (quoting 27B C.J.S. Divorce Sec. 293 (1950)). Therefore, one spouse acquires a special equity in the property of the other if (1) the property was acquired during coverture, (2) the spouse contributed to the acquisition of the property, and (3) the spouse's contribution was material. (emphasis added)

96. Also see, *Eagerton vs. Eagerton*, 285 S.C. 279, 328 S.E.2d 912 (Ct.App.1985), "In order to be entitled to an award of special equity in property or equitable distribution of a marital estate, the spouse seeking it must show that he or she has made a material contribution to the acquisition of the property; this is the threshold prerequisite of both doctrines."

97. Wife proved that she is entitled to a "special equity" interest in the farmhouse and surrounding land. There is uncontradicted objective evidence that Wife "made a material contribution" to the property and has met her burden of showing a special equity. Husband presented no evidence to the contrary.

98. I find that Wife contributed substantially to this marriage. While the birth and raising of three (3) children is certainly a material contribution, her other contributions to this marriage were otherwise significant. She had no nanny or maid, kept house, and improved these

properties. She made some direct financial contributions to this property, although most direct financial contributions were made by the Husband, and was not at fault in the breakup of this marriage.

99. Income received during the marriage is ordinarily marital property. *Brandi vs. Brandi*, 302 S.C. 353, 396 S.E.2d 124 (Ct. App.1990). Property acquired with that income becomes "marital property". The Court is not required to divide assets using the same percentage. *Marsh vs. Marsh*, 313 S.C. 42, 437 S.E.2d 34 (1993):

100. Based upon the foregoing findings and conclusions, I hereby identify the marital assets and assess net values as follows:

- a. **The marital home** and 40.5 acres (Item 11 on Plaintiff's Exhibit 25) is marital property as discussed above. I find that Simpson, Sr.'s value of \$175,000 is low, and the value of \$245,000 given by Ms. Linhardt is a more accurate value.
- b. **Property in the LLC**, less the marital home and 40.5 acres, is 481.86 acres (Plaintiff's 26). Ms. Linhardt values that property at \$599,650 which is an average of \$1,244.00 per acre. Simpson, Sr.'s value of \$750.00 per acre would place a value of \$361,395 on that property.

The Court finds the \$599,650 value to be more reasonable, and the marital portion of that property is \$299,825.

The Court has considered Defendant's Exhibit 25 which shows property purchased by Simpson, Jr. during the marriage. Deleting Items 5 and 6 (.92 acre and mobile home) and Item 8 (2 acres and home spot), Simpson, Jr. has a total of 205.7 acres shown on Defendant's Exb. 25 for which he reports having paid \$105,250. However, according to Defendant's Exb. 25 those 205.7 acres have an appraised value of \$299,000 which is \$1,453.57 per acre. This exhibit supports the Court's conclusion that Ms. Linhardt's appraisal of acreage is more accurate than Simpson, Sr.'s value of \$750.00 per acre across the board.

- c. **S&T Land Developers** was owned 50% by Simpson, Sr. at the date of filing and that is marital property.

00276

The gross value at the date of filing I find to be \$622,000 with a debt of \$184,457.00. The net value is \$437,543.00. with Simpson, Sr.'s 50% being valued at \$218,772.00.

The Court compared Ms. Linhardt's appraisal to the values given by Mr. Tidwell, Simpson's partner in S&T, and if one were to accept Mr. Tidwell's testimony, it would appear that S&T had property valued at \$86,100 with a debt of \$184,457.00. The Court does not find those values credible.

Simpson, Sr. and Tidwell signed a financial statement with the National Bank of South Carolina (Plaintiff's Exb. 71) which is undated showing property valued at \$406,000 with liabilities of \$114,615 and a net worth of \$291,385.00.

- d. Property owned by Simpson, Sr. and Tidwell, not included in S&T above, valued at \$425,000 with Simpson's 50% interest being valued at \$212,500.00 (See Paragraph 70).
- e. Property on Plaintiff's Exb. 25 owned 50% with Jonte or 25% with others: \$51,250.00 (See Paragraph 73).
- f. Charley's house - All parties agree that Charley's house valued at \$30,000 is a gift to her. While not clearly identified in the evidence, it appears to be Item 22 on Plaintiff's Exb. 25 (1.9 acres - value \$30,000).
- g. Property owned individually by Simpson, Sr. and valued at \$437,500.00 (See Paragraph 75).
- h. The farm equipment purchased during the marriage is marital property. I value it at \$329,536.00 (Defendant's Exb. 19).
- i. W. R. Simpson Farms Checking Account - As of date of filing (\$53,000).
- j. Joint Checking Account with son - I value at (\$16,000). 50% of this account is \$8,000.00.
- k. Two Edward R. Jones accounts are marital property which I value at (\$80,884 + 2,558) \$83,442.
- l. Simpson, Sr. crops in ground are valued at \$26,470.

- m. Other assets, alluded to but not valued, are valued at \$16,055 (Autos & collectibles) (Defendant's Exb. 18).
- n. Employee Account Receivable (\$78,095)
- o. Buck and Bull (\$250,000). Ms. Linhardt valued the property (not the business) at \$250,000. Simpson, Jr. testified he did not think this was worth \$250,000. Simpson, Sr. testified it was of little or no value before Simpson, Jr. started making improvements. Having no other value, the Court has no choice but to value the property at \$250,000.
- p. The Plaintiff had the following accounts at filing which are marital property:

1. NBSC Checking	\$5,500
2. Money Market	4,209
3. Certificate of Dep.	7,000
4. Bank stock	1,500
	\$18,209

**Total Marital Estate          \$2,327,654.00**

101. I find that the operating loans are paid from current earnings as an expense of the business prior to Simpson, Sr. determining his personal income and as such are not debts of the marital estate. There is no documentary evidence as to debts and no evidence as to how to separate debts of father from son.

Where there was credible testimony regarding a specific debt related to specific property, the Court has allowed that debt.

102. Total Value of Marital Assets: Based upon the foregoing, I find that the total marital estate subject to division has a value for equitable apportionment purposes of \$2,327,654 after debt.

00278

103. The statutory facts considered by the Court in making the equitable apportionment pursuant to §20-7-472 (1) - (15), South Carolina Code of Laws, 1976, as amended, are as follows:

- (1) The duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties:

(a) The findings in the Alimony Section are incorporated by reference.

- (2) Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of (a) entry of a pendente lite order in a divorce or separate maintenance action; (b) formal signing of a written property or marital settlement agreement; or (c) entry of a permanent order of separate maintenance and support of a permanent order approving a property or marital settlement agreement between the parties:

(a) The findings in the Alimony Section are incorporated by reference.

- (3) The value of the marital property, whether the property be within or without the state. The contribution of each spouse to the acquisition, preservation, depreciation or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence:

(a) The values of the marital property are as set forth above and are incorporated by reference. There is no non-marital property to be considered as all property is marital and the inherited property has been transmuted. This is a typical farm family. The Farmer of the Year award is as much an award to the family as to Simpson, Sr. This was a partnership where Husband worked in the fields and Wife took care of and improved the home and raised the children. It is obvious to the Court that the Parties were frugal as there would not have been funds with which these parties could have amassed over \$2,000,000.00 in net assets when, admittedly, they started with nothing.

- (4) The income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets:
- (a) The findings in the Alimony Section are incorporated by reference.
- (5) The health, both physical and emotional, of each spouse:
- (a) The findings in the Alimony Section are incorporated by reference.
- (6) The need of each spouse or either spouse for additional training or education in order to achieve that spouse's income potential:
- (a) The findings in the Alimony Section are incorporated by reference.
- (7) The non-marital property of each spouse:
- (a) The Court's findings as to the identification and valuation of non-marital property above is incorporated by reference. There is no non-marital property to be considered.
- (8) The existence or nonexistence of vested retirement benefits for each or either spouse:
- (a) Neither Husband nor Wife has any known retirement accounts.
- (9) Whether separate maintenance or alimony has been awarded:
- (a) Wife has been awarded periodic alimony of \$1,000.00 per month herein.
- (10) The desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children:
- (a) These parties last lived together in the family home in March 2003 when the Wife left. Throughout this litigation, Wife and Charley have resided in a separate home that is rented by Wife. There is no custody issue. Husband has been using the residence and has an office behind it which is necessary for his farming operation. I find and conclude that as a part of the equitable division, Husband should be granted ownership of this property and the use and possession of the same.

00230

- (11) The tax consequence to each or either party as a result of any particular form of equitable apportionment:
- (a) I find and conclude that in connection with transfers between the spouses, and the manner in which equitable division is determined herein, there are no immediate tax consequence to be considered and none were presented to the Court.
- (12) The existence and extent of any support obligations from a prior marriage or for any other reason or reasons, of either party:
- (a) I find and conclude that there are no support obligations on the part of either party by the reason of any prior marriage or otherwise.
- (13) Liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage:
- (a) In making the equitable apportionment, as set forth below, the Court has considered all liabilities in coming up with the marital estate which is after liabilities based on my view of the evidence.
- (14) Child custody arrangements and obligations at the time of the entry of the Order:
- (a) There is no minor child or custody dispute.
- (15) Such other relevant factors as the trial court shall expressly enumerate in its Order:
- (a) The Court incorporates herein the other findings and conclusions set forth throughout this Decree and as set forth hereinafter in making an equitable claim.
- (b) I find the stock the Plaintiff owns in Agent-Owned Realty is, according to the owner of the company, a marketing tool that is non-voting and has no value. There is no market for the same, and Plaintiff cannot sell it.

104. Based upon the foregoing, I find and conclude that Defendant Simpson, Sr. is a well-known farmer in Clarendon County, South Carolina and elsewhere. There is a preference

for division in kind. While division in kind is possible to some degree, the nature of Simpson, Sr.'s holdings commingled with other parties requires a partial cash payment by Simpson, Sr.

105. I find that the marital estate should be apportioned as follows:

	WIFE	HUSBAND
a. Marital Home (\$245,000)	\$85,750 (35%)	\$159,250 (65%)
b. Property in LLC (299,825)	149,912 (50%)	149,913 (50%)
c. S&T Developers (\$218,772)	54,693 (25%)	164,079 (75%)
d. Property owned w/others (\$51,250)	12,813 (25%)	38,437 (75%)
e. Property owned individually (\$437,500)	153,125 (35%)	284,375 (65%)
f. Owned with Tidwell (\$212,500)	53,125 (25%)	159,375 (75%)
g. Farm equipment (\$329,536)	115,338 (35%)	214,198 (65%)
h. Edward R. Jones Accts. (\$83,442)	29,205 (35%)	54,237 (65%)
i. Autos and Collectibles (\$16,055)	5,619 (35%)	10,436 (65%)
j. Employee Acct Receivable (\$78,095)	19,524 (25%)	58,571 (75%)
k. Buck and Bull (\$250,000)	62,500 (25%)	187,500 (75%)
<i>(Court has considered son's work in improving it, though no one put a value on it.)</i>		
l. Wife's accounts at filing (\$18,209)	11,836 (65%)	6,373 (35%)
m. Farm account (\$53,000)	18,550 (35%)	34,450 (65%)
n. Account with son (\$8,000)	2,800 (35%)	5,200 (65%)
o. Growing Crops (\$26,470)	9,265 (35%)	17,205 (65%)
Totals to Each (\$2,327,654.00)	\$784,055.00 (34%)	\$1,543,599.00 (66%)

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106. Within thirty (30) days of the date of this Decree, Simpson, Sr. shall transfer to Plaintiff the following:

a. Plaintiff retains her accounts at filing	\$18,209
b. Edward R. Jones Accounts	83,442
c. 2.1 acres (Item 1, Paragraph 75)	7,500
d. 1.4 acres (Item 5, Paragraph 75)	5,000
e. 161.1 acres (Item 21, Paragraph 75)	175,000
f. 1.3 acres (Item 51, Paragraph 75)	15,000
g. 6.7 acres (Item 54, Paragraph 75)	35,000
h. 133.2 acres (Item 62, Paragraph 75)	150,000
i. House and 16 acres (Item 64, Paragraph 75)	50,000
	<b>\$539,151</b>

107. In addition, within thirty (30) days of the date of this Decree, Simpson, Sr. will pay to the Plaintiff the sum of \$244,904.00. Interest shall accrue at the legal rate from the date of this Decree until paid.

108. I direct that judgment liens be recorded as a matter of record in all counties in which Simpson, Sr., S&T Land Developers, and Simpson Farm, LLC own property, and that said judgment be against Simpson, Sr., individually; Simpson, Sr. and Simpson, Jr. as owners of Simpson Farms, LLC, Simpson Farms, LLC, and Simpson, Sr. as partner in S&T Land Developers. Defendant Simpson, Sr. is restrained in all capacities from disposing of, pledging, or hypothecating any property except to pay this judgment and then only after notification to and agreement of Plaintiff's counsel.

109. Wife previously sold a truck of minimal value during these proceedings, and has purchased another vehicle on which she makes payments.

110. The personal property of the parties has heretofore been divided, and I find said division is final. Plaintiff shall retain her stock in Agent-Owned Real Estate.

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111. I have considered income from the award of equitable division herein that with the alimony should provide the Wife with the ability to pay her monthly expenses.

112. The matter of attorneys fees, costs and expenses has been reserved and shall hereafter be determined by this Court pursuant to notice to counsel for the parties in the manner previously determined.

**THEREFORE**, based upon the foregoing findings and conclusions, it is accordingly  
**ORDERED:**

1. Plaintiff be, and she hereby is, granted a divorce, *a vinculo matrimonii*, upon the statutory grounds of one (1) year of continuous separation;

2. Defendant Simpson, Sr. shall pay Plaintiff permanent periodic alimony in the sum of \$1,000.00 per month until her death or remarriage, whichever first occurs. These payments shall be made through the Clerk of this Court by the fifth of each month hereafter, commencing on the 5th of January 2005 and continuing until Plaintiff's death or remarriage. Defendant Simpson, Sr. shall pay in addition to this amount the court costs and handling fees that are currently Five (5%) Percent. The alimony payments herein are intended to be taxable to Plaintiff and tax deductible to Defendant Simpson, Sr.

3. Defendant Simpson, Sr. shall pay Plaintiff past due medical obligations totaling \$16,734.00, for herself and Charley as ordered in the Temporary Order within ten (10) days of the date of this Decree.

4. Plaintiff is hereby granted a judgment against Simpson, Sr., individually and as fifty percent owner of Simpson Farms, LLC and as fifty percent partner in S&T Land Developers, and against Simpson, Jr. as fifty percent owner of Simpson Farms, LLC, and against

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Simpson Farms, LLC, and against S&T Land Developers in the sum of \$244,904.00 which Simpson, Sr. is required to satisfy as follows:

a. Simpson, Sr. shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above and valued at \$539,151.00.

b. Simpson, Sr. shall pay to Plaintiff within thirty (30) days of the date of this Decree \$244,904.00.

5. The judgment liens created in favor of Plaintiff hereunder shall be recorded as a matter of record in all counties in which Simpson, Sr., S&T Land Developers, and Simpson Farm, LLC own property, and that said judgment shall be against Simpson, Sr., individually; Simpson, Sr. and Simpson, Jr. as owners of Simpson Farms, LLC, Simpson Farms, LLC, and Simpson, Sr. as fifty percent partner in S&T Land Developers.

6. Defendant Simpson, Sr. is restrained in all capacities from disposing of, pledging, or hypothecating any property except to pay this judgment and then only after notification to and agreement of Plaintiff's counsel.

7. The personal property of the parties has heretofore been divided, and I find said division is final. Plaintiff shall retain her stock in Agent-Owned Real Estate.

8. The matter of attorneys fees, costs and expenses has been reserved and shall hereafter be determined by this Court pursuant to notice to counsel for the parties in the manner previously determined.

9. The matter of attorney's fees, costs, and expenses is hereby reserved, and counsel for both Plaintiff and Defendants shall submit to this Court affidavits regarding their respective fees, costs, and expenses along with copies of all settlement negotiations not later than January

15, 2005. Should this Court determine a hearing is necessary before ruling on these matters, the same shall be set by the Court.

10. The other findings, conclusions, and determinations set forth above are hereby incorporated by reference and rendered the Order of the Court.

**AND IT IS SO ORDERED.**

*R Wright Turbeville*  
R. Wright Turbeville  
Family Court Judge  
Third Judicial Circuit

Manning, South Carolina

*December 31*, 2004

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# **EXHIBIT B**

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

DAISY WALLACE SIMPSON,

Plaintiff,

vs.

WILLIAM ROBERT SIMPSON, SR.  
individually and as shareholder/  
member of Simpson Farms, L.L.C.  
and WILLIAM R. SIMPSON, JR., as a  
shareholder/member of  
Simpson Farms, L.L.C.

Defendants.

IN THE FAMILY COURT FOR  
THE THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2003-DR-14-128

**ORDER REGARDING  
ATTORNEY'S FEES**

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE

DATE 2-17-05

*Beulah G. Roberts*

CLERK OF COURT  
CLARENDON COUNTY, SC

BEULAH G. ROBERTS  
CLERK OF COURT  
CLARENDON COUNTY, SC  
2005 FEB 17 AM 11 18

**DATES OF HEARINGS:**

July 7, 8, & 9 2004  
September 29 & 30, 2004  
October 22 & 26, 2004  
February 4, 2005

**TRIAL JUDGE:**

R. Wright Turbeville

**PLAINTIFF'S ATTORNEYS:**

James T. McLaren

Jan L. Warner

**DEFENDANTS' ATTORNEYS:**

Steven S. McKenzie

Simpson, Sr., Simpson, Jr., &  
Simpson Farms, LLC

Scott L. Robinson

**COURT REPORTERS:**

Carol Hanna, Janice Hinds,  
Crystal Jackson & Deborah Thomas  
(In Order)

The issue now before the Court is the Plaintiff's request for attorney's fees and costs. Neither Defendant seeks attorney's fees and costs, but both take the position that the Plaintiff should be responsible for her own fees and costs. The Court notes that while Simpson, Jr. was successful in defending the transfer of certain property into the LLC, he seeks no reimbursement for his fees and costs. However, the Court of Appeals has held that beneficial results obtained are only one of several factors to be considered by the family court in deciding whether or not to award fees. *Wooten vs. Wooten*, 358 S.C. 54, 594 S.E. 2d 854 (Ct. App. 2003).

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The Plaintiff asserts that the grand total of her fees and costs is \$361,220.97. Of that total, \$51,000.00 are charges by Beth Lindhart, and \$23,458.88 are charges by Mark Hobbs. \$61,300.00 are 153.25 hours billed by James T. McLaren at \$400.00 per hour, and \$172,540.00 are 431.35 hours billed by Jan L. Warner at \$400.00 per hour. \$11,420.00 are 57.10 hours of associate attorney time at \$200.00 per hour. There are 179.95 paralegal hours billed at \$100.00 per hour (total \$17,995.00), and the balance is reflected as costs.

In deciding whether to award attorney's fees, the family court should consider: (1) the parties' ability to pay their own fees; (2) the beneficial results obtained by counsel; (3) the respective financial conditions of the parties; and (4) the effect of the fee on each party's standard of living. *E.D.M vs. T.A.M.*, 307, S.C. 471, 415 S.E. 2d 812 (1992); *Shirley v. Shirley*, 342 S.C. 324, 536 S.E. 2d 427 (Ct. App. 2000). Our Supreme Court has identified the following factors for determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E. 2d 313 (1991). *Lache v. Lache*; (Court of Appeals Opinion No. 3920, Heard December 7, 2004, Filed January 10, 2005).

#### FACTORS CONSIDERED IN WHETHER TO AWARD A FEE

1. **The parties ability to pay their own fees:** The Plaintiff is a licensed real estate agent. She has the ability to earn at least \$30,000.00 per year, and her earning capacity is more likely to improve than is that of Simpson, Sr.

While Simpson, Sr. has the ability to earn \$150,000.00 per year, his farming operation will be affected by the in kind division of property. Simpson, Sr. offered no

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evidence as to what this effect would be, and the Court will not speculate on that effect.

Of a total marital estate of \$2,327,654.00, the Plaintiff will receive \$784,055.00 and the Defendant will receive \$1,543,599.00. The Plaintiff is to receive \$244,904.00 in cash from Simpson, Sr. and \$83,442.00 in the Edward R. Jones account. While Simpson, Sr. receives almost twice the property of the Plaintiff, the assets he receives, with few exceptions, are not liquid.

In addition, the Plaintiff will receive and Simpson, Sr. will pay \$1,000.00 per month in alimony.

While Simpson, Sr. earns substantially more than the Plaintiff, she will receive assets out of which she can pay fees, \$328,346.00 of which are in cash or liquid accounts.

2. **The beneficial results obtained by counsel:** The Plaintiff failed to prevail on the issue of bringing her son's share of the LLC back into the marital estate. The Court has considered all of the factors set forth herein and concluded that the son should not be required to contribute to his mother's fees.

While the Plaintiff prevailed on the issue of permanent, periodic alimony, she did not receive the amount of alimony she sought nor did she receive any retroactive increase in alimony.

The Plaintiff prevailed to a great extent on the identity and valuation of the marital estate (except as to inclusion of the son's share of the LLC). The Plaintiff prevailed on the issue of transmutation of the marital home.

The Plaintiff received approximately 34% of the total marital estate which is less than the 50% she sought.

The Plaintiff failed in her effort to have Simpson, Sr. and his banker, Mr. Jonte, held in contempt of court.

The Court found the Plaintiff's earning ability and annual income to be more than she claimed on her financial declaration.

Simpson, Sr. did not prevail in his desire to deny the Plaintiff all alimony or in his identification and valuation of the marital estate, including his effort to exclude the marital home.

On May 14, 2004, the Plaintiff offered to settle for \$3,750.00 per month retroactive alimony (with a formula for some reduction depending upon cash she received in equitable division), 50% of all marital assets (no value set forth in offer), health insurance on the Plaintiff, and \$75,000.00 attorney's fees and costs.

On May 21, 2004, the Defendants responded claiming assets of \$1,107,700.00, debts of \$646,831.00, with net assets of \$460,869.00. They offered \$1,000.00 per month for ten (10) years (\$120,000) towards marital property plus \$8,000.00 per year for ten (10) years (\$80,000), no attorney's fees and no alimony.

On July 8, 2004, the Plaintiff offered to settle for \$750,000.00 cash payment within thirty (30) days, \$2,000.00 per month alimony, with the Wife paying her own fees and costs.

In a July 13, 2004 letter Plaintiff restated the above agreement as well as her willingness to accept \$900,000 tax free (\$400,000 to \$500,000 up front with the balance paid over 7-10 years), no alimony and no attorney's fees.

All offers by the Plaintiff required a total cash payment with very little in kind division.

On July 7, 2004, the Defendants offered to settle for \$825,000.00 paying \$25,000.00 within thirty (30) days, \$75,000.00 at \$7,500.00 per year over ten (10) years and two pieces of property which the Plaintiff's expert valued at \$725,000.00. The Plaintiff in her attorney fee affidavit failed to mention this offer by the Defendant.

It appears to the Court that at that point the parties were fairly close in value, the Plaintiff wanting \$750,000.00 plus \$2,000.00 per month in alimony or \$900,000.00 with no alimony, and the Defendants offering \$825,000.00 mostly in property and no alimony.

Under the facts of this case, considering the nature of the property involved, it was unreasonable for the Plaintiff to demand an all cash settlement. The Plaintiff could be awarded some parcels of property, as the Court ultimately did, without running the risk of leaving her in business with the Defendants. The land in question is severable from the farming operation.

Likewise, it was unreasonable for Simpson, Sr. not to offer some alimony and/or a larger up front cash payment.

On June 6, 2004, Mr. McKenzie wrote the Plaintiff's attorney confirming the fact that the Defendants offered to mediate and the Plaintiff's attorney refused. Even though

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the letter indicated Plaintiff's attorney said no counteroffer would come, the Court notes that in July 2004 other offers were made by both parties.

In July 2004, the parties were only \$75,000.00 apart in their offers; the Court is not aware of either party exploring other settlement options after that point.

3. **The respective financial conditions of the parties:** The Plaintiff's annual income is substantially less than that of Simpson, Sr., and the total value of her property is slightly more than one-half that of Simpson, Sr. However, a greater portion of her assets are liquid than those of Simpson, Sr. Either party will have to borrow some money to pay fees, but both will receive property which could be used to secure such a loan.

This factor was discussed more fully in Number 1 above.

4. **The effect of the fee on each party's standard of living:** Any fee required to be paid by Simpson, Sr. will have to be borrowed by him adding more debt to his operation. He is already required to make a substantial cash payment to the Plaintiff.

The Plaintiff would have to use up all of available cash and/or sell some of her property to pay her fees. This event would reduce the availability of those funds and/or income from her property which she could otherwise apply to her living expenses.

#### FACTORS CONSIDERED IN DETERMINING A REASONABLE FEE

1. **The nature, extent, and difficulty of the case:** The Court begins by acknowledging that the valuation of a family farming operation is a difficult process. As W.C.

Coffey, Jr., long-time Clarendon County attorney, indicated in his testimony, much of it has to do with just the customary way family farmers do business.

The process is made easier and less expensive by the free exchange of information. In this case, the process was made more difficult by Simpson, Sr.'s failure to respond timely and fully to discovery requests.

The Plaintiff's first set of interrogatories were served January 19, 2004. The Defendants' Answers are dated April 2, 2004. Of thirty-two (32) questions, "this information is not available at this time" was given as an answer to ten (10). Question 16 asked for certain specific information regarding real property, and the answer was: "Enclosed please find copies of all real estate titles in our possession, all farm equipment titles will be made available prior to hearing".

Question 15 regarding financial records received the same general answer in spite of having asked for specific information regarding each account.

The Court believes Simpson, Sr. could have simplified matters, and possibly strengthened his own position, if he had presented a concise schedule of all real property, personal property, and debts (with supporting documents). While admittedly that requires a lot of work, that is precisely what litigation of this sort requires.

However, Ms. Lindhart's appraisal and schedule is admittedly incomplete and inaccurate. It is difficult for the Court to value that work at \$51,000.00 when it leaves so many questions regarding property unanswered.

Also, by July 6, 2004, an affidavit by Mary Gales in Defendants' attorney's office indicates that person's in Plaintiff's attorney's office indicated they had all the documents they had requested. The Court notes that the first day of trial was July 7, 2004.

2. **Time necessarily devoted to the case:** Lack of responsiveness in discovery certainly increases the amount of time required by attorneys or paralegals. While it is unclear exactly how much additional time was required as a result of Defendants slow and incomplete discovery responses, it is clear that conduct increased the time required by Plaintiff's counsel and experts.
3. **Professional standing of counsel:** It is undisputed that both attorneys for the Plaintiff are well respected domestic lawyers in South Carolina.
4. **Contingency of compensation:** The Plaintiff has received enough property that she could pay her attorney's fees, but it would deplete her equitable division award by about 50%. Her equitable division award was a factor considered by the Court in the award of alimony and that effect must be considered in determining attorney fees.
5. **Beneficial results obtained:** Discussed in detail above.
6. **Customary legal fees for similar services:** Both of Plaintiff's attorneys are billing at \$400.00 per hour. Their associate attorneys are billing at \$200.00 per hour. The paralegals are billing at \$100.00 per hour. J. Mark Taylor's affidavit asserts that these rates are comparable to rates of other family law experts who regularly take cases and try them in the Third Judicial Circuit as well as neighboring circuits.

Based on the testimony of Ray E. Chandler, W.C. Coffey, Jr., and experience, I find that customary fees for similar work in this area is \$185-\$250 per hour. Hourly fees that exceed this amount in this area are unusual rather than customary.

Litigants are entitled to employ lawyers of their choice...and they are entitled to employ any number of lawyers they so choose. The Court is not bound by the contract between the Plaintiff and her lawyers, and one important factor to be considered in determining legal fees is customary legal fees for similar services.

However, that is only one factor among many to be considered by the Court.

Considering and weighing all factors set forth above, I conclude that the Plaintiff is entitled to some contribution toward her attorney's fees. I find that in addition to the fees awarded at the temporary hearing, an additional contribution of \$85,000.00 would be reasonable.

**IT IS THEREFORE ORDERED** that the Defendant W. R. Simpson, Sr. pay to the Plaintiff the sum of \$85,000.00 within thirty (30) days of the date of this Order as a contribution towards her attorney's fees.

**AND IT IS SO ORDERED.**

At Chambers:

February 17, 2005

*/s/ R. Wright Turbeville*  
R. Wright Turbeville  
Family Court Judge  
Third Judicial Circuit

2PS

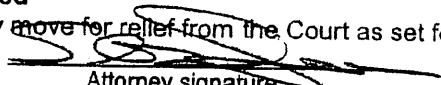
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STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
William R. Simpson, Jr. )  
PLAINTIFF )  
VS. )  
Becky Simpson and Wade Ingle )  
DEFENDANTS )

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NO: 04-DR-14-243 & 355

**MOTION INFORMATION FORM  
AND COVER SHEET**

\*\*\*\*\*

Name and address of Plaintiff's attorney: Steven S. McKenzie, Esquire Scott L. Robinson, Esquire 16 N. Brooks St. Manning, SC 29102 Telephone: 435-2858 Fax: 435-2858		Name and address of Defendant's attorneys: Jan L. Warner, Esquire Carrie Warner, Esquire 1122 Lady Street, Suite 1200 Post Office Box 2628 Columbia, South Carolina 29202 (803) 799-0544 James McLaren, Esq. McLaren & Lee PO Box 11809 Columbia, SC 29211 (803) 799-3074	2006 JUN 19 PM 3 12 CLARENDON CO. JUDGE, SC
X Motion Hearing requested (attach written motion and complete Section I & II) Form Motion, No Hearing requested (complete Sections I & II) Proposed Order/Consent Order (complete Sections II & III)			
<b>SECTION II: MOTION TYPE</b> Nature of Motion: <u>RECONSIDER, SET ASIDE AMEND, ETC, ORDER OF THE COURT DATED JUNE 8, 2006.</u> Estimated Time Needed: TWO (2) HOURS Court Reporter Needed: <u>Yes</u> / No			
<b>SECTION II: MOTION TYPE</b> X Written Motion attached Form Motion: I hereby <del>move</del> for relief from the Court as set forth in the attached proposed Motion.  Attorney signature Date: June 19, 2006			
<b>SECTION III: MOTION FEE</b> Paid amount: _____ Exempt: Rule to Show Cause in Child or Spousal Abuse Domestic abuse Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
<b>JUDGE'S SECTION</b> Motion to be paid upon filing of the attached order Other _____		JUDGE _____ Code: _____ Date: _____	
<b>CLERK'S VERIFICATION</b> Collected By: _____ Date Filed: _____ Motion Fee Collected: _____ Contested - Amount Due: _____			



STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

William R. Simpson, Jr.,

PLAINTIFF,

VS.

Becky H. Simpson, and Wade Ingle,

DEFENDANTS.

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NUMBER: 04-DR-14815-243

CLARENDON COUNTY  
JUN 19 3 19 PM '06

**NOTICE OF MOTION AND MOTION  
FOR THE COURT TO RECONSIDER,  
SET ASIDE, ALTER, AND OR AMEND  
OR CLARIFY THE COURT'S ORDER  
DATED FEBRUARY 14 AND 16, 2006  
AND SIGNED JUNE 8, 2006.**

**TO: THE DEFENDANT ABOVE NAMED AND HER ATTORNEYS JAMES T. MCLAREN,  
ESQUIRE CARRIE A. WARNER AND JAN L. WARNER, ESQUIRE :**

**YOU WILL PLEASE TAKE NOTICE** that the Defendants by and through their undersigned attorney will move before the Honorable Frances P. Segars-Andrews Judge of the Family Court, at the \_\_\_\_\_ County Courthouse on the tenth (10) day after service hereof at \_\_\_\_\_ .m., or at such other time the Court deems appropriate pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure for an Order setting aside, vacating, altering, amending, clarifying and /or reconsidering the Final Order For Equitable Division, Child Support, and Attorney's Fees in this matter dated June 8, 2006 (hereinafter "Order"). Said Motion is based upon the following:

A. The Court's rendition of the facts in this case are skewed in favor of the wife.

1. The Court fails to mention that the wife, upon separation of the parties and **signing of the first marital agreement, moved in with her paramour Defendant, Wade Ingle.** He was made a party to the

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attempting to preserve the value of a marital asset.

D. The Husband should be given credit for the \$16,000.00 given to the wife under the terms of the overturned Order because he had no duty to support the Wife because of her infidelity.

1. The Husband would show that the Wife began a sexual relationship with the Defendant, Ingle, in September of 2004 (See Plaintiff's Exhibit 10, Deposition of Becky Simpson, page 28 lines 19-25). The Wife had signed an agreement (The August 2004 agreement that was later overturned on January 6, 2005.) that was later overturned. She was being supported by the Husband (Husband continued to abide by the agreement until it was overturned) and the Husband continued to support the Wife while she was having a sexual relationship with Mr. Ingle. The Court's assertion in paragraph 42, page 12 "that the Plaintiff would have otherwise been supporting the Wife" is incorrect. The Husband would show that because of the wife's adultery he had no obligation to continue to pay under an Order that was overturned. In other words, the wife cannot have the Order overturned and expect that her adultery will not be taken into consideration. The Court has clearly committed error by not giving the husband credit for the payments he made to the Wife under the agreement that was overturned and while she was having sexual relations with another man.

The Plaintiff would show that the Order should be amended, corrected, modified set-aside, and/or reconsidered, overturned, and or clarified to reflect a more accurate picture of the factual basis of the matter. The Husband would also request that he be given credit for the \$16,000.00 he paid to the wife under the overturned Order because the wife's adultery barred her from receiving support.

E. The Plaintiff would show that the marital residence at 145 Heritage Road was not transmuted into marital property and that at the most, the Wife should only be given a special equity interest in the property.

1. The property was clearly gifted to the Husband by the Husband's father. The Court contradicts itself in the Order when in paragraph 37, page 10 (regarding the LLC property) the Court states: "This is clear since the Husband's father was careful to give his other children real property at the same time he gifted the land where the marital residence was built."

2. The Court clearly indicates that the marital residence was a gift. The Court finds elsewhere that the wife's contribution to the home were only through her decorating skills and landscaping efforts. The Court has also said that the Husband was the income earner in the family. It is clear that those facts are not enough to transmute the marital residence. "The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, ...is not sufficient evidence to establish transmutation....it was not enough to show that she contributed time and labor to the improvement of the marital home...While improvements made by a spouse ... may result in the spouse receiving an equitable interest in the property...." *Murray vs. Murray* 312 S.C. 154, 158 439 S.E.2d 312, 315 (Ct. App. 1993).
3. Also, the Court did not consider the fact that the Home was given to the Husband by his father after the marriage was entered into and after the home was built. If the intent was anything other than a gift, then why was the home built first on land on by the Husband's father and then it was deeded to the Husband and not the Wife and the Husband. The primary question is one of intent. Here, there is no intent.

The Plaintiff would show that the Order should be amended, corrected, modified set-aside, and/or reconsidered ,overturned, and or clarified to reflect a more accurate picture of the factual basis of the matter. The Husband would also request that the Home be found to be non-marital property and that at the most the wife only received a small special equity interest in the home.

- F. The Court is incorrect when in applying equitable apportionment factors pursuant to § 20-7-472(1)-(15) in the following manner:
1. The duration of the marriage along with the ages of the parties:  
The Court finds that this was a fifteen (15) year marriage and that the parties are ages 32 (Wife) and 35 (Husband). The Court neglects to make any finding that the relative young age of Wife gives her ample opportunity to acquire additional property.
  2. The Court fails to make an adequate finding that the Husband's efforts alone was the result of the wealth of the parties. While it is true that the Wife did provide for the home and the children, the husband paid all of the bills, the LLC was given to him by his father and the marital home was gifted by ~~the~~ Husband's father.

3. The Court fails to take into consideration what affect that the dividing of the farm land in its award will have on the future income of the Husband. The Court fails to recognize that by awarding the wife farm land, the Husband's income will be reduced because land is how he makes his living as a farmer. The Billy Road property and Huckabee Road property will greatly diminish the Husband's ability to earn the income ("nearly \$100,000.00 per year page 20 paragraph 63 of the Order). The Court fails to make a finding of how the division of farm land will impact the husband's income potential.
4. The Court did not properly consider the division of debt in its Order. The Court indicates that the Husband is receiving 60% of the assets; however, the Court fails to mention that the Husband is receiving 96% of the marital debt. The Court fails to take into consideration that the Pee Dee Farm Credit loan and Bank of Greeleyville loans (total of \$227,300.00) were used in the Husband's farming operation alone. That Simpson Farm, LLC (that was owned by the Father of the Husband and the Husband) is not responsible for the debt of the Husband. The Court fails to take into consideration how the Husband is to pay off \$234,500.00 in debt with only \$555,155.00 in gross assets. Of those gross assets that were awarded to the Husband, one was Simpson Farms, LLC valued at \$299,825.00. Said assets (Simpson Farms, LLC) has obligations of its own and no obligation to pay the debts of the Husband. Therefore, the Court should have either adjusted the valuation to reflect a greater interest in the assets by the Husband or made the Wife contribute to the debt payment. Finally, the Court talks about the confusing nature of the way that the bills are paid by the Husband and his father, it is clear that the three debts were debts of the marriage. The Pee Dee Farm Credit Debt; Bank of Greeleyville loan and credit card debt of the wife. Again, the Court assigned the Husband 96% of the value of the marital debt. With the deduction in income from the los of land, the Husband cannot service these debts. Also, the Court fails to mention that the pooling of the crops between the Husband father and the Husband created a better price for their crops. Finally, the Court awarded the Wife the Gunter road trailed and property, but did not divide the debt on the property (\$14,000.00).
5. The Court failed to give adequate weight to the child custody arrangements at the time of the entry of the Order. The Court does mention that Husband has custody; however, the Court fails to mention that the oldest child will not visit his mother (because of the physical altercation between the two) and that the youngest child only has limited visitation. The Court should have given greater weight to the fact that the Husband will have all of the financial burden of the children. Even though the wife does pay some child support according to the guidelines, the guidelines assume that the paying spouse will

have 110 overnight visits per year. That is not the case here. There are no overnight visitations allowed. Therefore, the Court has failed to give proper weight to the father's role as **primary** care giver of the minor children and the impact of his sole financial responsibility will have on his income.

6. In paragraph 60, the Court recognizes the following: "Since much of the property was acquired only because of the husband's family....This also takes into consideration that the Husband was hard working and creative in the acquisition of property." (See Plaintiff's Exhibit 10, Deposition of Becky Simpson, page 8 lines 18-25). If the Court recognizes this fact, then why does it allocate 40% of the marital estate to the Wife?

The Plaintiff would show that the Order should be amended, corrected, modified set-aside, and/or reconsidered ,overturned, and or clarified to reflect a more accurate picture of the factual basis of the matter and that the Court should allow the Husband to retain the use and possession of the crop land.

G. The Court incorrectly awarded the wife attorney's fees and Costs.

1. The incorrectly assumes that the Husband will continue to be able to make close to \$100,000.00 per year. In the Order, the wife is awarded substantial farming property that the Husband did use to make the income as noted by the Court; however, the income will be greatly reduced because of the Order. On the Other hand the wife will receive \$213,876.00 net. The Court also states: "He (Husband) was awarded substantially more assets in the above equitable apportionment." The Court fails to mention that the Husband was also awarded 96% of the marital debt. With the award of attorney's fees and Costs the Husband will be responsible for the following:

a.	Cost of private investigator	(The Court lists no number)
b.	Cost of all of the appraisals	\$7,638.37
c.	50% of wife's expert (Who did little on case)	\$5,000.00
d.	50% of wife's attorney's fees	\$78,039.91
e.	Pee Dee Farm Credit Debt	\$133,500.00
f.	Bank of Greeleyville Debt	\$101,000.00

Total paid by the Husband	\$325,178,28
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The Wife's debts from this Order are as follows:

a.	Credit Card debt	\$8,000.00
b.	50% cost of her expert	\$5,000.00
c.	50% costs of her attorney's fees	\$78,039.91
<b>Total paid by the wife</b>		<b>\$91,039.91</b>

The Court incorrectly assumes that the Husband will be able to continue to earn \$100,000.00 per year after losing farm acreage and having net assets of only \$229,976.72 as a result of this Order.

2. The Court was incorrect when it stated that the wife was better off with this Order than with the agreement the wife had overturned in January of 2005. Under the Property Settlement Agreement that was overturned, the wife was to receive the following:

a.	Alimony (\$450.00 per month for 40 months)	\$18,000.00
b.	One acre of Land (Estimate)	\$ 2,000.00
c.	Lump Sum property Division	\$22,500.00
d.	3 payments of \$5,000 over three years	\$15,000.00
e.	Joint custody of children with her being primary caretaker of daughter	Priceless
f.	Child support for daughter (300.00 per month until 18 birthday) 9 years.	\$32,400.00
g.	GMC Yukon with Husband being responsible for maint. for one year, taxes tags, insurance, etc. (Conservative)	\$10,000.00
h.	One tank of gas per week for one year (Using \$1.65 per gal. 20 gal. per week)	\$ 1,716.00
i.	Use of marital home with all expenses paid by the husband, payment, insurance, lights, phone bill for one year (estimate \$1,000.00 month for 12 months)	\$12,000.00
j.	Wife's choice of furnishings in marital home.	Unknown
k.	Less wife's credit card debt	\$-8,000.00
<b>Total</b>		<b>\$105,616.00</b>

Under this Court's Order the wife will Receive or pay the Following:

a.	Amount awarded by the Court	\$221,876.00
b.	Less credit card debt	\$ -8,000.00
c.	Less attorney's fees (50%)	\$-78,039.91
d.	Less expert fees	\$ -5,000.00

e.	Wife will pay \$233.05 per month until son is 18 years old (7/30/2009). 41 months at \$233.05 per month.	\$-9,555.05
f.	Wife will then pay child support for daughter Until her 18 <sup>th</sup> birthday ay \$189.00 per month for four years and eleven months or 59 months.	\$-11,151.00
g.	15% of uncovered medical, orthodontic, etc.	Unknown
<b>Total</b>		<b>\$110,130.04</b>

Had the Wife not had the agreement overturned, she would have retained joint custody of her children with primary placement of her daughter with her, her choice of furnishing from the marital home, her vehicle would be operating and hers free and clear and she would have only received \$4,514.04 more in money **without a Court fight, depositions, discovery, etc.** Not to mention the medical bills she will now be responsible for on the minor children. As a result, the Wife would have been in a better emotional and financial situation had she gone with the agreement.

3. The Court was absolutely incorrect when in paragraph 73, page 23 it states: "The agreement that the Husband initially had the wife sign gave her **virtually nothing**. Because of the work done by her counsel and expert she now has an equitable share of the marital property." The Husband would show that the only persons that benefitted from this Court Order would be his former Wife's attorneys and their expert.

For the aforementioned reasons, the Husband would show that the attorney's fees and costs ordered in this matter were not necessary because the wife did not obtain a beneficial result nor did she need to hire an attorney because you cannot put a price on having custody of the children (Wife lost custody because she had to assert that she was mentally incompetent in order to get the agreement overturned). Further, the Wife actually lost money because of the litigation and had to go through the emotional tribulation of a trial.

For the aforementioned reasons, the Plaintiff respectfully request that the Order in this matter be amended, corrected, modified set-aside, and/or reconsidered ,overturned, and or clarified. In reliance of his position the Plaintiff will use the transcript of the hearing as well as evidence presented at trial.

RESPECTFULLY SUBMITTED,

By 

Steven S. McKenzie  
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(803) 435-2858 Facsimile

June 18, 2006

00305



STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

WILLIAM R. SIMPSON, JR., )

Plaintiff, )

vs. )

BECKY H. SIMPSON AND WADE )  
INGLE, )

Defendants, )

IN THE FAMILY COURT OF THE  
THIRD JUDICIAL CIRCUIT  
DOCKET NUMBER: 2004-DR-14-243,315

**CERTIFICATE OF SERVICE**

DEULON  
FILED IN  
CLARENDON COUNTY  
2006 JUN 19 PM

I hereby certify that due and proper service of the Notice of Motion and Motion for the Court to Reconsider, Set Aside, Alter, and or Amend Its June 8, 2006 Order was made by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

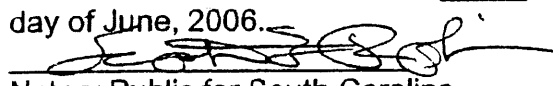
The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934

Jan L. Warner, Esquire  
Carrie Warner, Esquire  
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Columbia, South Carolina 29202

James McLaren, Esq.  
McLaren & Lee  
PO Box 11809  
Columbia, SC 29211

  
Steven S. McKenzie, Esquire

SWORN TO BEFORE ME this 19<sup>th</sup>  
day of June, 2006.

  
Notary Public for South Carolina

My Commission Expires: 4/22/2015

00306


Defendants.

# MEMORANDUM OF LAW

00307

On March 28, 2006, attorneys McKenzie and Robinson filed a *Notice of Motion and Motion for a New Trial Based upon Failure of Defendant's Counsel to Disclose the Court's Conflict of Interest*, after Your Honor's instructions were issued but before entry of a formal Final Order asserting that Plaintiff William R. Simpson, Jr. should get a new trial because Lon Shull had given an affidavit on the issue of attorneys fees in the case of "*Daisy Wallace Simpson vs. William Robert Simpson, Sr. individually and as shareholder/member of W.R. Simpson Farms, L.L.C. and William R. Simpson, Jr., as a shareholder/member of W.R. Simpson Farms, L.L.C.,*", Docket No. 2003-DR-14-128 (the "Simpson, Sr. case"). Daisy Wallace Simpson and William Robert Simpson, Sr. are the parents of William R. Simpson, Jr., the Plaintiff in this case. Plaintiff's Motion contended that Mr. Shull having given an affidavit on the issue of attorneys fees in the Simpson Sr. case (heard and decided by Judge Turbeville) created a conflict of interest preventing Your Honor from hearing this case and that Defendant Becky H. Simpson's attorneys should have disclosed this alleged conflict of interest to Plaintiff and his attorneys. Plaintiff's Motion was not supported by an Affidavit, nor was any prejudice or bias asserted in the Motion.

On April 13, 2006, Judge Segars-Andrews held a hearing on Plaintiff's the Motion for a New Trial at Sumter. At the call of the case, Your Honor stated that she denied the Motion for a New Trial. Then, *sua sponte*, Your Honor stated she was disqualifying herself and that the case would need to be re-tried in front of a new Judge because she had failed to disclose the fact that James T. McLaren had been co-counsel with Lon Shull in a personal injury case which had resulted in a substantial settlement. Your Honor stated that her husband, Mark Andrews, had recently reminded her about

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this. Although Your Honor stated she did not remember it when this case was being tried and as a result had not disclosed that fact at the beginning of the case, so she should disqualify herself. Your Honor further stated that she only realized that to be the case after the new trial Motion had been filed because she asked her husband who reminded her about the personal injury case, which had been concluded some time ago (settlement reached in December 2004 and paid in installments between January 13, 2005 and March 30, 2005). Your Honor said that she had not recalled that, nor did she have any consciousness about it when she was trying or deciding the case. Your Honor further stated that she tried and decided the case fairly without bias or prejudice.

#### DISCUSSION

1. **The "Duty to Sit"**

South Carolina law, like that of most jurisdictions, imposes a "duty to sit" in cases where disqualification is not required.

South Carolina Appellate Court Rule 501, Canon 3B(1) expressly states:

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.** (emphasis added)

e.g. see *United States of America vs. Gary L. DeTemple*, 162 F.3d 279 C.A.4 (VA) 1998; *U.S. v. Snyder*, 235 F.3d 42 C.A.1 (Mass.) 2000 – "[a] trial judge must hear cases unless [there is] some reasonable factual basis to doubt the impartiality or fairness of the tribunal.' *Blizard vs. Frechette*, 601 F.2d 1217, 1221 (1st Cir.1979). Thus, under § 455(a) a judge has a duty to recuse himself if his impartiality can reasonably be questioned; but otherwise, he has a duty to sit."]

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2. **Disqualification is not required.**

*South Carolina Appellate Court Rule 501, Canon 3E governs those situations where judicial disqualification is required. That Rule states:*

*E. Disqualification.*

*(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:*

*(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;*

*(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;*

*(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;*

*(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:*

*(i) is a party to the proceeding, or an officer, director or trustee of a party;*

*(ii) is acting as a lawyer in the proceeding;*

*(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;*

*(iv) is to the judge's knowledge likely to be a material witness in the proceeding.*

*(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children*

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*residing in the judge's household.*

Here, there is no evidence whatsoever of any factual basis requiring Your Honor's disqualification in this case.

There is no evidence that Your Honor has "*a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts*" in this case nor has any been alleged.

There is no evidence that Your Honor has "*served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.*"

There is no evidence that Your Honor has "*individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding...*".

There is no evidence Your Honor or your spouse "*...or a person within the third degree of relationship to either of them, or the spouse of such a person:*

*(i) is a party to the proceeding, or an officer, director or trustee of a party;*

*(ii) is acting as a lawyer in the proceeding;*

*(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;*

*(iv) is to the judge's knowledge likely to be a material witness in the proceeding."*

There is simply no factual basis in this case which requires or mandates Your Honor's disqualification as a judge in this case.

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3. The duty of disclosure.

While there is a duty of disclosure under *South Carolina Appellate Court Rule* 501, Canon 3, in certain instances, none of those instances apply to the subject case or circumstances.

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. (*South Carolina Appellate Court Rule* 501, Canon 3B, Commentary.)

There is no duty to disclose attenuated relationships or other circumstances which do not require or mandate disqualification. None of the circumstances requiring disclosure or disqualification are present in this case.

For example, if the duty to disclose and/or disqualify was as broad as is apparently perceived by Your Honor in this case, then Chief Justice Jean Toal and Chief Judge Kay Hearn would be required to either disqualify themselves or make disclosure not only in cases where their respective spouses or their spouse's law firms were attorneys of record for a litigant but also in cases where any attorney of record for a litigant had previously been co-counsel with or shared fees with their spouses or their spouse's law firms, irrespective of the fact that the previous case or cases had been concluded and there was no continuing or ongoing relationship. Disqualification and/or

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disclosure does not occur in these circumstances because it is not required. Nor is it required under the circumstances presented in this case.

4. **Related South Carolina law.**

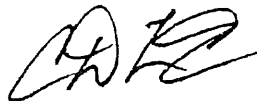
As stated in the Commentary to *Carolina Appellate Court Rule 501*, Canon 3E(1)(d):

**The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge.** Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification. (emphasis added)

The circumstances presented here are far more remote than those described above. No lawyer in this proceeding is "affiliated with a law firm with which a relative of the judge". Mr. McLaren was co-counsel with Mr. Shull (Mark Andrews' law partner) in one personal injury case which was settled and concluded well more than a year ago. No relative of the judge has any interest whatsoever in any law firm that could be "substantially affected by the outcome of the proceeding". There is no ongoing relationship between Mr. McLaren and Andrews and Shull. To the contrary, Mr. McLaren has been opposing counsel in cases before and since that time to litigants represented by both Mr. Shull and Mr. Andrews.

While there are apparently no reported South Carolina cases dealing directly with facts similar to those presented in this case and the issue of judicial disqualification, there are a plethora of analogous cases, all of which support the proposition that disqualification is not required in this case.

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In *Doe vs. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2002), Doe sued Howe for legal malpractice. The trial judge then granted summary judgment in favor of Howe. Two days after the summary judgment hearing the trial judge disclosed that he had contacted Howe to inquire about employment for his wife with the Charleston Law School (where Howe was on the Advisory Committee) and that the judge's law clerk had applied for employment with one of Howe's attorneys. Doe moved for disqualification of the trial judge. The trial judge denied that Motion. The Court of Appeal affirmed the denial of disqualification stating:

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." (FN7) "It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice."

Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself. If anything, the trial judge demonstrated sensitivity toward any concerns Doe might have had regarding his impartiality by voluntarily making full disclosure of his and his law clerk's contacts with Howe and Howe's counsel. 626 S.E.2d at 630.

In *Ness vs. Eckerd Corp.*, 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002), a case closely analogous to this case, Judge Harwell denied a Eckerd's Motion to set aside a default judgment. Eckerd filed a Rule 59(e) Motion requesting reconsideration of that ruling.

*In an order dated July 13, 1998, Judge Harwell stated "[he] discovered that one of the [his] brothers has a relationship to the corporate defendant which was unknown [to me] at the time this Court heard the Motions in question and entered the Order of May 28, 1998." He then vacated his earlier order and recused himself from the case. 566 S.E.2d at 195*

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The case was assigned to Judge Smoak who then set aside the default. Ness appealed. The Court of Appeals reversed Judge Harwell setting aside his Order stating in relevant part:

.....On realizing there might be a problem, Judge Harwell properly declined to take any further action in the case, but he should not have vacated his earlier order. Rule 63, SCRCP, directs as follows: If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then the resident judge of the circuit or any other judge having jurisdiction in the court in which the action was tried may perform those duties....

We construe the language "other disability" to include disqualification of the trial judge. Therefore, the Rule 59(e) motion should have been heard by another circuit judge. (emphasis added) 566 S.E.2d at 196

Here, like in *Ness vs. Eckerd Corp.*, Your Honor made a decision in this case before recalling the basis now asserted for Your Honor's disqualification. Even more compellingly, the grounds for disqualification in *Ness vs. Eckerd Corp.* mandated or required disqualification under Canon 3E(d)(iii) as Judge Harwell's brother had more than a *de minimus* interest in the defendant corporation that could be substantially affected by the proceeding. There is no basis for a required or mandatory disqualification in this case.

In *Murphy vs. Murphy*, 319 S.C. 324, 461 S.E.2d 39 (1995), the husband sought disqualification of the trial judge on the grounds that the judge has represented the wife's attorney in a prior legal matter. The trial judge denied disqualification. The Supreme Court affirmed the denial of disqualification noting there was "no evidence of judicial prejudice". 461 S.E.2d at 42



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In *Lyvers vs. Lyvers*, 280 S.C. 361, 312 S.E.2d 590 (Ct. App.1984), after entry of the Order the wife moved for disqualification of the trial judge upon learning that the judge had represented the husband's attorney in his divorce case four years earlier. The trial judge denied the Motion. The Court of Appeals affirmed the denial of disqualification stating:

*Finally, Mrs. Lyvers argues that the court erred in denying her motion to reconsider its order after she learned the judge had represented counsel for Mr. Lyvers in a domestic action four years previously. She asserts that the judge should have disqualified himself under the dictates of Canon 3(C)(1) of the Code of Judicial Conduct.*

*Canon 3(C)(1) of the Code of Judicial Conduct provides:*

*(C) Disqualification.*

*(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned*

*...*

*In applying Canon 3(C)(1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge. Rogers v. Wilkins, 275 S.C. 28, 267 S.E.2d 86 (1980). As in Rogers, the record before us is totally devoid of any evidence of judicial prejudice against Mrs. Lyvers, or bias in favor of Mr. Lyvers. Thus, it was not error for the trial judge to deny Mrs. Lyvers's motion for reconsideration. 312 S.E.2d at 594*

Also see *Townsend vs. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996) affirming trial judges denial of the father's disqualification motion where the judge was a childhood acquaintance of the mother.

South Carolina Judicial Advisory Opinion No. 2-1990:

*There is no conflict of interest or impropriety in a judge presiding over a trial in which one of the attorneys represented him in past litigation, provided that litigation is over, that their relationship was strictly an arms length lawyer-client relationship and there is no debt or financial obligation still outstanding.*

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South Carolina Judicial Advisory Opinion No. 28-1996:

*A Family Court Judge should recuse himself/herself from all cases involving the attorneys and their firms who are concurrently representing a judge's relatives in a divorce proceeding, particularly if the divorce case is expected to be highly confrontational.....However, upon termination of the divorce proceeding, the rules would not mandate that the judge recuse himself/herself. (emphasis added)*

### CONCLUSION

Here, there is no basis asserted under Canon 3 or otherwise in existence requiring or mandating Your Honor's disqualification in this case. Further, there is no reason Your Honor's impartiality can reasonably be questioned in the decision making process in this case. According to Your Honor's own statements at the hearing on April 13, 2006, Your Honor was completely unaware that Mr. McLaren had been co-counsel with Mr. Shull in the subject personal injury case until after your husband reminded you of that fact several days earlier and Your Honor expressly stated that you had tried and decided the case fairly without bias or prejudice.

Even if your husband was "affiliated" with McLaren & Lee, which he is not, that fact would not require Your Honor's disqualification in this case.

This case has been through a lengthy trial at great expense, financially and emotionally, to both parties. Defendant Becky Simpson has since relocated to the State of Texas and recently suffered a broken back. Substantial sums have already been spent to prepare and present her case at the trial in February 2006. If a retrial is ordered there will be great prejudice to Defendant Becky Simpson.

The "duty to hear and decide" set forth in Canon 3B(1) should control Your Honor's decision.



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For the reasons set forth above, both individually and collectively, Defendant Becky Simpson respectfully submits that Your Honor should not disqualify herself in this case or require a retrial of the issues.



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ATTORNEYS FOR DEFENDANT  
BECKY H. SIMPSON

Columbia, South Carolina

Dated: April 24, 2006

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## Defendants

AFFIDAVIT OF NATHAN M. CRYSTAL

DECLASSIFIED BY 6032  
ON 04-26-2008  
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who

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years and have authored a number of opinions that were adopted by the Committee on issues of legal ethics. I was appointed by the President of the South Carolina Bar as chair of the committee from 2002-2003. I also represented the South Carolina Bar in its petition to the Supreme Court in 1990 to adopt the South Carolina Rules of Professional Conduct. I have delivered more than 100 speeches, presentations, and continuing legal education programs to law firms, bar organizations, and other groups, both in South Carolina and nationally. I have appeared as an expert witness by way of testimony, deposition, or affidavit in more than 30 cases involving questions of professional responsibility and legal ethics.

3. My opinion is based on the statement of facts set forth in defendant's memorandum of law filed with the court on April 24, 2006, and attachments thereto. I have also reviewed defendant's Return and Memorandum of Law dated April 13, 2006, with attachments. In forming my opinion I have taken into account relevant authorities, including the South Carolina Code of Judicial Conduct, SCACR 501, case law, and legal literature. This factual and legal material is of a type reasonably relied on by experts in the field of professional responsibility and judicial ethics in forming their opinions.

4. I offer the following opinions:

(a) Judge Segars-Andrews is not disqualified from hearing this case because Lon H. Shull, Esq., who is a partner with her husband, Mark Andrews, (1) submitted an affidavit on the issue of attorney fees and costs in the divorce action between Daisy Wallace Simpson and William R. Simpson, Sr., the father of the plaintiff in this case, tried before Judge Turbeville, when counsel for Daisy Wallace Simpson (Mr. McLaren and Mr. Warner) also represent the defendant Becky H. Simpson in this case, or (2) because Mr. Shull was co-counsel with Mr.

McLaren, one of the lawyers for defendant Simpson in this case, in a personal injury case that ended about a year ago.

(b) Judge Segars-Andrews is not disqualified in this case because she failed to disclose either of the matters referred to above at the beginning of this case when she was unaware of Mr. Shull's involvement in the prior case and did not recall the co-counsel relationship between Mr. Shull and Mr. McLaren until after she had heard the evidence, issued her ruling, and directed defense counsel to prepare an order.

I.

Judge Segars-Andrews is not disqualified from hearing this case (1) because Mr. Shull submitted an affidavit on attorney fees and costs in the divorce action between plaintiff's father and Daisy Wallace Simpson or (2) because Mr. Shull was co-counsel with Mr. McLaren in a personal injury case that ended about a year ago.

5. Canon 3(E) of the Code of Judicial Conduct, SCACR 501, deals with disqualification of judges. That Canon sets forth specific grounds for disqualification: (a) personal bias or prejudice by the judge or personal knowledge of disputed evidentiary facts, (b) prior involvement by the judge or the judge's former law partner in the matter before the judge, or participation by the judge as a material witness, (c) economic interest of the judge or of close family members in the outcome of the case or in one of the parties to the case, and (d) four specific disqualifying relationships. Canon 3(E)(1)(a)-(d).

Based on the materials I reviewed, there is no basis for disqualification of Judge Segars-Andrews under any of these specific grounds. In particular, I note the following:

- There is no allegation that Judge Segars-Andrews harbors any personal bias or prejudice in favor of or against any of the parties or lawyers in this proceeding.

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Further, she has stated on the record that she was unaware of the claimed grounds for disqualification until after she had issued her ruling and that she decided the case fairly on the merits.

- Her husband and her husband's partner do not have any economic interest, direct or otherwise, in this case, nor do they have any other interest that could be substantially affected by her ruling in this case.

6. In addition to the specific grounds for disqualification set forth in Canon 3(E)(1)(a)-(d), Canon 3(E) provides a general standard for disqualification: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." In my opinion, neither of the matters creates a reasonable question about Judge Segars-Andrews' impartiality.

When judges are elected to the bench, they come with extensive professional and personal relationships. Judges who are married to lawyers have additional professional and personal relationships through their spouses. When judges or their spouses practice in law firms, those professional and personal relationships are further multiplied through the former partners of the judges or the current and former partners of their spouses. For two reasons, generally none of these relationships is a basis for disqualification. First, in almost all of these situations the relationships are too tenuous to have any impact on a judge's decision in a specific case, particularly because in many instances the judge will be unaware of the relationship when hearing the case, as is true in this matter. Second, as a practical matter, disqualification on the basis of such tenuous relationships would interfere with the administration of justice because

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judges would be disqualified too often, sometimes in the middle of a case.<sup>1</sup>

7. Under South Carolina case law a mere allegation of some tenuous prior relationship is insufficient to justify disqualification. The decision whether to grant a motion for recusal rests with the sound discretion of the trial judge. See *State v. Cheatham*, 349 S.C. 101, 111, 561 S.E.2d 618, 624 (Ct. App. 2002). The supreme court has stated on numerous occasions that a judge's decision to deny a motion for disqualification is not reversible unless there is some evidence of judicial prejudice. See *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004): "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Accord *Ellis v. Procter & Gamble Distributing Co.*, 315 S.C. 283, 284-285, 433 S.E.2d 856, 857 (1993).

South Carolina cases have found that a judge is not disqualified in situations involving much more significant relationships than involved in this case. For example, in *Murphy v. Murphy*, 319 S.C. 324, 461 S.E.2d 39 (Ct. App. 1995), the court of appeals found that the trial judge in a domestic case was not disqualified because counsel for the wife had previously

---

<sup>1</sup> Cf. *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998), where the supreme court held that a special referee (Fallon), who was subject to the Code of Judicial Conduct, was not disqualified because Fallon had received an award similar to the one issued by Fallon in a previous case (the *Leasure* case) in which the referee was one of the lawyers who represented the plaintiff Roche in the case before referee Fallon. The court said:

[R]eferees will invariably be appointed who were involved in prior, unrelated legal matters with the attorneys appearing before them. If this were the sole basis for disqualification, such counties would be severely hampered in their ability to appoint special referees. Young Brothers nevertheless suggests that a *quid pro quo* was implicit because the damages award in this case was similar to the award in the *Leasure* matter. We, however, find no evidence of bias or prejudice on the part of the special referee. The record clearly supports the special referee's factual findings and award of damages. *Id.* at 84-85, 504 S.E.2d at 316.

represented the judge in a matter. Similarly, in *Lyvers v. Lyvers*, 280 S.C. 361, 312 S.E.2d 590 (Ct. App. 1984), the court of appeals held that the trial judge was not disqualified because the judge had represented the counsel for the husband in a domestic action four years earlier. See also *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998) (referee, who was "judge" under Code of Judicial Conduct, not disqualified when referee issued award to plaintiff similar to award plaintiff's attorney, serving as referee in prior case, had issued to referee); *State v. Jackson*, 353 S.C. 625, 578 S.E.2d 744 (Ct. App. 2003) (judge not disqualified even though he was deputy solicitor at time defendant allegedly committed offenses).

## II.

Judge Segars-Andrews is not disqualified from hearing this case because she failed to disclose either of the alleged "conflicts" at the beginning of the case.

8. Under the Code of Judicial Conduct a judge should promptly disclose any information that may be relevant to disqualification, even if the judge believes that there is no basis for disqualification. The commentary to Canon 3(E)(1) states:

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

For three reasons in my opinion Judge Segars-Andrews is not disqualified for failing to disclose the alleged conflicts of interest at the beginning of the case.

9. First, Judge Segars-Andrews did not know nor did she have a duty to know about the alleged conflicts of interest at the beginning of the case. Judge Segars-Andrews has said that she did not know about the alleged conflicts until after she had heard the evidence, decided the case, and directed defendant's counsel to prepare an order. Obviously, a judge cannot be faulted

or disqualified for failing to disclose information about which she was unaware. Moreover, Judge Segars-Andrews did not violate any duty by not knowing about the alleged conflicts at the beginning of the case. Under the Code of Judicial Conduct a judge has a duty to "keep informed" about personal economic interests and the economic interests of her spouse and minor children residing in her home. Canon 3(E)(2) states:

(2) A judge shall keep informed about the judge's personal and fiduciary\* economic interests,\* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

Quite clearly Judge Segars-Andrews did not violate the duty to "keep informed." The duty only applies to economic interests of the judge, the judge's spouse, and minor children. The claimed conflict in this case does not involve an economic interest of any such person. Moreover with regard to a spouse, the judge only has an obligation to keep reasonably informed. A judge would not normally be expected to know about the expert witness or legal work done by the partner of the judge's spouse with regard to cases that were not before the judge and did not involve her husband.

10. Second, Judge Segars-Andrews' failure to disclose is, at worst, harmless error. The purpose of the disclosure obligation set forth in the commentary is to enable counsel to raise an issue of disqualification. As discussed above, however, the alleged "conflicts of interest" are not grounds for disqualification. In *Hathcock v. Southern Farm Bureau Cas. Ins. Co.*, 912 So.2d 844 (Miss. 2005), the judge's son was employed in a supervisory capacity by Southern. In addition, twenty years earlier the judge had represented Southern in all of the counties of the district. The judge had failed to disclose this information on the record. The court held that the

judge was not disqualified because any failure to disclose was harmless error:

Even had Judge Terry made the disclosure, the ultimate result would be no different because there is no real basis for disqualification. Assuming *arguendo* that Judge Terry's failure to disclose would be error, it would be *de minimus* at best, and therefore, harmless, as had Hathcock been informed of the son's employment and/or Judge Terry's prior representation was neither a basis for disqualification or recusal. In the case *sub judice*, there are two undisputed facts, (1) Judge Terry's prior representation of Farm Bureau, and (2) Judge Terry's son's employment with Farm Bureau in an unrelated capacity. Hathcock has offered this Court no additional facts. Accepting those two facts together, does not create a reasonable doubt as to Judge Terry's impartiality. *Id.* at 853.

11. Finally, as discussed above, South Carolina courts have held that a judge's decision on whether to recuse herself rests with the sound discretion of the judge. Here, in my opinion Judge Segars-Andrews should exercise her discretion against recusal, especially since the case has been litigated and a decision rendered. All of the equitable factors involved in this case point against recusal. From the plaintiff's perspective, Mr. Simpson has not been prejudiced in any way. Judge Segars-Andrews decided this case fairly without any knowledge of the alleged conflicts of interest. Judge Segars-Andrews did not violate a duty to disclose the alleged conflicts because she did not know about the conflicts at the beginning of the case. Nor did she violate her duty to "keep informed" about information that would be the basis of disqualification. Moreover, on the merits, the alleged conflicts of interest are not grounds for disqualification. From the defendant's perspective, disqualification would require a time consuming, expensive retrial before another judge. From the perspective of the fair administration of justice, disqualification should be denied. Both parties received a fair hearing before an impartial judge. There is no reason to think that a trial before another judge would be fairer. Retrial of the case before another judge would, however, unquestionably expend judicial resources.

For the foregoing reasons, in my opinion Judge Segars-Andrews is not required to recuse herself in this case and should not do so on her own motion.

Further the affiant sayeth not.

Nathan M. Gysel

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME

this 24<sup>th</sup> day of April, 2006

John Seward  
Notary Public

My Commission expires: 9-25-10

**WARNER, PAYNE & BLACK, L.L.P.**  
**ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.**

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PLEASE REPLY TO:  
COLUMBIA OFFICE

April 24, 2006

Beulah G. Roberts  
Clerk of the Family Court  
Third Judicial District  
Post Office Box 136  
Manning, South Carolina 29102-0136

**RE: William R. Simpson v. Becky Simpson**  
**Case No.: 2004-DR-14-243, 315**

Dear Ms. Roberts:

Please find enclosed herewith original and two (2) copies of Memorandum of Law, together with Affidavit of Nathan M. Crystal in the above-referenced matter.

I would appreciate your filing the original and returning the two copies to me in the enclosed self-addressed stamped envelope.

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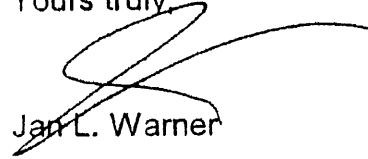


BEULAH G. ROBERTS  
CLERK OF THE COURT  
CLARENCE COUNTY, SC  
2006 APR 26 AM 10 25

Ms. Beulah G. Roberts  
April 24, 2006  
Page 2 of 2

---

Yours truly,

A handwritten signature in black ink, appearing to read "Jan L. Warner", is written over the "Yours truly," text.

Jan L. Warner

JLW/is

Enclosure(s): Memorandum of Law  
Affidavit of Nathan M. Crystal  
Self-Addressed Stamped Envelope

Cc: Steven McKenzie, Esquire (via fax)



STATE OF SOUTH CAROLINA )

COUNTY OF CLARENDON )

William R. Simpson, Jr., )

PLAINTIFF, )

VS. )

Becky H. Simpson, )

DEFENDANT )

IN THE FAMILY COURT OF THE

THIRD JUDICIAL CIRCUIT

DOCKET NUMBER: 04-DR-14-315, 243

NOTICE OF MOTION AND MOTION  
FOR THE COURT TO RECONSIDER,  
SET ASIDE, ALTER, AND OR AMEND  
OR CLARIFY THE COURT'S ORDER  
DATED APRIL 13, 2006 AND SIGNED  
MAY 22, 2006.

TO: THE DEFENDANT ABOVE NAMED AND HER ATTORNEYS JAMES T. MCLAREN,  
ESQUIRE AND JAN L. WARNER, ESQUIRE :

YOU WILL PLEASE TAKE NOTICE that the Defendants by and through their undersigned attorney will move before the Honorable Frances P. Segars-Andrews Judge of the Family Court, at the \_\_\_\_\_ County Courthouse on the tenth (10) day after service hereof at \_\_\_\_\_ .m., or at such other time the Court deems appropriate pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure for an Order setting aside, vacating, altering, amending, clarifying and /or reconsidering the final Order in this matter dated May 22, 2006. Said Motion is based upon the following:

1. On page 2, first paragraph of the May 22, 2006 Order, the Order states: "At the hearing on April 13, 2006 the Court also raised, *sua sponte*, the question of whether the Court should disqualify itself....At the hearing, the Court requested that each party submit any Memorandum or other documentation which they desired for the Court to consider on the issue." The Plaintiff would show that said factual rendition by the Court in its May 22, 2006 Order is

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inaccurate in the following manner:

- A. The Court did raise the issue of recusal; however the May 22, 2006 Order does not reflect that the Court orally granted its own Motion for recusal. Attached at Exhibit "A" is the transcript form said hearing that was heard on April 13, 2006. At page 3, lines 6-13. The Court raised the issue of recusal and then ruled on said issue. Lines 13-14 state: "I did not think about that, so I'm going to have to Recuse myself. You all will have to retry the case." (See also Exhibit "A" p. 7 lines 4-11 wherein the Court affirms that the Motion was from the Court *Sua Sponte*). The Court's May 22, 2006 Order needs to be clarified to reflect that the Motion of the Court was granted *Sua Sponte* and not that the "question of whether the Court should disqualify itself and grant a new trial....." (See the May 22, 206 order page 2, paragraph 1). The Plaintiff respectfully request that the Order reflect that actual sequence of events.
- B. The Court never requested that the parties submit a Memorandum or other documentation on the issue of recusal. In fact, the Court stated the following on page 3 lines 20-25: "THE COURT: If you all want to make any kind of motion on there, I just don't think that there is anything that I can do, because I did not think about it before trial. I will say this-we don't need to go on the record for this-" (See Exhibit "A" p. 3 lines 20-25). The Court will recall that off the record it stated that the parties could submit anything they wanted; however, the Court would not change its mind. (The Plaintiff would ask for the Court to rely on its memory of what was said off the record since said statement was stated off the record at the request of the Court. See Exhibit "A" p. 3, lines 22-25). Further, the Court stated: "I'll be glad to look at anything, but I'll tell you, I've been-I have looked at the Rules over and over, because I feel like I really have done a disservice by not disclosing this and causing your clients to have to go through another trial. I wish-" (See Exhibit "A" p. 7 lines 14-18). Also, the Court had the following discussion with Mr. McLaren (attorney for the defendant): "Can we have a week or so to get together another memo for you? We're closed tomorrow. The Court: Sure, I'm on vacation next week, But-." The Plaintiff would respectfully request that the Defendant requested to brief the matter and not that: "At the hearing the Court requested that each party submit any Memorandum or other documentation which they desired for the Court to consider on the issue." (See the May 22, 206 order page 2, paragraph 1). Also, the Order needs to reflect that the Court allowed the defendant to brief the issue after it had already decided the issue of recusal *Sua*

*Sponte*. Finally, the Order needs to reflect that no request was made by the defendant to hire an expert witness and allow the submission of an affidavit in support of her position.

- C. The May 22, 2206 Order addresses on page 2, paragraph 1 that an April 25, 2006 letter was received by the Court from the Plaintiff; however, the Court fails to mention that the letter alleges that Professor Crystal did not have an accurate rendition of the facts of the matter. (See April 25, 2006 letter p. 1 paragraph 3 at Exhibit "B"). The Plaintiff would request that the May 22, 2006 Order reflect that the inaccuracies in Professor Crystal's Affidavit were addressed to the Court by the Plaintiff in his April 25, 2006 letter.
- D. The May 22, 2206 Order addresses on page 2, paragraph 1 that only one letter was received by the Court from the Plaintiff (April 25, 2006 letter at exhibit "B"); however, the Court is well aware that the Plaintiff also wrote a letter on May 9, 2006 wherein the Court was notified that a transcript had been ordered (See the May 9, 2006 letter at Exhibit "C"). Also, the Court failed to mention in the May 22, 2006 Order that a May 11, 2006 letter was received wherein the Court was provided a copy of the hearing transcript and specific objections were made to the proposed Order of the Defendant (See the letter dated May 11, 2006 at Exhibit "D"). The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect that the aforementioned letters were received by the Court including the trial transcript prior to the Court's May 22, 2006 ruling.
- E. The Court's May 3, 2006 facsimile captioned "Instructions for order" (See said facsimile dated May 3, 2006 at Exhibit "E") the Court states: "After reviewing the memorandum provided by the defendant's counsel in this matter and the Canons." In the Order dated May 22, 2006 p. 2 paragraph 1 the Court states: Defendant has submitted a Memorandum of Law dated April 24, 2006 with an attached Affidavit from Nathan M. Crystal, a Professor at the University of South Carolina School of Law. Again, the Plaintiff was unaware that the Court considered Mr. Crystal's affidavit until the May 22, 2006 Order was issued. Again, the Plaintiff had specifically indicated to the Court that Mr. Crystal's factual basis for his affidavit were inaccurate (See the April 25, 2006 letter p. 1 paragraph 3 at Exhibit "B" wherein the Plaintiff alleges that Court fails to mention that the letter alleges that Professor Crystal did not have an accurate rendition of the facts of the matter). The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified

to reflect that the Court did not advise the parties that it was considering the affidavit of Professor Crystal.

2. The May 22, 2004 Order of the Court fails to address the extent and nature of the entire working relationship between Andrews and Shull and the attorney for the Defendant, Jim McLaren. Also, the May 22, 2006 Order fails to disclose any ongoing working relationships between Andrews and Shull and Jim McLaren. As stated in footnote 1 to page 2 of the Court's May 22, 2006 Order "Mark Andrews, the other partner in Andrews and Shull, is the husband of the undersigned." (See The May 22, 2006 Order page 2, footnote 1).
  - A. The Plaintiff has repeatedly requested that the Court address the nature and extent of the relationship between Andrews and Shull and the defendant's attorneys. For example, in the May 11, 2006 letter by the Plaintiff, the Plaintiff states: "The reason for the recusal needs to be cited along with the nature and amount of the "large settlement" (I have been repeatedly informed of a large settlement shared by McLaren and the law firm of Andrews and Shull, but no number other than "six figures" has been placed on any documentation. That information is relevant to the factual background of why the Court initially recused itself....) The Order also needs to reflect that the Mr. Shull and Mr. McLaren were involved in the matter of *Wooten vs. Wooten*, 364 S.C. 532, 615 S.E.2d 98 (2005) and that fact was also not disclosed." (See the letter dated May 11, 2006 at Exhibit "D"). The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect the nature and extent of the ongoing relationship of the Court's Husbands law firm and the defendant's counsel.<sup>1</sup> If there is no basis for disqualification, the monies received by Andrews and Shull and the defendant's counsel should be disclosed pursuant to Canon 3E and the amount of monies received and nature and extent (which is known by the Court) should be disclosed. The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect the nature and extent of the past relationship of the Court's Husbands law firm and the defendant's counsel.

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<sup>1</sup>The Plaintiff would request that the Court read the commentary to Canon 3E commentary paragraph 2 wherein the commentary states: A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to disqualification, **even if the judge believes that there is no real basis for disqualification.**

- B. The Court's May 3, 2006 facsimile captioned "Instructions for order" (See said facsimile dated May 3, 2006 at Exhibit "E") the Court states: "this court has a duty to rule in this case and that there was no duty to disclose the working relationship between McLaren and Andrews and Shull." Said statement by the Court gives the implication that an ongoing relationship other than what has been previously disclosed by the Court or revealed to the Court by the Plaintiff.<sup>2</sup> The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect the nature and extent of any ongoing (whether now or at the time of this hearing between Andrews and Shull and the attorneys for the Defendant) relationship of the Court's Husbands law firm and the defendant's counsel.
3. The May 22, 2004 Order of the Court fails to address Canons 1 and 2 of Judicial Conduct. Instead the Court does not address those Canons at all and relies almost exclusively on Canon 3. However, the Plaintiff is informed and believes that the Court has inadvertently failed to address those Canons and that they must be addressed in the context of this case.
- A. Canon 1 requires that a judge shall uphold the integrity and independence of the judiciary. The Commentary to said Canon states in relevant part that: "Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility." The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect that the Court has reviewed said Canon and that said Canon (Canon 1) has not been violated by the Court's May 22, 2006 ruling. The Plaintiff would ask that the Court consider Canon 1 with the following comments made by the Court at the April 14, 2006 hearing in mind: "And I was talking to my husband about it and he said, Did you think about this? ....I mean this is not a small amount of money ..., but it should have been disclosed; and, I can't, at this point remedy that. It should have been disclosed, I didn't think about it, so I didn't disclose it. I don't see how I can remedy that." (See also Exhibit "A" p. 5 lines 1-7). The Plaintiff Would request that the May 22, 2006 Order be modified, clarified or changed to reflect how those comments and others made by the Court on April 14, 2006 will not erode public confidence in the judiciary.

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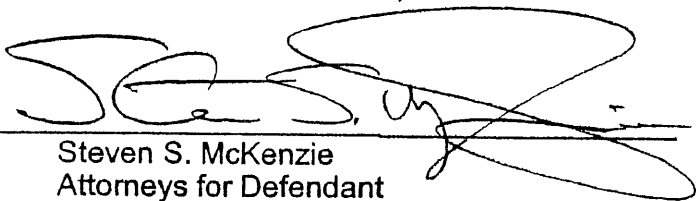
<sup>2</sup>Canon 3E(2) States: A judge shall keep informed about the judge's personal and fiduciary economic interest and make a reasonable effort to keep informed about the personal interest of the judge's spouse....

- B. Canon 2 of Judicial Conduct states: A judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities. Again, The Plaintiff would request that the May 22, 2006 Order be modified, changed or clarified to reflect that the Court has reviewed said Canon and that said Canon (Canon 2) has not been violated by the Court's May 22, 2006 ruling. The Plaintiff would request specifically that the Court review the transcript of the proceeding especially On page 6, wherein the following exchange takes place between the Plaintiff's Counsel and the Court: "Mr. McKenzie: Yes, Ma'am. And, your honor had my client known about this-We didn't know there was an association at all-I didn't know your husband even practiced law, and didn't know your honor; and, you know, had we known that any association with Mr McLaren, we would have asked you to recuse yourself. The Court: And, I think they have that right." (See Exhibit "A" p. 6 lines 14-21). Again, the Plaintiff Would request that the May 22, 2006 Order be modified, clarified or changed to reflect how those comments and others made by the Court on April 14, 2006 will not erode public confidence in the judiciary.<sup>3</sup>

For the aforementioned reasons, the Plaintiff request that the May 22, 2006 be modified, clarified, changed, set-aside, altered, reconsidered or amended.

RESPECTFULLY SUBMITTED,

By

  
Steven S. McKenzie  
Attorneys for Defendant  
16 North Brooks Street  
Manning, SC 29102  
(803) 435-0909 Telephone  
(803) 435-2858 Facsimile

June 10, 2006

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<sup>3</sup>The commentary to Canon 2 states: "A judge must avoid **all impropriety and appearance of impropriety**. A judge must expect to be the subject of constant public scrutiny." The Plaintiff would request a modification of the May 22, 206 Order to indicate how there is a reconciliation of the comments made by the Court on April 14, 2006 with the completely different ruling issued by the Court in its May 22, 2006 Oder.

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

FAMILY COURT

TRANSCRIPT OF HEARING  
04-243 and 315

SIMPSON )  
versus )  
SIMPSON )  
\_\_\_\_\_

Sumter, South Carolina  
April 14, 2006

**BEFORE:**

THE HONORABLE F. SEGARS-ANDREWS  
FAMILY COURT JUDGE

**APPEARANCES:**

STEVEN MCKENZIE, ESQUIRE

JAMES MCLAREN, ESQUIRE  
JAN WARNER, ESQUIRE

Sandra L. McGarry  
7208 Sunview Drive  
Columbia, S.C. 29209

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(NO EXHIBITS)

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1 THE COURT: OKAY; THIS IS SIMPSON VERSUS SIMPSON, CASE  
2 NUMBER 04-243 AND 315 -- I THINK IT'S BEEN CONSOLIDATED. THIS STARTED  
3 OUT AS A MOTION FILED BY THE PLAINTIFF ASKING ME TO RECUSE MYSELF  
4 BECAUSE MY HUSBAND'S LAW PARTNER WAS INVOLVED IN ANOTHER,  
5 ARGUABLY, RELATED CASE.

6 I DENIED THAT MOTION; HOWEVER, ONCE IT WAS -- I MENTIONED THIS  
7 TO MY HUSBAND, I WAS TOLD THAT--SOMETHING THAT I HAD FORGOTTEN--  
8 MR. MCLAREN AND MY HUSBAND'S LAW FIRM HAS ALSO BEEN INVOLVED IN  
9 ANOTHER MATTER TOGETHER THAT DOES -- NOT INVOLVING A SMALL AMOUNT  
10 OF MONEY, AND IT IS SOMETHING THAT IF I HAD REMEMBERED THAT I WOULD  
11 HAVE DISCLOSED AND ASKED YOU INITIALLY IF YOU WANTED ME TO RECUSE  
12 MYSELF.

13 I DID NOT THINK ABOUT THAT, SO I'M GOING TO HAVE TO RECUSE  
14 MYSELF. YOU ALL HAVE TO RETRY THE CASE.

15 MR. MCKENZIE: THANK YOU, YOUR HONOR. DO YOU WANT ME  
16 TO PREPARE AN ORDER, OR WILL THE COURT PREPARE ONE? OR--

17 THE COURT: I'LL PREPARE ONE.

18 MR. MCKENZIE: THANK YOU, YOUR HONOR.

19 MR. MCLAREN: DO YOU WANT US TO ADDRESS THIS?

20 THE COURT: IF YOU ALL WANT TO MAKE ANY KIND OF MOTION  
21 ON THERE, I JUST DON'T THINK THERE IS ANYTHING I CAN DO, BECAUSE I  
22 DID NOT THINK ABOUT THAT BEFORE THE TRIAL. I WILL SAY THIS -- WE DON'T  
23 NEED TO GO ON THE RECORD FOR THIS--

24 (THERE WERE SOME COMMENTS  
25 MADE OFF THE RECORD)

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1 MR. MCLAREN: YOUR HONOR, IF I UNDERSTAND THE RULES, THEY  
2 HAVE TO SHOW BIAS OR PREJUDICE, AND THEY HAVE SHOWN NEITHER. YOUR  
3 HONOR HAS INDICATED THAT YOU DIDN'T KNOW -- HAVE A CONSCIOUSNESS  
4 OF ANY DEALINGS I HAD WITH YOUR HUSBAND OR HIS PARTNER WHEN YOU  
5 TRIED THE CASE.

6 OBVIOUSLY, YOU DID SO WITHOUT BIAS OR PREJUDICE, NONE HAS BEEN  
7 ALLEGED OR PROVEN, AND I WOULD RESPECTFULLY QUESTION -- WHEN  
8 YOU CONSIDER WE TRIED THIS CASE AT GREAT COST TO THE PARTIES, AND  
9 THE RULING HAS BEEN -- THE INSTRUCTIONS FOR THE RULING HAVE BEEN  
10 ISSUED, AND I WOULD RESPECTFULLY ASK THAT YOU RECONSIDER THAT.

11 IT'S -- YOU HAD A CONSCIOUSNESS OF IT, MAYBE, BUT THERE WAS  
12 NO BIAS OR PREJUDICE, NOR HAVE THEY ALLEGED ANY, AND MY UNDER-  
13 STANDING OF THE LAW, WHICH IS CITED IN OUR MEMO, THEY'VE GOT TO SHOW  
14 BIAS AND PREJUDICE, WHICH THEY HAVEN'T. NOR HAVE THEY ALLEGED IT.

15 MR. WARNER: THE PROBLEM IS THAT THEY MADE A MOTION  
16 FOR 59, 50 AND 60--

17 THE COURT: WELL, I'M NOT GRANTING THEIR MOTION.

18 MR. WARNER: I UNDERSTAND.

19 THE COURT: BUT, AS I AM NOT SUPPOSED TO -- I MEAN, I  
20 UNDERSTAND THE CANONS, AND IF I HAD THOUGHT ABOUT THIS ON THE  
21 FIRST DAY OF TRIAL, I WOULD HAVE DISCLOSED IT AND SAID, YOU ALL  
22 NEED TO FIND ANOTHER JUDGE.

23 I DID NOT THINK ABOUT IT. I HEARD THE CASE, I DECIDED THE CASE.  
24 WHEN YOU SENT ME THAT MOTION, I THOUGHT IT WAS A FRIVOLOUS MOTION,  
25 AND I WAS TALKING TO MY HUSBAND ABOUT IT AND HE SAID, DID YOU THINK

00333

1 ABOUT THIS? YOU KNOW, AND I JUST -- I MEAN, I JUST DO NOT THINK IN  
2 GOOD CONSCIENCE -- I MEAN, THAT IS NOT A SMALL AMOUNT OF MONEY, AND  
3 IT WAS A FEW YEARS AGO, BUT, STILL -- AND IT'S SOMETHING THAT I DON'T  
4 THINK WOULD PREJUDICE ANY JUDGE, BUT IT STILL SHOULD HAVE BEEN  
5 DISCLOSED; AND, I CAN'T, AT THIS POINT, REMEDY THAT.

6 IT SHOULD HAVE BEEN DISCLOSED, I DIDN'T THINK ABOUT IT, SO I  
7 DIDN'T DISCLOSE IT. I DON'T SEE HOW I CAN REMEDY IT.

8 MR. WARNER: WELL, JUDGE, I THINK THE ISSUE IS WHETHER  
9 THAT AFFECTED YOUR DECISION OF THIS CASE. I MEAN, THERE'S A LOT OF  
10 THINGS THAT GO ON IN THE WORLD THAT MAYBE SHOULD HAVE DISCLOSED;  
11 BUT, NOBODY HAS ALLEGED THAT ANY OF THIS HAS AFFECTED YOUR OPINION.  
12 THEY HAVE NOT -- NO AFFIDAVIT WAS FILED -- I UNDERSTAND YOU DENIED  
13 THEIR MOTION, BUT THE FACT IS IF YOU HADN'T -- BEFORE THE FACT, IF IT  
14 DID NOT AFFECT YOUR DECISION, WE'VE GOT A THREE-DAY CASE HERE THAT,  
15 IF WE NEED TO REDO, I MEAN, IT'S GOING TO BE AN EXTREMELY -- I MEAN  
16 OUR CLIENT HAS NOW MOVED TO COLORADO, AND IT IS A SUPER HUGE  
17 PROBLEM.

18 IF WE NEED TO RETRY IT, WE'LL RETRY IT, BUT, IF YOUR HONOR TOOK  
19 THIS CASE ON AND DECIDED IT WITHOUT THAT IN THE BACK OF YOUR MIND,  
20 I DON'T KNOW WHERE THERE IS AN ISSUE ABOUT DISQUALIFICATION. I  
21 DON'T KNOW WHETHER THERE IS AN ISSUE ABOUT DISCLOSURE, TO BE VERY  
22 FRANK WITH YOU.

23 THE COURT: I MEAN, IF YOU ALL WANT TO DO SOME RESEARCH  
24 ON IT, I'LL BE GLAD TO LOOK AT SOME RESEARCH, BUT I JUST DON'T THINK --  
25 I THINK IT SHOULD HAVE BEEN DISCLOSED; I DIDN'T THINK ABOUT IT, I DIDN'T

1 DISCLOSE IT, AND I DON'T SEE HOW I CAN REMEDY THAT.

2 I THINK THAT -- YOU KNOW, I MEAN, FRANKLY, I THINK THAT I'M DOING  
3 THE WRONG THING FOR BOTH OF YOUR CLIENTS. I THINK IT WAS AN UNBIASED  
4 RULING, AND IT'S GOING TO END UP COSTING BOTH OF YOUR CLIENTS MORE.  
5 AND, I FEEL -- YOU KNOW, I FEEL BAD ABOUT IT, BUT I'VE GOT TO FOLLOW THE  
6 RULES, AND I JUST--

7 MR. WARNER: I'M JUST--

8 THE COURT: I UNDERSTAND THAT, PERHAPS, IF -- IN OTHER  
9 WORDS, IF YOU ALL APPEALED IT, YOU ALL WOULD HAVE TO SHOW BIAS.

10 MR. MCKENZIE: RIGHT.

11 THE COURT: I DON'T THINK YOU COULD. I MEAN, I THINK IT'S  
12 A RULING THAT BASICALLY ANY JUDGE WOULD MAKE, BUT I CAN'T GO BACK  
13 AND DISCLOSE THIS.

14 MR. MCKENZIE: YES, MA'AM. AND, YOUR HONOR, HAD MY  
15 CLIENT KNOWN ABOUT THIS -- WE DIDN'T KNOW THERE WAS ANY ASSOCIATION  
16 AT ALL -- I DIDN'T KNOW YOUR HUSBAND EVEN PRACTICED LAW, AND DIDN'T  
17 KNOW YOUR HONOR; AND, YOU KNOW, HAD WE KNOWN THAT, ANY  
18 ASSOCIATION WITH MR. MCLAREN, WE WOULD HAVE ASKED THAT YOU RECUSE  
19 YOURSELF.

20 THE COURT: AND, I THINK THEY HAVE THAT RIGHT.

21 MR. MCKENZIE: THANK YOU, YOUR HONOR.

22 MR. MCLAREN: YOUR HONOR, IN OUR MEMO THAT I HANDED  
23 UP -- AND I WOULD APPRECIATE IT IF YOU WOULD TAKE THE TIME TO READ  
24 IT BEFORE YOUR HONOR MAKES UP YOUR FINAL MIND -- MAKE YOUR FINAL  
25 DECISION IN THAT -- I THINK AT THE BOTTOM OF PAGE 10 AND 11, CITING

00341

1 THE ARNELL (PHONETIC) CASE, IT'S NOT ENOUGH FOR A PARTY SEEKING  
2 DISQUALIFICATION TO SIMPLY ALLEGE BIAS, THEY MUST SHOW SOME  
3 EVIDENCE OF BIAS; AND, IN HERE THEY HAVEN'T.

4 THE COURT: BUT, YOU UNDERSTAND, I'VE DENIED THEIR  
5 MOTION?

6 MR. MCLAREN: RIGHT; I UNDERSTAND THAT.

7 THE COURT: AND I'M--

8 MR. MCKENZIE: THIS IS A MOTION FROM THE COURT, YOUR  
9 HONOR; IS THAT CORRECT?

10 THE COURT: CORRECT.

11 MR. MCKENZIE: SUA SPONTE.

12 MR. MCLAREN: THIS HAS, OBVIOUSLY, A DIFFERENT TWIST TO IT,  
13 AND IF WE COULD HAVE THE OPPORTUNITY TO BRIEF THAT--

14 THE COURT: I'LL BE GLAD TO LOOK AT ANYTHING, BUT I'LL  
15 TELL YOU, I'VE BEEN -- I HAVE LOOKED AT THE RULES OVER AND OVER,  
16 BECAUSE I FEEL LIKE I REALLY HAVE DONE A DISSERVICE BY NOT DISCLOSING  
17 THIS AND CAUSING YOUR CLIENTS TO HAVE TO GO THROUGH ANOTHER TRIAL.  
18 I WISH--

19 MR. MCLAREN: AND, THE CASE YOU ARE REFERRING TO WAS --  
20 YOUR HUSBAND WAS NOT DIRECTLY INVOLVED IN, THAT WAS HIS LAW  
21 PARTNER.

22 THE COURT: I KNOW.

23 MR. MCLAREN: LON SHULL, AND THAT WOULD CERTAINLY  
24 BE AN INDIRECT BENEFIT AS A MEMBER OF THE FIRM, BUT I JUST THINK THAT'S  
25 AN UNRELATED ISSUE.

1 THE COURT: IT CERTAINLY IS UNRELATED. I MEAN, IF YOU  
2 CAN SHOW ME SOMETHING THAT WOULD MAKE ME FEEL LIKE THAT I SHOULD  
3 SIGN THIS ORDER, I'LL DO IT, BUT--

4 MR. MCLAREN: CAN WE HAVE A WEEK OR SO TO GET TOGETHER  
5 ANOTHER MEMO FOR YOU? WE'RE CLOSED TOMORROW.

6 THE COURT: SURE; I'M ON VACATION NEXT WEEK, BUT--

7 MR. WARNER: WILL A WEEK FROM MONDAY BE ALL RIGHT?

8 THE COURT: UM-HUM.

9 MR. MCKENZIE: THANK YOU, YOUR HONOR.

10 (THEREUPON, THE FOREGOING  
11 HEARING WAS ADJOURNED.)

00343

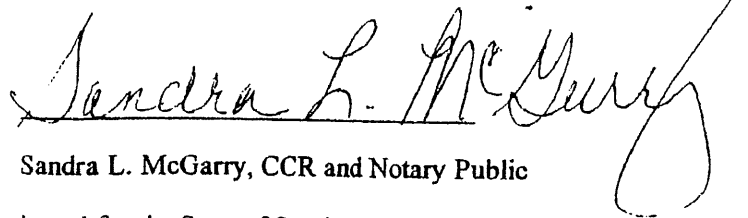
**CERTIFICATE OF REPORTER**

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

I, Sandra L. McGarry, official Court Reporter for the State of South Carolina and Notary Public in and for the State of South Carolina at Large, hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the requested proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Sumter County, South Carolina, on the 14th day of April 2006.

**I FURTHER CERTIFY** that I am neither kin, counsel, nor interest to any party hereto, nor am I financially interested in said cause.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and Seal at Columbia, South Carolina, this 9th day of May 2006.



Sandra L. McGarry, CCR and Notary Public  
in and for the State of South Carolina.

My Commission expires 09/26/15.

00344

Johnson, McKenzie & Robinson, LLC  
Attorneys at Law  
16 North Brooks Street  
Manning, South Carolina 29102

B

William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

April 25, 2006

Telephone 803.435.0909  
Facsimile 803.435.2858

The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

Dear Judge Segars-Andrews:

I am in receipt of Mr. Warner's Letter dated April 24, 2006; the accompanying memorandum of law; and the affidavit of Professor Nathan Crystal. I would respond as follows:

It is apparent to me after reading the memorandum and Professor Crystal's affidavit, I or either opposing counsel misunderstood your Honor's reasoning for recusal. It was my understanding that your Honor's husband's law firm and Mr. McLaren's law firm were the recipients of a large legal fee in a shared personal injury case prior to this matter being heard. Your honor knew about said case (and fee) prior to the trial of this case; however, you had forgotten about the case. After discussing my motion with your husband, he reminded you of the case. At that time, you recalled the matter and realized that you had a duty to disclose the matter prior to the hearing even though you didn't remember the matter at the time of the hearing; however, you were still aware of the large settlement prior to the hearing. As Professor Crystal states on page 6, paragraph 8: "A judge should disclose on the record information that the judge believes the **parties or their lawyers** consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

Professor Crystal then states: "Judge Segars-Andrews did not know nor did she have a duty to know about the alleged conflict of interest at the beginning of the case" (page 6, paragraph 9 of the Affidavit of Nathan Crystal). I do not believe that Professor Crystal knows the exact reasoning for your Honor's recusal in this matter. I could be mistaken, but I recall your Honor stating the aforementioned as her rationale for the recusal. I recall that you knew prior to the hearing about the large settlement, but had

00345

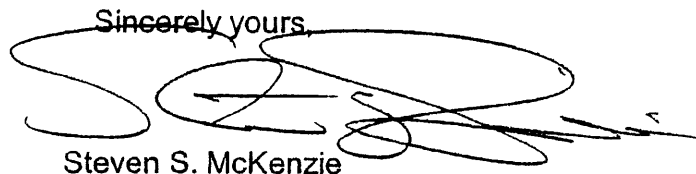


The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
April 25, 2006  
page 2

forgotten and your husband reminded you about it. You stated that the parties should have been made aware of that fact, and they were not made aware of the settlement involving Mr. McLaren and your husband's law firm. You also stated that you cannot now undue that omission. Therefore, a new trial is the only remedy.

Professor Crystal raises another interesting point regarding Cannon 3(E)(2) when he states: "(2) A judge shall keep informed about the judge's personal and fiduciary interests, and make reasonable efforts to keep informed about the personal economic interest of the judge's spouse...." I believe that you Honor abided by that Cannon; however, you had forgotten about the large settlement before the trial. When you were reminded of it by your husband, you had to then recuse yourself because of the appearance that it created. Said omission(the large settlement) could not be undone unless you recused yourself. You were truly concerned about the problem of wasting court time and money, but couldn't this matter have been avoided if opposing counsel had reminded the Court of the large settlement prior to the hearing? I certainly had no knowledge of it.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. McKenzie", with a large, stylized flourish extending to the right.

Steven S. McKenzie

SSM:gpb

cc: W. R Simpson, Jr. w/ enclosure(s)  
Jan Warner, Esq. w/ enclosure(s)  
James T. McLaren, Esq. w/ enclosure(s)

00346

Transaction Report						
Send						
Transaction(s) completed						
No.	TX	Date/Time	Destination	Duration	P. #	Result Mode
825	APR-25	12:29	803 799 2517	0'00'19"	002	OK N ECM

**Johnson, McKenzie & Robinson, LLC**

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April 25, 2006

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The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
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Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
824	APR-25	12:28	18439584415	0'00'19"	002	OK	N ECM

Johnson, McKenzie & Robinson, LLC

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April 25, 2006

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Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

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Professor Crystal then states: "Judge Segars-Andrews did not know her husband was

## Transaction Report

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Transaction(s) completed

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826	APR-25	12:29	8032523548	0'00'	41" 002	OK	N ECM

## Johnson, McKenzie &amp; Robinson, LLC

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April 25, 2006

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00349

Johnson, McKenzie & Robinson, LLC

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16 North Brooks Street  
Manning, South Carolina 29102

William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

May 9, 2006

Telephone 803.435.0909  
Facsimile 803.435.2858

The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

Dear Judge Segars-Andrews:

I am in receipt of Mr. McLaren's proposed Order and would object to the Order in its entirety. According to my recollection, the Proposed Order prepared by Mr. McLaren does not accurately reflect the factual or procedural findings of the Court on April 13, 2006. Therefore, I would ask the Court to allow me until Friday, May 12, 2006 at 5:00 p.m. so that I may formulate more comprehensive and specific objections. I have requested from Sandy McGarry, verbally, a copy of the transcript of the proceedings from April 13, 2006. She has promised me the transcript on Thursday, May 11, 2006. My rationale for wanting the transcript is as follows:

1. I do not wish to rely upon my memory solely as the basis for my objections and believe that the record will more accurately reflect what occurred in Court on April 13, 2006, and
2. The record will reflect accurately the procedural posture of how the Court based its ruling that day. This will help the Court with its decision and be a more accurate reflection of the proceedings for appellate review.

Sincerely yours,

  
Steven S. McKenzie

00350

cc: W. R. Simpson, Jr.  
Jan Warner, Esq.  
James T. McLaren, Esq.

## Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
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Scott L. Robinson

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Sincerely yours,  


00351

D

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Scott L. Robinson

May 11, 2006

Telephone 803.435.0909  
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The Honorable Frances P. Segars-Andrews  
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Charleston County  
Post Office Box 934  
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VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

Dear Judge Segars-Andrews:

I am in receipt of the transcript from **April 14, 2006** and I am attaching a copy for your review.

My specific objections to Mr. McLaren's proposed Order are as follows:

1. The Court denied the Plaintiff's Notice of Motion and Motion for a New Trial. Pages 2, 3 4, 5 and through the first paragraph on page 6 of the proposed Order address the issue of the Plaintiff's Motion that were not addressed by the Court and should not be in the Order. Procedurally, a motion was made by the Plaintiff and that motion was denied. The remainder of the hearing revolved around the Court's Motion. I would think that is all that the Order needs to contain about the Plaintiff's Motion;
2. Also, The Order needs to reflect that the Court by its own Motion, *Sua Sponte*, recused itself from the case. The reason for the recusal needs to be cited along with the nature and amount of the "large settlement" (I have been repeatedly informed of a large settlement shared by McLaren and the law firm of Andrews and Shull, but no number other than "six figures" has been placed on any documentation. That information is relevant to the factual background of why the Court initially recused itself.).
3. The Order needs to reflect that the Defendant requested a week to brief the issue for the Court. The Court after reviewing the memorandum from the Defendant's attorney reversed the Order of Recusal, *Sua Sponte*.
4. The Order also needs to reflect that the Mr. Shull and Mr. McLaren were involved in the matter of *Wooten vs. Wooten*, 364 S.C. 532, 615 S.E.2d 98 (2005) and that fact was also not disclosed.

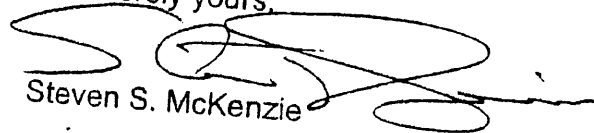
00352

Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
March 11, 2006

I would direct the Court's attention to page 7, lines 4-25. Mr. McLaren does not mention the *Wooten* case even though he and Mr. Shull were representing the Respondents in that case before the Supreme Court as late as June of 2005. Also, the amount of fees that Andrews and Shull received as a result of their association with Mr. McLaren in the *Wooten* case should be disclosed.

Thank you for your attention to this matter.

Sincerely yours,



Steven S. McKenzie

enclosures

cc:  
W. R Simpson, Jr.  
Jan Warner, Esq.  
James T. McLaren, Esq.

00353



1 THE ARNELL (PHONETIC) CASE, IT'S NOT ENOUGH FOR A PARTY SEEKING  
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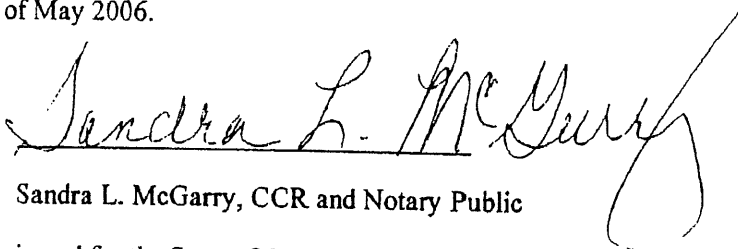
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COUNTY OF SUMTER )

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**I FURTHER CERTIFY** that I am neither kin, counsel, nor interest to any party hereto, nor am I financially interested in said cause.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and Seal at Columbia, South Carolina, this 9th day of May 2006.



Sandra L. McGarry, CCR and Notary Public

in and for the State of South Carolina.

My Commission expires 09/26/15.

00355

## Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
029	MAY-11	15:12	18439584415	0'01'17"	011	OK	N ECM

## Johnson, McKenzie &amp; Robinson, LLC

Attorneys at Law

16 North Brooks Street

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Scott L. Robinson

May 11, 2006

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The Honorable Frances P. Segars-Andrews  
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Charleston County  
Post Office Box 934  
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00356

To: RelayFax via port COM4

MMY-03-2006 16:07 From: JUDGE CREECH

From: 8438991050

8438991050

5/3/2006 4:03:31 PM (Page 2 of 2)

To: JIM LAM FIRM

P.C.C.

E

INSTRUCTIONS FOR ORDER

HEARD FEB. 14, 2006

DATE: 5-3-06

SIMPSON, JR. V SIMPSON AND INGLE

04-243

PL: STEVEN MCKINZIE

FAX: 803-435-2858

SCOTT ROBINSON

FAX: 803-435-2858

DF: JAN WARNER

FAX: 803-799-2517

CARRIE WARNER

FAX: 803-799-2517

JIM McLAREN

FAX: 803-252-3548

GAL: JAMES STODDARD

FAX: 803-773-6995

After reviewing the memorandum provided from the defendant's counsel in this matter and the cannons, this court determines that it has a duty to rule in this case and that there was no duty to disclose the working relationship between McLaren and Andrews and Shull.

Mr. McLaren, please prepare an order to this effect. Send a copy to opposing counsel twenty-four hours prior to sending it to my office

00357

Johnson, McKenzie & Robinson, LLC

Attorneys at Law  
2 North Brooks Street  
Manning, South Carolina 29102

William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

Telephone 803.435.0909  
Facsimile 803.435.2858

March 28, 2006

The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

Dear Judge Segars-Andrews:

Prior to your Honor making any further decisions in this case, please read the attached Motion for a New Trial along with the accompanying affidavit.

It is my client's position that had you known about Mr. Shull's involvement in his father's case (in which my client and the LLC were parties) you would have recused yourself from the trial of this matter and that any further involvement by your honor in this matter would violate Canon 2 of the Code of Judicial Conduct.

Therefore, we would ask that you not render any further opinions or Orders in this matter until the Motion for a New Trial can be heard.

Sincerely yours,  
**COPY**

Steven S. McKenzie

SSM:gbp

Enclosure(s)

cc: W. R. Simpson, Jr. w/ enclosure(s)  
Jan Warner, Esq. w/ enclosure(s)  
James T. McLaren, Esq. w/ enclosure(s)

00358

\*ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

Johnson, McKenzie & Robinson, LLC

Attorneys at Law  
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Manning, South Carolina 29102

William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

March 31, 2006

Telephone 803.435.0909  
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The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
Charleston County  
Post Office Box 934  
Charleston, SC 29402-0934  
VIA FACSIMILE (843)-958-4415

Re: W. R. Simpson, Jr. vs. Becky H. Simpson  
Docket #: 04-DR-14-243 & 315

COPY

Dear Judge Segars-Andrews:

I am in receipt of Mr. McLaren's letter dated March 29, 2006 and would respectfully respond as follows:

1. I do not personally know you or your husband. Neither Mr. Robinson nor myself knew that you were married to an attorney. Furthermore, we do not know Mr. Shull. We have never had any cases with him or your husband. Our practice is limited mainly to the Third Circuit with occasional cases in Florence or Georgetown. Prior to this hearing, I may have appeared one time in front of you. Mr. Robinson does not recall any appearances in front of you.
2. Mr. McLaren is correct when he states that Mr. Shull submitted an affidavit in January 2005 in W.R. Simpson, Jr's parents' divorce. However, he is incorrect when he states that Mr. Robinson and I knew that Mr. Shull was a law partner of your honor's husband. We did not know your honor was married to an attorney.
3. I started researching the connection after receiving the Order regarding visitation that was submitted on March 13, 2006 for your signature. On the first page, Mr. Warner (in regards to presiding judge) states: "Charlie Segars-Andrews." You marked over "Charlie" and placed F.P. Apparently, Mr. Warner knew you well enough to know your nick name was "Charlie." Mr. Robinson and I didn't know that fact or even what the "F.P" stood for until we

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The Honorable Frances P. Segars-Andrews  
Judge of the Family Court  
March 31, 2006  
page 2

looked it up in the desk reference. Once in the desk reference, we noticed that your husband's name was Mark O. Andrews. We then turned to alphabetical listing of lawyers and determined that your husband was an attorney. We also noticed that his partner's name was/is "Shull." That is when the connection was made that an attorney in the first Simpson case had written an affidavit in support of Mr. Warner and Mr. McLaren against our clients. Prior to that, we never made a connection with Mr. Shull and Family Court Judge F.P. Segars-Andrews. Had that connection been made, we would have immediately brought it to your attention.

4. After that connection was made, I did some further research and determined that Mr. Shull and Mr. McLaren represented the same client in 2005 in front of the Court of Appeals. See *Wooten vs. Wooten*, 364 S.C. 532, 615 S.E.2d 98 (2005).
5. Mr. McLaren also says there is no conflict because the attorney's fee affidavit was only against the father in Simpson I. Apparently, Mr. Shull didn't believe that because his affidavit is captioned "Daisy Simpson vs. Simpson Farms, LLC." Also, the record in this case is loaded with exhibits from Simpson I. They include transcripts from Simpson I depositions and trial excerpts at Defendants' Exhibit 12. Also, Orders from Simpson I at Plaintiff's 11 and Defendant's 10.
6. Finally, I am enclosing a copy of a Motion filed in Simpson II to implead W.R. Simpson, Sr. and Simpson Farms, LLC. The Motion was filed on March 9, 2005 and goes into great detail regarding the connection between Simpson I and II.

So, as you can see from the above, Mr. Robinson and I could not have waived any conflict because we did not know of the existence of a conflict before or during the trial.

Sincerely yours,

COPY

Steven S. McKenzie

SSM:gp

Enclosure(s)

cc: W. R Simpson, Jr. w/ enclosure(s)

Jan Warner, Esq. w/ enclosure(s)

James T. McLaren, Esq. w/ enclosure(s)

00360

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM CLARENDON COUNTY  
Family Court

Francis Segars-Andrews, Family Court Judge

Case No. 2004-DR-14-243 & 315

Becky Simpson,.....Respondent

v.

William Robert Simpson, Jr.....Appellant

**AMENDED NOTICE OF APPEAL**

William Robert Simpson, Jr. appeals the decision of the Honorable Francis Segars-Andrews from the hearing held on February 14 & 16, 2006, made order of the court on June 6, 2006 and received in this office on or about June 22, 2006. The Court heard said Motion for Reconsideration on July 26, 2006. The Honorable F.P. Segars-Andrews signed the Order denying the Petitioner's reconsideration on August 21, 2006. Said Order from Motion for Reconsideration hearing was filed in the Clarendon County Clerk of Court's office on August 23, 2006 and received in the Petitioner's office on August 23, 2006.

November 6, 2006



Steven S. McKenzie  
Johnson, McKenzie & Robinson, LLC  
2 North Brooks Street  
Manning, South Carolina 29102  
(803) 435-0909 Telephone  
(803) 435-2858 Facsimile  
Attorney for the Appellant

Other Counsel of Record:

Jan Warner, Esquire  
1122 Lady Street, Suite 1200  
Columbia, SC 29202  
Attorney for the Respondent

James McLaren  
1508 Laurel Street  
Columbia, SC 29201  
Attorney for the Respondent

00361



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CLARENDON COUNTY  
Family Court

Francis Segars-Andrews, Family Court Judge

---

Case No. 2004-DR-14-243 & 315

---

Becky Simpson,.....Respondent

v.

William Robert Simpson, Jr.....Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

AMENDED PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2006 addressed to 1122 Lady Street, Suite 1200, Columbia, SC 29202 and 1508 Laurel Street, Columbia, SC 29202.

November 6, 2006



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Attorney for the Appellant

00362

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William H. Johnson\*  
Steven S. McKenzie  
Scott L. Robinson

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Facsimile 803.435.2858

November 6, 2006

The Honorable Kenneth A. Richstad  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: William R. Simpson, Jr. vs. Becky Simpson  
Docket Number: 04-DR-14-243 & 315

Dear Mr. Richstad:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

Proof of Service of the Amended Notice of Appeal on the Respondent.  
A copy of the Order which is to be challenged on appeal.  
A copy of our letter requesting the transcript in this matter



Steven S. McKenzie  
Johnson, McKenzie & Robinson, LLC  
16 North Brooks Street  
Manning, South Carolina 29102  
(803) 435-0909 Telephone  
(803) 435-2858 Facsimile  
Attorney for the Appellant

cc: Jan L. Warner  
James T. McLaren  
William R. Simpson, Jr.

00363

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM CLARENDON COUNTY  
Family Court

Francis Segars-Andrews, Family Court Judge

Case No. 2004-DR-14-243 & 315

Becky Simpson,.....Respondent

v.

William Robert Simpson, Jr.....Appellant

**AMENDED NOTICE OF APPEAL**

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November 6, 2006



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Attorney for the Appellant

Other Counsel of Record:

Jan Warner, Esquire  
1122 Lady Street, Suite 1200  
Columbia, SC 29202  
Attorney for the Respondent

James McLaren  
1508 Laurel Street  
Columbia, SC 29201  
Attorney for the Respondent

00364

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CLARENDON COUNTY  
Family Court

Francis Segars-Andrews, Family Court Judge

---

Case No. 2004-DR-14-243 & 315

---

Becky Simpson,.....Respondent

v.

William Robert Simpson, Jr.....Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

AMENDED PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2006 addressed to 1122 Lady Street, Suite 1200, Columbia, SC 29202 and 1508 Laurel Street, Columbia, SC 29202.

November 6, 2006



Steven S. McKenzie  
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Attorney for the Appellant

00365

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Scott L. Robinson

Telephone 803.435.0909  
Facsimile 803.435.2858

November 6, 2006

The Honorable Kenneth A. Richstad  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: William R. Simpson, Jr. vs. Becky Simpson  
Docket Number: 04-DR-14-243 & 315

Dear Mr. Richstad:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

Proof of Service of the Amended Notice of Appeal on the Respondent.  
A copy of the Order which is to be challenged on appeal.  
A copy of our letter requesting the transcript in this matter



Steven S. McKenzie  
Johnson, McKenzie & Robinson, LLC  
16 North Brooks Street  
Manning, South Carolina 29102  
(803) 435-0909 Telephone  
(803) 435-2858 Facsimile  
Attorney for the Appellant

cc: Jan L. Warner  
James T. McLaren  
William R. Simpson, Jr.

00366

INSTRUCTIONS FOR ORDER

SIMPSON, JR. V SIMPSON AND INGLE

04- DR-14-243

HEARD 2-14-06

PL: STEVEN MCKINZIE FAX: 803-435-2858

SCOTT ROBINSON

DF: JAN WARNER FAX: 803-799-2517

CARRIE WARNER

JIM MCLAREN FAX: 803-252-3548

GAL: JAMES STODDARD FAX: 803-773-0576

CUSTODY AND VISITATION:

The agreement as to custody and visitation is approved.

FINDINGS:

This court finds that there is no evidence to establish adultery before the separation nor is there enough evidence to prove physical cruelty. This court therefore finds that there was not significant fault to take into consideration as to the division of property and other issues.

The husband was a hard worker and a good husband and father.

The wife was a good mother and wife until her emotional problems began just prior to the separation. However, it is clear that the father will be required to take care of the children in the near future with little help from the wife.

No significant premarital property was brought into the marriage and any that has been transmuted by this time.

Because of the speculative nature of farming, this court finds that there should be no value for the crops in production.

Because of the confusing nature in which the husband and his father run their business, husband should be responsible for the cost of most of the attorney's fees and CPA fees of the wife. He also shall be responsible for debts he owes his father with no contribution from the wife.

The LLC is clearly marital property. The court finds that the husband was paid little from his farming efforts during the marriage because he was earning his 50% interest in the farming property.

The husband shall receive no credit for what he paid to wife or on her behalf under the agreement that was overturned. It was an unconscionable agreement and the husband would have or should have otherwise been supporting wife during this period.

EQUITABLE DISTRIBUTION:

1996 SUBURBAN:

Wife values the vehicle at 500. The husband values the vehicle at 10,000.00. Wife shall be responsible for the cost Husband incurred in taking care of this asset while it was temporarily granted to wife;

insurance and taxes: 250

00367

towing fee

75

Since no one seems to want this vehicle, the husband shall be responsible for selling the vehicle. The proceeds he receives shall be divided equally between them.

**Kia Sephia Auto:**

This is the property of the wife. As indicated below, the wife has been given credit for the 37,500 she received during the litigation. There will therefore be no need give husband any credit for wife retaining this asset.

**HUSBAND'S DEBT TO FATHER:**

Father shall be responsible for any and all debts to his father. However, he will not be given credit for them. Because of the unorthodox way he and his father do business there is no way for this court to determine whether or not this was in their ordinary course of doing business. Just as it is too speculative to give the wife credit for crops in production.

**MARITAL RESIDENCE:**

The mortgage on the marital residence was increased during the marriage and there was no evidence to prove that it was not for a marital purpose.

**OTHER PERSONAL PROPERTY:**

Both parties have other assets that were not valued. The wife has a computer, husband old vehicles, a boat. Each party shall have ownership to those properties in their possession except for the wife's non-marital china, her clothes and furniture that is still husband's possession. She shall pick those up, if she has not done so already, the first Saturday in April at noon.

**HUSBAND'S PROPERTY AND DEBTS**

Cash on hand and in bank.....	2,435.00
Simpson, LLC.....	299,825.00
145 Heritage Rd (marital residence).....	61,400.00
Farm equipment.....	26,150.00
Inventory from Buck and Bull.....	4,345.00
Hwy 15.....	50,000.00
Poole Road.....	111,000.00

**LESS**

Pee Dee Loan Comp.....	133,500.00
Bank of Greeleyville.....	101,000.00

**TOTAL TO HUSBAND.....320,6:**  
60%

00368

WIFE'S PROPERTY

Cash on hand and in checking account.....	31.00
Gunter Road property and the trailer on the property.....	14,000.00
Bradham Rd.....	14,000.00
Cash paid to wife during litigation.....	37,500.00
Billy Road.....	5,000.00
Cost husband paid on suburban.....	325.00
Huchabee Rd.....	51,000.00

LESS

BANK OF AMERICA.....	8,000.00
----------------------	----------

TOTAL TO WIFE.....	213,876
40%	

As to the cost of 16,000 husband paid to wife as to the overturned agreement, the court considers that during the marriage before this litigation began. He would have paid her about that if he were supporting her.

ATTORNEY'S FEES AND COST:

COST OF PRIVATE INVESTIGATOR:

COST OF APPRAISALS:

5 tracks of farm land.....	\$,500
Gunner Rd.....	350
Marital residence.....	350
Buck and Bull inventory.....	300
Farm equipment.....	300

COST OF CANCELLED AUCTION.....	838.87
DEFENDANT'S CPA.....	10,000.00
DEFENDANT'S ATTORNEY'S FEES.....	156,079.82

Husband shall be responsible for the cost of all the appraisals and the cancelled auction. He shall also be responsible for 50% of wife's CPA fees and 50% of the wife's attorney's fees and other cost.

The husband shall have 120 days to pay these cost in full.

PLAINTIFF'S INCOME:

Husband's income shall be as indicated on his most recent financial declaration, \$8,350.00. The further only adjusted his financial declaration as to his income after the defendant's experts did their work.

CHILD SUPPORT:

Using the incomes of the husband and wife on the most recent financial declaration, the mother's child support obligation is \$221 per month. She shall pay this:



through the court with the 5%. Her total monthly payment is \$233.05. She may pay weekly at \$1 / week plus the 5% if she prefers.

The father shall be responsible for the cost of health insurance for the minor children.

Mother shall be responsible for 15% of non-covered medicals, dental, orthodontic, psychological and psychiatric costs incurred on behalf of the minor child after the father verifies that he has covered the first 250.00.

She shall have 30 days to reimburse the father for 15% of the son's orthodontic bill. She shall also have 30 days to reimburse him for other non-covered costs after he has provided the bills and proof of what the insurance has covered to her.

Warner and McLaren, please prepare an order to this effect. Please list all the factors in 20-7-472 and make appropriate additional finds to support the above decision. Send a copy to the opposing counsel twenty-four hours prior to sending it to my office. I failed to rule on any issue please indicate the issue in a fax. However, I will not entertain any further argument on any issue. Just as I did not consider any arguments contained in the marital assets addendums provided.

00370

**WARNER, PAYNE & BLACK, L.L.P.**  
**ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.**

**JAN L. WARNER**  
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Member, National Academy of Elder Law Attorneys  
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**MITCHELL C. PAYNE**  
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**CHARLES M. BLACK, JR.**  
B.S. (Finance/Management), J.D.  
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Former Asst. General Counsel, SC DHHS  
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**ASSOCIATE ATTORNEYS**

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FACSIMILE (803) 325-1973

PLEASE REPLY TO:  
COLUMBIA OFFICE

April 24, 2006

**VIA FACSIMILE**

The Honorable F.P. Segars-Andrews  
Family Court Judge, Third Judicial Circuit  
Attention: Connie  
100 Broad Street  
Charleston, South Carolina 29401  
Facsimile: (843) 958-4415

Re: W.R. Simpson, Jr. vs. Becky H. Simpson  
Case No.: 04-DR-14-243/315

Dear Judge Segars-Andrews:

Pursuant to Your Honor's direction on the 13<sup>th</sup> of April 2006, we are faxing copy of Memorandum in Opposition to Your Honor's Recusal and Affidavit of Nathan M. Crystal in support thereof.

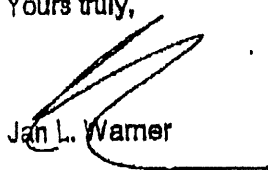
We are simultaneously faxing the same to Mr. McKenzie, counsel for the Plaintiff.

We are mailing the original to the Clerk in Manning for filing.

00371

The Honorable F.P. Segars-Andrews  
April 24, 2006  
Page 2 of 2

Yours truly,



Jan L. Wamer

JLW/is

Enclosure: Memorandum with Affidavit of Nathan M. Crystal

cc: Steven McKenzie, Esquire (via fax)

00372



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY  
Family Court of the Third Judicial Circuit

Francis Segars-Andrews, Family Court Judge

Case No. 2004-DR-14-243 & 315

William Robert Simpson, Jr.....Appellant,

v.

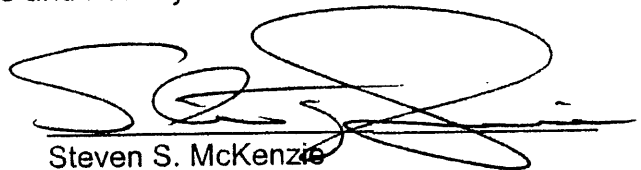
Becky H. Simpson and Wade Ingle, Defendants,

of Whom Becky H. Simpson is , .....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

February 24, 2007



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(803) 435-2858 Facsimile  
Attorney for the Appellant

