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APR-07-2006 FRI 02:07 PM JAN L. WARNER

FAX NO. 803 799 2517

P. 01

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From:	Jan L. Warner <i>JLW</i>	Pages:	29
	Simpson vs. Simpson		
Re:	04-DR-14-243 / 315	Date:	April 7, 2006

Gentlemen:

Please see attached correspondence and proposed Order forwarded to Judge Segars-Andrews this date.

15
EXHIBIT
12.2.09 <i>SB</i>

CONFIDENTIALITY STATEMENT: The document(s) contained in this transmission is (are) confidential and/or legally privileged information of Warner, Payne & Black, L.L.P. This information is intended only for the use of the individual entity named on the transmission cover sheet. If you are the intended recipient, be advised that any disclosure, copying, distribution, or action taken in reliance of the contents of this information is strictly prohibited. If you have received this telecopy in error, please notify us immediately by telephone so that we can arrange for its return. Thank you for your cooperation.

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P. 02

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April 7, 2006

The Honorable F.P. Segars-Andrews
Family Court Judge, Third Judicial Circuit
100 Broad Street
Charleston, South Carolina 29401

Re: **W.R. Simpson, Jr. vs. Becky H. Simpson**
Case No.: 04-DR-14-243/315

Dear Judge Segars-Andrews:

On March 27, 2006, we faxed a copy of the proposed Order to Mr. McKenzie.

As of this morning, we have heard nothing back from his office and, therefore, we are enclosing herewith for Your Honor's review proposed Order in the above-entitled matter pursuant to your written direction dated March 13, 2006.

I am also enclosing herewith a diskette on which the proposed Order has been saved as a Word document.



The Honorable F.P. Segars-Andrews
April 7, 2006
Page 2

If you require anything further from us, please do not hesitate to let us know.

Yours truly,



Jan L. Warner

JLW/jes

Enclosure: Proposed Order
Diskette

cc: Steven McKenzie, Esquire (via facsimile)
Scott Robinson, Esquire (via facsimile)
James A. Stoddard, Esquire (via facsimile)
James T. McLaren, Esquire (via facsimile)
Becky H. Simpson (via email)

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

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

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 merits hearings on February 14 and 16, 2006 pursuant to notice. A Bifurcated Decree of Divorce was rendered in this matter on March 24, 2005 which specifically reserved the issues determined herein and in this Court's Consent Order dated March 7, 2006, which deals with custody and visitation. The issues now before the Court are equitable division, child support, attorneys' fees, costs, and related relief.

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

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

BACKGROUND AND PROCEDURAL HISTORY

1. 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.
2. The parties are citizens and residents of Clarendon County, State of South Carolina, and this Court has continuing jurisdiction over both the parties and subject matter.
3. The matter of divorce was previously adjudicated by bifurcated decree dated March 24, 2005. A separate Consent Order resolving custody and visitation was issued on March 7, 2006. The remaining issues for determination by this Court are equitable division, child support, attorney's fees, and costs.
4. Pursuant to the discovery order, the depositions of Husband, Wife, Husband's accountant, and Defendant Ingle were taken. Written discovery requests were submitted and answered, and records were subpoenaed pursuant to Rule 45, S.C.R.Civ.P.
5. During the course of the hearing, Husband testified, presented witnesses and introduced eleven (11) Exhibits. Wife also testified, presented her witnesses, and

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.

6. Husband was a party in litigation in this Court between his father and mother ("Daisy W. Simpson vs. William R. Simpson, Jr., at al", 2003-DR-14-128) that resulted in a Decree issued by the Honorable R. Wright Turbeville, Judge of this Court, on December 31, 2003 (Defendant's Exhibit 10). Husband did not appeal that Order and is bound by the findings made therein with regard to him as referred to herein.

7. 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.

8. The two (2) children of this marriage are in the custody of Husband.

9. It is undisputed that at the time of the marriage, Wife had approximately Six Thousand Dollars (\$6,000.00) in a CD that she had inherited, and Husband had no assets. They lived in a trailer on his parents' land, and her funds were used to purchase a larger mobile home.

10. Wife made efforts to become educated and employed during the marriage, but Husband did not support her efforts to attend nursing school on two occasions. When the younger child began kindergarten at Clarendon Hall, a private school which both children attended, Wife worked at the school, first 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 (50%) percent reduction in the children's

tuition. Her position was terminated in the summer of 2004, shortly before this action was commenced.

11. In early 2004, Wife's emotional state required medical treatment and prescription medications; however, 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.

12. On or about July 30, 2004, Husband took Wife, accompanied by her elderly grandfather, to his attorney who prepared an agreement Wife signed. This agreement was first approved by The Honorable George E. McFadden by Order dated August 20, 2004, and then set-aside by Judge McFadden on Wife's motion by Order dated January 6, 2005.

13. After Wife moved to set aside the agreement, on September 23, 2004, Husband brought an action for divorce (04-DR-14-315) upon the ground of Wife's adultery that took place after the parties had separated.

14. 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, among other things, required that Husband 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.

15. On February 11, 2005, Husband asked 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.

16. A Rule to Show Cause for Husband to show cause why he should not be held in contempt and enforcement was issued by Judge Turbeville on February 15, 2005, returnable at March 11, 2005.

17. On February 22, 2005, Husband filed and served several notices to amend his pleadings, seeking to have Wade Ingle 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.

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

19. 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, and still refused to pay Wife the Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00).

20. After a hearing on March 11, 2005 on the two (2) Rules to Show Cause, The Honorable Jeffrey Young issued an Order on March 22, 2005 finding Husband in civil contempt and sentencing him to serve sixty (60) days unless he purged his 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 on March 24, 2005, ordered Husband to pay a portion of Wife attorneys' fees and costs, and thereafter appointed

Burke Watson, Jr. as an independent appraiser to value the land, farm equipment, and the store inventory.

21. After a hearing on March 23, 2005, Judge Myers issued a Bifurcated Decree of Divorce granting Husband a divorce based upon Wife's adultery which occurred subsequent to the separation of the parties in August 2004, finding that said Order would not be construed as making any finding relative to the issues of fault of either party in the cause of the marital breakup as may affect equitable division, custody, visitation, counsel fees, suit money, or any other issues that remained open.

22. 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. An Order for Rule to Show Cause was issued by Judge Turbeville, and a hearing was held on May 6, 2005. Wife denied the material allegations. On May 18, 2005, 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.

23. 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.

24. On July 27, 2005, Husband's Motions to Compel and for Child Support were heard by Judge Young who issued an Order dated 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.

CREDIBILITY

25. As with most matrimonial cases, the issue of credibility of the parties and their witnesses plays a major role in the trial judge's determination of the weight given to the evidence presented.

26. Wife has recently become employed in a hair salon and has income as is reported on her financial declaration.

27. On the other hand, Husband's financial declaration and financial disclosures have not been accurate depictions of his income and assets.

28. It has been most difficult for the Court to determine the income, expenses, and wealth of these parties based upon the confusing way in which Husband and his father run their farming operation as was previously determined by Judge Turbeville's Decree. Husband presented no CPA or other expert to assist the Court.

29. In fact, Husband adjusted his financial declaration only after Wife's counsel and experts had completed their work.

30. Husband took the position that his half interest in Simpson Farms, LLC, and the family residence were non-marital assets which caused Wife's counsel and experts additional work. Husband also claimed he owed certain debts to his father which this Court has discounted based on the preponderance of the evidence and the confusing manner in which Husband and his father run their business.

31. Mark Hobbs, CPA, Wife's expert, testified that Husband's reported income in most years was less than \$20,000.00, while the assets accumulated exceed \$750,000.00.

32. The preponderance of evidence reflects that Husband relies on his father to determine his income each year, and he could not explain how he paid expenses that exceeded his income.

33. Each year, Husband and his father pool their crops which are then sold by his father. The proceeds are then deposited into his father's bank account and divided based upon some non-descript formula. Husband admitted he received a lower salary from his father for a number of years in order to use "sweat equity" to purchase his 50 % interest in Simpson Farms, LLC, which, although required by law to file tax returns as a multi-member LLC, has never filed a tax return.

34. Based upon all the foregoing, it has been difficult for this Court to make a firm determination of Husband's true assets and income other than from the appraisals that Judge Young ordered, and the Court has discounted Husband's credibility.

MARITAL FAULT

35. Wife was a good mother and wife and hard worker until her emotional issues began just prior to the separation.

36. Husband was a hard worker and good husband and father.

37. There is absolutely no evidence that Wife committed adultery before the separation as alleged by Husband, and there is not enough evidence to prove physical abuse by Husband as alleged by Wife.

38. No marital misconduct alleged has risen to the level of being relevant as to the issues before this Court.

39. Therefore, I find that there has been no significant fault that should be taken into consideration with regard to the division of property and other issues.

ALIMONY

40. 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

41. 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. She may pay weekly at \$51.00 per week plus five percent (5%) costs, if she prefers.

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

43. 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.

44. Wife shall have thirty (30) days to reimburse Husband fifteen percent (15%) of the son's orthodontic bill, and she shall have thirty (30) days to reimburse Husband for other non-covered costs after he has provided Wife with bills, and proof of what insurance has covered, and his out-of-pocket contributions.

EQUITABLE APPORTIONMENT

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

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

47. 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)

48. Prior to making findings and conclusions with regard to equitable division, I reiterate my prior findings that Husband and his father operate their farming operation in a most unorthodox manner that made it difficult for this Court to make its determinations. Without the independent appraisals required by Judge Young, the testimony of Mark Hobbs, Certified Public Accountant, the preparation done by Defendant's counsel, a just result may not have been possible. Other than his financial declaration, which low-balled the value of the assets and bloated expenses, Husband presented no summarization of properties or credible evidence of valuation. No clear and concise identity and valuation of the marital property was offered by the Husband, and the Court can only conclude that Husband intentionally resisted discovery and efforts to accurately disclose the exact nature of his holdings and his income.

49. 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. These exhibits and Mr. Hobbs' testimony were uncontradicted, and I gave his testimony great weight. A review of the parties' tax returns and Husband's financial statements (which contradicted Husband's financial declaration), raised the curiosity of this Court as to

how Husband could acquire the assets that were appraised, while living affluently on the minimal reported income. Husband asserted significant debt to his father, but offered no documentary evidence thereof. Based upon the manner in which Husband and his father do business, Husband shall be solely responsible for any debts he says he owes his father, and he shall not be given credit for the same in this Court's equitable division.

50. Husband testified that each year he turns all of his crops over to his father, who sells all crops, collects all monies from the sales, and places the proceeds therefrom into his Simpson Farm account. From this account, Husband's father pays all the farm expenses and then divides the remaining balance with Husband in a non-descript manner. Husband testified that his father loaned him money and, when he did not pay it back, his father would repay the loan from the proceeds of the sale of the next year's crops. Husband has confirmed this Court's concern that no one could tell from year to year who would get what because he and his father "work out" who needs what each year, making accurate tracing practically impossible.

51. Husband has asserted that his interest in Simpson Farms, LLC is a non-marital asset. In one breath, he claims it was a gift, while in another, he asserts he received that interest in April 2000 based upon his hard work and sweat equity. I find that Simpson Farms, LLC is a marital asset. I find that Husband was paid less salary for his farming efforts during the marriage because he was earning a fifty percent (50%) interest in the farm and property. The LLC has yet to file an income tax return, and I find that Husband and his father have engaged in creative bookkeeping that has obfuscated the financial picture herein.

52. I find that the transfer to Husband by his father of a 50% ownership in Simpson Farms, LLC in April 2000 was payment to Husband for labor during the marriage, was acquired during the marriage, and is a marital asset. I find 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.

53. Burke Watson, the Court-appointed independent appraiser, testified to the valuation of the real property and, through two other appraisers, presented values of the farm equipment and inventory at "Buck and Bull", a store Husband operated and then closed during the marriage. These values were uncontradicted in the record other than on Husband's financial declaration to which I do not give credence.

54. I do not value crops in production because the evidence thereof is speculative as Husband's assertion of debts due to his father.

55. There is a 1996 Suburban automobile that, apparently, 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 on an arm's length transaction with an unrelated purchaser and that the proceeds he receives therefrom should be divided equally between Husband and Wife.

56. Husband has claimed that Wife should be responsible for the cost Husband incurred taking care of this vehicle while it was granted to her temporarily. I find that Wife should be responsible for \$250.00 in taxes and insurance and \$75.00 in for towing, a total of \$325.00.

57. Husband claims credit for \$16,000.00 he says he paid Wife under the terms of the overturned Consent Order. I find the agreement was unconscionable and

Plaintiff would have been supporting Wife during this period. I find that Husband shall be responsible for the costs of all appraisals along with the cost of the canceled auction, which was canceled pursuant to Judge Young's Order on Wife's motion. Husband shall also be responsible for fifty percent (50%) of Wife's attorneys' fees and fifty percent (50%) of Wife's Certified Public Accountant fees and other costs. Husband shall have 120 days to pay all costs in full based upon the following findings.

58. The Kia Sephia Vehicle was purchased by Wife after the date of filing using proceeds from the \$37,500.00 paid to Wife under Judge Myers' Order. This vehicle is Wife's property, and Husband has been given credit accordingly.

59. Husband claims the residence is non-marital because his father gifted the land. 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 funds were contributed to this property and the yard was landscaped by Wife.

60. While the evidence demonstrates that Husband received this land from his father, significant marital expenditures of time, labor, and money were contributed to this property. Wife made significant financial and other contributions into this property. 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.

61. "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).

62. Here, Wife has proved not only by her testimony, but by photographs of the property taken over the years, that what might have been non-marital asset was converted to marital property.

63. Wife presented clear and convincing evidence that she made "direct" financial contributions towards the improvement and home and surrounding property that resulted in significant increase in the value of the property

64. 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)

65. 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."

66. Wife proved that she is entitled to a "special equity" interest in the house 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 believable evidence to the contrary.

67. I find that Wife contributed substantially to this marriage. While the birth and raising of two (2) children is certainly a material contribution, her other contributions to this marriage were otherwise significant. She had no regular 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.

68. 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).

69. Based upon the foregoing findings and conclusions, I hereby identify the marital assets, values and debts 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) (not of mortgage for which he shall be responsible)	\$81,400.00
Farm equipment	\$26,150.00
Inventory from Buck and Bull Store	\$4,345.00
Highway 15 property	\$50,000.00
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 paid to Wife during litigation pursuant to Judge Myers Order	\$37,500.00
Billy Road property	\$95,000.00
Cost Husband paid on the Suburban	\$325.00

Huckabee Road property	\$61,000.00
Poola Road property	\$ 111,000.00
TOTAL	\$777,031.00

DEBTS:

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

70. 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 \$777,031.00 after debt.

71. I find that Husband's operating loans are paid from current earnings as an expense of the business prior to Simpson, Jr. 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.

72. 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:

See above findings that are incorporated herein.

- (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 pendentia 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:

See above findings that are incorporated herein.

- (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 as set forth above and are incorporated by reference. There is no non-marital property to be considered as all property is marital, and any inherited property has been transmuted. This is a typical farm family. 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 nearly \$800,000 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:

See above findings that are incorporated herein.

- (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.

- (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 and may seek additional training. Husband has no further need of any training.

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

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:

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.

(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:

These parties last lived together in the family home in August 2004. Wife left after the prior Agreement was set aside. Throughout this litigation, Husband and the two children have resided there. Husband should make arrangements to be granted the use and possession of this property.

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

I find and conclude that based upon in-kind division between spouses, and the manner in which equitable division is determined herein, there was no testimony of any 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:

Wife has a child support obligation to Husband as set forth above.

(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:

In making the equitable apportionment, as set forth below, the Court has considered all proven liabilities in determining the marital estate, which is after liabilities based on my view of the evidence. Husband should pay all liabilities, but shall not receive credit for any debts due his father.

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

Husband has custody of the minor children.

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

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

73. 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 is possible based on the following:

74. 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

TOTAL		\$555,155.00
	LESS	
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 paid to Wife during litigation pursuant to Judge Myers Order		\$37,500.00
Billy Road property		\$95,000.00
Cost Husband paid on the Suburban		\$325.00
Huckabee Road property		\$61,000.00
TOTAL		\$221,876.00
	LESS	
Bank of America Credit Card		(\$8,000.00)

Total to Wife \$ 213,876.00 (40%)

75. 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

76. 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, pledging, or hypothecating 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 COSTS

77. Rule 407 of the South Carolina Appellate Court Rules, Rule 1.5 of the Rules of Professional Conduct, and the holdings in Nienow v. Nienow, 268 S.C. 161, 232 S.E.2d 504 (1977), Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2d 14 (S.C. App. 1983); EDM v. TAM, 307 S.C. 471, 415 S.E. 2d 812 (1992); Sherman v. Sherman, 307 S.C. 280, 414 S.E. 2d 809 (S.C. App. 1992); and Glasscock v. Glasscock, 304 S.C. 158, 403 S.E. 2d 313 (1991) set forth the factors and criteria which should be considered in setting of attorney fees.

78. I am establishing attorney's fees and costs based upon my knowledge of the litigation between these parties in this case, the nature, extent and difficulty of the case that required the services rendered, the time necessarily devoted to the case, the beneficial results accomplished (especially since there is no contingency compensation in domestic relations cases), the professional standing of counsel, and fees customarily charged for similar legal services.

79. I have considered the following factors are used to determine reasonable attorney fees and costs. 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.

80. I incorporate herein the above findings with regard to the preparation done by Defendant's counsel as, without the degree of preparation done, the unconscionable

agreement would not have been set aside and it would have been literally impossible for the Court to determine the true value of Husband's holdings.

(1) The nature, extent, and difficulty of the case;

I have considered the fact that, similarly to the Decree of Judge Turbeville which was marked as an exhibit offered into evidence without objection, Husband attempted to obfuscate the facts of this case. His financial declaration did not paint an accurate picture of the assets and his financial declaration was not changed until Defendant's counsel and expert had accomplished their work.

(2) The time necessarily devoted to the case:

I find from the testimony and the exhibits, that Defendant's counsel did not duplicate time and effort and that the time they assert was placed into this case is credible.

(3) Professional standing of counsel;

I find that counsel for the Defendant are experienced matrimonial lawyers with long track records of handling difficult cases. In this Court's opinion, this is a difficult case based upon the manner in which Plaintiff and his father conduct their farming operations. The fact that Defendant's counsel herein previously the Plaintiff's mother, while giving them a "leg up" so to speak with regard to how the parties did business, still required substantial work in this case which was a much shorter marriage.

(4) Contingency of compensation;

I find there is no contingency of compensation.

(5) Beneficial results obtained; and

I find that counsel for the Defendant did an excellent job in representing their client. They were fully prepared and the result herein of 40 % to the Wife in this length of a marriage, given the agreement that the Wife initially signed, impresses the Court as having been the result of good legal representation.

(6) Customary legal fees for similar services.

While attorneys in Clarendon County, South Carolina may not charge the rates charged by Defendant's counsel, I find as a matter of fact that due to the complexity of this case, Defendant could not have received the results she received without the representation of experienced attorneys. To go one step further, Defendant testified that she did not have funds with which to hire an attorney when she signed the initial agreement prepared by Plaintiff'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, and, of the \$37,500.00 paid by the Husband to the Wife pursuant to Judge Myers' Order, a substantial portion thereof was paid back to the Wife for living expenses, to purchase an automobile, and to purchase tires for an automobile. I find and conclude that the hourly rates asserted by counsel for the Defendant and the hours were necessary and customary for similar services.

81. 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

82. I find that Husband should pay the cost of the appraisal 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 (15) days of the date of this Order. Those payments total \$7,838.37.

83. I further find 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. 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	\$51,000.00

2. Husband should pay the cost of the appraisal 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 (15) days of the date of this Order, with said payments totaling \$7,638.37.

3. 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.

4. 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.

To: RelayFax via port COM4

From: 803 799 2517

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APR-07-2006 FRI 02:22 PM JAN L. WARNER

FAX NO. 803 799 2517

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AND IT IS SO ORDERED.

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

At Chambers
Charleston, South Carolina

April __, 2006