JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Family Court
(Incumbent)

Full Name: Gordon Brockington Jenkinson
Business Address: 125 S. Academy Street
Post Office Box 262
Kingstree, SC 29556
Business Telephone: 843-355-3600

1. Why do you want to serve another term as a Family Court Judge?

   I have thoroughly enjoyed my five years on the Family Court Bench. When I get up in the morning I look forward to going to work.

2. Do you plan to serve your full term if re-elected? Yes
3. Do you have any plans to return to private practice one day? No
4. Have you met the statutory requirements for this position regarding age, residence, and years of practice? Yes
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

   I have my assistant Pamela F. Musick act as a screen to prevent any ex parte communication with lawyers. I do from time to time discuss scheduling matters on an ex parte basis.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

   I would make full disclosure to the lawyers and the litigants on the record as to any possible conflict of interests. If I feel as though I can be fair and impartial I will state that for the record. If there are continues to be an objection, then I will recuse myself.

7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

   I would take this on a case by case approach. Even if I believe that matter in question would not actually prejudice me I would generally recuse myself.

8. How do you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

   I would recuse myself.

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EXHIBIT 5A 6
11-27-12

9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

I would not accept any gifts. I do have any lawyers in what I would consider my circle of friends and the only time I socialize with other lawyers is at occasional social functions such as weddings. I see no conflict in these minimal contacts.

10. How do you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

I would confront that lawyer or fellow judge. If I was not satisfied with his or her response I would report them.

11. Are you affiliated with any political parties, boards or commissions which, if you were re-elected, would need to be re-evaluated? No

12. Do you have any business activities that you have remained involved with since your election to the bench? No

13. Since family court judges do not have law clerks, how do you handle the drafting of orders?

I ask one of the lawyers involved in the case to draft the order and provide copies to opposing counsel. If is a pro-se case I draft the order and mail it to the parties.

14. What methods do you use to ensure that you and your staff meet deadlines?

The only deadlines that I am aware of are the matters that I take under advisement. I keep up with matters under advisement personally and to my recollection I only had to report a small hand full of orders that were not signed within the required period. I believe all of these cases were situations where I was waiting on orders from attorneys.

15. What specific actions or steps do you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

Generally, I do not follow the progress of Guardians in the pendency of an action. I travel all over the state and it would be impossible to monitor the Guardians in this situation. However, if I received a complaint about the Guardians I would investigate immediately.

16. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

I am very conservative on the issue of judicial activism as I follow the letter of the law very carefully. I do not believe judges should have a significant role in setting or promoting public policy.

17. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

    I will speak at any seminars as I am asked to as I have done in the past.

18. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

    I do not find that the pressures serving as a judge strains my personal relationships. Both of my daughters are grown and they one lives in Charleston and one in Walterboro. My wife travels with me quite often and my serving as a judge has actually improved our relationship of 40 years.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

    No

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No

22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes

23. What do you feel is the appropriate demeanor for a judge?

    I feel that a judge should be calm at all times. Quite often I will see people that are appearing in my court that appear to be very upset or nervous. Regardless of who these people are, I try to assure them that no one is going to mistreat them in my court.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

    I try to apply these rule seven days a week, twenty-four hours a day.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

    I don't think anger is appropriate, but at times I have be very firm with lawyers that are not being civil to each other or to witnesses or with witnesses who do not follow my instructions in the courtroom.

26. How much money have you spent on your campaign? If it is over $100, has that amount been reported to the House and Senate Ethics Committees? None

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign? No

28. Have you sought or received the pledge of any legislator prior to this date? No
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No
30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
31. Have you contacted any members of the Judicial Merit Selection Commission? No
32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted? Yes

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.
s/ Gordon B. Jenkinson
Sworn to before me this 30th day of July, 2012.
Pamela F. Musick
Notary Public for South Carolina
My commission expires: 06-13-2021

State of South Carolina
The Family Court of the Third Judicial Circuit

GORDON B. JENKINSON
JUDGE

125 S. ACADEMY STREET
POST OFFICE BOX 262
KINGSTREE, SOUTH CAROLINA 29556
TELEPHONE: (843) 355-3600
FAX: (843) 355-3602
E-MAIL: gjenkinsonj@sccourts.org

November 19, 2012

Patrick Dennis, Esquire
Judicial Merit Selection Commission
Post Office Box 142
Columbia, SC 29202

RE: Complaint of William R. Simpson, Sr. and
William R. Simpson, Jr.

Dear Patrick:

I would also like to supplement my letter to you dated October 2, 2012 in several particulars.

Both Simpsons in their complaints state that they "felt ambushed" since I had not given them or their attorneys notice that I would be hearing any issues other than attorneys' fees and alimony in Simpson Sr.'s case on January 6, 2011. This is simply untrue. I have attached my letter dated December 29, 2010 which indicates that I will also be addressing equitable division issues at the hearing. The transcript of the January 6, 2011 hearing (you already have a copy) contains no objections by the Simpson's attorneys to my addressing the equitable distribution issues.

The complainants also state that I did not give attorney Paul Tinkler time to respond to Mr. McLaren's exhibit (which reallocated the martial assets) and this is also untrue. I gave Mr. Tinkler seven days to respond and his response was "That's' very fair, your honor." (p. 46-line 13-19.)

We concluded the equitable division portion of the hearing around lunch time, as I recall. Since the only issues to be heard in the afternoon related solely to

Simpson, Sr., Mr. Tinkler excused himself since he was representing only Simpson Jr.

On page 116, lines 12-15, the Simpsons take my remarks that "the Court says it may make a decision tomorrow" completely out of context. I was making reference to my decision on the attorneys fee remand from the Court of Appeals which had nothing to do with Simpson Jr. or Mr. Tinkler. I have known Mr. Tinkler for a number of years and he has a reputation as an excellent trial attorney. If I had done what the Simpsons accuse me of doing, I am sure that Mr. Tinkler would have protected his record.

The Simpsons also accuse me of wrongdoing when they say "the Court admits that it is bound by Judge Turbeville's percentages but revises the Original Order anyway." This is clearly wrong because I said that I was bound by Judge Turbeville's percentages and I never changed the percentages, only the allocation of the martial assets.

I have been advised that oral arguments have been scheduled in the Court of Appeals next month to review my rulings in Simpson Sr.'s case. If I am reversed, then Simpson Sr. should be satisfied. If I did in fact make an erroneous ruling, and we won't know that until sometime next year, I hope that will never be grounds for removing a setting judge from office.

Lastly, there is another cause for concern that I wanted to bring to your attention. A few years ago I was one of two attorneys that represented Cran Ohlandt and William Ohlandt in a legal malpractice action in Charleston County against George Campsen. Mr. Campsen, now deceased, was the father of Senator Chip Campsen, the newest member of the screening committee. This litigation was extremely contentious and my co-counsel and I negotiated a very substantial settlement for our clients.

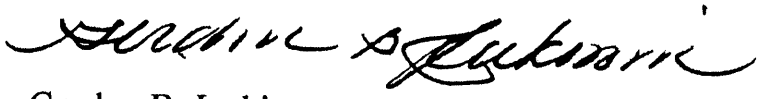
If the vote is close, I think it would be in order to ask Senator Campsen to recuse himself.

Should you have any questions, please do not hesitate to give me a call.

I would appreciate it if you would let me know when I will be advised of the committees' decision

With kindest regards, I am

Very truly yours,



Gordon B. Jenkinson

GBJ/pfm
Enclosures
cc: Jane O. Shuler, Esquire w/o enclosures

MEMORANDUM

TO: Carrie Warner, Esquire
Jim McLauren, Esquire
Reed Smith, Esquire
Paul Tinkler, Esquire
Michael Timbes, Esquire

FROM: Judge Gordon B. Jenkinson

RE: Daisy Wallace Simpson vs. William Robert Simpson, Sr., et al
03-DR-14-128

DATE: December 29 2010

Dear Ms. Warner and Gentlemen:

It is going to be my ruling that Judge Turbeville's Order only awards one half of the value of the LLC to the martial estate. I am going to elaborate on the reasons for my decision on January 6th and 7th, 2011when we are hearing the remaining issues. I also want to discuss with the attorneys the remaining dispute as to the 6.7 acre tract.

I am also respectfully denying the Plaintiff's Motions for Reconsideration.

I am looking forward to seeing everyone on January 6th and 7th,2011.

State of South Carolina
The Family Court of the Third Judicial Circuit

GORDON B. JENKINSON
JUDGE

125 S. ACADEMY STREET
POST OFFICE BOX 262
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October 2, 2012

Patrick Dennis, Esquire
Judicial Merit Selection Commission
Post Office Box 142
Columbia, SC 29202

RE: Complaint of William R. Simpson, Sr. and William R. Simpson, Jr.

Dear Patrick:

I wanted to give you a preliminary explanation of my actions so we will be in a better position next week to discuss these complaints. The main basis of both of the Simpsons' complaints stem from a divorce decree issued by the Honorable R. Wright Turbeville on December 31, 2004. Specifically, in paragraph 106 on page 40, Judge Turbeville specifies the properties that will be transferred to Ms. Simpson. The problem arises when Judge Turbeville apparently forgets that some of these parcels including the 161 acre tract delineated as E and the 133.2 acre tract delineated as H in paragraph 106 are titled in the name of Simpson Farms, LLC. In paragraph 4 on page 41 subsection (a), Judge Turbeville only requires Simpson Sr. to transfer these properties but not the LLC.

As a result, I found that it was my duty to reform paragraph 106 and require that the LLC join in a deed of conveyance for these properties. Doing this in my opinion effectuated the division of Judge Turbeville's with one exception. The two owners of the LLC were William R. Simpson, Sr. and William R. Simpson, Jr. I reduced the total martial estate awarded to Ms. Simpson by deducting ½ of the value of the 161.1 acre tract and ½ of the 133.2 acre tract which represented William R. Simpson, Jr.'s ½ ownership in the LLC.

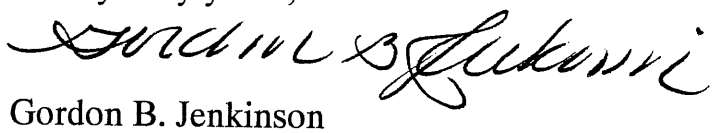
The other portion of Simpson Jr.'s complaint relates to my lifting a bench warrant that was issued on his ex-wife for failing to pay child support. I have enclosed herewith a copy of the transcript of the hearing on the bench warrant. I have highlighted the areas to save you some reading time. What happened was Steve McKenzie, Esquire, the attorney for Simpson, Jr., drafted my Order on the contempt but he did not draft the Order as I directed. At a subsequent hearing when I told him that the Order was incorrect he was very blunt with me and he told me I was mistaken and that the Order as drafted was exactly my ruling. As a result, I ordered the transcript myself and as you can see from the transcript, I was correct in my recollection and Mr. McKenzie was incorrect. Mrs. Ingle complied with all of the requirements of my purge provision in the order and she was entitled to have the bench warrant lifted which I did.

If you have any questions, after reading these materials, please do not hesitate to give me a call.

I look forward to meeting with you next week.

With kindest regards, I am

Very truly yours,



Gordon B. Jenkinson

GBJ/pfm
Enclosures
cc: Jane O. Shuler, Esquire w/o enclosures

Judge Turbeville
ORIGINAL ORDER

See para 106
p. 40. Item p. 41
para 4

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
Scott L. Robinson
Simpson, Sr., Simpson, Jr., & Simpson Farms, LLC

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

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2005 JAN -5 AM 10:08
W P & B, LLP
LEGAL SERVICES
OF SC, PA

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.

RWT

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.

RWT

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

RWC

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".

RWT

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.

RWC

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.

RWC

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.

RWt

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.

RWC

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

RWT

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:**

RWT

(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.

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(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 3rd 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

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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) **<u>The current and reasonably anticipated expenses and needs of both spouses:</u>**

(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.

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(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

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month payable on the fifth (5th) 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.

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

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

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

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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

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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

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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

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(47) .69 acres	15,000
(66) 1.4 acres	17,500
	$425,000

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

71. Plaintiff's Exhibit # 27 reflects Ms. Linhardt's opinion of the value of S&T 000.00). Item #52 was transferred to a Garneau on 11/20/2001 deducting $15,000.00 a balance of $622,000.00. When Simpson, Sr. transferred his half-interest on March 10, gross value of his half-interest was $311,000.00. Ms. Linhardt found no mortgages of as to any of the S&T properties, and no mortgages on record in the name of Simpson, Sr. dwell testified that the debt as of the date of filing was $184,457.00. The net value at was $437,543.00 ($622,000 – $184,457), and Simpson, Sr.'s 50% interest had a value of 72.00.

72. Plaintiff's Exhibit #26 reflects Ms. Linhardt's opinion of the value of the property red 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
	Total	**$844,650**

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

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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			
			-80,000.00	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			
			-41,800.00	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			
			-20,000.00	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

RWC

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 Simpson, Sr.'s farm equipment, but none of them would do so because it belonged to , Sr. The Court finds this explanation for failure to appraise the farm equipment at weak. This situation should have been brought to the attention of the Court prior to en arrangements could have been made to inventory and appraise the farm equipment. , 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 t. Mr. Hobbs testified that the bulk of the material he had received from Defendant n came in "dribbles and drabs", but most of the information came over the weekend trial. He corroborated Plaintiff's position that she could not secure appropriate records efendant Simpson, Sr.

78. Through Plaintiff's Exhibit # 33, Mr. Hobbs' produced a summary of Simpson, general ledger that was prepared by Mr. Gibbons. As of December 31, 2002, Simpson, cords showed advances or loans to Simpson, Jr. of $44,100.00, yet there were no 1099's to Simpson, Jr. On Simpson, Sr.'s income returns, these advances were deducted from his e as miscellaneous expenses. On Simpson, Jr.'s tax return, there was no entry for the 00.00.

RWC

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.

RWt

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

RWE

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

RWt

he made some direct financial contributions to this property, although most direct tributions were made by the Husband, and was not at fault in the breakup of this

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

Based upon the foregoing findings and conclusions, I hereby identify the marital 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.

RWL

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.

RWT

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.

RWL

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.

RWC

(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.

RWC

(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

RWT

division in kind. While division in kind is possible to some degree, the nature of Simpson, '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) *(Court has considered son's work in improving it, though no one put a value on it.)*	62,500 (25%)	187,500 (75%)
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%)**

RNt

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
		$539,151

Some of these tracts were titled in the LLC but. Mr. Simpson only was ordered to conveyed these tracts

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.

See p. 41 para 4

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.

RWT

111. I have considered income from the award of equitable division herein that with 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

RWT

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.

Simpson only + not Farm LLC

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

RWC

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.

s/ R Wright Turbeville
R. Wright Turbeville
Family Court Judge
Third Judicial Circuit

Manning, South Carolina
December 31, 2004

RWT

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	DOCKET #: 2004-DR-14- 243
William R. Simpson, Jr.,	)	
Plaintiff,	)	
vs.	)	ORDER FROM RULE TO SHOW CAUSE
Becky H. Simpson, n/k/a Becky H. Ingle and Wade Ingle,	)	
Defendants.	)	

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 7/6/11
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

PRESIDING JUDGE: **The Honorable Gordon B. Jenkinson**
ATTORNEY FOR PLAINTIFF: **William H. Johnson and Steven S. McKenzie**
ATTORNEY FOR DEFENDANT: **Did not Appear**
COURT REPORTER: **Patsy Nye**
HEARING HELD: **June 29, 2011**

This matter was scheduled to come before me this 29th day of June, 2011 pursuant to an Order and Rule to Show Cause signed by The Honorable George M. McFaddin, Jr. on March 31, 2011 directing the Defendant to appear and show cause why she has failed to abide by the terms of this Court's Order from hearings dated February 14, and 16, 2006 and this Court's subsequent Order dated March 6, 2006. Present and appearing at the hearing were the Plaintiff, along with his attorneys, William H. Johnson, Esquire, of the Clarendon County Bar and Steven S. McKenzie, Esquire, of the Clarendon County Bar. The Defendant, Becky Ingle, was not present and was not represented by an attorney. The Court noted that she was served with proper notice of the date, time and place of this hearing and that she has filed an Answer in the form of two (2) letters, one to Mr. Johnson and one to the Court.

GBJ #1

The Court then heard testimony offered by the Plaintiff and his counsel, reviewed the Court's file and previous Orders, and received arguments from the Plaintiff's attorneys.

At the end of the hearing, William H. Johnson, the attorney for the Plaintiff offered his fee affidavit related to and reflecting attorney's fees and costs arising from this action on behalf of his client to enforce this Court's Order.

Based upon the testimony and evidence received, the Court makes the following:

FINDINGS OF FACTS

1. This Court has continued jurisdiction over the parties to this action and the subject matter of this action.

2. The parties were previously before this Court on February 14 and 16, 2006 for a hearing in this matter. At that hearing the Defendant, Becky H. Ingle, was ordered to pay the Plaintiff child support in the amount of $233.05 per month, through the Clarendon County Family Court.

3. In a subsequent hearing held on March 6, 2006, the Plaintiff's child support obligation was increased to Three Hundred Fourteen ($314.00) Dollars per month, to be paid through the Clarendon County Family Court.

4. The records of the Clerk of Court indicate that the Defendant has failed to pay as ordered, which failure to pay has created an arrearage owed to the Plaintiff in the amount of Six Thousand Six Hundred Ninety-Five and no/100ths ($6,995.00) Dollars.

5. The Defendant has not made any payment since March 8, 2010.

TB #2

6. In compliance with the order entered dividing the marital estate of the parties, the Defendant received over $213,000.00 in assets. This value, with interest, was paid to the Defendant in 2008.

7. In her letter to the Court dated May 12, 2011, the Defendant indicated that she had the means available to pay the amount owed.

CONCLUSIONS OF LAW

1. An adult who willfully violates, neglects, or refuses to obey or perform a lawful Order of the Court...may be proceeded against for contempt of Court. S.C. Code Ann. §20-7-1350 (supp. 2006).

2. "In a proceeding for contempt for violation of a Court Order, the moving party must show the existence of a Court Order and the facts establishing the respondent's non-compliance with the Order." Hawkins v. Mullins, 359 S.C. 497, 501, 597 SE 2nd 897, 899 (Ct. App. 2004).

3. In cases where the Plaintiff seeks to hold the Defendant in contempt for failure to pay child support, the United States Supreme Court has recently held that, in order to satisfy constitutional safeguards, the Court must also provide the Defendant an opportunity at a hearing to respond to statements and questions about his or her financial status and also the Court must make an express finding that the Defendant has an ability to pay. Turner v. Rogers, ___ U. S. ____, 131, S.Ct. 1624(2011).

4. In this case, the Plaintiff has directed the Court's attention to previous Orders of this Court requiring that the Defendant pay child support to the Plaintiff. The Plaintiff has also provided uncontroverted evidence that the Defendant has failed to pay as ordered by the Court, and in fact that this failure has continued over a significant period of time. An appropriate hearing was held wherein

JB #3

the Defendant, had she appeared, would have been provided with the opportunity to respond to questions about her financial status. The Defendant failed to appear to take advantage of that opportunity. Further, the Defendant acknowledged in her correspondence to this Court that by using assets currently in her "retirement pension plan," she was able to pay the amount owed. Based upon the combination of these facts, this Court finds that the Defendant had the ability to pay the amount owed.

5. Accordingly, this Court finds that the Defendant, Becky H. Ingle, is in willful civil contempt of this Court for failing to pay child support as ordered. As a result of this willful civil contempt, the Defendant, Becky H. Ingle, is sentenced to incarceration for a period of sixty (60) days in the Clarendon County Detention Center. During this incarceration, the Defendant will not be eligible for work release nor will credit be allowed to reduce the sentence on the basis of "good time."

6. The Defendant may purge herself of this contempt by the payment, within thirty (30) days of June 29, 2011, of the sum of Six Thousand Nine Hundred Ninety-Five and no/100ths ($6,995.00) Dollars constituting the current arrearage of child support owed, along with Court costs in the amount of Two Hundred Fifty and no/100ths ($250.00) Dollars and also attorney's fees to the Plaintiff's counsel in the amount of One Thousand Two Hundred Eighty Two and 50/100ths ($1,282.50) Dollars. The payment of the arrearage and Court costs shall be paid directly to the Clarendon County Family Court. The attorney's fees awarded shall be made payable to William H. Johnson and forwarded directly to the Plaintiff's attorney at Post Office Box 137, 411 North Brooks Street, Manning, South Carolina 29102.

#4

This was not my ruling & I corrected this by subsequent order

7. In addition, should the Defendant fail to pay on or before the first day of the month in which it is due, the child support payment due to the Plaintiff, and this failure to pay occurs more than once within ninety (90) days of the date of the hearing, such failure to pay on the part of the Defendant shall constitute an additional act of contempt which shall subject the Defendant to sixty (60) days incarceration at the Clarendon County Detention Center. In the event of such failure to pay, the Plaintiff need only to file an affidavit with the Clerk of the Family Court substantiating that failure to pay upon receipt of which the Clerk of the Family Court is authorized to issue a bench warrant for the arrest of the Defendant for the purposes of insuring the service of sixty (60) days of incarceration.

ACCORDINGLY, it is hereby Ordered as follows:

1. The Defendant, Becky H. Ingle, is hereby sentenced to incarceration at the Clarendon County Detention Center for sixty (60) days as a result of the Defendant's willful civil contempt. The Defendant may purge herself of this contempt by the following actions:

a. Payment, via the Clarendon County Family Court, of the amount of Six Thousand Nine Hundred Ninety-Five and no/100ths ($6,995.00) Dollars arrearage owed,

b. Payment, via the Clarendon County Family Court, of Two Hundred Fifty and no/100ths ($250.00) Dollars Court costs;

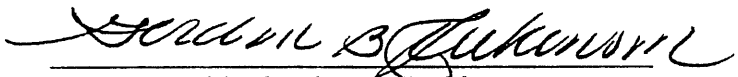
c. Payment, to William H. Johnson, One Thousand Two Hundred Eighty Two and 50/100ths ($1,282.50) Dollars attorney's fees and costs.

Each of these payments must be made on or before July 29, 2011. In the event said payments are not made, the Plaintiff may file an affidavit with the Clerk of the Family Court confirming the same, at which point the Clerk of the Family Court is hereby directed to issue a bench warrant for the arrest

of the Defendant for the purpose of serving the sentence herein imposed.

2. In the event the Defendant shall fail to make when due, more than one of the regular monthly child support payments due within the next three (3) months, the Plaintiff may file an affidavit confirming the same with the Clerk of the Family Court, upon receipt of which, the Clerk of the Family Court shall issue a bench warrant for the arrest of the Defendant, and she shall serve a sentence of sixty (60) days incarceration at the Clarendon County Detention Center.

AND IT IS SO ORDERED.



The Honorable Gordon B. Jenkinson
Presiding Judge, Family Court
Third Judicial Circuit

July 1, 2011

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NO.: 2004-DR-14-243
WILLIAM R. SIMPSON, JR.,	)	
Plaintiff,	)	
	)	**RULE 60 (A) ORDER**
Versus	)	
	)	
BECKY H. SIMPSON, N/K/A	)	
BECKY H. INGLE,	)	
Defendant.	)	
_____	)	

2012 MAR -2 AM 11: 38
CLARENDON COUNTY, SC

DATE OF HEARING: **JUNE 29, 2011**
TRIAL JUDGE: **HON. GORDON B. JENKINSON**
PLAINTIFF'S ATTORNEY: **WILLIAM H. JOHNSON/STEVE MCKENZIE**
DEFENDANT'S ATTORNEY: **WAYNE GAMBLE**[1]
COURT REPORTER: **PATRICIA NYE**

This Matter came before the Court on June 29, 2011 at which time the undersigned heard a Rule to Show Cause filed by the Plaintiff William R. Simpson, Jr., directing the Defendant Becky H. Ingel to show cause why she should not be held in contempt for failing to pay child support arrearages in the amount of $6,995.30. The Defendant did not appear and the Court made a finding by a clear and convincing standard that she was in willful civil contempt of Court.

[1]Retained subsequent to the June 29, 2011 hearing.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/2/12
CLERK OF COURT
CLARENDON COUNTY, SC

#1

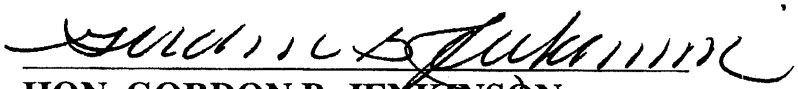
The undersigned signed the Order as drafted by Mr. McKenzie unaware of a clerical error in the same. The Court's ruling on this issue was "that she (Mrs. Ingel) cannot miss more than one payment over the next three months." (See page 21, lines 20 through 22 of the transcript attached hereto).

Accordingly, this wording is inserted in the place of Mr. McKenzie's findings in paragraph 7.

As a result, the Order dated July 1, 2011 is hereby amended to reflect the rulings set out in the transcript of record.

The Court further finds that Ms. Ingle did not miss more than one payment and she is not held in contempt in connection with this provision of the Order.

AND IT IS SO ORDERED.



HON. GORDON B. JENKINSON
Presiding Judge of the Family Court
Ninth Judicial Circuit

February 28, 2012
Kingstree, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE FAMILY COURT 2004-DR-14-243
William R. Simpson, Jr., PLAINTIFF, VS. Becky H. Simpson, n/k/a Becky Ingle, and Wade Ingle, DEFENDANTS.	)	TRANSCRIPT OF RECORD October 27, 2011 Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE GORDON B. JENKINSON, Judge

A P P E A R A N C E S:

STEVEN S. MCKENZIE, Esquire
Attorney for the Plaintiff

S. WAYNE GAMBLE, III, Esquire
Attorney for the Defendant

MISSY BROWN
Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Marilyn Wilson				
BY THE COURT:	4			
BY MR. GAMBLE:		7		
BY MR. MCKENZIE:		9		17
CERTIFICATE OF REPORTER	22			

E X H I B I T S

NO.	DECRIPTION	ID	EV
	No exhibits presented at hearing.		

1 P R O C E E D I N G S

2 OCTOBER 27, 2011

3 (Whereupon, Court convened when the following matters

4 were had:)

5 THE COURT: This is the case of William R.

6 Simpson, Jr., versus Becky H. Simpson, now know as Becky H.

7 Ingle, and Wade Ingle, before the Court pursuant to Mr.

8 Gamble's -- S. Wayne Gamble's notice of motion and motion

9 and he is present on behalf of the Defendants. Mr. Steve

10 McKenzie is here on behalf of the Plaintiff.

11 Unless I hear an objection from either one of you I

12 think it might be prudent to let me call the Clerk of the

13 Family Court to get an update on exactly what's been paid

14 and then I'll hear from you, Mr. Gamble, and then Mr.

15 McKenzie.

16 Is that okay, gentlemen?

17 MR. GAMBLE: That'd be fine, Your Honor.

18 THE COURT: Okay. Ms. Wilson, would you come

19 forward, please, and be sworn? Right over here. Place

20 your left hand on that bible and raise your right hand,

21 please.

22 **MARILYN WILSON,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 EXAMINATION BY THE COURT:

25 Q. All right. If you would, please, ma'am, please state

1 your name for the record.
2 A. Marilyn Wilson.
3 Q. And I believe you are the head clerk of the family
4 court for Clarendon County?
5 A. That's correct.
6 Q. And in that capacity you, of course, have the payment
7 records for the Simpson case that's before me today?
8 A. Yes, sir.
9 THE COURT: And it appears that we last went to
10 court on June 29th, 2011, on a rule to show cause; is that
11 right, gentlemen?
12 MR. GAMBLE: That's correct, Your Honor.
13 MR. MCKENZIE: That's correct, Your Honor.
14 Q. And apparently at that time Mrs. Ingle was ordered to
15 pay -- at that hearing to pay back child support in the
16 amount of $6,995, attorney's fees of $1,282.50, and court
17 costs in the amount of $250. Is that your understanding?
18 A. Yes, sir.
19 Q. Have those amounts been paid?
20 A. Yes, sir. Everything has been paid.
21 Q. Okay. Was it paid within the 30-day window? I
22 believe I had a 30-day window on that order.
23 A. Okay. Can I just tell you payments on the printout?
24 Is that what you -- the dates?
25 Q. Yes, ma'am.

1 A. The $6,006.20 was paid on July 6th, 2011. A payment of
2 315 was paid on July 22nd, 2011. A payment of $1,003.80 was
3 paid on July 25th, 2011. And a payment of 314 was paid on
4 August 8th, 2011, and another payment of 314 was paid on
5 August 29th, 2011.
6 Q. Okay. Now, so everything that I ordered to be paid
7 has been paid?
8 A. It was a zero balance as of 7/25/11 so that would have
9 been ---
10 Q. Within that 30-day window?
11 A. --- within the 30 days.
12 Q. Okay. And there was some language in my order that
13 another condition of the purge provision was that Mrs.
14 Ingle was not to miss more than one payment subsequent to
15 my order. Did she miss more than one payment?
16 A. The regular child support payment was paid on June --
17 excuse me, July 22nd, and it was due on July 1st. And the
18 second payment, August payment, was paid on August 8th, due
19 on August 1st.
20 Q. Okay. Do I understand you correctly to say that she
21 did not miss more than one payment?
22 A. I'm not saying she didn't miss more than one payment,
23 she was ---
24 Q. She never got two payments behind subsequent to my
25 order, did she?

1 A. Right.

2 Q. And I believe a bench warrant was issued by you for

3 her arrest.

4 A. Right.

5 THE COURT: Cross examination, Mr. Gamble?

6 MR. GAMBLE: Yes, Your Honor.

7 CROSS EXAMINATION BY MR. GAMBLE:

8 Q. Since these payments, is she still up to date in her

9 child support?

10 A. The last payment was made on -- it was actually

11 yesterday. It's dated today because it was after closeout.

12 And she now has a credit of 361.10.

13 Q. Okay. And as far as the -- the order in this case, do

14 you know when that was served on her?

15 A. The affidavit of personal service, order for rule to

16 show cause, was served on July 18th, 2011.

17 Q. Okay. And so when that was served on her she already

18 would have missed the July 1st payment because she didn't

19 know what the order said until July 18th; is that right?

20 A. That's correct.

21 Q. Since she started making payments -- at one point did

22 she send you a check that was a counter check, a bank

23 counter check?

24 A. Right.

25 Q. And your office -- you --you've learned since then

1 sent that back?

2 A. Right.

3 Q. And she's replaced that check?

4 A. Right. That's correct.

5 MR. GAMBLE: I have no other questions.

6 THE COURT: All right. Let me ask you a question

7 and then I'll get to you, Mr. McKenzie.

8 Has Mrs. Simpson ever been held in contempt for

9 failure to make support payments before?

10 THE WITNESS: Judge, I'd have to look at that for

11 a moment. I'm not sure.

12 THE COURT: Can you help me with that, Mr.

13 McKenzie?

14 MR. MCKENZIE: She has, Your Honor.

15 THE COURT: All right. Do you know how long ago

16 that was?

17 MR. MCKENZIE: It's been some -- it's been some

18 time. It's whenever she was living in South Carolina. But

19 she moved to Montana about four years ago, four or five

20 years ago, and that's when she stopped making ---

21 THE COURT: She's not been held in contempt since

22 she moved to Montana?

23 MR. MCKENZIE: Yes, sir. Because we couldn't

24 find her.

25 THE COURT: Okay. That answers my question.

1 MR. MCKENZIE: Yes, sir.

2 THE COURT: Okay. Cross examination, Mr.

3 McKenzie?

4 MR. MCKENZIE: Thank you, Your Honor.

5 CROSS EXAMINATION BY MR. MCKENZIE:

6 Q. You have a copy of the Court's order; is that correct?

7 A. I do.

8 Q. And your job as the clerk of court is to enforce the

9 orders ---

10 A. That's correct.

11 Q. --- of the Court. And I'm going to hand you a copy of

12 Family Court Rule 24 and can you read paragraph A for us?

13 A. Determination of arrearage?

14 Q. Yes.

15 A. Clerks of Court shall review all child support and

16 periodic alimony accounts paid through the clerk of court.

17 This review shall be conducted at least once a month. An

18 account shall be considered in arrears if a scheduled

19 payment has not been received when review is made and at

20 least five working days have passed.

21 Q. Okay. Now turn to paragraph 7 of Judge Jenkinson's

22 order from the rule to show cause hearing.

23 A. Would it be page 6?

24 Q. It'd be page 5, paragraph 7.

25 A. Oh, sorry. Sorry.

1 Q. Page 5, paragraph 7.

2 A. Okay. Page 5, paragraph 7?

3 Q. Yes.

4 A. I'm there.

5 Q. Can you read that for us into the record?

6 THE COURT: Give me just a minute to put my hand

7 on that.

8 MR. MCKENZIE: Page 5, Your Honor, paragraph 7.

9 THE COURT: Page 5?

10 MR. MCKENZIE: Yes, sir, paragraph 7.

11 THE COURT: Paragraph what?

12 MR. MCKENZIE: Paragraph 7.

13 THE COURT: Seven?

14 MR. MCKENZIE: Paragraph 7, yes, sir, on page 5.

15 Page 5, paragraph 7.

16 THE COURT: Oh, okay.

17 Q. Can you read that for us?

18 A. Okay. In addition, should the Defendant fail to pay

19 on or before the first day of the month in which it is due,

20 the child support payment due to the Plaintiff, and this

21 failure to pay occurs more than once within 90 days of the

22 date of the hearing ---

23 Q. All right. Let me stop you right there. When was the

24 day of the hearing?

25 A. The date of the hearing was June 29th, 2011.

1 Q. Okay. When was the next day that the child support --
2 or when was the next time that child support -- she pays
3 monthly; is that correct?
4 A. Right.
5 Q. And so she only would have had three times that she
6 could have been late ---
7 A. Within the 90 days.
8 Q. --- within the 90-day period?
9 A. Right.
10 Q. So from the date of that hearing the next payment date
11 was due July 1st; is that right?
12 A. That's correct.
13 Q. And I know that she was not served with the order
14 until July 18th, but according to what you testified to, she
15 actually made -- started complying with the order on July
16 6th. She made a $6,000 payment towards the arrearage, did
17 she not?
18 A. That's correct.
19 Q. And then I think you told me by July 22nd she made her
20 next child support payment, but she was served on July 18th.
21 A. That's correct.
22 Q. So even though she was -- she wasn't in contempt at
23 that point in time in July, it wasn't until the August
24 payment where she was more than five days late, August 8th,
25 she made the next payment; is that right? Child support

1 payment?
2 A. That's correct.
3 Q. So, you issued the bench warrants because she missed
4 -- or she was late more than twice within a 90-day period
5 of time in compliance with paragraph 7 of this order?
6 A. That's correct.
7 Q. Okay. So, you, and part of your duties as a clerk, is
8 that Rule 24 requires you to periodically review these
9 files; is that right?
10 A. That's correct.
11 Q. And so when Mr. Simpson filed his affidavit with the
12 Court, did that alert you to the fact that you needed to go
13 look at this file?
14 A. Right.
15 Q. And is that the reason that you issued the bench
16 warrant?
17 A. That's it.
18 Q. Okay. So, Judge Jenkinson's order said that she
19 couldn't miss more than two payments -- she could have
20 gone, as long as she complied with the order, because she
21 was served the order on July 22nd, if she'd made the August
22 payment on time we wouldn't be here today, would we?
23 A. That's correct.
24 Q. Because she would only have missed one payment.
25 A. One.

1 Q. But she was two payments late and therefore that --
2 that paragraph 7 kicked in?
3 A. That's right. That's correct.
4 THE COURT: Give me your copy of the order. I
5 don't -- I didn't get all of the order. It's just a
6 complete mess. It's not anybody's fault but mine.
7 (Whereupon, order was handed up to the Court.)
8 THE COURT: All right. Tell me again what your
9 argument is that Ms. Wilson seems to agree with?
10 MR. MCKENZIE: Your Honor, you ordered that if
11 she was more than two payments late from the date of the
12 hearing, the date of the hearing was the 29th of June, her
13 next payment, because she pays monthly, was due on July 1st.
14 So from the date of -- and you've got to understand the --
15 the Defendant had the opportunity to be here for that
16 hearing ---
17 THE COURT: I understand.
18 MR. MCKENZIE: --- and chose not to be here. And
19 so when you choose not to be at a hearing you choose it at
20 your own peril. So she would have heard that had she been
21 at the hearing.
22 But, anyway, she was served with the order on -- on
23 July 22nd and all she had to do was make that payment on
24 August 1st as the order said, because she had the order in
25 her hand, and she never would have been in contempt of

1 court. When she was late on the August payment, when it
2 was received on August 8th, that's whenever this provision
3 kicked in and triggered.
4 THE COURT: And she hadn't made the July payment?
5 MR. MCKENZIE: She -- she made the July payment
6 on the 22nd.
7 THE COURT: Of July?
8 MR. MCKENZIE: Of July, which was 20 -- I'm
9 sorry, 17 days late. And she -- so the next payment -- and
10 she wasn't in contempt at that point. She had to -- she
11 had to be late twice within a 90-day period of time and
12 that's what that provision says.
13 THE COURT: Well, ---
14 MR. MCKENZIE: So the next payment was due August
15 1st.
16 THE COURT: --- I don't know if that's what that
17 provision says. And of course those are my -- those are my
18 words. And I will tell you this, and this hasn't come up
19 before and Ms. Wilson and I have talked about the wisdom of
20 using this type of trigger, and I can tell you that it was
21 my intention that the second payment had to be missed and
22 not being late on two payments. My intention was that if
23 two -- if she's two payments behind, then it is triggered.
24 And y'all didn't have the benefit of that.
25 MR. MCKENZIE: Your Honor, ---

1 THE COURT: One other thing while we're talking
2 about this. Let me ask you this. And I've thought a lot
3 about this. Of course Mrs. Ingle was found in willful
4 civil contempt of court.
5 MR. MCKENZIE: Yes, sir.
6 THE COURT: And will you agree with me -- do you
7 agree with Mrs. Wilson that she is current now?
8 MR. MCKENZIE: I will agree that she's current
9 now, Your Honor.
10 THE COURT: Okay.
11 MR. MCKENZIE: I'll agree that for four years she
12 never made a payment.
13 THE COURT: All right. And I think I was
14 ambiguous in that provision and I will think very seriously
15 before I ever use that provision again because it's subject
16 to more than one interpretation.
17 But I think both of you will agree with me with a
18 civil contempt citation I have to give the Defendant, in
19 this case Mrs. Ingle, the keys to the courthouse. And it
20 would be my position, and I'll hear from you further on it,
21 if she's caught up she's gotten the keys to the courthouse
22 and should be released.
23 Now I'll hear from you on that further.
24 MR. MCKENZIE: Your Honor, ---
25 THE COURT: Do you agree with my position on the

1 law if it's civil contempt I have to give her the keys --
2 the way to get out?
3 MR. MCKENZIE: Your Honor, I think your order
4 stands. I think your order is written. It wasn't
5 appealed. There was no motion made to amend, alter. She
6 had -- she was served with the order on the 22nd and she had
7 30 days in which to appeal the order and, Your Honor, if
8 you'll look at Rule 26.
9 THE COURT: I looked at it.
10 MR. MCKENZIE: And Rule 26 says once you sign
11 that order it's the -- it's the law of this case.
12 THE COURT: How about my interpretation of my
13 order where I say it was my intention that if she is two
14 payments behind, not late twice within that window?
15 And Mrs. Wilson can tell you I use that quite often,
16 more often than she wants me to use it.
17 But, Ms. Wilson, would you agree with my
18 interpretation as far as being supported by previous cases?
19 THE WITNESS: And you're saying you meant two
20 payments -- missing two payments?
21 THE COURT: Yes.
22 THE WITNESS: Not behind?
23 THE COURT: Not -- not being late on two
24 payments, but missing -- not making two payments.
25 MR. MCKENZIE: Your Honor, I -- I can tell you I

1 was in that courtroom that day and you said if she is late
2 more than twice in the next 90-day period of time that's
3 another willful contention -- willful contempt of court.
4 THE COURT: Well I don't recall having said that.
5 And that was not my intention.
6 And again I go back to the proposition if that's what
7 I said -- if we got the transcript and that's what I said,
8 I was in error, because I do have to give her the keys to
9 the courthouse and this being an equity court that would be
10 -- that is my ruling.
11 I hadn't let you say what you wanted to on the motion.
12 And then I'll get back to you, Mr. McKenzie.
13 Anything else?
14 MR. GAMBLE: I was just going to have her read
15 the second part of Rule 24 that he brought. Rule 24(b)
16 says that the Clerk would issue a rule to show cause.
17 That's what they're talking about here. Not the present
18 situation that we have before us.
19 RECROSS EXAMINATION BY MR. GAMBLE:
20 Q. The -- the other thing, as far as the bench warrant, I
21 think, Ms. Wilson, you -- you told me that you had looked
22 at the actual order after you issued the bench warrant?
23 A. I did.
24 Q. And that the affidavit did not quite conform to what
25 you needed in the affidavit?

1 A. Yes ---
2 Q. That you might -- you might have had reservations
3 about it if you had compared the two prior to issuing the
4 bench warrant?
5 A. The affidavit actually stated that the Defendant has
6 failed and refused to make the payment by the 1st day of
7 August 2011.
8 Q. Right. It didn't say she missed ---
9 A. Two payments.
10 Q. --- missed two payments or been late on two payments?
11 A. Right.
12 MR. GAMBLE: That's all I have, Your Honor.
13 THE COURT: All right.
14 And, Mr. McKenzie, ---
15 MR. MCKENZIE: Your Honor -- Your Honor, just for
16 the record, all we can do is go by the court orders. I
17 mean if the court order is wrong -- this order hasn't been
18 appealed. I mean I don't know what else we can do. I mean
19 if the order says that she can't be more -- miss -- and
20 that's a separate order -- offense of contempt. That's
21 what that paragraph says. And I don't understand how we
22 can be -- how we have not complied with our provision.
23 My client hadn't received child support in four years.
24 THE COURT: Do you have the trial -- do you have
25 the transcript?

1 MR. MCKENZIE: No, sir. I didn't know I needed a
2 transcript. I thought the order stood by itself. And I
3 thought if a transcript ---
4 THE COURT: Well, Mr. McKenzie, I don't ever
5 recall in four years on this job using the wording that you
6 have in paragraph 7 of the complaint. I may be mistaken.
7 But it was my intention to -- to give her a grace period of
8 approximately 30 or 35 days. Otherwise I think that would
9 be very harsh and ---
10 MR. MCKENZIE: Well, Your Honor, I think you were
11 harsh on her that day. She hadn't appeared when she was
12 ordered to appear. You were upset with her for not
13 appearing.
14 THE COURT: For not sending the check when she
15 had the funds. And that's why I only gave her 90 days to
16 pay.
17 MR. MCKENZIE: And Your Honor was very upset that
18 she didn't appear after she'd been ordered to appear. I
19 mean she had a failure to appear for a rule to show cause.
20 She was ordered to appear in the Clarendon County
21 Courthouse and she didn't appear.
22 THE COURT: And that's why I granted the relief
23 you requested.
24 MR. MCKENZIE: And part of that was the fact that
25 you were upset and you said that she couldn't be late more

1 than twice in a 90-day period of time.

2 THE COURT: Well I don't believe I said that.

3 But I've been wrong before. But this being an equity court

4 and this woman has brought her account current -- and

5 another thing we have to look at, this -- my order was

6 signed July 1st and she wasn't served until 17 days later.

7 And from a fairness standpoint she didn't have 30 days even

8 to rectify these so-called late payments.

9 MR. MCKENZIE: She was late on August 1st, Your

10 Honor. That July 22nd didn't hold her in contempt, the

11 August 1st held her in contempt. That's the payment that

12 held her in contempt, that violated your order. That was

13 the second late payment.

14 THE COURT: Well, isn't Rule 24, isn't that more

15 geared to the clerk's instructions on how to handle these

16 rules?

17 MR. MCKENZIE: Yes, sir, but that gives her the

18 instructions on how -- how to -- you know, she's supposed

19 to periodically review it. She would have -- she would

20 have done this anyway. Mr. Simpson's affidavit just merely

21 said, you know, go in and look at this -- look at my case

22 because I think there's a violation of the court order.

23 And whenever she saw it ---

24 THE COURT: Well does it say anything in that

25 rule that I'm to be governed by that? Isn't that a

1 directive to the clerk of court to keep up with these rules
2 and these late payments?
3 MR. MCKENZIE: Yes, sir.
4 THE COURT: Anything else, Mr. McKenzie?
5 MR. MCKENZIE: No, sir.
6 THE COURT: Okay.
7 Would you prepare me an order, Mr. Gamble? And do you
8 want to do a form order lifting the bench warrant and then
9 you can get some more detail on the -- expand on the
10 reasons and I want all of those reasons covered in there,
11 please, sir.
12 MR. GAMBLE: I sure will. All right. Thank you,
13 Your Honor.
14 THE COURT: Thank y'all very much.
15 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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1 CERTIFICATE OF REPORTER

2 I, the undersigned Missy Brown, Official Court
3 Reporter for the Ninth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete transcript of record of all the
6 proceedings had and evidence introduced in the hearing of
7 the captioned case, relative to appeal, in the Family Court
8 for Clarendon County, South Carolina, heard in Berkeley
9 County, South Carolina, on the 27th day of October 2011.
10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.
12 March 22, 2012
13
14
15 Missy Brown
16 Court Reporter
17
18
19
20
21
22
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25

Copy Contempt transcript

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF CLARENDON	)	MANNING, S.C.
	)	MANNING, SOUTH CAROLINA
WILLIAM SIMPSON, JR.	)	
PLAINTIFF,	)	DOCKET NO. 2004-DR-14-243
V	)	JUNE 29,2011
BECKY H. SIMPSON and WADE INGLE,	)	
DEFENDANTS.	)	

BEFORE THE HONORABLE GORDON B. JENKINSON, JUDGE

WILLIAM JOHNSON, ESQUIRE
STEVE MCKENZIE, ESQUIRE
REPRESENTING THE PLAINTIFF

PATRICIA A. NYE
OFFICIAL COURT REPORTER
FOR THE THIRD JUDICIAL
CIRCUIT

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EXHIBITS

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(none offered)

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17 motion, is it in the file?
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23 gave us is the correct caption for the Motion to Protect,
24 Ms. Gertist (Phonetic spelling)
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1 the file, and everything appears to be in order.
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4 Motion?
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7 State of North Carolina.
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9 Now, we're going to proceed with the rule?
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19 came down also?
20 MR. JOHNSON: He is a party Defendant, but he's not
21 subject to the Rule to Show to Cause.
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24 THE COURT: So the name that's in there is Becky H.
25 Simpson?

1 MR. JOHNSON: That's correct.

2 THE COURT: And I see where she has been personally
3 served in this matter. And I see that it looks like she
4 has filed a letter dated June 23, 2011, apparently, I can
5 take it for a Pro-Se answer, she asked that The Court
6 renounce his complaint, which I take to mean, that she's
7 asking to be dismissed. Have there been any offers of
8 settlement by her. She makes some reference to the
9 payment of $6,006.21, from her retirement account.

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11 was a letter, where she offered to -- to do that.

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14 that we sent back to her.

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17 can see that it is previous to the June 23rd date that
18 you referenced. This exchange happened in May, and we
19 sent that to her saying, you want to pay, that's fine,
20 here is the consent order, send the check that would be
21 Federal Expressed.

22 THE COURT: Okay.

23 MR. JOHNSON: And we've heard nothing from her since
24 that time.

25 THE COURT: All right. Wait just a minute, please.

1 You want to offer some testimony?
2 MR. McKENZIE: We can, Your Honor, or we can offer
3 up a certified copy of The Court's Statement about how
4 far Ms. Simpson is behind. I think it's a sum of $600.
5 THE COURT: All right. Well, in light of the recent
6 Supreme Court case, I think it's *Turner Versus Jones*,
7 we'll be walking on egg shells, I guess with these cases.
8 So, let's take some brief testimony, please.
9 MR. MCKENZIE: Thank you, Your Honor, we can do
10 that. Your Honor, we would call Bill Simpson to the
11 stand.
12 THE COURT: All right. Come forward, please, Mr.
13 Simpson.
14 MR. SIMPSON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:
16 THE COURT: Please be seated, and state your name
17 for the record.
18 WITNESS: Bill Simpson.
19 DIRECT EXAMINATION BY
20 MR. MCKENZIE:
21 Q Mr. Simpson, you are a resident of Clarendon County?
22 A Yes, I am.
23 Q And can you tell me, do you know where your ex-wife,
24 Becky H. Simpson, I think she's now known as Becky H. --
25 A Ingel.

1 Q Do you know where she currently resides?
2 A She's in Montana.
3 Q She's in Montana. And I think that we have actually
4 filed a service order -- this order, Rule to Show Cause,
5 on her personally in Montana, is that correct?
6 A Yes, sir.
7 Q And I think that you went to some great expense in
8 regards to that; is that correct?
9 A That's right.
10 Q I'm going to hand you a copy of that.
11 A She was actually in Colorado, for some time, and
12 then she moved, and it took us a while to locate where
13 she had gone to, because she wasn't corresponding with
14 her children in any kind of way.
15 Q Now, pursuant to your divorce decree back in 2004,
16 you obtained custody of your -- both of the minor
17 children in the marriage; is that correct?
18 A Yes.
19 Q And is Ms. Simpson was ordered to pay child support,
20 and The Court has a copy of the child support.
21 MR. MCKENZIE: Your Honor, I would at this time
22 ask The Court, unless Ms. Daisy Brandt, step-mother-in-
23 law, formal mother-in-law, of the defendant --
24 THE COURT: All right. And what's your
25 request?

1 MR. MCKENZIE: I would request that she not be
2 permitted in the courtroom. There's no reason for her to
3 be here. She's not representing anybody.
4 THE COURT: Okay. Well, in general, we have an
5 open door policy.
6 MR. MCKENZIE: I understand that, Your Honor, I
7 understand that, but I think that it would disrupt court.
8 THE COURT: She's outside right now, so then
9 you make your motion again when she comes back in.
10 MR. MCKENZIE: All right.
11 Q. We were talking, and I think you were given custody
12 of your children, right?
13 A Yes.
14 Q And who -- and tell us the children's names.
15 A Cody Simpson, and Caitlyn (phonetic spelling)
16 Simpson.
17 Q Okay. And pursuant to the, I think --
18 THE COURT: Excuse me for interrupting. I
19 think Ms. Simpson and I guess her new husband are in the
20 courtroom, and you had a motion?
21 MR. MCKENZIE: I just think Your Honor, I think
22 this is an open court, unless they're here -- I
23 understand that this is an open court, and they can be
24 here to observe as far as the testimony representing Ms.
25 Ingel, but it would be inappropriate at this point in

1 time.

2 THE COURT: Well, I think so too, but we'll cross

3 that bridge when we get to it. You can have a seat Mrs.

4 -- it's Brandt now isn't it?

5 MS. BRANDT: Yes.

6 MR. McKENZIE CONTINUES DIRECT:

7 Q Mr. Simpson, do you -- we were talking earlier, and

8 you were awarded custody of your two minor children?

9 A Yes, sir.

10 Q And since that time, I think one of those children

11 is actually over the age of 18?

12 A Right, and still involved in school. He goes to

13 Frances Marion, in Florence.

14 Q Okay. And there's been no subsequent order, to

15 modify, or change with the child support; is that

16 correct?

17 A Not that I'm aware of.

18 Q But you do have a minor child at home, what's her

19 name?

20 A Caitlin Simpson.

21 Q Caitlin, and how old is she?

22 A She's just turned 16.

23 Q And The Court has been provided a print-out from The

24 Family Court, showing that the -- your ex-wife, Ms.

25 Ingel, is currently behind in child support. Can you

1 tell The Court how she has paid you over the years since
2 your divorce in regards to child support?
3 A She would pay me monthly, she would pay a month, I
4 guess in advance, and she would send the check to The
5 Court. And she'd received, or we had -- I had to pay --
6 to pay her right at 350,000 or $360,000.
7 THE COURT: Three hundred fifty-six thousand?
8 WITNESS: Three hundred and fifty or sixty, I'm not
9 exactly sure of the amount.
10 THE COURT: Okay. That was in the settlement of the
11 '04 case?
12 WITNESS: Yes, sir.
13 THE COURT: Thank you, sir.
14 MR. McKENZIE CONTINUES DIRECT:
15 Q And so, that's part of the property division, but as
16 far as her paying you child support, can you tell us how
17 frequently, and regularly she paid child support to you?
18 A Not any in the past couple years I don't think.
19 Q Okay. And we'll provide The Court with a copy of
20 the print out. Have you received anything in the last
21 three months?
22 A No, sir.
23 Q Okay.
24 A I don't think in the past three years, I'm not sure
25 exactly, but it's a very minimum that she's paying

1 anyway.
2 Q I think the order amount is a little over $200 a
3 month, is that correct?
4 A Uh-huh.
5 Q Is that yes?
6 A Yes.
7 Q Okay. So she has not paid you any child support
8 since that time; is that correct, or at least the past
9 three months?
10 A The original, I think was added in there, and upped
11 it a little bit to $329, or something, I'm not exactly
12 sure of the figure.
13 Q But The Court has a print out and you would agree
14 with whatever The Court has?
15 A Yes, sir.
16 Q And you would agree that readjustment amount that
17 she owes is in the print out?
18 A Yes, sir.
19 Q Okay.
20 THE COURT: That for the record is $6995.30?
21 MR. MCKENZIE: That's correct, Your Honor.
22 THE COURT: Okay.
23 Q You had Ms. Ingel served in Montana at great
24 expense, I'm assume?
25 A Yes, sir.

1 Q And you also incurred attorney's fees, in regards to
2 this action?
3 A That's right.
4 Q And I'm going to hand you a copy. When I say great
5 expense, actually, sir, there is a process where there's
6 a $25 fee. I'm going to hand you a copy of the affidavit
7 of attorney's fees. Is that your copy of the affidavit
8 of attorney's fees?
9 A Yes, sir.
10 Q Are you asking The Court to have her to pay your
11 attorney's fees in this action?
12 A Yes, sir.
13 Q Okay. And will you tell us the amount on the second
14 page, the total amount of the attorney fees?
15 A $1,282.50.
16 Q Okay. And would it have been necessary for you to
17 bring this action if Ms. Ingel paid her child support as
18 ordered?
19 A Not at all.
20 Q You have seen Ms. Ingel's proposal in regard to
21 retirement and your attorney, Mr. Johnson, co-counsel of
22 mine, has sent her a response in regards to her proposal.
23 She has not responded back to you, has she?
24 A No.
25 Q Okay. Has she responded back to Mr. Johnson, as far

1 as you know?
2 A No, sir.
3 Q Okay. Are you asking The Court today, to find her
4 in willful contempt of The Court's order?
5 A Yes, sir.
6 Q For failure to pay child support?
7 A Yes, sir.
8 Q Are you asking The Court to incarcerate her until
9 she pays this amount of money?
10 A Yes, sir.
11 Q Okay. Are you asking The Court to also fine her, or
12 incarcerate her for failure to appear today?
13 A Yes, sir.
14 Q Okay. I mean, she was given notice of this hearing,
15 is that correct?
16 A Yes, sir.
17 Q And you went through the expense to have her served,
18 and notice of this hearing, is that right?
19 A Yes, sir.
20 Q And she has not appeared today in spite of The
21 Court's Order, Rule to Show Cause, for her to appear?
22 A Right.
23 Q And so you're asking for not only for her
24 incarceration for failure to pay child support, but also
25 failure to appear?

1 A Yes, sir.
2 MR. MCKENZIE: That's all the questions I have.
3 THE COURT: Okay. Mr. McKenzie, do you remember how
4 much in retirement funds that Mrs. Simpson was paid?
5 MR. MCKENZIE: I do not, Your Honor.
6 THE COURT: Okay. And when was the case finalized
7 from the Supreme Court, or The Court of Appeals. I don't
8 think it went further than The Court of Appeals?
9 MR. JOHNSON: I think it went to -- it's 2008, Your
10 Honor.
11 THE COURT: So that's when she was paid the -- do
12 you have that decree?
13 MR. MCKENZIE: I have Judge Seegar-Andrews' decree.
14 It's attached to your Rule to Show Cause, I believe, Your
15 Honor, in the file. You'll want to put it back in.
16 THE COURT: I'll leave it in. You have it right
17 there, and I'll give it back to you. I see it.
18 MR. MCKENZIE: You see it? And it references the
19 child support payment on -- paragraph 3.
20 THE COURT: The Court Administration has sent us
21 some guidelines to hopefully set aside the United States
22 Supreme Court case of *Turner versus Rodgers*. And what I
23 have to do is make a finding that the defendant has the
24 ability to make these payments. And you said she
25 received these funds in 2008?

1 MR. MCKENZIE: Yes, sir.
2 THE COURT: Okay. And that was for -- let me see
3 how much that was.
4 MR. MCKENZIE: If you look back, I think to the
5 property division. On page 20, Your Honor.
6 THE COURT: Yeah, there's some on 20. It says
7 213,876?
8 MR. MCKENZIE: That's correct, Your Honor.
9 THE COURT: All right. Were the other funds in
10 addition to that?
11 MR. MCKENZIE: You're talking about --
12 THE COURT: Or that's it. That's the total for the
13 wife?
14 MR. MCKENZIE: Total for the wife, but he also, had
15 to pay attorney's fees,
16 WITNESS: All together, it's $37,500 up front.
17 MR. MCKENZIE: And additional attorney's fees at the
18 beginning of the case, that Mr. Warner, classified as
19 seed money.
20 THE COURT: Did your wife ever work during the
21 marriage?
22 WITNESS: Yes, sir.
23 THE COURT: What did she do?
24 WITNESS: She worked at Piggly Wiggly, and worked at
25 the school as a teacher.

1 THE COURT: Does she have a high school education?
2 WITNESS: Yes, sir.
3 THE COURT: So she has nothing to keep her, health
4 wise, from work?
5 WITNESS: No, sir. I think she's -- by
6 correspondence that she had got a year or so from my
7 daughter, that she had went back to school, and was
8 teaching where she's at out in Montana also.
9 THE COURT: Okay. I don't believe that I have any
10 more questions. Any follow up on my question?
11 MR. MCKENZIE: Nothing, Your Honor, other than that,
12 you know, Your Honor, I think it satisfies The Supreme
13 Court's opinion, that you were talking about. She does,
14 and she wrote into The Court itself, saying that she did
15 have money to pay these fees.
16 THE COURT: She did have what?
17 MR. MCKENZIE: She did have money on, or at least an
18 account that she could draw from. The problem is that
19 she'd never -- she did not appeared here today to tell
20 you.
21 THE COURT: Are you referring to the retirement
22 account?
23 MR. MCKENZIE: I am.
24 THE COURT: Okay.
25 MR. MCKENZIE: So there is money, obviously there,

1 and there was money from equable distribution, so she can
2 pay this.
3 THE COURT: Okay. All right.
4 MR. MCKENZIE: Thank you, Your Honor. Your Honor,
5 No further questions.
6 THE COURT: Okay. And you said you had nothing
7 further?
8 MR. MCKENZIE: Nothing further.
9 THE COURT: It is the ruling of The Court that Mrs.
10 Becky H. Simpson, is in wrongful civil contempt of Court,
11 and she's sentenced to 60 days in the Clarendon County
12 Detention Center, and I'm not going to allow any work
13 release. She can purge herself by the payment of the
14 arrearages of $6,995.30, within 30 days. Also, pay
15 attorney's fees of $1280.50, within 30 days, and court
16 cost of $250, within 30 days. Anything else?
17 MR. MCKENZIE: Your Honor, the only thing that at
18 the -- and I've asked this before -- to Family Court
19 judges and gotten mixed opinion about this: My
20 understanding of Rule to Show cause is there are two
21 basic concepts that we agree on. One is the failure of
22 the person to do something that is ordered previously.
23 And also, we have an order from The Court, requiring her
24 to appear. And so, if she would've been here to appear
25 today, so she has willfully disobeyed the Order that

1 required her to appear and show cause. So we would ask
2 The Court to address that issue regarding her failure to
3 appear. Obviously she can purge herself because she has
4 these fees, but you have a Court Order that said that she
5 had to appear today, in person to show cause. And so,
6 we're asking The Court to also address that issue, the
7 fact, the Rule of failure to appear.
8 THE COURT: I don't think I've been asked to address
9 that separately, and that's what you've given me.
10 MR. MCKENZIE: Well, I asked, Mr. Simpson, if he --
11 that's why I asked him on the stand.
12 THE COURT: Okay.
13 MR. MCKENZIE: If you wanted it -- because we didn't
14 know whether she would appear or not. And obviously, she
15 didn't. She did not appear; she chose not to appear. And
16 so, I think that's a separate issue in regards to the
17 contempt power of The Court, and basically, and excuse
18 the expression, slap in the face of The Court for not
19 appearing. When you have an order that says appear, then
20 you're supposed to appear.
21 THE COURT: Okay.
22 MR. MCKENZIE: And we'd ask The Court to address
23 that issue.
24 THE COURT: Okay. Ms. Brandt, you're raising your
25 hand, you're not a party to this action, nor are you an

1 attorney. Do you want to say something?
2 MS. BRANDT: Yes, sir.
3 THE COURT: Well, stand up, please, ma'am.
4 MS. BRANDT: Becky didn't have the money to get a
5 lawyer. She didn't have any money to get a plane ticket
6 here. She's working three jobs, doing everything she
7 can. They both lost their jobs, so she's doing
8 everything that she can, but she has a cashier's check
9 for the 6,000 or whatever she told them that she would
10 pay, ready to come, but she did not have any money to
11 come see her -- for the funeral for her step father. She
12 doesn't have any money to be here from Montana.
13 THE COURT: Well, Ms. Brandt, Mr. Johnson, wrote her
14 on May 20th, and apparently, before that she had these
15 funds available. And it doesn't take more than 30 days
16 to access money out of retirement account. Why didn't
17 she do it before today?
18 MS. BRANDT: She wrote a letter to The Court,
19 saying --
20 THE COURT: Well, a letter -- she's been through
21 enough legal proceedings to know that by simply writing a
22 letter --
23 MS. BRANDT: I'm just stating what she said.
24 THE COURT: All right. Thank you, ma'am.
25 MS. BRANDT: Can we be excused?

1 THE COURT: Ma'am?

2 MS. BRANDT: Can we be excused?

3 THE COURT: Yes, ma'am, you may leave. Mr.
4 McKenzie, I believe I addressed your last issue, your
5 separate issue by way of The Court cost. And I know no
6 one knows The Court's cost, but given the distance that
7 she would have to travel, I'm not going to impose any
8 different sanctions, any additional sanctions.

9 MR. MCKENZIE: Thank you, Your Honor.

10 THE COURT: But if you all would prepare an order
11 for me.

12 MR. MCKENZIE: Thank you, Your Honor. That will be
13 a $200 court cost, Your Honor?

14 THE COURT: Two hundred and fifty dollars.

15 MR. McKENZIE: Would you address the issue of any
16 future payments as far as if she misses any future
17 payments. Didn't you mean to put that in your order,
18 also?

19 THE COURT: You want an additional purge provision?

20 MR. McKENZIE: Additional purge provision --

21 THE COURT: Here's what I'll do, I generally go
22 about three months out, that she cannot miss more than
23 one payment over the next three months.

24 MR. McKENZIE: That will be fine, Your Honor.

25 (WHERE UPON THE MATTER IN THIS CASE WAS CONCLUDED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, PATRICIA A. NYE, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING IN THE ABOVE CAPTIONED CASE, RELATIVE TO APPEAL IN THE FAMILY COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 29TH DAY OF JUNE 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

_____

PATRICIA A. NYE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF CLARENDON	)	3RD JUDICIAL CIRCUIT
WILLIAM SIMPSON, JR.	)	MANNING, SOUTH CAROLINA
PLAINTIFF,	)	
V.	)	JUNE 29,2011
BECKY H. INGLE	)	
DEFENDANT.	)	

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STEVE MCKENZIE, ESQUIRE
REPRESENTING THE PLAINTIFF

PATRICIA A. NYE
OFFICIAL COURT REPORTER FOR
THE THIRD JUDICIAL CIRCUIT

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13 THE COURT: All right. Mr. Johnson, I would be happy
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2 MR. JOHNSON: Okay. All right.
3 THE COURT: There's no written objections in the
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23 MR. JOHNSON: And we've heard nothing from her since
24 that time.
25 THE COURT: All right. Wait just a minute, please.

1 You want to offer some testimony?
2 MR. McKENZIE: We can, Your Honor, or we can offer
3 up a certified copy of The Court's Statement about how
4 far Ms. Simpson is behind. I think it's a sum of $600.
5 THE COURT: All right. Well, in light of the recent
6 Supreme Court case, I think it's *Turner Versus Jones*,
7 we'll be walking on egg shells, I guess with these cases.
8 So, let's take some brief testimony, please.
9 MR. MCKENZIE: Thank you, Your Honor, we can do
10 that. Your Honor, we would call Bill Simpson to the
11 stand.
12 THE COURT: All right. Come forward, please, Mr.
13 Simpson.
14 MR. SIMPSON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:
16 THE COURT: Please be seated, and state your name
17 for the record.
18 WITNESS: Bill Simpson.
19 DIRECT EXAMINATION BY
20 MR. MCKENZIE:
21 Q Mr. Simpson, you are a resident of Clarendon County?
22 A Yes, I am.
23 Q And can you tell me, do you know where your ex-wife,
24 Becky H. Simpson, I think she's now known as Becky H. --
25 A Ingel.

1 Q Do you know where she currently resides?
2 A She's in Montana.
3 Q She's in Montana. And I think that we have actually
4 filed a service order -- this order, Rule to Show Cause,
5 on her personally in Montana, is that correct?
6 A Yes, sir.
7 Q And I think that you went to some great expense in
8 regards to that; is that correct?
9 A That's right.
10 Q I'm going to hand you a copy of that.
11 A She was actually in Colorado, for some time, and
12 then she moved, and it took us a while to locate where
13 she had gone to, because she wasn't corresponding with
14 her children in any kind of way.
15 Q Now, pursuant to your divorce decree back in 2004,
16 you obtained custody of your -- both of the minor
17 children in the marriage; is that correct?
18 A Yes.
19 Q And is Ms. Simpson ordered to pay child support, and
20 The Court has a copy of the child support.
21 MR. MCKENZIE: Your Honor, I would at this time
22 ask The Court, unless Ms. Daisy Brandt, step-mother-in-
23 law, formal mother-in-law, of the defendant --
24 THE COURT: All right. And what's your
25 request?

1 MR. MCKENZIE: I would request that she not be
2 permitted in the courtroom. There's no reason for her to
3 be here. She's not representing anybody.
4 THE COURT: Okay. Well, in general, we have an
5 open door policy.
6 MR. MCKENZIE: I understand that, Your Honor, I
7 understand that, but I think that it would disrupt court.
8 THE COURT: She's outside right now, so then
9 you make your motion again when she comes back in.
10 MR. MCKENZIE: All right.
11 Q. We were talking, and I think you were given custody
12 of your children, right?
13 A Yes.
14 Q And who -- and tell us the children's names.
15 A Cody Simpson, and Caitlyn (phonetic spelling)
16 Simpson.
17 Q Okay. And pursuant to the, I think --
18 THE COURT: Excuse me for interrupting. I
19 think Ms. Simpson and guess her new husband are in the
20 courtroom, and you had a motion?
21 MR. MCKENZIE: I just think Your Honor, I think
22 this is an open court, unless they're here -- I
23 understand that this is an open court, and they can be
24 here tc observe as far as the testimony representing Ms.
25 Ingel, but it would be inappropriate at this point in

1 time.

2 THE COURT: Well, I think so too, but we'll cross

3 that bridge when we get to it. You can have a seat Mrs.

4 -- it's Brandt now isn't it?

5 MS. BRANDT: Yes.

6 MR. McKENZIE CONTINUES DIRECT:

7 Q Mr. Simpson, do you -- we were talking earlier, and

8 you were awarded custody of your two minor children?

9 A Yes, sir.

10 Q And since that time, I think one of those children

11 is actually over the age of 18?

12 A Right, and still involved in school. He goes to

13 Frances Marion, in Florence.

14 Q Okay. And there's been no subsequent order, to

15 modify, or change with the child support; is that

16 correct?

17 A Not that I'm aware of.

18 Q But you do have a minor child at home, what's her

19 name?

20 A Caitlin Simpson.

21 Q Caitlin, and how old is she?

22 A She's just turned 16.

23 Q And The Court has been provided a print out from The

24 Family Court, showing that the -- your ex-wife, Ms.

25 Ingel, is currently behind in child support. Can you

1 tell The Court how she has paid you over the years since
2 your divorce in regards to child support?
3 A She would pay me monthly, she would pay a month, I
4 guess in advance, and she would send the check to The
5 Court. And she'd received, or we had -- I had to pay --
6 to pay her right at 350,000 or $360,000.
7 THE COURT: Three hundred fifty six thousand?
8 WITNESS: Three hundred and fifty or sixty, I'm not
9 exactly sure of the amount.
10 THE COURT: Okay. That was in the settlement of the
11 '04 case?
12 WITNESS: Yes, sir.
13 THE COURT: Thank you, sir.
14 MR. McKENZIE CONTINUES DIRECT:
15 Q And so, that's part of the property division, but as
16 far as her paying you child support, can you tell us how
17 frequently, and regularly she paid child support to you?
18 A Not any in the past couple years I don't think.
19 Q Okay. And we'll provide The Court with a copy of
20 the print out. Have you received anything in the last
21 three months?
22 A No, sir.
23 Q Okay.
24 A I don't think in the past three years, I'm not sure
25 exactly, but it's a very minimum that she's paying

1 anyway.
2 Q I think the order amount is a little over $200 a
3 month, is that correct?
4 A Uh-huh.
5 Q Is that yes?
6 A Yes.
7 Q Okay. So she has not paid you any child support
8 since that time; is that correct, or at least the past
9 three months?
10 A The original, I think was added in there, and upped
11 it a little bit to $329, or something, I'm not exactly
12 sure of the figure.
13 Q But The Court has a print out and you would agree
14 with whatever The Court has?
15 A Yes, sir.
16 Q And you would agree that readjustment amount that
17 she owes is in the print out?
18 A Yes, sir.
19 Q Okay.
20 THE COURT: That for the record is $6995.30?
21 MR. MCKENZIE: That's correct, Your Honor.
22 THE COURT: Okay.
23 Q You had Ms. Ingel served in Montana at great
24 expense, I'm assume?
25 A Yes, sir.

1 Q And you also incurred attorney's fees, in regards to
2 this action?
3 A That's right.
4 Q And I'm going to hand you a copy. When I say great
5 expense, actually, sir, there is a process where there's
6 a $25 fee. I'm going to hand you a copy of the affidavit
7 of attorney's fees. Is that your copy of the affidavit
8 of attorney's fees?
9 A Yes, sir.
10 Q Are you asking The Court to have her to pay your
11 attorney's fees in this action?
12 A Yes, sir.
13 Q Okay. And will you tell us the amount on the second
14 page, the total amount of the attorney fees?
15 A $1,282.50.
16 Q Okay. And would it have been necessary for you to
17 bring this action if Ms. Ingel paid her child support as
18 ordered?
19 A Not at all.
20 Q You have seen Ms. Ingel's proposal regards to
21 retirement and your attorney, Mr. Johnson, co-counsel of
22 mine, has sent her a response in regards to her proposal.
23 She has not responded back to you, has she?
24 A No.
25 Q Okay. Has she responded back to Mr. Johnson, as far

1 as you know?
2 A No, sir.
3 Q Okay. Are you asking The Court today, to find her
4 in willful contempt of The Court's order?
5 A Yes, sir.
6 Q For failure to pay child support?
7 A Yes, sir.
8 Q Are you asking The Court to incarcerate her until
9 she pays this amount of money?
10 A Yes, sir.
11 Q Okay. Are you asking The Court to also find her, or
12 incarcerate her for failure to appear today?
13 A Yes, sir.
14 Q Okay. I mean, she was given notice of this hearing,
15 is that correct?
16 A Yes, sir.
17 Q And you went through the expense to have her served,
18 and notice of this hearing, is that right?
19 A Yes, sir.
20 Q And she has not appeared today in spite of The
21 Court's Order, Rule to Show Cause, for her to appear?
22 A Right.
23 Q And so you're asking for not only for her
24 incarceration for failure to pay child support, but also
25 failure to appear?

1 A Yes, sir.
2 MR. MCKENZIE: That's all the questions I have.
3 THE COURT: Okay. Mr. McKenzie, do you remember how
4 much in retirement funds that Mrs. Simpson was paid?
5 MR. MCKENZIE: I do not, Your Honor.
6 THE COURT: Okay. And when was the case finalized
7 from the Supreme Court, or The Court of Appeals. I don't
8 think it went further than The Court of Appeals?
9 MR. JOHNSON: I think it went to - it's 2008, Your
10 Honor.
11 THE COURT: So that's when she was paid the -- do
12 you have that decree?
13 MR. MCKENZIE: I have Judge Seegar-Andrews' decree.
14 It's attached to your Rule to Show Cause, I believe, Your
15 Honor, in the file. You'll want to put it back in.
16 THE COURT: I'll leave it in. You have it right
17 there, and I'll give it back to you. I see it.
18 MR. MCKENZIE: You see it? And it references the
19 child support payment on -- paragraph 3.
20 THE COURT: The Court Administration has sent us
21 some guidelines to hopefully set aside the United States
22 Supreme Court case of *Turner versus Rodgers*. And what I
23 have to do is make a finding that the defendant has the
24 ability to make these payments. And you said she
25 received these funds in 2008?

1 MR. MCKENZIE: Yes, sir.
2 THE COURT: Okay. And that was for -- let me see
3 how much that was.
4 MR. MCKENZIE: If you look back, I think to the
5 property division. On page 20, Your Honor.
6 THE COURT: Yeah, there's some on 20. It says
7 213,876?
8 MR. MCKENZIE: That's correct, Your Honor.
9 THE COURT: All right. Were the other funds in
10 addition to that?
11 MR. MCKENZIE: You're talking about --
12 THE COURT: Or that's it. That's the total for the
13 wife?
14 MR. MCKENZIE: Total for the wife, but he also, had
15 to pay attorney's fees,
16 WITNESS: All together, it's $37,500 up front.
17 MR. MCKENZIE: And additional attorney's fees at the
18 beginning of the case, that Mr. Warner, classified as
19 seed money.
20 THE COURT: Did your wife ever work during the
21 marriage?
22 WITNESS: Yes, sir.
23 THE COURT: What did she do?
24 WITNESS: She worked at Piggly Wiggly, and worked at
25 the school as a teacher.

1 THE COURT: Does she have a high school education?
2 WITNESS: Yes, sir.
3 THE COURT: So she has nothing to keep her, health
4 wise, from work?
5 WITNESS: No, sir. I think she's -- by
6 correspondence that she had got a year or so from my
7 daughter, that she had went back to school, and was
8 teaching where she's at out in Montana also.
9 THE COURT: Okay. I don't believe that I have any
10 more questions. Any follow up on my question?
11 MR. MCKENZIE: Nothing, Your Honor, other than that,
12 you know, Your Honor, I think it satisfies The Supreme
13 Court's opinion, that you were talking about. She does,
14 and she wrote into The Court itself, saying that she did
15 have money to pay these fees.
16 THE COURT: She did have what?
17 MR. MCKENZIE: She did have money on, or at least an
18 account that she could draw from. The problem is that
19 she'd never -- she'd not appeared here today to tell you.
20 THE COURT: Are you referring to the retirement
21 account?
22 MR. MCKENZIE: I am.
23 THE COURT: Okay.
24 MR. MCKENZIE: So there is money, obviously there,
25 and there was money from equable distribution, but she

1 can pay this.

2 THE COURT: Okay. All right.

3 MR. MCKENZIE: Thank you, Your Honor. Your Honor,

4 No further questions.

5 THE COURT: Okay. And you said you had nothing

6 further?

7 MR. MCKENZIE: Nothing further.

8 THE COURT: It is the ruling of The Court that Mrs.

9 Becky H. Simpson, is in wrongful civil contempt of Court,

10 and she's sentenced to 60 days in the Clarendon County

11 Detention Center, and I'm not going to allow any work

12 release. She can purge herself by the payment of the

13 arrearages of $6,995.30, within 30 days. Also, pay

14 attorney's fees of $1280.50, within 30 days, and court

15 cost of $250, within 30 days. Anything else?

16 MR. MCKENZIE: Your Honor, the only thing that at

17 the -- and I've asked this before -- to Family Court

18 judges and gotten mixed opinion about this: My

19 understanding of Rule to Show cause is there two basic

20 concepts that we agree on. One is the failure of the

21 person to do something that is ordered previously. And

22 also, we have an order from The Court, requiring her to

23 appear. And so, if she would've been here to appear

24 today, so she has willfully disobeyed the Order that

25 required her to appear and show cause. So we would ask

1 The Court to address that issue regarding her failure to
2 appear. Obviously she can purge herself because she has
3 these fees, but you have a Court Order that said that she
4 had to appear today, in person to show cause. And so,
5 we're asking The Court to also address that issue, the
6 fact, the Rule of failure to appear.
7 THE COURT: I don't think I've been asked to address
8 that separately, and that's what you've given me.
9 MR. MCKENZIE: Well, I asked, Mr. Simpson, if he --
10 that why I asked him on the stand.
11 THE COURT: Okay.
12 MR. MCKENZIE: If you wanted it -- because we didn't
13 know whether she would appear or not. And obviously, she
14 didn't, she did not appear, she chose not to appear. And
15 so, I think that's a separate issue in regards to the
16 contempt power of The Court, and basically a, excuse the
17 expression, slap in the face of The Court for not
18 appearing. When you have an order that says appear, then
19 you're supposed to appear.
20 THE COURT: Okay.
21 MR. MCKENZIE: And we'd ask The Court to address
22 that issue.
23 THE COURT: Okay. Ms. Brandt, you're raising your
24 hand, you're not a party to this action, nor are you an
25 attorney. Do you want to say something?

1 MS. BRANDT: Yes, sir.
2 THE COURT: Well, stand up, please, ma'am.
3 MS. BRANDT: Becky didn't have the money to get a
4 lawyer. She didn't have any money to get a plane ticket
5 here. She's working three jobs, doing everything she
6 can. They both lost their jobs, so she's doing
7 everything that she can, but she has a cashier's check
8 for the 6,000 or whatever she told them that she would
9 pay, ready to come, but she did not have any money to
10 come see her -- for the funeral for her step father. She
11 doesn't have any money to be here from Montana.
12 THE COURT: Well, Ms. Brandt, Mr. Johnson, wrote her
13 on May 20th, and apparently, before that she had these
14 funds available. And it doesn't take more than 30 days
15 to access money out of retirement account. Why didn't
16 she do it before today?
17 MS. BRANDT: She wrote a letter to The Court,
18 saying --
19 THE COURT: Well, a letter -- she's been through
20 enough legal proceedings to know that by simply writing a
21 letter --
22 MS. BRANDT: I'm just stating what she said.
23 THE COURT: All right. Thank you, ma'am.
24 MS. BRANDT: Can we be excused?
25 THE COURT: Ma'am?

1 MS. BRANDT: Can we be excused?

2 THE COURT: Yes, ma'am, you may leave. Mr.
3 McKenzie, I believe I addressed your last issue, your
4 separate issue by way of The Court cost. And I know no
5 one knows The Court's cost, but given the distance that
6 she would have to travel, I'm not going to impose any
7 different sanctions, any additional sanctions.

8 MR. MCKENZIE: Thank you, Your Honor.

9 THE COURT: But if you all would prepare an order
10 for me.

11 MR. MCKENZIE: Thank you, Your Honor. That will be
12 a $200 court cost, Your Honor?

13 THE COURT: Two hundred and fifty dollars.

14 MR. McKENZIE: Would you address the issue of any
15 future payments as far as if she misses any future
16 payments. Didn't you mean to put that in your order,
17 also?

18 THE COURT: You want an additional purge provision?

19 MR. McKENZIE: Additional purge provision --

20 THE COURT: Here's what I'll do, I generally go
21 about three months out, that she cannot miss more than
22 one payment over the next three months.

23 MR. McKENZIE: That will be fine, Your Honor.

24

25 (WHERE UPON THE MATTER IN THIS CASE WAS CONCLUDED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, PATRICIA A. NYE, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING IN THE ABOVE CAPTIONED CASE, RELATIVE TO APPEAL IN THE FAMILY COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 29TH DAY OF JUNE 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

Patricia A. Nye

PATRICIA A. NYE

William Simpson Jr.
2052 Billie Drive
Manning, SC 29102
803.460.6216

September 26, 2012

BY HAND DELIVERY

Jane O. Shuler, Esq.
Chief Counsel
Judicial Merit Selection Commission
104 Gressette Senate Office Building
1101 Pendelton Street, Room 104
Columbia, SC 29202

Re: Formal Judicial Complaint Against
Judge Gordon B. Jenkinson of the
South Carolina Family Court of the Third Judicial Court
In re: *Daisy Wallace Simpson vs. William Robert Simpson, Sr., et al.*,
Case No. 03-DR-14-128

Dear Ms. Shuler:

I am submitting my Affidavit/Complaint against Judge Gordon Jenkinson in the attached binder which includes Tabs 1 through 11 of documents related to my testimony.

Thank you in advance for your attention to this matter. I look forward to hearing from you.

Sincerely,

William. R. Simpson, Jr.

Enc. Blue Binder with tabs 1-11

JUDICIAL MERIT SELECTION COMMISSION)
)
In the Matter of:) WITNESS AFFIDAVIT FORM
)
The Honorable Gordon B. Jenkinson, Kingstree, SC)
)
Candidate for 3rd Circuit, Seat 3
)

AFFIDAVIT OF WILLIAM R. SIMPSON, JR.

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least five (5) days prior to the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is October 30, 2012.

In regard to my intended testimony, I will offer information as to the following:

1. My name is William R. Simpson, Jr. I am 43 years of age. I live at 2052 Billie Drive , Manning, SC 29102. My home and work telephone number is 803.460.6216.

2. Other persons who have knowledge of the facts concerning my testimony:

   Steven S. McKenzie, Esq.
   Coffey, Chandler & Kent
   P.O. Box 1292
   8 South Brooks Street
   Manning, SC 29102

   Paul E. Tinkler, Esq.
   Law Offices of Paul E. Tinkler
   154 King Street, Third Floor
   Charleston, SC 29402
   843.937.8000

3. The nature of the testimony regarding the qualifications of the above-named judicial candidate will include the candidate's wrongdoing and misconduct in: (1) my father's divorce case of which I was a defendant; and (2) his conduct in matters involving my own divorce. My divorce and my father's divorce proceedings overlapped and Judge Jenkinson was involved in both cases.
4. Specific dates, places and times at which or during which such allegations took place:

January 6, 2011 hearing: In the matter of In re: *Daisy Wallace Simpson vs. William Robert Simpson, Sr., Individually and as shareholder/member of Simpson Farms,LLC And William R. Simpson, Jr., as a shareholder/member of Simpson Farms, LLC.* Case No. 03-DR-14-128 [Attached Tab #4: Transcript of Hearing]

Background: I was a named defendant in my father's divorce in the above-entitled action. Judge Turbeville was the original trial judge who sat through several days of trial and issued a 43 page "Final Decree of Divorce" dated December 31, 2004 (Tab #1 Attached). This detailed Order written by Judge Turbeville addresses their property division at page 41, paragraph "4."

Subsequent to his Final Order in my parents' divorce, Judge Turbeville retired. Judge Jenkinson replaced him and at this point begins to hear matters filed in the case. In the meantime, Defendants appealed Judge Turbeville's Order to the Court of Appeals. The Court of Appeals upheld the lower court's Order and **remanded only as to attorneys' fees**.

On January 6, 2011 a hearing was scheduled and held before Judge Jenkinson on what I understood was to be on the issue of attorneys' fees pursuant to the Court of Appeals' Order. I was present with my attorney, Mr. Tinkler. As the hearing progressed, plaintiff's counsel introduced what is referred to in the transcript as "Exhibit 9". This Exhibit 9 was inappropriately introduced into evidence and accepted by Judge Jenkinson and made part of the record. Judge Jenkinson was wrong in taking in evidence at this point in the case because the Court of Appeals had upheld Judge Turbeville's Order. The only issue to be determined by Judge Jenkinson was attorneys' fees. My attorney asked the Court to file a response after the hearing and the Court agreed to do so. Based on this understanding, my attorney was only present for the morning session of this hearing. In the afternoon my attorney was not present and Judge Jenkinson heard plaintiff's counsel at length on this Exhibit 9 which, in effect, revisited distribution of property to the benefit of his client. My right to proper representation was violated. I was at a disadvantage because I was not able to cross-examine and rebut the contents of Exhibit 9, nor the inappropriateness of Judge Jenkinson' s hearing this matter which had already been adjudicated and upheld by the Court of Appeals. Based on this, it is my view that Judge Jenkinson:

(1) exercised abuse of judicial discretion because he did not have the authority to entertain any further discussion or take evidence on property distribution. That had already

been adjudicated in Judge Turbeville's Order and upheld by the Court of Appeals. But he went ahead and did it anyway, citing that his court is a "court of equity;

(2) if he was going to re-hear Plaintiff on property distribution, another hearing date should have been scheduled so that I would have the opportunity of my attorney being there representing me;

(3) he violated rule of law by ignoring the Court of Appeals' Order which sent the case back to him for the sole purpose of hearing on attorneys' fees; and

(4) Judge Jenkinson also reversed his own order of May 28, 2010 [Tab #3]in which he concurred with Judge Turbeville's Final Order. While it is true that a family court is vested with discretion as to the weight given to factors and evidence, at this juncture Judge Jenkinson's role was simply to follow the remand from the Court of Appeals and he did not do that.

Below are some transcript references of the January 6, 2011 hearing that I would point out to the Commission [Tab #4].

Page 25, Lines 10-14: colloquy between counsel and the Court where the Court admits that it is bound by Judge Turbeville's percentages but revises the Original order anyway.

Page 28: lines 15 -21: colloquy where the Court asks counsel about "some sort of cashing out" to plaintiff and an objection by counsel about going beyond the scope of the hearing. Not only was this beyond the scope of the hearing but beyond his jurisdiction.

Page 29, lines 4-6: The Court says, "But I don't believe I have the authority to alter the terms of paragraph 106 of Judge Turbeville' decree." He does anyway.

Page 40: Lines 8-10: Mr. Tinkler, representing William Simpson, Jr., says that this hearing was scheduled to hear alimony and attorneys' fees , not property division. Mr. Tinkler requests that he be given some time after the hearing to respond and the Court says it will do that. But then the Court goes ahead and makes a ruling anyway at **page 42, lines 1-16**, even though he just told Tinkler he would give him time to respond. Mr. Tinkler reminds the court at page 43, lines 23-25 that earlier the court had agreed to give him time to respond to plainitiff's exhibit which outlined their view of how the property should be divided (post-court of appeals staying Judge Turbeville's Final Order.) Page 45, lines 24 and 25 and into page 46. Mr. Tinkler points out to the court that the effect of the court's ruling revising the property division in essence puts Simpson, Jr. in the position of giving property away twice. At this

point the court gives Defendants seven days to respond. Upon this agreement Mr Tinkler does not attend the afternoon session. But at page 116, lines 12-15 the court says it may make a decision tomorrow, inconsistent with having said he would allow Mr. Tinkler to respond before he ruled.

Page 48, Lines 3-12: Discussion about my ability to pay an additional cash award (that was not in the original Order) and Judge Jenkinson says at lines 11 and 12: "Well, doesn't your client have a very close relationship with the Bank of Greeleyville?"

Page 60: Discussion about conveying land by quitclaim deed: In the past it hasn't been acceptable for me to provide quitclaim deeds but now it is. Confusing and inconsistent.

Page 68, Lines 15-25 and page 69, Lines 1-25:, Defendant Simpson, Jr. addresses the court on the court hearing issues that were not on the calendar. I believe the court should not have continued to hear counsel on anything that involved Simpson, Jr. because his attorney, Mr. Tinkler, was not present for the afternoon session. Given the nature of this case, that would have been the prudent thing to do.

June 29, 2011 Hearing before Judge Jenkinson in my divorce case in the matter of William Simpson, Jr. v. Becky H. Simpson and Wade Ingle, Docket No. 2004-DR-14-243. This was a hearing to show that the defendant, Becky H. Simpson was in arrears on child support payments. [The Transcript of the hearing is attached as Tab 6] Judge Jenkinson finds Defendant in contempt of court and sentences her to 60 days in jail with arrearages to be paid in 30 days, including court costs and attorney's fees. [Tab 6, page 18, lines 9-16.]. Based on his ruling at this hearing, the Defendant was arrested and in custody for 15 days.

As a result of this hearing, Judge Jenkinson issued an Order, dated July 1, 2011 [Tab 7] against Defendant Becky Simpson which in sum and substance ordered her to pay a total of $8,525.80 "Each of these payments must be made on or before July 29, 2011." Page 5, last paragraph of his July 1, 2011.

October 27, 2011: [Hearing Transcript, Tab 10]. At the time of this hearing, Defendant Becky Simpson had been arrested in Montana pursuant to Judge Jenkinson's June 29, 2011 Order.

At this October hearing the Clerk of the Family Court testified as to the Defendant' s payment history. The math indicates that the Defendant had not complied with the June 29, 2011 Order. The payments that "must" be made by July 29, 2011 were a total of $8,525.80. The payments she actually made were $7,325.00 -- $572.80 short of the Order. In spite of this fact, Judge Jenkinson revisits the language of his July 1, 2011 Order and says that what he meant was different than what he wrote. See Tab 10 at page 15, lines 13-16 where Judge Jenkinson says, "And I think I was ambiguous in that

provision and I will think very seriously before I ever use that provision again because it's subject to more than one interpretation."

Again at page 16, lines 1-25 Mr. McKenzie says, "Your Honor, I think your order stands. I think your order is written. It wasn't appealed. There was no motion made to amend, alter. She had – she was served with the order on the 22nd and she had 30 days in which to appeal the order and, Your Honor, if you'll look at Rule 26.

THE COURT: I looked at it.

MR. McKENZIE: And Rule 26 says once you sign that order it's the law of this case.

THE COURT: How about my interpretation of my order where I say it was my intention that if she is two payments behind, not late twice within that window? And Mrs. Wilson can tell you I use that quite often, more often than she wants me to use it. But, Ms. Wilson, would you agree with my interpretation as far as being supported by previous cases?

THE WITNESS: And you're saying you meant two payments – missing two payments?

THE COURT: Yes.

THE WITNESS: Not behind?

THE COURT: Not – not being late on two payments, but missing – not making two payments.

MR. McKENZIE: Your Honor, I – I can tell you I, Page 17, lines 1-10: was in the courtroom that day and you said if she is late more than twice in the next 90-day period of time that's another willful contention – willful contempt of court.

THE COURT: Well I don't recall having said that. And that was not my intention. And again I go back to the proposition if that' s what I said, I was in error, because I do have to give her the keys to the courthouse and this being an equity court that would be – that is my ruling."

Judge Jenkinson's explanation of what he "intended" to say in his Order of June 29th actually becomes moot because as of July 29, 2011 the Defendant had in fact not made payment in full of the $8,525.80 and was in contempt and therefore her arrest in Montana was proper. The Defendant was in fact arrested. [See Tab 9 Arrest Report]. Relying on his Order of July 1, 2011 and the fact that the Defendant had not paid in full pursuant to the Order, I incurred additional legal fees and related expenses in arranging for the Defendant to be brought back to South Carolina. [See Tab 8 – Private Investigator's Affidavit].

His July 1, 2011 Order further stated: "In the event said payments are not made, the Plainitff may file an affidavit with the Clerk of the Family Court [which I did] ... at which point the Clerk of the Family Court is hereby directed to issue a bench warrant for the arrest of the Defendant for the purpose of serving the sentence herein imposed." However, he once again abused his discretion by revisiting the language of his earlier Order and now says that his "intention" was to say she would be in contempt if she missed more than one payment, not be late more than one payment in three months. But if one reads the language in the last paragraph of page 5 of his Order (Tab 7) it clearly and unequivocally says, "**Each of these payments** [$6,995.00, $250.00, and $1,282.50=$8,525.80] must **be made on or before July 29, 2011**." As of July 29, 2011 Defendant had only made payments totaling $7,325.00. So his explanation on October 27, 2011 of what he "intended" is really a moot point. Nonetheless, he once again changes his Order by merely applying his standard answer that even if he made a mistake, his is a court of equity and that is his ruling. Well, he does need to be mindful of the language of his rulings and the negative impact it has on people's lives. I went through the added expense of arranging to have the defendant served in Montana, arranged for her the expenses related to travel and accommodations to bring her back to Clarendon County after her incarceration in Montana, only to have Judge Jenkinson once again reverse himself on his Order. Furthermore, the Defendant served 15 days in jail as a result of his Order which with a stroke of the pen and an explanation of what his intention was renders the Defendant's jail time unnecessary. This is not acceptable behavior from the bench. It is demoralizing to litigants who come before him and cannot rely on his Orders because he gets do-overs under the auspices of rewriting what his "intention" was because his is a "court of equity."

Summary: I ask the Commisssion to take into consideration the manner in which Judge Jenkinson conducts court, his reasoning and conclusions of what the law is, his arbitrary approach to the rule of law and his conduct as it relates to the The Code of Judicial Conduct, Rule 501, SCACR which states:"

> *Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities);*
>
> ***Canon 2(A)(a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary);***

Canon 3(a judge shall perform the duties of judicial office impartially and diligently);

Canon 3(B)(2)(a judge shall be faithful to the law and maintain professional competence in it); Canon 3(B)(8)(a judge shall dispose of all judicial matters promptly, efficiently and fairly); and Canon 3(C)(1)(a judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business)."

AND

Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR:

Rule 7(a)(1) it shall be ground for discipline for a judge to violate the Code of Judiial Conduct.

Rule 7(a)(4) it shall be ground for discipline for a judge to persistently fail to perform judicial duties or persistently perform judicial duties in an incompetent or neglectful manner; and

Rule 7(a)(7) it shall be ground for discipline for a judge to willfully violate a valid court order issued by a court of this state.

Names of persons present during such allegations took place, or have knowledge of.

Reid B. Smith, Esq. [for Simpson Sr.]
Bird & Smith, P.A.
1712 St. Julian Place, Suite 102
Columbia, SC 29204
803.779.2255

Paul E. Tinkler, Esq. [for William R. Simpton, Jr.]
Law Offices of Paul E. Tinkler
154 King Street, Third Floor
Charleston, SC 29402

How this information relates to the qualifications of the judicial candidate.

Judge Jenkinson portrays a cavalier attitude in his lack of mindfulness in writing his Orders and then seeming to think that he can arbitrarily exercise wide discretion under the umbrella of the Family Court being a "court of equity." A judge must be mindful and articulate in the language he uses in writing his orders. How can a litigant rely on a judge's order when he has the ability to later on say that what he wrote was not his intention? If we allow judges to run amuck in excessive abuse of discretion, the integrity of our judicial system is diluted.

In the three instances I reference here, it is my belief that Judge Jenkinson has not been fair and impartial in both my divorce case and in my father's divorce case of which I was a named defendant. His pattern of issuing Orders and then revising them under the auspices that it is a "court of equity" is simply not acceptable. In my father's divorce Judge Jenkinson went so far as to ignore the decision of the Court of Appeals and reversed himself on a prior order saying that it is a "court of equity", leaving the impression that he can do whatever he wants. This is conduct unbecoming and inappropriate of a judge. It violates our rule of law, disrupts our legal procedure and leaves litigants with little faith in our legal system.

During these three times I was before Judge Jenkinson in 2011 is the same time that his recent book, "River Road" was published. Not that there's anything wrong with writing a book in and of itself. But one has to wonder how a trial judge with case overload has the time to write a 300 page fiction novel without sacrificing his day job.

Finally, I also believe Judge Jenkinson's physical ability is impaired with respect to his hearing. It became apparent at the hearings that he was having difficulty hearing the parties. He also was reading our lips as we spoke.

List and provide copies of all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

1. 12/31/2004 Judge Jenkinson's Final Order of Divorce in Sr.' s Divorce
2. 4/4/2007 Court of Appeals Order Upholding Lower Court
3. 5/28/2010 Judge Jenkinson's Order
4. 1/6/2011 Hearing Transcript
5. 2/2011 Judge Jenkinson's Order (reversing his 5/28/2010 Order)
6. 6/29/2011 Hearing Transcript before Judge Jenkinson

7. 7/1/2011 Order from 6/29/2011 Hearing

8. Affidavit of Private Investigator: Joseph Geldrich

9. Montana Sherriff's Office Arrest Report for Becky Simpson

10. 10/27/2011 Hearing Transcript before Judge Jenkinson

11. 2011 publication of Judge Jenkinson's Book: River Road, cover page

Other facts you feel are pertinent to the screening of this judicial candidate.

None.

I understand that the information I have provided is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel..

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission, I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to I thank this Commission in advance for its attention and time. question other parties, including my attorney, concerning the facts and issues of my case.

Respectfully submitted,

William R. Simpson, Jr.

Sworn to me this 21 day of September, 2012

Aimee A. McWhite L.S.

Notary Public of South Carolina

My Commission Expires: 4-12-22

AIMEE A. MCWHITE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 4-12-2022

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JUDGE TURBEVILLE
ORIGINAL ORDER

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: Simpson, Sr., Simpson, Jr., & Simpson Farms, LLC	**Steven S. McKenzie** **Scott L. Robinson**
COURT REPORTERS:	**Carol Hanna, Janice Hinds, & Crystal Jackson (In Order)**

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W P & B, LLP
FEDERLAW SERVICE
OF SC, PA

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.

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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

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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".

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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.

RWF

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.

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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

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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:**

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(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.

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(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 3rd 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

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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.

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(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

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month payable on the fifth (5th) 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.

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

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

61. Simpson, Jr. testified that each year he turns all of his crops over to Simpson, Sr. ells all crops, collects all monies from the sales, and places the proceeds into his Simpson account. From this account, Simpson, Sr. pays all the farm expenses and then divides the ning balance with Simpson, Jr. in a non-descript manner. Simpson, Jr. testified that, on sion, Simpson, Sr. loaned him money and, when he did not pay it back, Simpson, Sr. would the loan from the proceeds of the sale of the next year's crops. Simpson, Jr. confirmed the 's concern that no one could tell from year to year who will get what, because he and his 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

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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

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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

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(47) .69 acres	15,000
(66) 1.4 acres	17,500
	$425,000

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

71. Plaintiff's Exhibit # 27 reflects Ms. Linhardt's opinion of the value of S&T 000.00). Item #52 was transferred to a Garneau on 11/20/2001 deducting $15,000.00 a balance of $622,000.00. When Simpson, Sr. transferred his half-interest on March 10, gross value of his half-interest was $311,000.00. Ms. Linhardt found no mortgages of s to any of the S&T properties, and no mortgages on record in the name of Simpson, Sr. dwell testified that the debt as of the date of filing was $184,457.00. The net value at was $437,543.00 ($622,000 – $184,457), and Simpson, Sr.'s 50% interest had a value of 72.00.

72. Plaintiff's Exhibit #26 reflects Ms. Linhardt's opinion of the value of the property red 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
	Total	**$844,650**

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

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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			
			-80,000.00	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			
			-41,800.00	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			
			-20,000.00	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

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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 Simpson, Sr.'s farm equipment, but none of them would do so because it belonged to , Sr. The Court finds this explanation for failure to appraise the farm equipment at weak. This situation should have been brought to the attention of the Court prior to en arrangements could have been made to inventory and appraise the farm equipment. , 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 t. Mr. Hobbs testified that the bulk of the material he had received from Defendant n came in "dribbles and drabs", but most of the information came over the weekend trial. He corroborated Plaintiff's position that she could not secure appropriate records efendant Simpson, Sr.

78. Through Plaintiff's Exhibit # 33, Mr. Hobbs' produced a summary of Simpson, general ledger that was prepared by Mr. Gibbons. As of December 31, 2002, Simpson, ecords showed advances or loans to Simpson, Jr. of $44,100.00, yet there were no 1099's to Simpson, Jr. On Simpson, Sr.'s income returns, these advances were deducted from his e as miscellaneous expenses. On Simpson, Jr.'s tax return, there was no entry for the 00.00.

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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.

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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

RWE

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

RWT

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

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

Based upon the foregoing findings and conclusions, I hereby identify the marital 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.

RWL

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.

RWT

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.

RWL

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.

RWC

(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

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division in kind. While division in kind is possible to some degree, the nature of Simpson, '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) *(Court has considered son's work in improving it, though no one put a value on it.)*	62,500 (25%)	187,500 (75%)
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
		$539,151

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 thereafter 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

RWT

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

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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.

s/ R Wright Turbeville
R. Wright Turbeville
Family Court Judge
Third Judicial Circuit

Manning, South Carolina
December 31, 2004

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Daisy Wallace Simpson,
Respondent/Appellant,

v.

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., Appellants/Respondents.

Appeal From Clarendon County
R. Wright Turbeville, Family Court Judge

Unpublished Opinion No. 2007-UP-147
Submitted December 1, 2006 – Filed April 4, 2007

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Steven Smith McKenzie, of Manning, for Appellants-Respondents.

C. Dixon Lee, James T. McLaren, Jan L. Warner, of Columbia, for Respondent-Appellant.

WILLIAMS, J.: In this domestic action, William Robert Simpson (Husband) appeals the family court's order, arguing the family court erred in (1) failing to rule on his motion for a retroactive decrease in alimony and a return of attorney's fees and costs; (2) its award of equitable distribution; (3) awarding his former wife, Daisy Wallace Simpson (Wife) alimony; (4) finding Husband's yearly income is $150,000 per year; (5) its valuation of property; (6) characterizing him as not having cooperated in the discovery process; and (7) awarding Wife attorney's fees and costs. Wife also appeals the award of attorney's fees. We affirm in part, reverse in part, and remand.

FACTS

Husband and Wife married in 1968, and resided in Clarendon County, South Carolina

throughout the duration of the marriage. When the couple first married, they bought a mobile home and lived on property owned by Husband's father.

In 1971, Husband's father died, and his will left a life estate in the Simpson family home to Husband's mother, with the remainder to Husband. Husband asked Wife to quit her job at a manufacturing plant in Manning to stay home with his mother. The couple moved into the house and lived there throughout the remainder of the marriage. Husband's mother lived at the house for one year until she remarried. Although Husband's interest in the house did not fully vest until his mother's death in 1991, the couple substantially renovated the home. Husband and Wife completed most of the renovations themselves. The couple has three children. Two of the children are emancipated and the youngest was attending college at the time of the hearing.

During the marriage, Wife had several outside jobs but primarily stayed at home and took care of the family. Husband became a successful farmer and land owner and eventually developed some of his land into residential lots.

In 1989, pursuant to a hand-written agreement between William Simpson, Jr., (Simpson, Jr.) and Husband, Simpson, Jr. began working for Husband. The agreement provided that Simpson, Jr. would work on the family farm for $120 per week. In exchange for his low salary, Husband would provide Simpson, Jr. with equity in the land and farm machinery. In 2000, a month after Husband and Wife reconciled, Husband began to transfer most of the property he owned into Simpson Farms, L.L.C. (the LLC).

The couple separated three times during the marriage. The first separation occurred in the 1980's and the second in 1999. In 1999, the parties began formal litigation, but they reconciled in 2000. The parties' final separation occurred in 2003.

After the parties reconciled in 2000, Wife began attending real estate classes and eventually earned her real estate license. Husband did not approve of Wife's pursuit of her real estate license and did not speak to her during this time. Husband purchased and sold numerous properties, often using other real estate agents.

On March 4, 2003, Wife filed this action against Husband, the LLC, and Simpson, Jr.**[1]** Wife also requested, *inter alia*, separate support and maintenance, equitable division of the marital estate, and attorney's fees. At the temporary hearing, the family court ordered Husband to pay Wife $1,000 per month *pendente lite* spousal support. Further, the family court ordered Husband to advance Wife $15,000 *pendente lite* attorney's fees with the caveat that the family court could treat the fees as a credit toward Wife's equitable apportionment at the final hearing.

Most of the three day trial concerned the value of Husband's vast property holdings and the amount of Husband's income. Husband testified he did not know exactly what he owned. In many instances, the value Husband assigned to his properties and assets contradicted what he reported on his tax returns. Further, Husband testified the LLC never filed a tax return nor did it have an operating account. Although Husband denied selling his interest in S & T Land Developers (S & T) after litigation commenced, a deed dated March 10, 2003—six days after Wife instituted her action—showed that Husband transferred his fifty percent interest to Ray Tidwell for $5. During trial, Wife's expert testified the value of

Husband's fifty percent interest in S & T was $318,000. Husband also testified that he pays Simpson, Jr. a different amount each year. He could not recall what he paid his son the previous year.

The family court found that Husband and Simpson, Jr. were not credible witnesses. The family court based its decision, in part, on testimony of Husband's witness, Tracy Amos, a certified public accountant. Amos admitted Husband undervalued assets, failed to report to her his antique car collection, and failed to report on his tax return a sale of timber for $40,000. The family court found Husband repeatedly testified that he did not know what he owned. In his responses to discovery it appeared that he made "little effort" to assist his lawyer or the court to identify what he owned. The family court also found Husband testified that he purchased property with cash to assist sellers in avoiding taxation. Ultimately, the family court found Husband tried to hide his true income and ultimately determined his income was $150,000, which was the amount he reported to banks and other lending institutions.

The family court awarded Wife $1,000 per month in periodic permanent alimony and awarded her 34% of the marital property, valued at $784,055. In making an equitable division of the marital property, the family court recognized the existence of the LLC and awarded Wife half of Husband's fifty percent interest, while leaving Simpson, Jr.'s fifty percent interest intact. The family court reserved the issue of attorney's fees and costs and asked that both parties submit affidavits regarding fees and costs no later than January 15, 2005.

On January 11, 2005, Husband filed a Rule 59(e) motion asking the family court to reconsider its order. The morning of the hearing on the Rule 59(e) motion and the remaining issue of attorney's fees, the clerk of court brought the family court the Notice of Appeal filed by Husband. The family court took the position that the filing of the notice divested it of jurisdiction to hear the Rule 59(e) motion, and Husband's attorney agreed. Thereafter, the family court dismissed the Rule 59(e) motion and proceeded with the attorney's fees hearing. After the hearing, the family court awarded Wife $85,000 in attorney's fees and costs. Both parties appeal.

STANDARD OF REVIEW

On appeal from the family court, this Court has the authority to find facts in accordance with its own view of the preponderance of the evidence. Rutherford v. Rutherford, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). This broad scope of review does not require us to disregard the family court's findings, and we remain mindful of the fact the family court, who saw and heard the parties, is in a better position to evaluate their credibility and assign weight to their testimony. Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981).

ISSUES

I. Husband's Appeal

A. Did the family court err in failing to rule on Husband's post-trial motion for a retroactive decrease in alimony and a return of attorney's fees and costs

awarded to Wife at the temporary hearing?

B. Did the family court err in its equitable division of the marital property?

C. Did the family court err in awarding wife alimony?

D. Did the family court err in finding Husband's yearly income was $150,000?

E. Did the family court err in its valuation of Husband's properties?

F. Did the family court improperly characterize Husband as uncooperative in the discovery process?

G. Did the family court err by awarding Wife attorney's fees?

II. Wife's Appeal

A. Did the family court err in failing to award Wife the full amount of requested attorney's fees and costs?

LAW/ANALYSIS

I. Husband's Appeal

A. Post-trial Motion

Husband argues the family court erred in failing to rule on his Rule 59(e), SCRCP, motion for a decrease in alimony and a return of temporary attorney's fees and costs. We disagree.

Rule 205, SCACR, provides that upon service of the Notice of Appeal, "the appellate court shall have exclusive jurisdiction over the appeal . . . ." In Elam v. S.C. Dep't of Transp., the South Carolina Supreme Court recognized "that a party may attempt to file both a Rule 59(e) motion and a notice of appeal. If [that] does occur, one or the other will be inappropriate . . . ." 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) (citing Hudson v. Hudson, 290 S.C. 215, 216, 349 S.E.2d 341, 342 (1986) (holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature)). Under Elam and Hudson the appellant should notify the appellate court of the pending post-trial motion in writing, and the clerk will dismiss the case with prejudice. Rule 225, SCACR offers the alternative of moving the appellate court to lift the automatic stay of the lower court proceedings so that the post trial motion may be heard.

Husband exercised neither of these options which would have kept jurisdiction in the family court. In fact, Husband agreed with the family court that the Court of Appeals had exclusive jurisdiction once the notice of appeal had been filed. In any event, even though the family court dismissed Husband's Rule 59(e) motion, we find the divorce decree did address Husband's arguments concerning a reduction in Wife's alimony and a return of attorney's fees awarded at the temporary hearing.

The divorce decree awarded Wife $1,000 per month in permanent periodic alimony. The family court concluded Wife was entitled to alimony pursuant to the statutory factors, and accordingly, the family court denied Husband's request for a decrease in the alimony awarded at the pendente lite hearing.

Husband also maintains the family court failed to rule on his motion for a return of the

attorney's fees and costs, which he paid to Wife at the temporary hearing. After a separate hearing on the issue of attorney's fees and costs, the family court issued an order stating "in addition to the fees awarded at the temporary hearing, an additional contribution of $85,000 would be reasonable." Therefore, the family court took into consideration the pendente lite attorney's fees and rejected Husband's argument that he was entitled to the money he advanced to Wife during the hearing.

B. Equitable Distribution Award

Husband assigns numerous points of error to the family court's equitable distribution of marital assets. First, Husband argues the family court failed to consider the debts of the LLC and farming equipment in making its award. Husband also argues the family court erred by awarding certain properties to Wife and awarding the Buck and Bull Country Store to Husband. Lastly, Husband argues the family court improperly awarded Wife a part of the marital home and surrounding acreage that he transferred into the LLC three years previously. We address each argument in turn.

1. Failure to Consider Debts

Initially, we note Husband's first assignment of error—that the family court failed to consider the debts of the LLC and farm equipment when distributing assets to the parties—is not preserved for our review. To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but it must have been raised to and ruled upon by the family court. Charleston County Dep't of Soc. Servs. v. Jackson, 368 S.C. 87, 104-05, 627 S.E.2d 765, 775 (Ct. App. 2006) (citing Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.")). Although Husband made a Rule 59(e) motion, for the reasons stated above, the family court dismissed the motion without a ruling. Therefore, this issue is not preserved.

Even if this issue was preserved, we find that any error in the family court's failure to properly assess the debt of the LLC stems from Husband's lack of candor with the court. The apportionment of marital property is within the family court's sound discretion, and we will not disturb the apportionment on appeal absent an abuse of that discretion. Bowers v. Bowers, 349 S.C. 85, 97, 561 S.E.2d 610, 616 (Ct. App. 2002). Section 20-7-472 of the South Carolina Code (Supp. 2005) lists fifteen factors for the family court to consider when apportioning the marital estate and vests the family court with the discretion to determine what weight should be assigned to each factor. Thomas v. Thomas, 346 S.C. 20, 25, 550 S.E.2d 580, 583 (Ct. App. 2001). On review, we look to the overall fairness of the apportionment, and if the result, taken as a whole, is equitable, courts weighing specific factors differently than the family court is irrelevant. Id.

At the outset, we note the family court did consider Husband's debt in lands owned by Husband in conjunction with partners excluding Simpson, Jr. The family court took into account the debts of S & T, which were $184,457, and subtracted that debt from Husband's fifty percent interest when it found Husband's interest had a value of $218,772. The family court took into consideration the debt on lands owned by Husband and his partner, Mr. Jonte, when assessing the value of Husband's interest in those lands as $51,250. Additionally, the family court's order specifically lists each factor set forth in section

20-7-472, and under the debt factor provides: "In making the equitable apportionment, as set forth below, the [c]ourt has considered all liabilities in coming up with the marital estate which is after liabilities based on my view of the evidence." We also observe that Wife's expert testified that none of the properties owned by Husband or the LLC had any recorded mortgages.

Husband points to a handwritten document he submitted to the family court, which purportedly shows his debts, to bolster his argument that the family court erroneously concluded he showed no documentary evidence of debts. We find the family court properly discounted this evidence because to find Husband's handwritten document of debts credible, the family court would have to consider Husband to be credible. The record is replete with evidence that Husband undervalued his assets. Further, as noted previously, his fixed asset and equipment records do not match the depreciation schedule on his tax return. Also, when asked how much money he owed banks, Husband's reply was "I don't know." The family court's order plainly states, "I find as a fact that the credibility of Defendant's [sic] Simpson, Jr., and Simpson, Sr., are subject to significant question." Therefore, it is evident from the family court's order that the court was aware of the statutory factors and considered the debt based on the submitted credible evidence. Accordingly, we find the family court did not err.

2. Award of Property and Buck and Bull Country Store

Next, Husband argues the family court erred by awarding property that was in the LLC to Wife and awarding him the Buck and Bull Country Store. Husband contends that the family court could not give Wife certain pieces of real property because they were part of the LLC. We disagree.

Husband did not raise this issue to the family court, and the family court dismissed his subsequent Rule 59(e) motion. Therefore, this issue is not preserved for our review.**[2]** See Hatfield v. Hatfield, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997) (issue must be raised to and ruled on by family court to be preserved for appellate review).

Even if this issue was preserved, we find no merit to Husband's claim that the property awarded to Wife was part of the LLC. The family court order distinguishes the property owned individually by Husband from the property owned by the LLC. The family court based its conclusion on research performed by Wife's expert who researched public records to ascertain what Husband owned individually, with other partners, and as a member of the LLC. The family court awarded Wife six parcels of property and Husband argues that two of the six parcels were in the LLC. He points to the testimony of one of his expert witnesses who testified: "[I]tem D-7 was purchased two years after the formation of the LLC . . . ." However, it is unclear from the testimony that D-7 is the piece of property Husband refers to in his brief. Furthermore, it is unclear whether the LLC or Husband purchased the property. As to the second parcel, Husband points to the deed purporting to show the property's transfer into the LLC. The deed shows numerous transfers, and it is unclear as to whether this particular parcel was included in the transfers.

It was husband's burden to show the property had been transferred to the LLC. See Hodge v. Hodge, 305 S.C. 521, 526, 409 S.E.2d 436, 439 (Ct. App. 1991) ("A spouse who wishes to claim that certain property is not part of the marital estate has the burden of presenting witnesses or evidence to establish its non-marital character . . . ."). Since Husband did not

present credible evidence to support his contention, he failed to meet that burden. Accordingly, we find the property the family court awarded to Wife was individually owned by Husband, and was not property owned by the LLC.

As to the award of the Buck and Bull Country Store and surrounding property to Husband, we find no error in the family court's decision. Simpson, Jr. operates the store, and the record indicates the store is thriving. The family court is vested with the authority to apportion marital property, and we can discern no error in the family court's decision to award Husband the store, especially in light of the contentious relationship between Simpson, Jr. and Wife. See Rampey v. Rampey, 286 S.C. 153, 156, 332 S.E.2d 213, 215 (Ct. App. 1985) ("Apportionment of the marital estate is a matter left to the sound discretion of the family court.") (citation omitted). Therefore, we find no merit to Husband's contention Wife should have been awarded the store.

3. Award of Interest in Marital Home

Next, Husband argues the family court improperly awarded Wife a part of the marital home and surrounding acreage that he transferred into the LLC three years previously. Husband contends the family court should have charged him with only half the home's value of $122,500, instead of the entire value of $245,000 because Simpson, Jr., as a member of the LLC, owned half of the house. At most, Husband believes Wife was entitled to half of his fifty percent interest in the marital home. We disagree.

Husband does not dispute the family court's finding the home he inherited was transmuted into marital property; his only argument is that he transferred the house into the LLC. The family court's order provides "[i]t is not clear to the [c]ourt the marital home was ever transferred into the LLC, and it will be considered separately." Husband's brief points to numerous places in the record that he believes show the marital home was transferred into the LLC. However, these places in the record show only that Husband owned the marital home, along with numerous other properties. Accordingly, because Husband did not meet his burden in showing the marital home was in the LLC, we find the family court properly charged Husband with the home's full value.

C. Alimony Award

Husband argues the family court erred by awarding permanent periodic alimony to Wife. Husband contends Wife makes more than $30,000 and is capable of supporting herself. We disagree.

The decision to award alimony "rests within the sound discretion" of the family court, and absent an abuse of discretion, it will not be disturbed on appeal. Dearbury v. Dearbury, 351 S.C. 278, 282, 569 S.E.2d 367, 369 (2002) (citing Clardy v. Clardy, 266 S.C. 270, 222 S.E.2d 771 (1976)). When awarding alimony, the family court must consider and weigh the following statutory factors set forth in section 20-3-130(C) of the South Carolina Code (Supp. 2005):

> (1) the duration of the marriage . . . [and] the ages of the parties at the time of the marriage and at the time of divorce or separate maintenance action . . . ; (2) the physical and emotional condition of each spouse; (3) the educational background of each spouse . . . ; (4) the employment history and earning

> potential of each spouse; (5) the standard of living established during the marriage; (6) the current and reasonably anticipated earnings of both spouses; (7) the current and reasonably anticipated expenses and needs of both spouses; (8) the marital and nonmarital properties of the parties . . . ; (9) custody of the children . . . ; (10) marital misconduct or fault . . . ; (11) the tax consequences to each party . . . ; (12) the existence and extent of any support obligation from a prior marriage . . . ; and (13) such other factors the court considers relevant.

In its final order, the family court thoroughly examined each of the statutory factors and made specific findings under each factor. The family court considered the duration of the marriage, finding the parties' marriage was a long-term marriage that spanned thirty-five years. The family court also found that Husband was in good health and that Wife was currently in relatively good health, despite having to take medication for high cholesterol and a rapid heartbeat. Further, the family court made extensive findings regarding the employment history and earning potential of each spouse. The focus of these findings primarily centered on Husband's attempt to hide his income. The family court ultimately concluded that Husband's income and assets greatly exceeded what he reported in his financial declaration. The family court found Husband's income to be $155,000 per year. Notably, the family court considered Husband's assertion that he did not have the funds sufficient to support Wife; however, he did have funds to continue purchasing assets in the name of S & T, a company in which he claims to have no ownership. The family court found that the children attended private schools, Husband owned an antique car collection, and the parties extensively renovated their home. The family court concluded the parties had an upper middle class family lifestyle.

The family court found that although Wife initially quit her job at Husband's insistence to be a homemaker, she is currently employed as a real estate agent. The family court further found that Wife works solely on a commission basis and that during the six-month period from January 1 to June 15, 2004, her gross revenue on homes she sold was $30,555. Out of the $30,555, the real estate company, Agent Owned Realty, withheld $10,928.92 in franchise fees. This finding is corroborated in the record by the testimony of Claude Loadholt, the president of Agent Owned Realty, who testified that Wife pays numerous fees and overhead to the company. Loadholt testified that in addition to franchise fees and overhead Wife pays many of her own expenses, including advertising, automobile, and continuing education expenses. With those expenses in mind, Wife's net income for that six-month period can be estimated to be close to $15,000. Therefore, we find the family court correctly concluded her net income was $30,000 per year. Considering the discrepancy in income and the needs of the parties, we hold the family court did not abuse its discretion by awarding alimony.

D. Husband's Yearly Income

Husband argues the family court erred when it found his income was $150,000 per year. He contends his income was approximately $60,000-$70,000 per year. We disagree.

The family court found that Husband's annual income was $150,000 per year based upon a NBSC financial statement Husband gave the bank in which he represented his annual income was $150,000 per year. Husband argues that two certified public accountants, Mark Hobbs and Tracey Amos, both found his income was approximately $60,000 per year. This

testimony was based upon Husband's tax returns, which both experts, when questioned, admitted were not complete. For example, Hobbs testified that neither Husband nor Simpson, Jr.'s tax returns show the Buck and Bull Country Store as having either a gain or loss. Further, Hobbs testified it was unusual that Husband's general ledger was "so different" from his tax returns. For example, the ledger showed payments to Simpson, Jr. as payments in 2002, but in 2003, the payments to Simpson, Jr. were classified as miscellaneous. Hobbs opined that any time he saw records as "mixed up" as Husband's, a heightened fraud risk existed because the records indicated that he wanted to change the classification of his assets and liabilities on a yearly basis.

Additionally, Hobbs found Husband's fixed asset and equipment records could not be reconciled to the depreciation schedule on his tax returns. The difference between the two amounted to over $700,000. Hobbs also testified that the LLC has never filed a tax return and because Husband has no formula by which he pays Simpson, Jr., he is able to shift his income around.**[3]**

Amos testified that Husband informed her he no longer had approximately sixty pieces of farm equipment; however, those assets were listed in the depreciation schedule on his tax return. Further, Husband sold timber for $40,000, and this sale was not listed on his tax return. Moreover, when asked whether Husband's intentions could be to dupe Wife out of her interest in the property and at the same time not pay income tax, Amos conceded it was a possibility.

Therefore, the evidence presented at trial showed that Husband made significantly more income than he reported, and he manipulated Simpson, Jr.'s income to any level he desired. We find the family court was left with no alternative but to use Husband's statement that he submitted to the bank showing his income was $150,000. We also recognize that Husband made no effort to cooperate in identifying his assets and income and "cannot complain of an error which his own conduct has induced." Cox v. Cox, 290 S.C. 245, 248, 349 S.E.2d 92, 93 (Ct. App. 1986) (citing Shearer v. Deshon, 240 S.C. 472, 126 S.E.2d 514 (1962)); see also Patrick v. Britt, 364 S.C. 508, 513, 613 S.E.2d 541, 543-44 (Ct. App. 2005) (finding when husband failed to provide the court with any meaningful representation of his actual income that husband "would be hard pressed to complain of the family court's ruling . . . the court of appeals does not sit to relieve self-inflicted wounds") (citations omitted). Accordingly, we find no error in the family court finding Husband's income is $150,000 per year.

E. Valuation of Property

Husband argues the family court erred in its valuation of the property owned by the LLC. Husband contends the family court erroneously accepted Wife's expert's value of the land at $1,244 per acre. We disagree.

Again, we note Husband did not raise this issue to the family court, nor was this issue ruled upon in any subsequent Rule 59(e) motion; therefore, this issue is not preserved for our review. See Riggs v. Riggs, 353 S.C. 230, 237, 578 S.E.2d 3, 6 (2003) (citing Hatfield v. Hatfield, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997) (issue must be raised to and ruled on by family court to be preserved for appellate review))**[4]**.

Even if this issue was preserved, we find no error in the family court's valuation of the land

owned by the LLC. The family court has broad discretion in valuing marital property, and this court will affirm the findings of the family court when the findings below are supported by the evidence.
Fields v. Fields, 342 S.C. 182, 187, 536 S.E.2d 684, 686 (Ct. App. 2000) (citing Smith v. Smith, 327 S.C. 448, 459, 486 S.E.2d 516, 519 (Ct. App. 1997) ("[A]n appellate court will affirm the family court's valuation of marital property if it is within the range of the evidence presented.")).

During the trial, Husband presented Tracy Amos, a certified public accountant and a certified valuation analyst, as an expert witness. She testified that she valued the total amount of land owned by Husband using the values for each individual property that Husband supplied. Additionally, Amos' testimony revealed that for one of the properties, Husband submitted to her an appraisal value of $6,500, but that the tax assessment on that property for 2004 was $107,600. Further, she found at least sixty items of farm equipment that Husband no longer owned listed on his depreciation schedule that he submitted to the IRS. In light of the fact Husband's own witness could not explain Husband's inconsistent reporting of assets nor his undervaluing of his assets, we find no error in the family court's decision to forgo using his expert's valuation.

Wife presented Beth Linhardt, a certified and licensed real estate appraiser, as an expert witness. The family court found that Linhardt's asset listing was "inaccurate and based on only one method, comparable sales." The family court also found Linhardt had a difficult time determining what property had been acquired and sold by Husband due to the lack of income or expense records maintained by Husband or Simpson, Jr. Further, the family court's order found that Linhardt had difficulty determining what property Husband owned because he failed to provide a list of his property, and she had to look in several counties to determine what Husband owned. Linhardt testified she spent 1,248 hours attempting to identify all of the property owned by Husband.

Ultimately, Linhardt concluded that the LLC's assets were $846,650, and that Husband's fifty percent share would be half of this value. Because the family court found Linhardt's valuation was "incomplete at best," the court had to make adjustments to the value based on the evidence before it. The record reveals the family court took into consideration Linhardt's lists of property that showed what Husband owned individually, and what he owned as a member of the LLC. The family court was careful to eliminate the properties on Linhardt's appraisal which had been duplicated or sold. The family court found the marital home was not in the LLC and subtracted its acreage from the remaining property when it came up with 481.86 acres of property in the LLC. The family court then valued the property at $599,650, which is $1,244 per acre.

After reviewing the record, we find the family court's rejection of Husband's valuation of his property was well within its discretion, especially because Husband presented no credible evidence of valuation. See Smith v. Smith, 294 S.C. 194, 198, 363 S.E.2d 404, 407 (Ct. App. 1987) ("The weight the trial court affords the testimony of witnesses, including parties, is discretionary with the trial court . . . . In valuing marital assets, the trial court 'is fully within its discretion to choose the valuations of one party over those of the other party.'") (citations omitted). In this particular case the family court had a difficult task in determining what property Husband owned and in subsequently valuing it. Under the difficult circumstances of this case, the family court valued the property to the best of its ability. Accordingly, we hold that the family court considered fully all of the evidence presented,

and we assign no error in the family court's determination of the value of the marital property.

F. Discovery

Husband argues the family court improperly characterized him and Simpson, Jr. as uncooperative in the discovery process. We disagree.

Again, we note this argument, having not been raised to and ruled upon by the family court, is not preserved for our review. See Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715.**[5]** However, even if this issue was preserved, we find the family court properly characterized Husband as uncooperative in the discovery process.

The family court's order provided:

> [I]t has been difficult for this [c]ourt to make a final determination of [Husband's] assets and income[,] and the [c]ourt has had to cross reference the testimony of all parties and witnesses as no one presented a clear and precise picture of the identification of the marital assets. [Husband] testified on numerous occasions that he did not know what he owned, and his responses to interrogatories and other discovery indicate to the [c]ourt he made little effort to clarify what he owned during the course of this litigation.

Husband's answers to Wife's interrogatories begin our inquiry into Husband's non-cooperation during the discovery process. Out of the forty-three questions Wife submitted, Husband replied sixteen times "this information is not available at this time." Other times, he simply replied that the questions would be answered before the hearing. During his deposition, when Wife's counsel asked Husband, "Why didn't you answer [the interrogatory asking you] to identify the financial institution or lenders by name and address? Is there any reason you didn't answer that?" Husband's response was "No." When asked when he sold property within the last five years, Husband's response was "I don't know." At one point during his deposition, Husband testified that he "didn't know exactly" what he owned.

The record is replete with examples of Husband's stubborn refusal to be candid with the family court. Further, Husband seems to argue that because he submitted numerous documents to the family court, he did comply with discovery; however, his tax returns were incomplete at best, and numerous experts testified to the fact Husband underreported the value of his assets and his income. We find the family court was properly skeptical of any of Husband's handwritten submitted documents that he alleges show his financial worth. Accordingly, the family court properly characterized Husband as uncooperative in the discovery process.

G. Attorney's Fees

Husband argues the family court erred in even considering Wife's request for fees and costs because her documentation in support of fees was untimely. Husband contends, because Wife did not file a Rule 6(b), SCRCP, motion for an enlargement of time, the family court should not have considered her documentation. We disagree.

The family court's final order provides: "The matter of attorney's fees, and costs, and expenses is hereby reserved, and counsel for both Plaintiff and Defendants shall submit to this [c]ourt affidavits . . . not later than January 15, 2005." Wife submitted her affidavit for attorney's fees and costs on January 18, 2005. Husband contends it was error to award attorney's fees without ruling on his motion relating to the timeliness of Wife's supporting documentation. However, he did not argue the family court's failure to address his motion at the hearing on Wife's Rule 59(e) motion for reconsideration of the award of attorney's fees. This issue, not having been ruled upon by the family court, is not preserved for our review. An issue cannot be raised for the first time on appeal, but it must have been raised to and ruled upon by the family court to be preserved for appellate review. Lucas, 359 S.C. at 511, 598 S.E.2d at 715.

Even if this issue was preserved, we find no error in the family court's decision to rule on the issue of attorney's fees. January 15, 2005, was a Saturday. Monday, January 17, 2005 was Martin Luther King Jr. Day, a state and federal holiday and the family court was closed. Wife filed her attorney's fee affidavit with the clerk of the family court on the first day the family court was open after January 15. Accordingly, Wife's affidavit was timely filed because holidays and the weekends extend court filing deadlines. See Rule 6(a), SCRCP ("The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday."). Accordingly, the family court judge did not commit error in ruling on this issue.

II. Wife's Appeal

A. Attorney's Fees & Costs

Wife argues the family court erred by not awarding Wife adequate attorney's fees and expenses. Further, Wife maintains the family court erroneously limited its consideration of the factor of "customary legal fees for similar services" to the local geographic area where the trial was held.

The total marital estate in this case is valued at nearly $2.4 million. Wife was awarded $1,000 per month in alimony, and her equitable share in the marital assets was $784,055. Wife employed two attorneys from Columbia. Her attorneys charged $400 per hour for their work, $200 per hour for associates, and $100 per hour for paralegal work. Her two expert witnesses, Hobbs, the CPA, and Linhardt, the appraiser, charged $23,458.88 and $51,000, respectively, for their work in assessing and valuing the marital estate.

Wife argues the family court abused its discretion by not giving sufficient consideration to Husband's material misrepresentations, non-disclosure of income, and undervaluation of marital assets. The court made numerous findings regarding Husband's intentional non-disclosure of information and misrepresentations, including:

> [Husband's] Financial Declaration is not an accurate reflection of his spendable income . . . . It is now clear to the [c]ourt that the Husband's income and assets greatly exceed that which has been reported on his Financial Declarations. . . . I find that [Husband] has obfuscated his true income and assets . . . . [Husband] testified he purchased property with cash so that sellers could avoid taxation. . . . 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. . . . I find as a fact that the credibility of the Defendants Simpson Jr. and Simpson Sr. are subject to significant question. . . . The demeanor of [Husband] while testifying before this [c]ourt and his own admissions as to some of his financial transactions raise questions in the [c]ourt's mind as to how open and honest he has been with [Wife] and the [c]ourt regarding his economic transactions. . . .

The record supports the family court's conclusions that Husband's behavior unnecessarily complicated this case. It is important to remember when analyzing attorney's fees that this Court does not sit to relieve self-inflicted wounds. Rish v. Rish by and Through Barry, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988). Likewise, this Court looks unfavorably on cases, such as this one, where a party withholds information that is necessary for the proper adjudication of the matters under consideration. Skipper v. Skipper, 278 S.C. 104, 106, 292 S.E.2d 596, 598 (1982). Husband's lack of cooperation in discovery forced Wife's attorneys to obtain relevant information through other more difficult means. See Johnson v. Johnson, 296 S.C. 289, 372 S.E.2d 107 (Ct. App. 1988) (Because Husband's behavior caused Wife to incur additional expenses in the form of attorney's fees at trial and on appeal, those expenses should be included in the family court's determination of attorney's fees on remand.).

In E.D.M. v. T.A.M., the South Carolina Supreme Court delineated the four factors used to determine whether attorney's fees are warranted in a given case:

(1) the party's ability to pay his or her own fee;

(2) beneficial results obtained by the attorney;

(3) the parties' respective financial conditions;

(4) the effect of the attorney's fee on each parties' standard of living.

307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). Additionally, in Glasscock v. Glasscock, the South Carolina Supreme Court clarified the six factors used to determine a reasonable attorney's fee:

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

(2) the time necessarily devoted to the case;

(3) professional standing of counsel;

(4) contingency of compensation;

(5) beneficial results obtained;

(6) customary legal fees for similar services.

304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

In the present case, we find the family court properly identified and applied the Glasscock

factors until it considered the last factor, "the customary legal fees for similar services" factor. The family court's order reads "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." This conclusion is not supported by the record. Ray Chandler, Husband's former attorney, testified as follows:

> Q: Ray, you say you've been practicing law for twenty-seven years?
>
> A: I've been practicing law for thirty-three years. I've been practicing domestic law until last year when I have it up. Twenty-seven, twenty-eight years.
>
> Q: What were your rates when you gave up the good domestic practice per hour?
>
> A: About two hundred and fifty dollars an hour in this county.
>
> Q: What is your observation of the average rates of domestic fees in Clarendon, Lee, Williamsburg, in the Third Circuit, Sumter County?
>
> A: I think the numbers that I see run between a hundred and sixty, seventy-five, eighty-five dollars.

Mr. Chandler did not testify as to the customary fees for a complex case such as this one. W.C. Coffey never testified about rates whatsoever. Instead, his testimony concerned the common practice of father-son farmer teams setting up LLC's in which to hold their land and equipment.

On the other hand, the family court was presented with affidavits from Wife's attorneys as well as attorneys Lon Shull III and Mark Taylor, all of whom testified that $400 per hour is a reasonable and customary rate in Clarendon County for family law experts who try complicated cases like the one at bar. Our Supreme Court has approved the practice of considering attorneys' resumes or professional standing as well as attorneys' affidavits when deciding appropriate attorney's fees. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989). Additionally, the court may consider whether the case was contested in good faith, whether the proof was simple or complicated because of the extent that material facts were disputed, and whether trial preparation by the attorneys required unusual skill, effort, or investment of time. Prevatte v. Asbury Arms, 302 S.C. 413, 417, 396 S.C. 642, 644 (1990).

The record shows this was not an average case; rather it was a quite complex case which required unusual skill, effort, and time. The family court was presented with testimony of four lawyers concerning customary fees for similar services in a complex case. However, the court relied on testimony of Husband's former attorney who testified regarding average rates for a domestic case. This was error.

Numerous cases in South Carolina list attorney's fees charged in the locality for similar services as a factor to be considered in awarding attorney's fees. See e.g., Blumberg v. Nealco Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (emphasis added); Meene v. Keowee Key Prop. Owners Ass'n Inc., 368 S.C. 557, 569, 629 S.E.2d 690, 697 (Ct. App.

2006); Rowell v. Whisnant, 360 S.C. 181, 185-86, 600S.E.2d 96, 99 (Ct. App. 2004). Therefore, we cannot assign error to the family court's consideration of the local geographic area in determining the proper attorney's fees.

Accordingly, the portion of the family court's order regarding attorney's fees and costs is reversed and remanded for the family court to properly assess the facts of the case and the Glasscock factors in accordance with our decision.

CONCLUSION

For the reasons stated above, the family court's order is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.[6]

ANDERSON, and HUFF, JJ., concur.

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[1] Wife named Simpson, Jr. as a defendant because he is a member of the LLC.

[2] This issue was not raised in Husband's Rule 59(e) motion and would not have been preserved even if the motion had gone forward.

[3] We also note that Simpson, Jr.'s tax return and his accumulation of assets cannot be reconciled. For example, in 2001 he purchased $14,000 worth of real estate and his tax return showed an income of $17,000. Despite a tax return never showing an income greater than $26,000, in 2003, Simpson, Jr. owned $150,000 worth of farm equipment.

[4] This issue was not raised in Husband's motion for reconsideration.

[5] Husband did raise this issue in the Rule 59(e) motion, which the family court dismissed.

[6] We decide this case without oral argument pursuant to Rule 215, SCACR.

May 24, 2010

Jenkinson

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE THIRD JUDICIAL CIRCUIT DOCKET NO.: 2003-DR-14-0128
COUNTY OF CLARENDON	)	
DAISY WALLACE SIMPSON, Plaintiff,	)	
vs.	)	ORDER
WILLIAM ROBERT SIMPSON, 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. Defendants.	)	

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DATE 5/28/10
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

2010 MAY 28 PM 1:29

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

Hearing Dates:	September 15, 2009 and December 21, 2009
Presiding Judge:	Gordon B. Jenkinson
Attorneys for Plaintiff:	James T. McLaren Jan L. Warner (September 15, 2009 hearing) Carrie A. Warner (December 21, 2009 hearing)
Attorneys for Defendant William Robert Simpson, individually and as member of W. R. Simpson Farms, LLC.:	Steven S. McKenzie Reid B. Smith
Defendant William R. Simpson, Jr.:	Paul E. Tinkler
W.R. Simpson Farms, LLC	Paul Thurmond
Court Reporter:	Patsy A. Nye

GBJ #1

PROCEDURAL HISTORY

This matter was heard before the undersigned at Manning, South Carolina on September 15, 2009, and at Kingstree, South Carolina on December 21, 2009. Present and appearing at the hearing in Manning, South Carolina were Plaintiff Daisy Wallace Simpson; James T. McLaren and Jan L. Warner, attorneys for the Plaintiff Daisy Wallace Simpson; Steven S. McKenzie and Reid B. Smith, attorneys for the Defendant William Robert Simpson; and, William R. Simpson, Jr., who appeared without counsel. Defendant William Robert Simpson did not appear personally but was represented by his attorneys.

After the September 15, 2009 hearing, Paul E. Tinkler, Attorney for Defendant William R. Simpson, Jr., requested an opportunity to appear before the Court, due to his lack of notice of the hearing. The Court granted his request and conducted a hearing on December 21, 2009.

Present and appearing at the hearing in Kingstree, South Carolina were Plaintiff Daisy Wallace Simpson; James T. McLaren and Carrie A. Warner, attorneys for the Plaintiff Daisy Wallace Simpson; Defendant William Robert Simpson; Steven S. McKenzie and Reid B. Smith, attorneys for the Defendant William Robert Simpson ; William R. Simpson, Jr.; Paul E. Tinkler, attorney for William R. Simpson, Jr.; and Paul Thurmond, attorney for W.R. Simpson Farms, L.L.C.

Defendant William Robert Simpson and Plaintiff Daisy Wallace Simpson were formerly husband and wife and were divorced by Final Decree of this Court entered December 31, 2004 by the Honorable R. Wright Turberville. That Final Decree awarded Plaintiff a total of Seven Hundred Eighty-Four Thousand and Fifty-Five Dollars ($784,055.00) as equitable division. This

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award required a cash payment to Plaintiff of Two Hundred Forty-Four Thousand Nine Hundred and Four Dollars ($244,904.00) plus a transfer of real estate and improvements to Plaintiff that was valued by the Final Decree at Five Hundred Thirty-Nine Thousand One Hundred and Fifty One Dollars ($539,151.00). The property required to be transferred to Plaintiff, as identified in paragraph 106 at page 40 of the December 31,2005 Final Decree, is as follows:

a.	Plaintiff retains her accounts at filing	$ 18,209.00
b.	Edward R. Jones accounts	$ 83,442.00
c..	2.1 acres	$ 7,500.00
d.	1.4 acres	$ 5,000.00
e.	161.1 acres	$175,000,00
f.	1.3 acres	$ 15,000.00
g.	6.7 acres	$ 5,000.00
h.	133.2 acres	$150,000,00
i.	house and 16 acres	$ 50,000.00

By Order Regarding Attorneys Fees entered February 17, 2005, Judge Turbeville ordered Defendant William Robert Simpson to pay Plaintiff the sum of Eighty-Five Thousand Dollars ($85,000.00), as a contribution towards Plaintiff's attorney fees.

Defendants filed appeals to the South Carolina Court of Appeals as did Plaintiff. By Unpublished Opinion filed April 4, 2007, the South Carolina Court of Appeals affirmed Plaintiff's alimony and equitable division awards as set forth in the Final Decree. The Court of Appeals reversed this Court's Order regarding attorney's fees and remanded the case for this court to properly assess the facts of the case and the Glascock factors in accordance with the Court of Appeals decision.

Defendant then sought Certiorari from the South Carolina Supreme Court which was denied on February 21,2008,

Plaintiff initiated the matter now before the Court by Notice of Motion and Motion,

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Affidavit and Complaint for Issuance of Order and Rule to Show Cause filed with this Court on April 29, 2008. In that Motion and Complaint, Plaintiff seeks to enforce various aspects of the December 31, 2004 Final Decree and the February 17, 2005 Order Regarding Attorneys Fees previously issued by this Court and to address issues remanded to this Court following appeals by both Plaintiff and Defendants from that Final Decree and Order Regarding Attorneys Fees.

On April 29, 2008, this Court issued a Rule to Show Cause scheduling a hearing on Plaintiff's aforesaid Motion for July 17, 2008,

On July 17, 2008 the Court, recognizing that the 30 minutes scheduled for the hearing on that date was insufficient to take evidence on all contested issues, conducted a hearing by conference call. As a result of that hearing certain issues were resolved and other issues were left open for future determination as is more fully reflected in this Court's March 6, 2009 Interim Order on Plaintiff's Contempt Action.

On January 21,2009 Plaintiff filed an *Ex Parte* Motion, Verification, and Complaint for Issuance of Order raising additional issues. On January 21, 2009 this Court issued a Rule to Show Cause requiring all Defendants to appear at a hearing on those issues scheduled for March 3, 2009. That hearing was continued by Order of this Court entered March 12, 2009. The March 3, 2009 hearing was rescheduled for September 15, 2009 and conducted on that date.

ISSUES

The issues in the two Orders and Rules to Show Cause before this Court include Plaintiffs request for enforcement of the Final Decree by this Court requiring Defendant to pay the cash portion of the equitable division judgment along with judgment interest thereon; to pay the Eighty-Five Thousand Dollars ($85,000.00) attorney fees along with judgment interest; and, to transfer the above identified real estate to Plaintiff.

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Plaintiff seeks an Order holding Defendants in contempt for (1) not satisfying the cash portion of the equitable division judgment under the Final Decree; (2) not transferring the real estate to satisfy the property portion of the equitable division award; and, (3) not paying the Eighty-Five Thousand Dollars ($85,000.00) in attorneys fees.

As set out in the Interim Order on Plaintiff's Contempt Action entered March 6, 2009, the issue involving the cash portion of the equitable division judgment under the Final Decree; payment of the Eighty-Five Thousand Dollars ($85,000.00) in attorney fees; and, Plaintiff's request for judgment interest on those amounts was resolved by Defendant William R. Simpson, Sr. paying to Plaintiff Daisy Wallace Simpson the sum of Five Hundred Ninety-seven Thousand Eight Hundred and Twenty-nine Dollars and 01/100 ($597,829.01). This payment represented the cash portion of the equitable division judgment, including the Edward R. Jones accounts, and Defendant's required contribution to Plaintiff's attorney fees, plus interest through the date of payment.

The issues remaining for this Court to resolve are:

1. The transfer of the real estate due to Plaintiff to satisfy the real property portion of the equitable division award to Plaintiff in the Final Decree.

2. The issue of additional attorney fees and costs for Plaintiff as remanded to this Court by the South Carolina Court of Appeals.

3. Plaintiff's requests for an award of attorney fees and costs in this proceeding, Plaintiff's Contempt Actions.

FINDINGS OF FACT

After considering the record in this case, as well as the testimony, exhibits, and arguments of counsel, this court makes the following Findings of Facts.

Paragraph 75 of the Final Decree dated December 31, 2004 found that the real property identified as tract "e. 161.1 acres," tract "h. 133.2 acres," and tract "i. House and 16 acres" were owned individually by William Robert Simpson. The Court of Appeals found that "... the property that the Family Court awarded to wife was individually owned by husband, and was not property owned by the LLC."

William Robert Simpson is not the record title holder of this real property. Tract e and tract h are titled in the name of Simpson Farms, L.L.C. Judge Turbeville and Judge Segars-Andrews both found that Simpson Jr. owned a 50% interest in the LLC. The findings of Judge Turbeville and Judge Segars-Andrews were not reversed.

William R. Simpson, Jr. Testified at the September 15, 2009 hearing that he would not consent to the LLC transferring real estate belonging to Simpson Farms, L.L.C. to the Plaintiff.

By letter from Steven S. McKenzie to Jan L. Warner, dated October 28, 2008, William R. Simpson tendered seven quitclaim deeds to Daisy Wallace Simpson, for the properties identified in Paragraph 106 of the Final Decree dated December 31, 2004.

William Robert Simpson made a good faith effort to transfer the tracts that he owned to Daisy Wallace Simpson. Ms. Simpson's attorneys objected to this conveyance since it was not a general warranty deed. The Final Decree of Divorce does not require that the conveyances be made by general warranty deed.

William Robert Simpson was very hesitate to execute a general warranty deed because he could be liable for breaching the general warranty of the deed.

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The real estate identified in Paragraph 75 of the Final Decree of Divorce as tract "c. 2.1 acres," tract "d. 1.4 acres," and tract "g. 6.7 acres" is titled in the name of William Robert Simpson.

The quit claim deed tendered by Mr. Simpson effectively transferred title to tracts c and d to the Plaintiff, Daisy Wallace Simpson.

Prior to the September 15, 2009 hearing, William Robert Simpson transferred the real estate, identified above as tract g, to the parties daughter. This transfer accomplished the intention of the parties.

In the Decree entered December 31, 2004, The Honorable R. Wright Turbeville ordered only William Robert Simpson to convey those tracts set out in paragraph 106 and not the other named Defendants.

It was the position of the Plaintiff's attorney at the hearing on September 15, 2009 that they would proceed on the Rule as it related to William Robert Simpson, Sr. only.

CONCLUSIONS

1. William R. Simpson, Sr. is not held in willful civil contempt of Court, as he made a good faith effort to comply with the final Decree entered December 31, 2004.

2. A conveyance of real estate titled in the name of Simpson Farms, L.L.C. can only be done by the LLC. As a member of the LLC, William R. Simpson, Sr, individually, does not have a transferable interest in property belonging to the LLC. See S.C. Code of Laws § 33-44-501 (a) (1976, as amended.)

3. The Plaintiff's request for attorneys fees regarding the filing Plaintiff's Rule to Show Cause is hereby denied. However this Court makes no findings of fact or conclusions of law

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regarding Plaintiff's collateral request for attorney's fees from the remand order of the Court of Appeals. That matter regarding attorneys fees, in light of the remand order, will be addressed by this Court at a separate hearing to be scheduled hereafter.

NOW, THEREFORE, it is accordingly

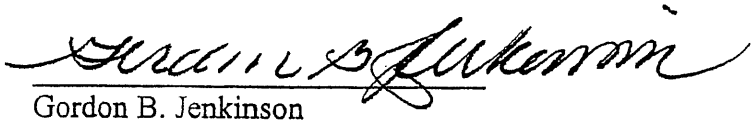
ORDERED, ADJUDGED AND DECREED as follows:

1. William R. Simpson, Sr. is not held in willful civil contempt of Court.

2. The Plaintiff's request for attorneys fees regarding the Plaintiff's Rule to Show Cause is hereby denied.

3. Matters related to the remand of attorneys fees by the Court of Appeals will be addressed at a separate hearing to be scheduled hereafter and heard by this Court. Any rulings within this Order are without prejudice to either party regarding attorneys fees as a consequence of the Court of Appeals Order of Remand.

AND IT IS SO ORDERED.



Gordon B. Jenkinson
Family Court Judge
Third Judicial Circuit

Kingstree, South Carolina
May 24, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE FAMILY COURT
KINGSTREE, SOUTH CAROLINA

DAISY WALLACE SIMPSON,)
PLAINTIFF,)
)
VERSUS,)
)
WILLIAM R. SIMPSON, Sr.,)
INDIVIDUALLY AND AS A)
SHAREHOLDER/MEMBER OF)
SIMPSON FARMS, LLC. AND)
WILLIAM R. SIMPSON, JR.,)
INDIVIDUALLY AND AS A)
SHAREHOLDER/MEMBER OF)
SIMPSON FARMS, LLC.)
DEFENDANTS)

TRANSCRIPT OF RECORD

CASE NO: 2003-DR-14-128

DATE: JANUARY 6, 2011

B E F O R E: THE HONORABLE GORDON B. JENKINSON

A P P E A R A N C E S:

JAMES T. McLAREN, ESQUIRE
CARRIE WARNER, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

REID SMITH, ESQUIRE
ATTORNEYS FOR THE DEFENDANT
WILLIAM R. SIMPSON, SR.

MR. PAUL TINKLER, ESQUIRE
REPRESENTING THE DEFENDANT
WILLIAM R. SIMPSON, JR.

PATSY A. NYE
OFFICIAL COURT REPORTER

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PROCEEDINGS

THE COURT: Okay. This is the case of Daisy Wallace Simpson versus William Robert Simpson, individually and as shareholder/member of Simpson Farms, LLC; and William R. Simpson, Jr., as a shareholder/member of Simpson Farms, LLC. It's a Clarendon County case and it's Docket Number 2003-DR-14-128. Present in the courtroom is Mr. Jim McLaren and Ms. Carrie Warner along with their client, Mrs. Simpson. Also present is Mr. Reid Smith and Mr. Paul Tinkler along with their client, Mr. William Robert Simpson. Also present is Mr. William R. Simpson, Jr., I believe.

I believe this matter is before the Court for a -- an interpretation, or reinterpretation of the final decree of Judge Wright Turbeville, which was dated December 31st, 2004, as it relates specifically to the equitable division issues and more specifically as to how that decree effects the properties known as the Simpson Farms, LLC. I understand that another issue before the Court is my reconsideration of the attorney's fees awarded by Judge Turbeville under that same order, based upon the remand by the South Carolina Court of Appeals. And, as I understand it, there's an additional case to be heard, hopefully today, which is 2008-DR-456. Mr. William Robert Simpson, Jr. -- Senior, I'm sorry, is the plaintiff and Ms. Daisy Wallace Simpson is the defendant with the same attorneys being involved in that matter.

So is it anything -- and let's -- let's take the -- take

1 them in order -- is there anything from the attorneys to be put on
2 record as it relates to the equitable division interpretation?
3 MR. McLAREN: Your Honor, if it please the Court, from
4 the plaintiff's standpoint, we brought a rule to show cause to
5 enforce Judge Turbeville's decree so the property -- real property
6 awarded to her would be transferred to her in accordance with that
7 decree, as affirmed, on appeal. And we came before the Court,
8 Your Honor eventually issued an order on it and it kind of left us
9 in a place where we didn't get the property and the decree, from
10 our viewpoint, wasn't enforced. And we had asked for relief
11 against all the defendants. We asked the property be conveyed,
12 that our client would be made whole because the property was
13 ordered transfer some six, seven, eight years ago at this point.
14 And, so we did a motion to reconsider, and as a part of that
15 process, I understand Your Honor is wrestling with the concept of
16 what was intended and how to enforce it; what's the appropriate
17 action.
18 THE COURT: And I think the term "wrestling" is very
19 appropriate and a very appropriate term.
20 MR. McLAREN: Yes. And I -- and I -- I understand. So
21 that -- that's, from our viewpoint, why we're here, at least on
22 the first part. I'd also point out that Mr. Timbes appeared
23 previously and he talked to Mr. Tinkler. Mr. Tinkler can address
24 the fact that Mr. Timbes is not here and has waived the right to
25 be here.

1 MR. TINKLER: Your Honor, that -- that is correct. Mr.
2 Timbes and I talked after receiving Your Honor's letter dated; I
3 think it was, December 29th about this event today. And we
4 believe Your Honor has made a ruling that fully understands that
5 the LLC is a legal entity and the Court has honored that legal
6 entity in his prior pronouncements. And having made sure that the
7 Court got that point, Mr. Timbes told me that he did not believe
8 it was necessary for him to appear today. He waived his
9 appearance.
10 THE COURT: Okay. And I don't have any problem with
11 that. Do you, Mr. McLaren?
12 MR. McLAREN: I do not. And -- and Your Honor's letter
13 to all of us on the, I think it was the 29th of December,
14 indicated that you intended to speak with us about the letter of
15 ruling that we got, and I understand that Mr. Timbes, knowing
16 that, determined he didn't need to appear and that -- I understand
17 that.
18 THE COURT: Okay. And I did that mainly to give y'all a
19 heads up to let you know what my thoughts were, to hopefully see
20 if the parties could move toward a resolution of the issues
21 relating to equitable division, and I --
22 MR. McLAREN: Your Honor --
23 THE COURT: -- see that --
24 MR. McLAREN: -- if I may --
25 THE COURT: -- you have not.

1 MR. McLAREN: -- just again, some housekeeping issues.
2 THE COURT: Okay.
3 MR. McLAREN: Before we began, we agreed that on the
4 attorney fees issue -- and I know we haven't gotten there yet --
5 we premarked Exhibits -- Plaintiff's Exhibits 1 through 11, which
6 are part of the record already and you can simply take judicial
7 notice by --
8 THE COURT: Okay.
9 MR. McLAREN: -- it would be prudent, and I thought it'd
10 been easier for Your Honor to mark those as separate exhibits for
11 this proceeding. And that would be Number 1 is the Final Decree
12 of Divorce, Number 2 is Judge Turbeville's Order regarding
13 attorney fees, Number 3 is the Court of Appeals Opinion, the --
14 Number 4 is the Supreme Court denial of cert, Number 5 is the
15 Order granting costs on appeal, Number 6 is the original Affidavit
16 that Mr. Warner and I submitted in the original trial. The
17 Affidavit, Number 7, of Mark Taylor is the original affidavit he
18 submitted in the original trial, and the Affidavit of Lon Shull,
19 Number 8, is the original Affidavit that Mr. Shull submitted in
20 the original proceeding, which is already part of the record, but
21 I wanted to mark those for Your Honor's convenience.
22 THE COURT: Okay.
23 MR. McLAREN: And that's with consent --
24 THE COURT: And you want them --
25 MR. McLAREN: -- of counsel.

1 THE COURT: -- marked independent?

2 MR. McLAREN: They're -- they are marked already.

3 THE COURT: Oh, marked already. Okay. And without

4 objection, of course.

5 MR. McLAREN: And -- and may I hand those up to Your

6 Honor?

7 THE COURT: Yes, sir.

8 MR. McLAREN: The -- the other thing I wanted to

9 address, Your Honor, and I'd like to mark -- Your Honor sent us a

10 -- by letter on December 29th, I believe it is, 2010, your

11 preliminary ruling, and then we talked a little bit in chambers

12 this morning about what you're doing and our positions on that and

13 where, from each parties, that would leave us. And I would like

14 to mark that as an exhibit. Counsel already --

15 THE COURT: Okay.

16 MR. McLAREN: -- has a copy of it, and this is only

17 intended as an aid to the Court.

18 THE COURT: Has that document been changed since we

19 looked at it in chambers?

20 MR. McLAREN: No -- no, sir.

21 THE COURT: Okay.

22 MR. McLAREN: So that would be Exhibit Number 9,

23 Plaintiff's Exhibit Number 9.

24 THE COURT: And that's without objection?

25 MR. SMITH: Yes, sir.

1 THE COURT: Okay.

2 (WHEREUPON, the foregoing Letter was marked

3 Plaintiff's Exhibit Number 9 and received into

4 evidence.)

5 MR. McLAREN: If I may just address that for briefly --

6 THE COURT: All right.

7 MR. McLAREN: -- Your Honor.

8 THE COURT: And let me interrupt you. I need to do

9 this, if I may. I apologize and -- and maybe get on the record

10 what we discussed in chambers. And I'm looking specifically on

11 page 40 of Judge Turbeville's decree, paragraph 106, which we've

12 been through many, many times.

13 MR. McLAREN: Page 40, Your Honor?

14 THE COURT: Forty. Yes, sir.

15 MR. McLAREN: Paragraph 106?

16 THE COURT: You have it?

17 MR. McLAREN: Yes, sir.

18 THE COURT: Okay. We -- this -- it appears to be maybe

19 some discrepancies in the decree as far as several tracts of land,

20 but starting up at paragraph -- or item C, the 2.1 acres. I

21 understand that that's not in dispute. That's been accounted for?

22 And I'm going by my notes from previous hearings that item D, the

23 1.4 acres, there's no discrepancy there. The item E, the 161.1

24 acres, is that one of the LLC tracts?

25 MR. SMITH: Yes, sir, it is.

1 THE COURT: Oh, okay. Is the acreage correct or were
2 the -- would it be half of that?
3 MR. SMITH: Your Honor, I believe the acreage is correct
4 on that one.
5 THE COURT: And that's with -- is that the total acreage
6 owned by the LLC, or one-half that's allotted to Mr. Simpson,
7 Senior?
8 MR. SMITH: Your Honor, the trial court found that the
9 value was 175 for the entire 161 acres.
10 THE COURT: So the value is correct for one-half?
11 MR. SMITH: Yes, sir.
12 THE COURT: Okay.
13 MR. SMITH: No, no. You're not --
14 THE COURT: And the same thing would be for item H, the
15 133.2 acres, and it's LLC.
16 MR. SMITH: Your Honor, if I could correct something,
17 please.
18 THE COURT: Yes, sir.
19 MR. SMITH: The 175 is the total value for the entire
20 tract --
21 THE COURT: Okay.
22 MR. SMITH: -- not -- not the one-half interest -- not
23 of -- one-half the value.
24 THE COURT: Okay. And I think somewhere in the decree
25 the total value of those LLCs was -- or one-half was like 299,000

1 and some change?

2 MR. SMITH: Yes, sir. That's what Judge Turbeville

3 found --

4 THE COURT: Okay.

5 MR. SMITH: -- on page 26 of the decree.

6 THE COURT: Okay. Okay, thank you.

7 MR. SMITH: Your Honor, if I could --

8 MR. TINKLER: And we would not --

9 MR. SMITH: -- enter something into the record --

10 THE COURT: Yes, sir.

11 MR. TINKLER: -- right now. When we indicated

12 previously that we would consent to the Court addressing the issue

13 of -- of the -- Mr. Simpson's half interest in the LLC, we -- I --

14 I would like for the record to reflect that we're consenting only

15 for that limited purpose and not for any other purpose.

16 THE COURT: As relates to Simpson, Senior's, one-half

17 interest in the LLC.

18 MR. SMITH: Yes, sir.

19 THE COURT: And you have no objection to that position?

20 MR. SMITH: No, sir.

21 THE COURT: Of course, that's been his position all

22 along, wasn't it?

23 MR. SMITH: Yes, sir. It has --

24 THE COURT: Okay.

25 MR. SMITH: -- been.

1 THE COURT: Okay. All right. Anything else for the
2 record?
3 MR. McLAREN: Yes, I do.
4 THE COURT: Okay.
5 MR. McLAREN: Your Honor, the -- the 161 is titled --
6 161.1, is in Simpson Farms, LLC.
7 THE COURT: Okay.
8 MR. McLAREN: And -- and it makes a difference because
9 some of them are in Simpson Farms, LLC, which really exists, and
10 some of the property is in W.R. Simpson's Farm, LLC, which doesn't
11 exist.
12 THE COURT: Okay.
13 MR. McLAREN: And -- and I can read those out, and
14 that's -- the 161 we talked about is in the Simpson's Farms, LLC.
15 THE COURT: Okay.
16 MR. McLAREN: Tract -- that's in tract E.
17 THE COURT: Okay.
18 MR. McLAREN: And then tract G, the 6.7 acres, that's in
19 Simpson Farms, LLC.
20 THE COURT: Okay. And that's really three acres,
21 according to the testimony of Steve McKenzie.
22 MR. McLAREN: Well, and according to the testimony of my
23 client, that's really the property that goes around Charlie's
24 house.
25 THE COURT: Okay. And -- and --

1 MR. McLAREN: And --

2 THE COURT: -- let me -- let me interject this, and I --
3 I think what we decided in chambers was, tract F, 1.3 acres, which
4 is Charlie's house. G, 6.7, that's really three acres, according
5 to Mr. McKenzie. And I, a house and 16 acres, which involved the
6 Stone family, but those are really not in dispute.

7 MR. SMITH: That's correct, Your Honor.

8 THE COURT: Okay. All right.

9 MR. McLAREN: I -- I apologize, Your Honor. And I
10 apologize for being a little slow, but I'm trying to jump around
11 between what Your Honor's asking, the decree, and our documents to
12 reflect what's titled in which, so I don't want my silence to be
13 taken --

14 THE COURT: Be acquiescence.

15 MR. McLAREN: -- as acquiescence --

16 THE COURT: Okay.

17 MR. McLAREN: -- and I -- if I can just go through this
18 real quick and --

19 THE COURT: Well, let -- let's do it this way, and I
20 know I'm jumping around. Your Plaintiff's Number 11, your
21 spreadsheet --

22 MR. McLAREN: Yes, sir.

23 THE COURT: -- and you allocate, or indicate, that --
24 well, let -- let me ask you this way: That in no way reflects any
25 interest of either party in tracts F, G, and I, the smaller

1 tracts?

2 MR. McLAREN: Is what Your Honor is saying is that --

3 THE COURT: Mr. McLaren --

4 MR. McLAREN: F --

5 THE COURT: -- just give me --

6 MR. McLAREN: -- F --

7 THE COURT: -- one minute, please. I'm just signing a

8 previous emergency order, and then I'll be back.

9 (OFF THE RECORD.)

10 THE COURT: All right, sir. You may go ahead.

11 MR. McLAREN: Can I -- Your Honor, can I -- Your Honor,

12 can I sit so I can shuffle papers and talk and write at the same

13 time? Looking at Exhibit --

14 THE COURT: And I think I misidentified it. It looks

15 like it's Exhibit Number 9.

16 MR. McLAREN: Looking at Exhibit Number 9, the 133.2

17 acres, that is in W. R. Simpson Farms, LLC, that doesn't exist.

18 THE COURT: That's the 131 acres?

19 MR. McLAREN: Yes, sir.

20 THE COURT: All right.

21 MR. McLAREN: The --

22 THE COURT: Is that the --

23 MR. McLAREN: -- tract --

24 THE COURT: -- one --

25 MR. McLAREN: -- I --

1 THE COURT: -- did you say -- I'm sorry, what did you
2 say it was in?
3 MR. McLAREN: W. R. Simpson Farms, LLC, doesn't exist.
4 THE COURT: And it does not exist?
5 MR. McLAREN: Doesn't exist.
6 THE COURT: Okay. Is that on your client's side of the
7 spreadsheet? I mean Mr. Smith's client?
8 MR. McLAREN: The -- that was awarded to my -- that
9 property was awarded to my client.
10 THE COURT: Okay.
11 MR. McLAREN: Okay? The tract I, the house and 16
12 acres, that's in W. R. Simpson Farms, LLC, that doesn't exist.
13 And that was awarded to my client.
14 THE COURT: And you say it doesn't exist?
15 MR. McLAREN: Doesn't exist.
16 THE COURT: That -- that's I? So you -- you're telling
17 me your client is entitled to a credit or some sort of offset for
18 the nonexistence of that property?
19 MR. McLAREN: Oh, the property exists. The LLC doesn't
20 exist.
21 THE COURT: Okay.
22 MR. McLAREN: The property exists. The LLC doesn't
23 exist.
24 THE COURT: Well, if I grant the request that it be
25 conveyed to your client, who's going to be the grantor of that

1 deed?

2 MR. McLAREN: Well, we asked in our rule to show cause

3 that all the defendants be compelled to join in the deed,

4 transferring it to my client.

5 THE COURT: Okay.

6 MR. McLAREN: Okay?

7 THE COURT: And that should cover it?

8 MR. McLAREN: Yes, sir. I believe so.

9 THE COURT: All right.

10 MR. McLAREN: Tract --

11 THE COURT: Let -- let -- well, let's do these maybe one

12 tract at a time. Is there any dispute as far as that is

13 concerned?

14 MR. SMITH: Your Honor, I -- I believe that the issue of

15 W. R. Simpson Farms and Simpson Farms, LLC, was addressed by Judge

16 Turbeville and he basically found that they were one in the same.

17 That the -- that the property was in the LLC, even though there

18 may have been a mistake --

19 THE COURT: All right. But there's --

20 MR. TINKLER: -- in it's name.

21 THE COURT: -- no contention that Simpson, Junior, owned

22 part of that, is it?

23 MR. TINKLER: Yes, sir. He does own a half interest in

24 that -- the LLC owns that real estate.

25 THE COURT: Have we talked about this before?

1 MR. TINKLER: No, sir. This is -- and I think this has
2 been going -- going beyond what we had agreed to --
3 THE COURT: I think so, too.
4 MR. TINKLER: -- go into.
5 THE COURT: All right. You may proceed, Mr. McLaren.
6 MR. McLAREN: Can I have one second, Your Honor?
7 THE COURT: Well, what was the --
8 MR. McLAREN: And so --
9 THE COURT: -- intended --
10 MR. McLAREN: -- well, look --
11 THE COURT: -- effect of the Stone quiet title action?
12 MR. McLAREN: The Stones -- the Stones had given the
13 property. They gave a deed originally, but reserved three or 3.5
14 acres unto themselves.
15 THE COURT: The Simpsons did?
16 MR. McLAREN: The Stones deeded it, the house and 16
17 acres --
18 THE COURT: And reserved three point --
19 MR. McLAREN: -- to W. R. Simpson Farms, LLC, reserving
20 unto -- unto the Stones, the house and either three or 3.5 acres,
21 if I remember correctly. So in the quiet title action, we all
22 agreed without prejudice that that three or 3.5-acre tract
23 belonged to the Stones.
24 THE COURT: Okay. So we're looking at about 12.5 acres
25 in the marital estate?

1 MR. McLAREN: I think it's about 13, actually.
2 THE COURT: All right.
3 MR. McLAREN: But --
4 THE COURT: And -- and Mr. Smith contends that that's
5 owned by the LLC and, as a result, half owned by Junior and half
6 owned by Senior.
7 MR. McLAREN: Right. And, you know, he -- Mr. Smith's
8 position is that -- that Your Honor can't award Junior's half of
9 the LLC. Well, if the property never was titled in the name of
10 Simpson Farms, LLC, he can't have a -- he can't have an interest
11 in it, particularly when Judge Turbeville and the Court of Appeals
12 said that the husband owned it. The Court made that determination
13 already, but now they want to say oh no, that -- that's really one
14 in the same with the LLC, but they're two different names. W. R.
15 Simpson Farms, LLC doesn't exist. Simpson Farms, LLC, does exist.
16 Can -- can I go back to -- and kind of start again for a
17 second --
18 THE COURT: Well --
19 MR. McLAREN: -- if I may? Exhibit Number 9, what I
20 intended to do here was to address Your Honor's letter to help us
21 all understand where your ruling would leave us, if you did what
22 you --
23 THE COURT: And that's why I jumped over to the -- what
24 I -- these tracts that I thought were not in dispute, and then I
25 could say, well, what -- what is in dispute? And then I could

1 reidentify the marital estate.

2 MR. McLAREN: If I could start again and try --

3 THE COURT: All right, sir.

4 MR. McLAREN: -- and -- try to address that. First, we

5 say it is *res judicata* and binding on this Court as to which

6 properties are owned by Senior. Judge Turbeville said what's

7 owned by him. The Court of Appeals affirmed it when specifically

8 addressing the issue. If Your Honor goes back and readjusts the

9 property division by saying, no, Judge Turbeville, you are

10 incorrect and, Court of Appeals, you're incorrect, which I

11 respectfully submit, Your Honor, does not have the jurisdiction to

12 do. I think you -- you have the right to enforce my client

13 getting the property, which was Judge Turbeville's intent and the

14 Court of Appeals' intent, and have jurisdiction to order any or

15 all of the defendants, as we've requested, to convey the property

16 so she gets what Judge Turbeville ordered, just so we're clear on

17 that.

18 But, if Your Honor goes beyond that and says, no, I'm

19 going to go back and make an adjustment.

20 THE COURT: All right. Let me --

21 MR. McLAREN: What I did in the --

22 THE COURT: Okay. Let me stop you for a minute.

23 MR. McLAREN: Okay.

24 THE COURT: Let me go ahead and -- and, if I rule on

25 these things as we come up, and these tracts as we come up, I

1 think I'm going to get a better handle. Because if I hear all of
2 these arguments for another hour or hour and-a-half, then I have
3 to go back, it becomes very difficult for me to separate what has
4 been said.

5 As I indicated in chambers, and as I indicated in my
6 memorandum, I feel like, as a Court of equity, I have the -- the
7 right and the duty to rule on what I feel like Judge Turbeville
8 intended, even though I'm well aware of the wording of the Court
9 of Appeals' decision, which I have read and reread many times.

10 But it's clear throughout the reading of the decree that
11 Judge Turbeville intended for only one-half of the Simpson Farms,
12 LLC, to be included in the marital estate. I looked at wording
13 such as page 22, paragraph 59. And Judge Turbeville says the wife
14 knew of the arrangements with the father and the son and the LLC
15 and that it was 50/50. Also, on paragraph 65 he makes a finding
16 that Simpson, Senior, should be charged with 50% of the property
17 in the LLC, the Simpson Farms, LLC, that was acquired -- I'm
18 sorry, that the wife acquiesced in this plan for three years after
19 the transfer. All right. And I know that -- that the Court of
20 Appeals -- I'd say indirectly said that all of it was included in
21 the marital estate, but I respectfully disagree with that. I
22 telling you I'm just saying this for the record because I have a
23 feeling that my words here today are going to be typed and sent to
24 Columbia. So that is my basis for overruling your objection as
25 far as reinterpreting Judge Turbeville's order.

infra
SR

1 All right, sir. You may proceed.

2 MR. McLAREN: All right. If I may go back to what I've

3 attempted to do, and I -- and I don't want to be interpreted I'm

4 agreeing that Your Honor can go back --

5 THE COURT: I understand.

6 MR. McLAREN: -- and rule that, so --

7 THE COURT: And I -- I think you're --

8 MR. McLAREN: -- but I --

9 THE COURT: -- fully protected on the record.

10 MR. McLAREN: -- and I just want to point out what the

11 effect of that will be. On Exhibit 9, entitled "Equitable

12 Division per Final Decree," we laid out what property was awarded

13 under the decree --

14 THE COURT: All right. Now, where in the decree are you

15 looking at?

16 MR. McLAREN: It's really the whole decree.

17 THE COURT: Okay. I'm -- I'm not --

18 MR. McLAREN: I mean, it's --

19 THE COURT: -- quite sure --

20 MR. McLAREN: -- it's intended to be --

21 THE COURT: Okay.

22 MR. McLAREN: -- a summary.

23 THE COURT: You're looking at your summary. Okay.

24 MR. McLAREN: I'm looking at -- at Exhibit Number 9.

25 This is intended to show what property was awarded to whom, what

1 the Court said title was, generally --

2 THE COURT: Okay.

3 MR. McLAREN: -- and the values and the overall

4 division. The bottom line of that is on the third page of that

5 exhibit where my client was supposed to end up with $784,055, or

6 34% of what Judge Turbeville found the marital estate to be. So

7 that's where I started my analysis.

8 THE COURT: Okay.

9 MR. McLAREN: The second exhibit is the effect of the

10 failure to transfer. At this point, none of the properties have

11 been transferred and we all seen this -- I mean, Mr. McKenzie sent

12 a -- sent Mr. Warner quit claim deeds, which were very limited

13 deeds. We sent those back. They've never been recorded and I've

14 asked for them back. I've never gotten the deeds back, so at this

15 point, none of that property's been transferred, with the

16 exception of the Charlie property we've talked about, and we dealt

17 with the three acres -- and it was three acres with the Stone

18 property. So --

19 THE COURT: And those have been transferred?

20 MR. McLAREN: Yeah, that's been done.

21 THE COURT: All right. How does your analysis treat the

22 daughter's property and the valuation, I believe, of $35,000?

23 MR. McLAREN: We ignored it.

24 THE COURT: Ignored it.

25 MR. McLAREN: Okay.

1 THE COURT: Are y'all agreeing, Mr. Smith and Mr.
2 Tinkler, in ignoring that for purposes of trying to even up the
3 division?
4 MR. SMITH: Your Honor, not necessarily because that
5 property was factored into valuating the marital estate.
6 MR. McLAREN: Well, I say I ignored it. We -- that's --
7 that's really not correct because it's --
8 THE COURT: All right. Now, who is credited with that
9 property? Is Ms. Simpson?
10 MR. McLAREN: That -- that goes on -- supposed to go on
11 Ms. Simpson's side.
12 THE COURT: Okay.
13 MR. McLAREN: But --
14 THE COURT: And is Mr. Simpson given credit for it going
15 in Mrs. Simpson's --
16 MR. McLAREN: He's not supposed to get credit for it.
17 She was supposed to get it under the decree, but the two of them
18 determined to give it to Charlie.
19 THE COURT: All right. She's gotten credit and then is
20 there any objection as far as that credit going on this side of
21 the Court?
22 MR. McLAREN: It really shouldn't go on either side
23 because --
24 THE COURT: Okay.
25 MR. McLAREN: -- they both decided --

1 THE COURT: So we don't have to talk about that. I just
2 want to make --
3 MR. McLAREN: I don't -- I don't think we do because --
4 THE COURT: Okay.
5 MR. McLAREN: -- they both agreed that that would go to
6 Charlie, so they -- they did that. The next -- the -- the effect
7 of failure to transfer is that next exhibit that, if she doesn't
8 get any of that property, which includes Charlie's, so you got to
9 jiggle with that, she's down to a 15% division and only $346,000.
10 But where Your Honor is going is the next exhibit -- our
11 next page exhibit, the effect of the 12/29/10 ruling. I took the
12 first pages of the decree and then, on the second page of that
13 part of the exhibit that's highlighted -- it's got the dark on it
14 -- we went ahead and made the adjustment. It looks like this.
15 THE COURT: Okay. That's what was transferred over.
16 Okay. I see.
17 MR. McLAREN: And, if you look at the -- that
18 highlighted part, for instance, next to the one -- 161.1 acres, we
19 reduced that to a 50% interest in accordance with Your Honor's
20 preliminary ruling just to see where that would leave us. And we
21 did the same thing with the 6.7 acres, which was Charlie's, the
22 three -- 133.2 acres and the house and 16 acres. We reduced those
23 to 50%. Okay?
24 THE COURT: Okay.
25 MR. McLAREN: And, if you go to the far right column,

1 because the wife is still supposed to get that property, the
2 property she's supposed to get is that reduced half interest,
3 that's the value that -- that it -- that, under your ruling, she
4 would get. Okay?
5 THE COURT: Okay.
6 MR. McLAREN: So then you go to the next page, assuming
7 she gets the half -- reduced half interest that changes the total
8 of the marital estate. And if you want to do what Judge
9 Turbeville said to do and do 34% --
10 THE COURT: I'm -- I believe I'm bound by his
11 percentages.
12 MR. McLAREN: Maybe, maybe not.
13 THE COURT: May -- well, maybe not, but I'm -- that's my
14 ruling.
15 MR. McLAREN: I think she ought to get 50%, frankly, but
16 I understand what you're saying.
17 THE COURT: All right.
18 MR. McLAREN: So, but if you leave it at the 34, and
19 this is an intended example only, he has to pay an additional
20 133,250 to get back to the 34%.
21 THE COURT: Okay.
22 MR. McLAREN: On the other hand, if you say, okay, I
23 don't want -- and I'm not suggesting, as I'm saying by way of
24 example, if you say, okay, I don't want to leave these people in
25 business together. Mr. -- Mr. Simpson, Senior, you keep the --

1 you keep that half and you pay her cash instead. It gets them out
2 of business completely, then he would --
3 THE COURT: You say --
4 MR. McLAREN: -- have to pay her --
5 THE COURT: -- you thought the -- you said half. I
6 thought you said house at first, but you're talking about half.
7 MR. McLAREN: Half.
8 THE COURT: Okay.
9 MR. McLAREN: The half that you reduced it --
10 THE COURT: Okay.
11 MR. McLAREN: -- from 100% to a 50% interest. To get to
12 -- back to a 34 and not have her not get any of that property,
13 then you would need a -- the cash payment would be the $38,250.
14 Okay? And that would be 87,500 for the 161.1 acres, 17,500 for
15 the 6.7 acres, 75,000 for the 133.2 acres, and 25,000 for the
16 house and 16, which is actually 13 acres. So, if you put the
17 original cash of 133,250 plus those additional items, it brings it
18 up to 338,250 if you turn it into cash.
19 THE COURT: All right.
20 MR. McLAREN: Okay? Now what --
21 THE COURT: Yeah.
22 MR. McLAREN: -- we've not addressed --
23 THE COURT: I -- I -- you lost me. You lost me right
24 there. Are you back on the last page?
25 MR. McLAREN: May I approach, Your Honor?

1 THE COURT: Yes, sir. All right. Those are your
2 figures there. These -- these handwritten figures are not on my
3 sheet, are they?
4 MR. McLAREN: No.
5 THE COURT: Okay.
6 MR. McLAREN: They're not. I -- I sat and figured that
7 out while --
8 THE COURT: Well, no wonder you --
9 MR. McLAREN: -- we were on break.
10 THE COURT: -- lost me.
11 MR. McLAREN: And if you go back here --
12 THE COURT: Does Mr. Smith have those --
13 MR. McLAREN: He does.
14 THE COURT: -- forms?
15 MR. SMITH: Your Honor, I got them this morning. I
16 haven't had a chance to look them over and I'm following with Mr.
17 McLaren as he goes through.
18 THE COURT: All right. When we get a break, would y'all
19 make a -- make me a copy of that? You were saying that Mr.
20 Simpson owes Mrs. Simpson how much?
21 MR. McLAREN: One -- this number right here.
22 THE COURT: Mr. Smith, do you -- y'all want to come up
23 here and look at this?
24 MR. TINKLER: Yes, sir, Your Honor.
25 MR. McLAREN: The 130 -- the 133,250.

1 THE COURT: Okay.

2 MR. McLAREN: -- plus 133,350 -- well, that -- that's a

3 -- that's our number. Eighty-seven five --

4 THE COURT: All right. Where does that come in from?

5 MR. McLAREN: That's coming from the 161.1 acres.

6 THE COURT: Oh, so you hadn't factored those in yet?

7 MR. McLAREN: I hadn't -- well, we -- we had her just

8 getting the property --

9 THE COURT: Okay.

10 MR. McLAREN: -- because you're -- you're -- you're

11 saying that --

12 THE COURT: You -- this -- this theory is to -- to cash

13 her out and -- and dissolve any joint ownership.

14 MR. McLAREN: That's right.

15 THE COURT: Okay. You gentlemen have any objection to

16 that, if -- and I'm not saying I'm ruling this way -- do you have

17 any objections to some sort of cashing out, if Mr. Simpson,

18 Senior's, given a reasonable period of time to do that?

19 MR. SMITH: Your Honor, renewing our objection about

20 this going beyond the scope of what we had agreed, and also, I do

21 not agree with Mr. McLaren's analysis, but --

22 THE COURT: And I'm going to give you a chance to

23 respond to it.

24 MR. SMITH: But -- but, understanding the Court's

25 inclination, it --

1 THE COURT: Well, let -- let me say this. Absent an
2 agreement, I don't think I can -- can turn around and require
3 Senior to cash out the LLCs. They're just going to have to work
4 it out even if he -- we have wind up partitioning. But I don't
5 believe I have the authority to alter the terms of paragraph 106
6 of Judge Turbeville's decree.
7 MR. McLAREN: The problem is, before she got 100% of it,
8 so there wasn't an ownership problem.
9 THE COURT: I -- I understand.
10 MR. McLAREN: By giving her -- by reducing ownership --
11 THE COURT: I understand.
12 MR. McLAREN: -- to half, you leave them in a business
13 deal --
14 THE COURT: Well, I think -- I think Judge Turbeville
15 said something in the decree to the effect that maybe Mrs. Simpson
16 was being a little unreasonable in insisting on a total cash
17 settlement to -- when they were negotiating because it wasn't --
18 there was some liquidity, but there was so much more in real
19 estate, farm equipment, the store. So I don't feel like I can go
20 behind Judge Turbeville's decision, so.
21 MR. McLAREN: I agree with that.
22 THE COURT: In toto; is that what you're saying?
23 MR. McLAREN: Yes, sir.
24 THE COURT: Okay.
25 MR. McLAREN: But -- and I also would point out that

1 maybe there was some great wisdom in what my -- my client had to
2 say about a cash out. We wouldn't be six, seven years in more
3 litigation.
4 THE COURT: I understand that, but that's --
5 MR. McLAREN: Can I just give you these numbers so
6 we're --
7 THE COURT: That's fine. If you'll give me -- you'll
8 just stamp it and put them on --
9 MR. McLAREN: I --
10 THE COURT: -- the record.
11 MR. McLAREN: -- I'd be glad to do it. I'm sorry.
12 (WHEREUPON, the foregoing document was marked
13 Plaintiff's Exhibit Number 10 and received
14 into evidence.) McLarens figures
15 MR. McLAREN: So, Your Honor, if you start with 133,250
16 cash payment to get to 34,000, and if you were to order a cash out
17 on what would become fractional interest, if you re-did the
18 property division -- we're not agreeing to it, but if you did that
19 -- we'd either add $87,500 for the 161.1-acre tract.
20 THE COURT: Okay.
21 MR. McLAREN: You would need to add 17,500 for the
22 6.7-acre tract. You would need to add 75,000 for the 133.2 acre
23 tract and 25,000 for the house and 16, now 13, acre tract. That
24 total cash would be $338,250. And what that does not consider is
25 that this decree was issued in 2003 or 2004 and Mr. Simpson has

1 had the use of the property, earned money and received subsidies
2 and other earnings on the property. It's my client's property.
3 It became her property when that decree was entered and we offered
4 evidence of that previously and, you know, she's not anywhere near
5 being whole. You could treat it like a money judgment and add
6 judgment interest to it, or you could inquire as to his --
7 THE COURT: Well, didn't quite some time ago Mr.
8 Simpson, Senior, do what he felt like he should do under the terms
9 of the order and in accordance with the instructions of his
10 attorney?
11 MR. McLAREN: He did what was cute. He gave my client
12 nothing and his lawyer testified he gave her nothing. The only
13 thing he gave her was three minor tracts that were titled in his
14 name and then, in his deeds, I -- that were prepared by his
15 lawyer, it said Simpson, Senior, individually only and not in any
16 other capacity. He knew what he doing. He knew he intended to
17 transfer nothing. And --
18 THE COURT: Okay, sir.
19 MR. McLAREN: So no, that -- if you're asking was that
20 in good faith, should he benefit from that? No, I don't think he
21 should.
22 THE COURT: Okay. Anything else as far as this last
23 spreadsheet?
24 MR. McLAREN: No, sir.
25 THE COURT: All right. Mr. Smith? And I direct your

1 attention to -- I guess it's the next to the last page, paragraph
2 E, the property that's in the shaded section.
3 MR. SMITH: Yes, sir.
4 THE COURT: What if -- what objection do you have, if
5 any, as far as how Mr. McLaren characterized those properties?
6 MR. SMITH: Your Honor, I -- I do not believe that those
7 properties are owned individually.
8 THE COURT: Now, I'm not talking about owned
9 individually, whether or not they should be included in the
10 marital estate.
11 MR. SMITH: Yes, Your Honor, they should be included in
12 the marital estate because -- well, in -- if I could rephrase,
13 Your Honor.
14 THE COURT: Okay.
15 MR. SMITH: To the extent the properties belong to the
16 LLC, and it was determined that those properties added value to
17 the LLC, then Mr. Simpson's interest in the LLC, represented by
18 these properties, is an asset of the marital estate. We do not
19 dispute that.
20 THE COURT: Okay. So you're saying that if I should
21 enter -- and it's consistent with my memorandum of December 29th,
22 as far as the LLC property, the two properties. Would you object
23 to my ordering Mr. Simpson to make these conveyances?
24 MR. SMITH: Yes, sir.
25 THE COURT: Why?

1 MR. SMITH: Because the properties are titled in the
2 name of the LLC.
3 THE COURT: Well, you're telling me that -- that the --
4 I'm correct in saying that half of the LLC, and not 100% of the
5 LLC, is in the marital estate.
6 MR. SMITH: Yes, sir.
7 THE COURT: But you're telling me that because the --
8 it's titled in the name of the LLC that Mrs. Simpson doesn't get
9 it?
10 MR. SMITH: I'm saying that Mr. Simpson, Senior, as the
11 Court recognized in its May 2010 order, doesn't have the capacity
12 as a member of the LLC to convey --
13 THE COURT: Well, but --
14 MR. SMITH: -- LLC's property.
15 THE COURT: -- the LLC's a party defendant.
16 MR. SMITH: But the order only directed that Mr. Simpson
17 convey --
18 THE COURT: I understand --
19 MR. SMITH: -- property.
20 THE COURT: -- that, but it -- the -- in interpreting
21 this order, it cuts both ways.
22 MR. SMITH: Yes, sir.
23 THE COURT: That is, I can tell Mr. -- Judge
24 Turbeville's intention was, at least in my opinion, that one-half
25 of the LLC's a part of the marital estate. And I've got to read

1 into the decree his intention as far as the conveyance of these
2 other properties. It would defeat his order; would it not?
3 MR. SMITH: It would -- by force -- by requiring the LLC
4 to convey the property would defeat the intent of the order.
5 THE COURT: I mean, do you not believe that was just a
6 drafting oversight or Scribner's error?
7 MR. SMITH: Your Honor, I believe it goes back to the
8 testimony of the plaintiff's expert, Cath Lindhart, who was not
9 sure who owned which properties. Her testimony was set out, or
10 using Exhibit 25 from the trial, Ms. Lindhart went out and
11 testified -- and if the Court would allow me, I have a copy of
12 Exhibit 25. Your Honor, I think -- I beg the Court's indulgence.
13 THE COURT: Okay.
14 MR. SMITH: My -- my file has gotten -- has grown.
15 THE COURT: Okay.
16 MR. SMITH: Your Honor, I'd -- would ask that we be
17 allowed to introduce in this hearing what was marked as Exhibit 25
18 in the --
19 THE COURT: Okay.
20 MR. SMITH: -- trial in the--
21 THE COURT: Is there --
22 MR. SMITH: -- family court.
23 THE COURT: -- any objection?
24 MR. McLAREN: No objection.
25 MR. TINKLER: None.

1 THE COURT: All right. Okay.

2 (WHEREUPON, the foregoing prior exhibit was

3 marked Defendant's Exhibit Number 1 and

4 received into evidence.)

5 THE COURT: Okay, sir.

6 MR. SMITH: Your Honor, this exhibit was prepared by Ms.

7 Lindhart, which sets out property acquired during the marriage,

8 now or formerly W. R. --

9 THE COURT: Okay. So, but now, wasn't this -- this

10 witness, I would say, was -- maybe impeached is not the proper

11 word, but -- but she was discredited in some of her entries.

12 MR. SMITH: Yes, sir. Judge Turbeville specifically

13 found that in his decree -- I believe it was in the order awarding

14 attorney's fees --

15 THE COURT: Okay.

16 MR. SMITH: -- that her analysis was not helpful to the

17 Court at all.

18 THE COURT: Okay.

19 MR. SMITH: It was -- is --

20 THE COURT: Well, tell me what you --

21 MR. SMITH: -- incomplete.

22 THE COURT: -- purport to show by this exhibit, please.

23 MR. SMITH: That the confusion surrounding the title to

24 the property is not attributable to Mr. Simpson, but it's

25 attributable to the plaintiff's expert witness.

1 THE COURT: What were -- regardless of --
2 MR. McLAREN: I -- I object --
3 THE COURT: Hold on.
4 MR. McLAREN: -- to that.
5 THE COURT: Wait just a minute.
6 MR. McLAREN: Let's don't --
7 THE COURT: I don't -- I don't think that's really
8 before me. I think everybody agrees that there was confusion. I
9 think everybody will agree that we're still confused somewhat
10 today, but we're going to try to resolve these issues. But let
11 ask you this, Mr. Smith. If these -- and I'm going back to next
12 to the last page, the shaded properties.
13 MR. SMITH: Yes, sir.
14 THE COURT: If all of those properties were titled in
15 the name of Mr. Simpson, Senior, and Ms. Daisy Simpson, it
16 wouldn't be any problems if I agreed with Mr. McLaren's
17 methodology to order the -- the -- that those properties be
18 conveyed to Mrs. Simpson.
19 MR. SMITH: Yes, Your Honor. If they were titled in the
20 name of Mr. Simpson individually.
21 THE COURT: You'd have no problem with that?
22 MR. SMITH: No, sir.
23 THE COURT: Okay. And consequently, and trying to be
24 consistent with my earlier rulings, would it then follow, to
25 reinstitute the 34/66 division, wouldn't it be appropriate or

1 proper for me to order Mr. Simpson, Senior, to make a cash
2 disbursement of $133,250 to Mrs. Simpson?
3 MR. SMITH: Your Honor, the -- understanding the Court's
4 inclination to somehow correct this morass, yes, Your Honor, I
5 think that would be the appropriate solution.
6 THE COURT: Okay.
7 MR. SMITH: And it's something that should've happened
8 in the original trial.
9 THE COURT: Yeah. All right, thank you for your candor.
10 Anything else, Mr. McLaren -- Mr. Tinkler, I'm sorry.
11 MR. TINKLER: Thank you, Your Honor. I just want to --
12 MR. SMITH: Your Honor, I'm -- I apologize for
13 interrupting, but could I make one more comment about --
14 THE COURT: Yes, sir.
15 MR. SMITH: -- about Plaintiff's Exhibit 9? I do not
16 necessarily agree with Mr. McLaren's end result. I have a
17 spreadsheet --
18 THE COURT: The 133,250?
19 MR. SMITH: Yes, sir. We -- I -- I would agree with
20 that, but when he goes back and he adds the other numbers, I'm not
21 sure that I agree with that.
22 THE COURT: Now, which numbers are you talking about?
23 MR. SMITH: The additional real estate that he factored
24 in.
25 THE COURT: Which additional real estate?

1 MR. SMITH: Your Honor, let me withdraw that comment. I
2 think I'm confusing myself and the Court.
3 THE COURT: I confused myself already a few times this
4 morning.
5 MR. McLAREN: Well, that's the real candor.
6 THE COURT: But -- but you -- you stand by what you said
7 about if the properties that were shaded were titled in Mr.
8 Simpson, Senior, or Mrs. Simpson. And if I require the conveyance
9 of those properties to Mrs. Simpson, then she would be entitled to
10 a -- an additional disbursement of $133,250?
11 MR. SMITH: Yes.
12 THE COURT: Okay. All right. Mr. Tinkler.
13 MR. TINKLER: Thank you, Your Honor. I got involved in
14 this case well after these trials, well after these appeals. And
15 my task, as I understood it, was to defend Junior against
16 potential charges of contempt. And Your Honor heard those
17 arguments over the course of a long period of time and Your Honor
18 has found --
19 THE COURT: Was Mr. Simpson, Junior, a -- a defendant in
20 that contempt action, too?
21 MR. TINKLER: Well, he -- he's actually was.
22 THE COURT: Okay.
23 MR. TINKLER: There -- there was more than one pleading
24 filed by Mr. Warner during the course of -- of my involvement with
25 the case, and one of those pleadings did actually have his name on

1 it. He was seeking contempt --

2 THE COURT: Okay.

3 MR. TINKLER: -- and you may recall that Mr. Warner

4 later appeared at -- before the Court at a hearing, which I was

5 not present because I didn't have notice of it, and said that he

6 was only proceeding against Simpson, Senior. But -- but be that

7 as it may, I understood my task to defend this gentleman against

8 a --

9 THE COURT: But there's --

10 MR. TINKLER: -- contempt --

11 THE COURT: -- that potential.

12 MR. TINKLER: There was that potential and -- and, so

13 anyway, I think I've seen him through that and we've had a -- a

14 motion for rehearing of Your Honor's order. I think we appeared

15 in early December and, if I recall correctly, and Your Honor

16 declined to reconsider your prior ruling that he was not in

17 contempt. So he'd done everything, as I understand it, under the

18 order that he was required to do. You will recall that he was not

19 ordered to transfer any property. The LLC was not ordered to

20 transfer any property; only Mr. Simpson, Senior, was.

21 And so we understand that -- what the Court is wrestling

22 with and we -- we sort of said that at -- at the hearing. We

23 don't agree that the Court has the power to -- or the jurisdiction

24 to just go modify Judge Turbeville's order. We do think the Court

25 has -- probably does have the power to interpret it and then

1 somehow try to work your way out of this mess. I -- I would agree
2 with that. But after the hearing in early December and after Your
3 Honor's ruling that you -- your letter ruling of December 29th,
4 you said you wanted to -- you sort of had concluded that Judge
5 Turbeville only considered one-half of the LLC value to be part of
6 the marital estate. We agree with that. And your letter further
7 said at this hearing this morning you wanted to expound on your
8 reason. Now, this hearing was originally scheduled, as I
9 understand it, only to address the issues of alimony and
10 attorney's fees.
11 THE COURT: Well, I -- I was under the impression that I
12 -- and I -- I think that I received, on -- on a agreement and
13 consent by all of the attorneys, that I will also -- it -- it was
14 properly before me to make the determination as far as these
15 tracts that we're arguing about here today.
16 MR. TINKLER: Well, in any event, I -- I thought I'd
17 better come back up here today and --
18 THE COURT: Okay.
19 MR. TINKLER: -- and hear the Court expound its reasons
20 for that sentence in your --
21 THE COURT: And I'm -- I'm going to do that in just a
22 minute.
23 MR. TINKLER: And -- and I -- you know we would love to
24 -- to hear your -- your whole reasoning on that. I don't think I
25 -- I was prepared to do an analysis like Mr. McLaren, so what I

1 would ask the Court to do, we'd like to hear Your Honor's reasons
2 and we would like the opportunity, after hearing you expand your
3 reasoning, to respond to it. And that's all I'm requesting.
4 THE COURT: Okay. And I've probably already given my
5 reasons, but I'll go back through them in a -- in a --
6 MR. SMITH: All right, sir.
7 THE COURT: -- few minutes. Thank you, sir. And I -- I
8 will allow you to do that. Mr. McLaren, anything else before I
9 rule?
10 MR. McLAREN: Just one. And I wanted to correct one
11 statement. Procedurally there were two rules before the Court.
12 The second rule to show cause was against all defendants in all
13 capacities. And the statement by Mr. Warner, if you look at it in
14 context, was not to say he was only proceeding against Senior, and
15 I briefed that in our memorandum. I just wanted to correct that.
16 We do not agree with what Mr. Tinkler said about that.
17 THE COURT: Okay.
18 MR. McLAREN: Thank you.
19 THE COURT: Anything else?
20 MR. McLAREN: That's it.
21 THE COURT: Well, as y'all know by my memorandum and by
22 what I -- I have said this morning, I am going to try to attempt
23 to interpret Judge Turbeville's ruling because it's -- I think all
24 parties will concede that there's some ambiguities, particularly
25 as it relates to the direction that -- that only Mr. Simpson,

1 Senior, will make the conveyances set out in paragraph 106 of his
2 order. But I feel like that there is a question of jurisdiction,
3 but this being the Court of equity and the Court of fairness, I am
4 going to rule that in plaintiff's Exhibit Number 9, the subsection
5 E, the highlighted or shaded properties are to be conveyed to Mrs.
6 Simpson to effectuate the terms of Judge Turbeville's decree.
7 And, as a result, Mrs. Simpson will be owed an additional $133,250
8 to effectuate the division of 34% to Mrs. Simpson and 66% to Mr.
9 Simpson. And my order will reflect that all other named
10 defendants will join in these conveyances to ensure that Mrs.
11 Simpson gets a free -- a title free and clear. I'm requiring that
12 these be general warranty deeds to the extent of Mr. Simpson,
13 Senior's, 50% interest in the LLC. And, of course, the LLC will
14 have to join in these conveyances. It may be that they may need
15 to be conveyed to an intermediary and then to Mrs. Simpson.
16 Whatever needs to be done, I'm ordering that to be done.
17 Mr. Smith, do you want to confer -- why don't we do
18 this. Why don't we take about a five-minute bathroom break and
19 then I'll hear from your arguments and I would like to hear from
20 your client as far as what would be fair as far as a payment of
21 these sums. Now, let's --
22 MR. SMITH: Your Honor, if I could get one point of
23 clarification, please.
24 THE COURT: Okay.
25 MR. SMITH: Is the Court's ruling that the property in

1 Exhibit 9, the shaded portion, under section E, are you ruling
2 that that property is to be conveyed in addition to the cash
3 payment?
4 THE COURT: That property is to be conveyed and then the
5 cash payment was to be paid. Does that answer your question?
6 MR. SMITH: Yes, sir. I -- I think it does.
7 THE COURT: Yes, sir. Did I follow your methodology
8 correctly Mr. McLaren?
9 MR. McLAREN: Yes, sir.
10 THE COURT: Okay. Let's take about a five or six minute
11 break and then we'll see where we are.
12 MR. McLAREN: Thank you, Your Honor.
13 (OFF THE RECORD)
14 THE COURT: Okay, about the -- as far as the payment --
15 and I'll get to you in just a second.
16 MR. SMITH: Your Honor, if I -- I am so sorry. We were
17 talking about other matters, could you give me one minute, please?
18 THE COURT: Well, what -- what we can do is, I'm going
19 to probably break for lunch after we finish with this. Y'all can
20 talk about it at lunch and then come back together.
21 MR. SMITH: Yes, sir.
22 THE COURT: Thank you, sir. All right. Mr. Tinkler.
23 MR. TINKLER: Your Honor, I just want to say maybe on
24 the record, as I understood, when I got up and made remarks, I --
25 we were going to have the opportunity to respond to Mr. McLaren's

1 exhibit before Your Honor make -- made a ruling.
2 THE COURT: And you did, and I apologize for that.
3 MR. TINKLER: And I -- you appear to have made at least
4 a preliminary ruling. And -- and I wanted the opportunity to
5 respond to that, and I don't want to argue with the Court.
6 THE COURT: I'll -- I'll give you that that -- and I'll
7 do -- I'll do this. I'll -- I'll hear your response and I'll
8 consider it over lunch --
9 MR. TINKLER: Okay.
10 THE COURT: -- unless you want to go back to Charleston.
11 MR. TINKLER: Well, what I was thinking is, let -- let
12 me just point out an example. As I understand Mr. McLaren's
13 presentation here, the value of the marital estate had been
14 reduced, if you take Judge Turbeville's numbers.
15 THE COURT: Yes, I -- I think it has. I think I -- I
16 would agree with that. Do you agree with that, Mr. McLaren?
17 MR. McLAREN: Yes, sir.
18 THE COURT: All right.
19 MR. TINKLER: But -- but maybe I'm missing something,
20 but the value of what Daisy's getting have gone up.
21 MR. McLAREN: I disagree with that.
22 THE COURT: All right. Now, give me a little more --
23 MR. TINKLER: Well --
24 THE COURT: -- specifics.
25 MR. TINKLER: If -- if I -- well, she -- she's getting

1 all of this property, which I -- I think was already ordered that
2 Mr. Simpson, Senior, convey to her, but it's in the LLC. She was
3 already -- she was already ordered to do that, but now under Your
4 Honor's ruling and under his analysis, she's -- she's entitled to
5 an additional $133,000 in cash. He's already --
6 THE COURT: But haven't those real estate values been
7 decreased by my rulings or we've -- some of them have been
8 disregarded, such as Charlie's property?
9 MR. TINKLER: Well, they have, but -- well, I -- I mean,
10 I'm not sure of what Your Honor's ruling is. I'm just confused,
11 to be honest.
12 THE COURT: All right. Well, let -- let me tell you
13 what my ruling is and then I'll let you continue.
14 MR. TINKLER: Okay.
15 THE COURT: That all of the properties in the shaded
16 area under paragraph E, the Court finds are -- are part of the
17 marital estate. And I think Mr. Smith conceded that had they been
18 titled in Mr. Simpson, Senior, and/or Mrs. Simpson, that they
19 would be subject to equitable division and -- subject to division.
20 And he also agreed, if that was in fact the case, and Mr.
21 McLaren's methodology of Mrs. Simpson being entitled to an
22 additional $133,250 in cash, would effectuate the 34/66 division
23 as mandated by Judge Turbeville.
24 MR. TINKLER: Well, I -- I just think the effect of what
25 Your Honor's ruling is, if I understand it, is Junior has given

1 away that property twice. He gave it away in his divorce --

2 THE COURT: Well, after all is said and done and these

3 conveyances are made, I believe Junior will still wind up with 50%

4 of the LLC; would he not, Mr. McLaren?

5 MR. McLAREN: Yes, sir.

6 THE COURT: Okay. I'm not affecting Junior's 50%

7 interest.

8 MR. TINKLER: All right. So, Your Honor, we'll have to

9 analyze --

10 THE COURT: Okay.

11 MR. TINKLER: -- this exhibit and then -- and then, if

12 Your Honor is going to give --

13 THE COURT: Well, and why don't I do this. Since y'all

14 just got the exhibit today, why don't I give y'all seven days to

15 submit anything as far as Mr. McLaren's calculations and so forth.

16 MR. TINKLER: All right, sir. I -- that's fair.

17 That's --

18 THE COURT: Okay.

19 MR. TINKLER: -- very fair, Your Honor.

20 THE COURT: All right.

21 MR. TINKLER: And if -- with that in mind, I don't -- I

22 don't think that it's necessary for me to come back to the

23 afternoon session, which I believe, is just going to deal with the

24 issue of --

25 THE COURT: Attorney's fees --

1 MR. TINKLER: -- attorney's fees and --

2 THE COURT: -- and then, if we get to it, the alimony
3 termination.

4 MR. SMITH: That's correct.

5 THE COURT: Okay.

6 MR. TINKLER: Thank you, Your Honor.

7 THE COURT: Do y'all have any objection excusing Mr.
8 Tinkler?

9 MR. SMITH: No, sir.

10 MR. McLAREN: I'll miss him, but it's okay for him to go
11 back to Charleston.

12 THE COURT: All right. So you're --

13 MR. TINKLER: Thank you.

14 THE COURT: -- excused. You, too. Thank y'all for
15 coming. Anything else before we break for lunch? Let's try to
16 get back here as close to maybe 1:15 as we can. That'll give us
17 about -- about an hour and 10 minutes. If you need more time,
18 take it, but let's try to get back as quickly as we can and then
19 we'll start next on the attorney's fees issue.

20 MR. McLAREN: Thank you, Your Honor.

21 (THE COURT RECESSED FOR LUNCH.)

22 THE COURT: Do we have everyone back?

23 MR. SMITH: Yes, sir. I believe so.

24 THE COURT: I believe so.

25 MR. SMITH: All the --

1 THE COURT: Okay.

2 MR. SMITH: -- defendants.

3 THE COURT: Have you had the opportunity to confer with

4 your client as far as the payment of that award?

5 MR. SMITH: Yes, Your Honor. And -- and, preserving our

6 objections on the jurisdiction of the Court, Mr. Simpson's

7 financial position right now is -- is in a dire predicament and we

8 can't state with any particularity when exactly he could come up

9 with the money. The only way would be to borrow the money and, in

10 today's credit market, I'm not sure. So we're --

11 THE COURT: Well, doesn't your client have a very close

12 relationship with the Bank of Greeleyville?

13 MR. SMITH: Your Honor, he would still need to qualify

14 for their -- their credit requirements, and when Mr. Simpson had

15 to come up with money to pay to -- to address a previous rule to

16 show cause --

17 THE COURT: About three or $400,000, wasn't it?

18 MR. SMITH: Your Honor, it was closer to, I think,

19 600,000.

20 THE COURT: Okay.

21 MR. SMITH: So he's -- he's --

22 THE COURT: Is he individually or through any LLCs that

23 he controls has -- have any unencumbered farmland?

24 MR. SMITH: Your Honor, I -- I know that he had to

25 pledge property to secure the loan --

1 THE COURT: I understand.

2 MR. SMITH: -- to pay the others, if I could consult

3 with my client.

4 (Mr. Smith confers with the defendant.)

5 MR. SMITH: No, sir.

6 THE COURT: Okay. Well, the other side of that coin is

7 Mrs. Simpson has been without her property for a number of years,

8 and that's not all of Mr. Simpson's fault; I'm aware of that.

9 What's your position, Mr. McLaren, immediate payment?

10 MR. McLAREN: Yes, sir. I mean, it's been a long time

11 and, you know, I've -- I said earlier it should not only be the

12 payment but it should be her share of whatever was earned on the

13 property since it was originally ordered conveyed. You know, I --

14 it is -- he just needs to find a way. He's got a lot of property.

15 He's got a lot of wealth, a lot more than client does and, if Your

16 Honor orders it, he'll find a way to do it.

17 THE COURT: Well, and I didn't -- and I'm making these

18 rulings subject to any objections that Mr. Tinkler may have as far

19 as the Plaintiff's Exhibit Number 9 submitted this morning, but I

20 am going to require that the -- the real estate be conveyed within

21 20 days of the filing of the decree. And I think I said this

22 morning, but I want these deeds to be general warranty deeds, no

23 quit claim deeds. And I am going to require that the monies be

24 paid to Mrs. Simpson within 90 days and, if it's not paid after 90

25 days, then interest will run at the rate of 10% until paid in

1 full. That does not -- that provision, as far as the interest,
2 does not in any way alleviate the obligation to pay the money
3 within the time frame.
4 MR. McLAREN: Now, does that run from --
5 THE COURT: That'll just give Mrs. Simpson some
6 protection.
7 MR. McLAREN: Does that run from the date of filing of
8 the decree as well?
9 THE COURT: I'm sorry?
10 MR. McLAREN: Does that run -- does the 90 days run from
11 the date of the filing of the decree?
12 THE COURT: Of the -- of this decree. Okay. Yes, sir.
13 And once we get clearance from Mr. Tinkler, I'd ask you to prepare
14 the order, Mr. McLaren.
15 MR. McLAREN: I'll be glad to do that, Your Honor.
16 THE COURT: Anything else on those issues?
17 MR. McLAREN: Your Honor, could you specifically rule on
18 whether or not we're entitled to either judgment interest or to
19 share in the earnings of the property since the decree was
20 originally entered by Judge Turbeville?
21 THE COURT: Yes, sir.
22 MR. SMITH: Your Honor, I -- I think there's case law
23 that, if the obligation is to convey property or in-kind property,
24 as opposed to a monetary payment, that the recipient is not
25 entitled to interest. And I -- I've got some case law on that

1 that I could hand up to the Court.

2 THE COURT: Well, is that -- is that before me today?

3 MR. McLAREN: Well, it was in the original rule that

4 requested it. It was not granted in the order that Your Honor

5 issued and we move to reconsider that and ask that you do include

6 interest or sharing in what was earned or what my client would

7 have been able to do with the property had it been conveyed to her

8 when intended by the Court.

9 THE COURT: Well -- well, I don't have anything in front

10 of me to make that decision, though, do I?

11 MR. McLAREN: Yes, sir.

12 THE COURT: In what way?

13 MR. McLAREN: The original rule that started the process

14 asked for that -- that relief. When you issued the last order,

15 you did not address that, so part of our motion to reconsider,

16 which we are here on today and have been in the last hearing as

17 well, we asked that Your Honor address that issue and award

18 interest or the earnings on the property that my client would have

19 otherwise had, had the property been given to her back in 2003.

20 THE COURT: Well, that cuts both ways, doesn't it? Mr.

21 Simpson, Senior, has retained farmland properties that I would say

22 have markedly gone down in value.

23 MR. McLAREN: I don't know whether it has or not, Your

24 Honor.

25 THE COURT: Well, that's just my general, conventional

1 wisdom that all farmland in this area -- timberland, hunting land
2 or whatever, has -- has gone down quite drastically. You disagree
3 with that Mr. Smith?
4 MR. SMITH: No, sir. Your Honor, in my experience with
5 farmers is that farmland has declined in value.
6 MR. McLAREN: I -- I don't know that. I'm not aware of
7 any--
8 THE COURT: Well, that's just from my general knowledge
9 of this area, and it's --
10 MR. McLAREN: We've not put together any evidence about
11 any of that. I just -- I don't know the answer to it.
12 And the -- not to change the subject, but you also need
13 to rule on that piece of acreage that Mr. McKenzie testified
14 about.
15 THE COURT: Which acreage?
16 MR. McLAREN: That was the property paragraph G, where
17 there's a 6.7 acres.
18 THE COURT: All right. Give me just a minute. In
19 paragraph 106, subsection G?
20 MR. McLAREN: G. And if I remember correctly, Your
21 Honor, it appears the dispute -- Mr. McKenzie said, when he
22 prepared the deeds, that he did not find a 6.7-acre tract that
23 matched up with the tax map number that was in either in
24 Lindhart's report or in the decree; I don't remember which one.
25 But he did find a three-acre tract --

1 THE COURT: Uh-huh.

2 MR. McLAREN: -- that matched the tax map number.

3 THE COURT: Titled in whose name? One of the

4 defendants?

5 MR. SMITH: Mr. Simpson, Senior, Your Honor. I have a

6 copy of that deed that --

7 THE COURT: Okay. I --

8 MR. SMITH: -- matches the --

9 THE COURT: -- thought we --

10 MR. SMITH: -- tax map.

11 THE COURT: -- disposed of all of these issues this

12 morning.

13 MR. McLAREN: That one you didn't. You started to, but

14 we never -- you said we -- and your letter does on the 29th.

15 THE COURT: That's why -- that's why I got on -- off on

16 the task of going through these three items that we talked about

17 in chambers, F, G, and I that I thought were in dispute, and after

18 we finished our conference, I thought we were under the impression

19 that they were not in dispute.

20 MR. McLAREN: I apologize. I'm not trying to confuse,

21 but -- but the -- my client would be left a half interest in

22 whatever property they deed, so I think you need to clarify which

23 property it is to deed on that one piece.

24 THE COURT: All right. But your exhibit, Plaintiff's 9

25 introduced this morning, does not deal with the subsection G, 6.7

1 acres that we think -- these three acres. It does not deal with
2 that.
3 MR. McLAREN: It does deal with that.
4 THE COURT: Does or does not? I'm sorry.
5 MR. McLAREN: It -- it does.
6 THE COURT: Well --
7 MR. McLAREN: And -- and what -- the way it deals with
8 it, it cuts the value in half to seventeen-five, so she'll get a
9 half interest in that property. The question is: What is that
10 property? And there's two competing sets of evidence. Mr.
11 McKenzie said that when you match up the tax map number --
12 THE COURT: I understand. I remember that.
13 MR. McLAREN: -- it's a three -- three acre, not 6.7.
14 Our evidence was that, if you match up the acreage on the value,
15 the 6.7 to 6.7, it is the property that surrounds what we all
16 Charlie's property. And therefore our view is, because there is
17 confusion in that part of the decree, that Your Honor needs to
18 decide which -- which piece of property it is, it's three acres or
19 6.7.
20 THE COURT: Well, is there any testimony in the record,
21 other than Mr. McKenzie's testimony --
22 MR. McLAREN: My --
23 THE COURT: -- that it is three acres.
24 MR. McLAREN: -- my client's testimony, when we put up
25 the plat. That was in a number of hearings ago.

1 THE COURT: Well, I went home at lunch thinking we'd at
2 least had resolved the equitable division issues, but I was wrong.
3 MR. McLAREN: I -- I'm sorry, Your Honor.
4 THE COURT: Is this unimproved property?
5 MR. McLAREN: Yes.
6 THE COURT: All right. Well, my handwritten notes on
7 this decree is -- it is my writing saying it's valued at $35,000.
8 MR. McLAREN: Your Honor --
9 THE COURT: And that's --
10 MR. McLAREN: -- we have a --
11 THE COURT: -- Charlie's house, isn't it?
12 MR. McLAREN: Yes.
13 THE COURT: Well, now we --
14 MR. McLAREN: Wait a minute.
15 THE COURT: -- we took Charlie's house out of the mix.
16 MR. SMITH: I believe Charlie's house, Your Honor, was
17 the 1.3-acre tract.
18 MR. McLAREN: There's a 1.3 is Charlie's.
19 THE COURT: Okay.
20 MR. McLAREN: Charlie got that. I mean, it's out of our
21 mix, but Charlie has that property.
22 THE COURT: All right. That's what I understand, too.
23 MR. McLAREN: And the 6.7 acres is the property that
24 surrounds Charlie's property. And that's the property we think
25 should be deeded to my client, at least the half interest that you

1 now --

2 THE COURT: Why -- why wouldn't it a -- a 34 -- a 34%

3 interest of that tract to your client?

4 MR. McLAREN: Because the property division -- well,

5 there's two levels to it. One, you reduced what's in the estate

6 by 50%, saying 50% is in an LLC, so that leaves the property. But

7 the property in its -- in its totality, under the original award,

8 was awarded to my client. Now she'll only get half because only

9 half is in the marital estate, so she will get half of the 6.7

10 acres, not -- not the full 6.7 acres. So in our memo -- and I

11 don't whether Your Honor has that handy or not -- I addressed

12 specifically that letter, or that issue, and, if I just may read

13 it in short.

14 THE COURT: Yes, sir.

15 MR. McLAREN: "Plaintiff will now address the

16 discrepancy between the final decree and the tendered quit claim

17 deed regarding tract G. The final decree requires transfer of 6.7

18 acres at a value of 35,000, referring to a particular tax map

19 number. Mr. McKenzie testified that the property with that tax

20 map number refers to a tract having only three acres. There is no

21 evidence as to the value of that other three-acre tract that Mr.

22 McKenzie found. At the hearing plaintiff presented a plat

23 describing the 6.7-acre tract as being the 6.7 acres surrounding

24 the property..." --

25 THE COURT: All right. And who is that -- In the legend

1 of the plat, who does it list as the property owner?
2 MR. McLAREN: I'd have to pull the plat, Your Honor. I
3 -- I didn't --
4 THE COURT: Well, just because there's a plat doesn't
5 mean it's owned by the marital estate, does it?
6 MR. McLAREN: No, but it helps us identify which
7 property it is because, if you map the acreage in the decree, it
8 is 6.7, but the property that Mr. McKenzie found is only three
9 acres.
10 THE COURT: Well, I mean, Mr. McKenzie is a member of
11 the bar and here now for other purposes, but why shouldn't I give
12 deference to his opinion?
13 MR. McLAREN: Well, I -- I don't think you should not
14 give deference to his opinion, but we put -- and so I think you
15 need to look at the totality of the facts. The facts are: Judge
16 Turbeville intended to award a, what was identified as a 6.7-acre
17 tract at 35,000.
18 THE COURT: Which contains, as I understand it,
19 Charlie's home.
20 MR. McLAREN: Surrounded Charlie's home.
21 THE COURT: But he didn't value 6.7 acres as an
22 unimproved small tract of land at $35,000, did he?
23 MR. McLAREN: He did because it's -- it's -- I want to
24 say like swamp land, it's -- it's -- what do you call it?
25 THE PLAINTIFF: It's wetlands.

1 MR. McLAREN: It's wetlands.

2 THE PLAINTIFF: Wetlands, right.

3 THE COURT: Well, we can -- if wetlands, it wouldn't be

4 worth anywhere near that.

5 MR. McLAREN: That's what the judge valued it at. And

6 then -- but the tax map number refers to a piece of property that

7 no one's ever dealt with and it's -- and it's only three acres.

8 So Your Honor would need to decide which piece of property. It's

9 the three acres or it's 6.7.

10 THE COURT: All right. Well, what if I give the 6.7

11 acres to Mrs. Simpson and we adjust the figures from this morning

12 based upon that asset going into her column, and Mr. Simpson would

13 be willing to -- or would be obligated to pay less than the

14 133,000 and some change? Would that be a way to resolve it?

15 MR. McLAREN: Can I ask my client --

16 THE COURT: Yes, sir.

17 MR. McLAREN: -- something, Your Honor?

18 (Mr. McLaren confers with the plaintiff.)

19 MR. McLAREN: Your first question, Your Honor, was how

20 is the 6.7 acres titled. It's titled to W. R. Simpson Farms, LLC.

21 THE COURT: Which is non-existent.

22 MR. McLAREN: Which doesn't exist, but you said that,

23 because it's an LLC, it falls to the -- the LLC category. My

24 client does not want the property in that way, but what she would

25 be willing to do is handle it the same way we handle Charlie's

1 house and -- and just give her, give Charlie, that 6.7 acres and
2 take out of --
3 THE COURT: Or whatever acreage it is.
4 MR. McLAREN: What -- what everybody --
5 THE COURT: Okay.
6 MR. McLAREN: -- it'd be -- it'd be the acreage around
7 her house, and then take that out, then we got to adjust the
8 numbers again.
9 THE COURT: Mr. Smith, what -- would you discuss that
10 with your client, please?
11 MR. SMITH: Yes, sir.
12 THE COURT: You need to step outside?
13 MR. SMITH: If -- if I could make sure I understand it
14 because I was trying to find that property in my notes --
15 THE COURT: Okay.
16 MR. SMITH: -- Your Honor. Now, what was --
17 THE COURT: Repeat that, please, Mr. McLaren.
18 MR. SMITH: All right. The real estate surrounding
19 Charlie's house.
20 MR. McLAREN: Six point seven acres surrounding
21 Charlie's house. It is the wetlands property. Take that out of
22 the marital estate; give it to Charlie. That will then lower the
23 amount of the total marital estate, then do the 34%/66% division
24 again. That'll adjust the cash number. And just give it to
25 Charlie and not fight about it.

1 MR. SMITH: Your Honor, if you would give me a couple
2 minutes?
3 THE COURT: Yes, sir. Go ahead.
4 (Mr. Smith confers with the defendant.)
5 (OFF THE RECORD)
6 MR. SMITH: Your Honor, I apologize for taking --
7 THE COURT: That's all right.
8 MR. SMITH: -- so long, but this is a very confusing
9 issue trying to identify this property. And I think it's just
10 further evidence of how convoluted this particular case it. But,
11 subject to our reservations of objections to the jurisdiction, we
12 -- my client will agree to that.
13 THE COURT: And whatever acreage it is in this --
14 whatever we do, I think we need to provide it as a quit claim deed
15 for whatever acreage it is. And it will be conveyed to the
16 parties' daughter, Charlie, and that will resolve that issue.
17 MR. SMITH: That value will be -- be taken out of the
18 marital estate for the purposes of Mr. McLaren's calculations.
19 THE COURT: Do you agree with that, Mr. McLaren?
20 MR. McLAREN: I'm just writing it down, Your Honor. I
21 guess I do. We're taking -- it would be the property, the 6.7
22 acres, more or less, that surrounds Charlie's property, not that
23 other three-acre tract, that that goes to Charlie by appropriate
24 general warranty deed by whoever needs to sign it. And that --
25 THE COURT: Well, I think -- just -- just so there's --

1 since there is a discrepancy in the acreage, I think it'd be fair
2 to say that there would -- to do a quit claim deed by all these
3 possible owners because, if there's a -- is a general warranty
4 deed for 6.7 acres, it's re-surveyed, is turned out to be three
5 acres or less, then that puts the onus on Mr. Simpson, Senior.
6 MR. McLAREN: I'm not concerned about it being five
7 acres or six acres or seven acres or 6.7. I just want to make
8 sure we're talking about the property that was shown on the plat
9 in evidence that --
10 THE COURT: Okay. Do we have that tax map number?
11 Let's put that in the record, if we could please.
12 MR. SMITH: Your Honor, I'd --
13 MR. McLAREN: That's the property it would not be.
14 MR. SMITH: Your Honor --
15 THE COURT: Sir?
16 MR. SMITH: -- I believe I have that.
17 MR. McLAREN: That tax map would not be that -- that --
18 the tax map property. It's the other property that's shown on the
19 plat. We're trying to find the plat and I can't put my hands on
20 it.
21 THE COURT: So you're saying the tax map number is
22 combined with Charlie's residence and whatever acreage that's
23 situated upon.
24 MR. McLAREN: I believe I've got it.
25 THE COURT: Okay.

1 MR. McLAREN: You're asking me about which tax map
2 number. One --
3 THE COURT: Just so we can identify it so there won't be
4 any mistake after we leave here after the decree's drawn.
5 MR. McLAREN: Do you know what it is? I don't know what
6 it is.
7 MR. SMITH: I -- I -- this is the tax map number, but
8 that's also the same tax map number of the real estate in the deed
9 that Steve referred to.
10 MR. McLAREN: Can we ask Mr. McKenzie to help us with
11 this?
12 THE COURT: You're going to take his word?
13 MR. McLAREN: Mr. McKenzie okay. He bought me lunch.
14 (Mr. McLaren and Mr. Smith conferring with Mr. Steven McKenzie.)
15 W.R. SIMPSON, JR.: -- discussion about the LLC
16 property, how am I supposed to convey my 50% of the LLC
17 shareholder with her in this property that you're telling -- that
18 I have to order -- if you order me to convey the property today
19 that -- where, in my LLC code of laws, if I can read them, I have
20 to be in 100% agreeance to become a shareholder --
21 THE PLAINTIFF: Well, in --
22 MR. SIMPSON, JR.: -- or someone else in the property.
23 How -- how am I supposed to end up with my property?
24 THE COURT: Well, if you --
25 MR. SIMPSON, JR.: -- when it's said and done --

1 THE COURT: -- to be honest with you, Mr. Simpson,
2 Junior, other than closing a few real estate loans, I didn't do a
3 whole lot of real estate work, particularly as it applied to LLCs.
4 And Mr. Smith, a few months ago, was nice enough to provide me
5 with the statute of -- one of the statutes, as far as conveying
6 property, and I suggested this morning -- I don't know if I'm
7 correct, but maybe possibly the LLC would deed the property to a
8 third person acting as an intermediary, and the third person could
9 sign a deed to Mrs. Simpson for one-half of that property, and
10 then re-convey the property, or your -- your share back to you. I
11 don't know exactly how it can be done.
12 MR. SIMPSON, JR.: But -- but my share -- I've already
13 testified under oath I'm not willing to give her my share of the
14 LLC and I'm not willing to let any part of the LLC go to -- go
15 anywhere. It's in the LLC.
16 THE COURT: I -- well, I understand your position, but
17 that's not before me today.
18 MR. SIMPSON, JR.: You ordered --
19 THE COURT: I'm just trying --
20 MR. SIMPSON, JR.: -- you ordered --
21 THE COURT: -- to interpret --
22 MR. SIMPSON, JR.: -- to give it away --
23 THE COURT: -- Judge Turbeville's --
24 MR. SIMPSON, JR.: -- earlier, though --
25 THE COURT: -- decision, which --

1 MR. SIMPSON, JR.: -- Your Honor.
2 THE COURT: -- I interpreted it to be that half of the
3 LLC was marital property, or half of the value. And it'd been a
4 lot easier if -- and he has his reasons for doing this, I know --
5 if he put a value on the 100% of the LLC and given -- and required
6 Mr. Simpson, Senior, to give Mrs. Simpson the value of that --
7 that money. That -- that's not here today and I really don't --
8 MR. SIMPSON, JR.: The order --
9 THE COURT: -- mean to --
10 MR. SIMPSON, JR.: -- the decree that --
11 THE COURT: -- cut you off.
12 MR. SIMPSON, JR.: -- Judge Turbeville goes into the --
13 split the details of --
14 THE COURT: I'm sorry, speak up a little louder.
15 MR. SIMPSON, JR.: The -- Judge Turbeville, in that
16 decree, order decree, goes on in explicit details of the cutting
17 down on the LLC property and its value and awards that in monetary
18 fees, which we've already paid.
19 THE COURT: I understand, but that -- that's not before
20 me this afternoon. And I'd like to get these issues straight
21 today and, if you want to bring something through Mr. Tinkler on
22 that, that -- I'd be happy to hear it, but I -- I can't hear it
23 this afternoon. Let's go back to your property.
24 MR. McLAREN: Your Honor, we have -- Mr. Smith's kindly
25 provided me what I call photographic -- an aerial shot of the

1 property and I've taken a pen and outlined the property, which is
2 what we have identified as 6.7 acres. It could be more or less
3 than that. And I've written on it, "subject property to Charlie,"
4 so that property goes to Charlie, and it appears that -- can I
5 hand that up to Your Honor --
6 THE COURT: Yes, sir.
7 MR. McLAREN: -- and go ahead -- I would like to make
8 this a joint exhibit.
9 MR. SMITH: Your Honor, this is with the understanding
10 that, although there is a plat, we're using this only to identify
11 the property. We're not making any warranties or guarantees about
12 the boundaries or -- or any of that because there appears to be
13 some confusion as -- as to exactly what's there.
14 THE COURT: All right. As I understand it then, y'all
15 are agreeing to convey -- everyone, both sides agreeing to convey
16 -- and that is the LLCs, any entities that either --
17 MR. SMITH: No, sir.
18 THE COURT: -- party can --
19 DEFENDANT SIMPSON, SR.: We're not -- we're not --
20 THE COURT: Please speak through your attorney, please,
21 sir.
22 (Mr. Smith confers with the defendant.)
23 MR. SMITH: Your Honor, I think this gets back to our
24 reservations of the objections to the Court --
25 THE COURT: And you're protected on that.

1 MR. SMITH: -- doing this, but -- but just for purposes
2 of this, this particular tract, I believe, is titled in the name
3 of Mr. Simpson individually.
4 THE COURT: Okay.
5 MR. SMITH: And Mr. Simpson individually has no
6 objection to conveying the -- the property that's been identified
7 without any warranties as to the boundaries or the -- the acreage
8 or anything of that sort.
9 THE COURT: But he does warrant to you and to the Court
10 that it's titled in his name individually.
11 MR. SMITH: Yes, sir.
12 THE COURT: Okay. Any objection to that?
13 MR. McLAREN: I think the deed ought to be what we -- I
14 think real estate lawyers call a limited warranty deed. He's --
15 he's warranting that he holds title and that he can convey title.
16 THE COURT: Any objection to that, Mr. Smith?
17 MR. SMITH: Your Honor, I -- I don't have a problem with
18 a limited warranty deed.
19 (Mr. Smith confers with the defendant.)
20 MR. SMITH: Your Honor, we would prefer to limit it to a
21 quit claim because of the questions about the -- the dimensions
22 and the size of the property. And I --
23 THE COURT: Okay.
24 MR. SMITH: -- I think a quit claim deed --
25 THE COURT: I -- I think that would be reasonable and,

1 of course, it would convey any interest individually owned by Mr.
2 Simpson.
3 MR. McLAREN: Well, he -- we're taking his word today
4 that it's in his name. And the information we've been operating
5 under so far was that it wasn't under his name. So, if we're
6 going to put in an order that he warrants and guarantees to this
7 Court that it's in his name --
8 THE COURT: Well, that's why asked did you just ask Mr.
9 Smith and he said his client does warrant to the Court, through
10 him, that he owns or holds title individually to this piece of
11 land.
12 MR. McLAREN: I just want to make sure that's the --
13 THE COURT: Okay.
14 MR. McLAREN: -- real clear.
15 MR. SMITH: Yes, sir.
16 THE COURT: All right.
17 MR. McLAREN: Can I mark that a joint exhibit?
18 MR. SMITH: That's fine.
19 MR. McLAREN: Can I show that to Your Honor before --
20 I'll mark, then I'll hand you --
21 THE COURT: Yes, go ahead and mark it, if you would,
22 please.
23 (WHEREUPON, the foregoing plat was marked as
24 Joint Exhibit 1 and received into evidence.)
25 MR. McLAREN: And I'll get copies for everybody when

1 we're done, Your Honor. I was going to show that to Your Honor.
2 That's Charlie's house.
3 THE COURT: Okay.
4 MR. McLAREN: That the -- what we've described as the
5 surrounding property, 6.7 acres more or less.
6 THE COURT: Okay.
7 MR. McLAREN: Okay?
8 THE COURT: All right. Thank you. Does that resolve
9 all of the -- does that resolve all the property issues? Any
10 equitable division issues?
11 MR. SMITH: Yes, sir.
12 MR. McLAREN: The -- the only issue left open is the
13 question I'd pose first is, what about interest, what about
14 earnings on the property she should have gotten back in 2003?
15 THE COURT: Okay. And I'll get back to that in a
16 minute. Is there anything else other than the equitable division
17 of the property in this particular case? Mr. Simpson, Junior, you
18 want to say something else?
19 MR. SIMPSON, JR.: Yes, sir. Any --
20 THE COURT: And I wish Mr. Tinkler had -- had stayed if
21 there were going to be some issues coming up.
22 MR. SMITH: Yes, sir.
23 MR. SIMPSON, JR.: Well, we didn't know exactly what all
24 was going to be before the Court because it seems to be that Mr.
25 McLaren can put in anything before the Court, as he did last time,

1 and this -- this stuff, we didn't know what we were coming into
2 Court for the last time, other than 24-hour notice before. And
3 now we come in here -- we were going to take care of alimony
4 issues and attorney fees, and now we've got into opening up
5 everything about the LLC and you've already ordered all my
6 property away, where in all of the records that says there's no
7 jurisdictional issues, which he's already -- and you ended up
8 doing it anyway. And I was just wondering how we're going to get
9 beyond that with the Court move -- by making all --
10 THE COURT: Well --
11 THE DEFENDANT SIMPSON, JR.: -- of that.
12 THE COURT: -- I'm going to make my ruling, which I have
13 made, subject to Mr. Tinkler's filing any objections as far as the
14 math and anything related to the exhibit, Plaintiff's Number 9, I
15 believe it was, about all of the division and the property and the
16 payment to Mrs. Simpson.
17 THE DEFENDANT SIMPSON, JR.: Well, the other --
18 THE COURT: And --
19 THE DEFENDANT SIMPSON, JR.: -- thing, too --
20 THE COURT: -- in your -- your remedy would be to file
21 an appeal and that -- I know you're familiar with that process.
22 MR. SMITH: Your Honor, I --
23 MR. SIMPSON, JR.: Well, the other thing is, too, all of
24 the property that's in this -- that we have conveyed -- my father
25 and I have conveyed monetary things to do with property that was

1 in the order that hasn't been picked through, or whatever, yet.
2 But there was my aunts and uncle and -- and my other aunt's
3 property, that that was part of the equitable division that he
4 actually -- we settled and paid that default of the Court to get
5 it settled in that part, but none of that -- none of those issues
6 have been brought up. Van Stone's house was given away to Ms.
7 Simpson and they took that out. And the store property was valued
8 at $250,000; we paid that out of the LLC and to the equitable
9 division. And I just want it all to be before the Court that, if
10 it's all going to be opened up and they're going to pick the
11 pieces out of the property that they want, I'd like to get a
12 little couple pieces of property that I want out of there if I'm
13 going to be a member of the LLC. I just want to -- I want to get
14 that clarified to the Court that that's where we're at today with
15 the property, giving away --
16 THE COURT: Since Mr. Paul --
17 THE DEFENDANT SIMPSON, JR.: -- to whoever they want.
18 THE COURT: -- Tinkler is your attorney of record and
19 you can -- you can have him file whatever motions that need to be
20 done and we -- we'll do that.
21 MR. SIMPSON, JR.: Okay.
22 MR. McLAREN: Your Honor, I would point out, just for
23 the record, that your letter of December 29th, 2010, to me, Ms.
24 Warner, Reid Smith, Paul Tinkler, Michael Timbes, said, "It's
25 going to be my ruling that Judge Turbeville's order only awards

1 one-half the value of the LLC to the marital estate. I am going
2 to elaborate on the reasons for my decision on January 6th and
3 7th...", that's today and tomorrow, "...when we are hearing the
4 remaining issues. I also want to discuss with the attorneys the
5 remaining dispute as to the 6.7-acre tract...," which is what
6 we're discussing now. So I just want to point out we all had
7 notice why we're here.
8 THE COURT: Okay.
9 MR. McLAREN: And Your Honor asked the question of does
10 that take care of the equitable division issue, and as I said, it
11 was the interest and earning issue is -- is in there. And there's
12 a side issue on some of the fees throughout this process. Your
13 Honor has either denied them or said, "I'm going to take that up
14 at the end." And there are fees relating to the alimony part that
15 we haven't finished yet, there are fees --
16 THE COURT: We haven't even started that, have we?
17 MR. McLAREN: Right. So --
18 THE COURT: Okay.
19 MR. McLAREN: -- what I did was just did a fee affidavit
20 an updated the affidavit that goes from the time of the decree,
21 when we finished that in the main case, up till now, but allocated
22 it between the different hearings so that Your Honor can consider
23 that for whatever you want to with it.
24 THE COURT: I'll -- I'll consider it. I'm not going to
25 necessarily --

1 MR. McLAREN: But I just don't --
2 THE COURT: -- say that --
3 MR. McLAREN: -- want it --
4 THE COURT: -- I'll agree with it.
5 MR. McLAREN: -- before close and I sit down and say
6 that's it because there are some fee issues that we'll take up
7 when we get to that part.
8 THE COURT: Well, you want to take them up today?
9 MR. McLAREN: Well, I was going to take them up when we
10 get to the fee part, because I think --
11 THE COURT: Oh, okay. Okay.
12 MR. McLAREN: -- we're doing the equitable division.
13 THE COURT: All right. Anything else on the equitable
14 division, Mr. McLaren, Mr. --
15 MR. McLAREN: No, sir. Other than those two --
16 MR. SMITH: The only thing to address -- I don't think
17 this is before the Court, but I would cite to the Court the case
18 of Christie vs. Christie, which stands for the proposition that
19 when property, as opposed to money, is ordered to be transferred,
20 that interest does not accrue on that transfer.
21 THE COURT: It does not accrue?
22 MR. SMITH: No, sir. Christie vs. Christie -- and I
23 have a copy --
24 THE COURT: All right. If you would just give a copy to
25 my assistant, Pam. But you're saying it does not accrue.

1 MR. SMITH: That's right.

2 THE COURT: Okay. Anything else, Mr. McLaren, on your

3 motion for interest or appreciation or whatever?

4 MR. McLAREN: No, sir.

5 THE COURT: All right. I'm going to respectfully deny

6 that motion.

7 MR. McLAREN: Okay.

8 THE COURT: Are we now ready to move on to the

9 attorney's fees issue as remanded by the Court of Appeals?

10 MR. McLAREN: Yes, sir.

11 THE COURT: Okay. As I understand it, the relevant case

12 is this same caption, Ms. Daisy Simpson versus the same

13 defendants, and in the unpublished opinion submitted December 1st,

14 2006, the Court of Appeals, among other things, remanded to this

15 Court the issue of attorney's fees.

16 MR. McLAREN: Yes, sir. Can I ask Mr. Smith --

17 (Mr. McLaren conferring with Mr. Smith

18 THE COURT: As I understand the issue on remand, I'll

19 read it and y'all correct me if I'm wrong. My review is limited,

20 of course, to the amount of the fee, but in particular under

21 Glasscock vs. Glasscock. The customary legal fees for similar

22 circumstances. Do you agree with that, Mr. McLaren?

23 MR. McLAREN: I agree that what the Court of Appeals

24 said was that is -- we may be saying the same thing -- that the --

25 the hourly rates in the locale are but one factor. And the Court

1 of Appeals disagreed with the holding that reduced the fee down
2 to, I think, 200 or $250 an hour. And --
3 THE COURT: Well, it was hard to see what -- number one,
4 it was hard to see what hourly rate Judge Turbeville used. He had
5 done -- I think Mr. Chandler testified it was $575 an hour, maybe
6 a little more. And the Court of Appeals says it was even wrong to
7 consider Mr. Chandler's opinion because he was a former attorney
8 for Ms. Simpson; is that right?
9 MR. McLAREN: Yes, sir. And if -- I've done a memo on
10 this issue if I may --
11 THE COURT: Okay.
12 MR. McLAREN: -- hand that up.
13 THE COURT: Well, it's obvious from the length of this
14 memo, I don't intend -- from the time reference, I'm going to need
15 to take it under advisement.
16 MR. McLAREN: Probably.
17 THE COURT: All right. Mr. Smith, do you agree on my
18 assessment of what issues, as far as the attorney fees, are before
19 me?
20 MR. SMITH: Yes, sir. I do, but I would -- I would also
21 note that the Court of Appeals reversed Judge Turbeville and
22 remanded. It was simply not a remand.
23 THE COURT: Okay. I understand that. Yes, sir. Maybe
24 I didn't state it correctly, but yes, I -- I understand that.
25 MR. McLAREN: If I could just -- just give the nutshell

1 of our -- our position.

2 THE COURT: Yes, sir.

3 MR. McLAREN: Judge Turbeville basically said, okay, the

4 lawyers testified that in Clarendon County we charge X amount of

5 dollars, and I think he said 185 to 250. And the Court of Appeals

6 said that it was not appropriate -- reversed and said it was not

7 appropriate as to -- to focus on that issue in that way. And the

8 clear inference is the fee needed to be increased. Now, the

9 question becomes: Why does it need to be increased? And, if so,

10 what should the increase be?

11 So, well, this is where I started and that's how the

12 client walked into the office, because there were no lawyers in

13 Manning, where they live, that could take the case because they

14 were conflicted out in large part because they'd either

15 represented Mr. Simpson, Senior, in a prior matrimonial action, or

16 had represented Senior or Junior or LLC --

17 THE COURT: And I've also found, from practicing for 33

18 years in a town very similar to Manning, here in Kingstree, that

19 if they don't have conflicts, people just want to go out of town

20 to get divorce lawyers because they just don't want all their

21 business known in town.

22 MR. McLAREN: Well --

23 THE COURT: I agree with that as far as Clarendon

24 County, but tell me about Sumter County.

25 MR. McLAREN: Well, Sumter County -- let me see, John

1 MacDougal comes to mind; he charges $550 --
2 THE COURT: Well --
3 MR. McLAREN: -- an hour.
4 THE COURT: -- is that in the record?
5 MR. McLAREN: Now, you just asked me how this --
6 THE COURT: Well, we need -- I'm -- I'm talking about
7 available attorneys. I'm not talking about fees right now. And
8 I'm hearing you on the fees, but --
9 MR. McLAREN: Well, I'm just -- I'm just -- I know as a
10 lawyer, in terms of what we all charge, and I know that the
11 lawyers over there are in the -- depending on the case --
12 THE COURT: Well, and I told --
13 MR. McLAREN: -- MacDougal's --
14 THE COURT: -- I told y'all in chambers this morning, I
15 didn't realize this issue would be in front of me for about two
16 years, and I've taken mental notes and I made some copies of the
17 fee petitions, which we cannot locate. But there are good lawyers
18 in Sumter now, good matrimonial lawyers, such as Harry Wilson,
19 that charge in the $200 range.
20 MR. McLAREN: But --
21 THE COURT: I think that's a little low right now
22 myself, but I --
23 MR. McLAREN: I think -- I don't think it's appropriate
24 to go outside the record. With the record, in this case, is we
25 have our affidavit, Mr. Warner and I; Mr. Shull's affidavit from

1 Charleston; Mr. Taylor's affidavit from West Columbia, and they
2 talk about customary and usual fees. That is what's in the record
3 in addition to Mr. Chandler and Mr. Coffey. And the Court of
4 Appeals --
5 THE COURT: Are you saying I'm bound by the record to
6 adopt Mr. Taylor and Mr. Shull's fee schedule?
7 MR. McLAREN: I think that you're bound by the record in
8 terms of what you can consider.
9 THE COURT: That -- I'm sorry?
10 MR. McLAREN: In terms of what you can consider.
11 THE COURT: Okay.
12 MR. McLAREN: Now, what you conclude from what you
13 consider is within Your Honor's province. And I think you need to
14 do what's fair and appropriate. And Shull and Taylor said that
15 $400 is a reasonable and customary fee for a complicated case, as
16 they describe it, as Judge Turbeville described it, and as the
17 Court of Appeals described it.
18 THE COURT: In -- but in this area, do they say in this
19 area? And when I say "in this area," I'm looking obviously at
20 this circuit, maybe Florence, maybe Orangeburg.
21 MR. McLAREN: I -- I'll quote from the Court of Appeals.
22 "The Family Court was presented with the affidavits from...," --
23 THE COURT: Give me that --
24 MR. McLAREN: "...wife's attorneys..." --
25 THE COURT: -- page number.

1 MR. McLAREN: -- "...as -- as well as attorney Ron..."
2 THE COURT: Mr. McLaren, give me that page number,
3 please.
4 MR. McLAREN: Oh, I'm sorry, page 3. I apologize, Your
5 Honor. It's the first full paragraph on page 3.
6 "...Ron Shull and Mark Taylor, all who testified that
7 $400 per hour is a reasonable and customary rate in Clarendon
8 County for a family law expert to try complicated cases like the
9 one at bar. Our Supreme Court has approved the practice of
10 considering attorneys' resumes or professional standing, as well
11 as the attorneys' affidavits, when deciding appropriate fees. The
12 record shows this is not an average case, rather it's quite a
13 complex case requiring unusual, skill, effort, and time. The
14 family court was presented with testimony of four lawyers
15 concerning customary fees for similar services in a complex case.
16 However, the Court relied on testimony of the husband's former
17 attorney who testified regarding averages rates for a domestic
18 case. This was error."
19 So let me tell you where I think that leaves us. Why
20 did -- you know, if you can buy whatever kind of car you want to
21 buy. People can make a choice to buy a Ford Falcon, they can buy
22 a Mercedes, they can buy some place in between; that's their
23 choice. But some people don't have choices. Here the local
24 lawyers were in large part conflicted out. And I pulled the 2003
25 lawyers directory, and in the memo -- and my client will testify

1 to this -- virtually every lawyer listed in Manning that would be
2 available to hear the case was conflicted out because they either
3 represented Senior, Junior, or the LLC.
4 THE COURT: Or knew them very well.
5 MR. McLAREN: Pardon me?
6 THE COURT: Or knew them very well.
7 MR. McLAREN: Yes.
8 THE COURT: Okay.
9 MR. McLAREN: Or, you know, so she had to go out of town
10 and she did go out of town.
11 THE COURT: And I'll accept that. I don't believe
12 that's going to be in dispute, but how far out of town did she
13 have to go? And I'll say this: I've tried cases and I've had Mr.
14 Taylor out of Columbia, and Mr. Shull, only Mr. Shull in another
15 case was in Charleston, and they submitted affidavits in that
16 range. And I agree that is the appropriate fee for Charleston and
17 Columbia. I just question whether or not it's appropriate -- big
18 fee for this rural circuit.
19 MR. McLAREN: Well, we addressed that issue and that --
20 that begins at page 4 of our brief, and we went and found cases
21 that dealt with exactly that issue. What happens when a litigant
22 has to go out of circuit or out of town to get a lawyer? Is the
23 out-of-town lawyer bound by the fees of the local lawyers who were
24 unavailable -- would have charged had they taken the case?
25 THE COURT: Well, I can name at least four good,

1 crackerjack lawyers in -- in Sumter, which would be Michael Self,
2 T. Davis, Bunt Wilson, Ken Young -- I'm not trying to step on
3 anybody's toes. There are other good lawyers there, but I -- I
4 just question whether or not they had to go that far out of
5 Manning.
6 MR. McLAREN: Well, first, Michael Self couldn't take
7 the case because he was one of the lawyer that, I believe, one of
8 Simpsons consulted with, and --
9 THE COURT: Okay.
10 MR. McLAREN: -- so -- and so he'd be out. I don't know
11 about the rest, but I -- again, we kind of get on thin ice when we
12 get into stuff that's not part of the record because those
13 lawyers, you don't know whether they had a conflict or not,
14 whether they'd be available. You assume that they were, but I
15 know for one that Michael Self and John MacDougal would not be
16 available because I asked them for their fee affidavits --
17 THE COURT: And he --
18 MR. McLAREN: -- and they said I, I can't get involved
19 because we talked to -- I'm just dancing a little bit. So my --
20 my only -- my thinking is we should stay within the record on the
21 affidavits that are there.
22 THE COURT: Okay.
23 MR. McLAREN: And, when we took this case, we said in
24 our affidavits, we charged her less than our normal rates because
25 they were either at or it was shortly after that, went to like 450

1 or 500, depending on the case. And we took our 400 and we stuck
2 through it all this time. And the fees have been enormous. I
3 mean, they've been huge. Now we've been through the -- the main
4 case. We've been through an appeal. We've been through
5 contempts, and we have been trying to get this case to a
6 conclusion and was trying to get the property awarded.
7 But, anyway, the case law is that when you go out of
8 town, and you have a good reason to do it, you pay the out-of-town
9 rates. That's the basic bottom line of it. And I know Your
10 Honor's going to take this under advisement. I'd appreciate your
11 reading the cases, which I think you would. And these issues have
12 been addressed elsewhere. Our circuit's not -- our -- our --
13 Court of Appeals and Supreme Court does not address the issue,
14 that I'm aware of. I think they'd love to address it. I don't --
15 I'm not --
16 THE COURT: And I think they're probably going to, you
17 know.
18 MR. McLAREN: Well, I don't know whether they are or
19 not, but I -- I think that the right thing to do is award our fees
20 at $400 an hour, given these circumstances And -- and if there's
21 a factual dispute about the unavailability of these lawyers, I
22 want my client to testify to that so I have record about it. And
23 I brought the book and -- or Your Honor can take judicial notice
24 at who would have conflict. We need to handle that so I have a
25 record, but -- because that's a lynchpin on my --

1 THE COURT: All right. Well, let me stop you. Mr.
2 Smith, do y'all dispute -- and I would be inclined to rule that
3 way, but I'll hear from you -- that -- that it would be difficult
4 to find a member of the Clarendon County Bar that would not have a
5 conflict and could have been involved in representation.
6 MR. SMITH: Your Honor, if I could consult with my
7 client.
8 (Mr. Smith consults with the defendant.)
9 MR. SMITH: Your Honor, we -- we -- don't know enough to
10 -- whether to stipulate to that or not. I don't think we're in a
11 position --
12 THE COURT: And I will say this: If I make that ruling,
13 that doesn't necessarily mean that I -- I don't agree that a
14 lawyer, either in Orangeburg, Florence, Sumter, or even
15 Williamsburg County for that matter could not have been retained
16 in this case.
17 MR. SMITH: Yes, sir. I understand, but I don't think
18 we have enough facts to make that -- that stipulation.
19 THE COURT: Okay. Okay. All right. And I cut you off,
20 but you're going to need to offer some testimony?
21 MR. McLAREN: Well, I was going to have my client
22 testify. And if I could just read it off specifically, I think
23 they'll agree.
24 THE COURT: Okay.
25 MR. McLAREN: And I've got the directory here, which I'd

1 just like to mark as an exhibit. That's 2003 Official Directory
2 of the South Carolina Bar.
3 THE COURT: This is Clarendon County?
4 MR. McLAREN: It's -- well, it's the whole book, but
5 these are the Clarendon County. That's Plaintiff's Exhibit Number
6 10.
7 (WHEREUPON, the afore-described Directory of
8 the South Carolina Bar was entered into
9 evidence as Plaintiff's Exhibit Number 11.)
10 THE COURT: Okay. You got a fair amount of lawyers over
11 there that don't practice.
12 MR. McLAREN: But this -- this was the group that was
13 available then, and if I could just read them out. And I -- if
14 Mr. Smith would confer with his client, Ray Chandler was --
15 THE COURT: Disqualified.
16 MR. McLAREN: -- was -- was disqualified --
17 THE COURT: Okay.
18 MR. McLAREN: -- because he was Simpson, Senior's,
19 previous divorce counsel and testified in this case, so he'd be
20 out. Is there any dispute about that?
21 MR. SMITH: Your Honor, I -- I'm trying to think to the
22 reasons for Mr. McKenzie disqualification, and I believe it was
23 because that firm had represented her present spouse.
24 THE COURT: Well, now Mr. McKenzie represented Simpson,
25 Junior, didn't he, in the --

1 MR. McLAREN: Senior.

2 THE COURT: He was not disqualified.

3 MR. McLAREN: Well they actually represented both,

4 wasn't it?

5 THE PLAINTIFF: Yeah.

6 THE COURT: Mr. McKenzie, can you help us with that?

7 MR. McKENZIE: Your Honor, prior to -- and -- and I

8 haven't looked at the list, but prior to me being retained by Mr.

9 Simpson, Senior; Mr. Simpson, Junior, I had no affiliation with

10 either one of them or Mrs. Simpson. Ms. Simpson is the plaintiff

11 in this action, so the only thing I can say about what I'm hearing

12 from Mr. McLaren is, is that there was an attorney in Clarendon

13 County available to -- to represent Ms. Simpson, and that would

14 have been me. If she --

15 THE COURT: And you were available?

16 MR. McKENZIE: I was available.

17 THE COURT: And that -- that was before --

18 MR. McKENZIE: Before --

19 THE COURT: -- your representation?

20 MR. McKENZIE -- well, I had -- I had --

21 THE COURT: They didn't --

22 MR. McKENZIE: -- no knowledge of these --

23 THE COURT: Okay.

24 MR. McKENZIE: -- these two gentlemen prior to that.

25 THE COURT: So there would have been no disqualification

1 if they'd sought to hire you; is that what you're saying?
2 MR. McKENZIE: That's what I'm saying.
3 THE COURT: Okay.
4 MR. McKENZIE: And -- and, also, I don't know of any
5 disqualification --
6 MR. McLAREN: Well, I'll get to that in a minute.
7 MR. McKENZIE: Okay.
8 THE COURT: All right. Well, let me say this for the
9 record.
10 MR. McLAREN: But why -- this is where I get that
11 anyway. Why don't I put my client on the stand and she'll testify
12 to it. I don't need to argue with him about it. It's -- they're
13 not going to agree with me. I mean, Mr. McKenzie saying he was
14 available, he wasn't available because he got hired by Mr.
15 Simpson, Senior, and got in the case, so --
16 THE COURT: Junior or Senior?
17 MR. McLAREN: Both.
18 THE COURT: Well, Mrs. Simpson brought the action, so I
19 would assume that neither Simpsons were represented at the time
20 that they were served, and they could have sought the services --
21 or she could have sought the services of Mr. --
22 MR. McLAREN: I'll ask --
23 THE COURT: -- McKenzie.
24 MR. McLAREN: -- her about it on the witness stand.
25 THE COURT: Okay.

1 MR. McLAREN: I think there --
2 THE COURT: Okay.
3 MR. McLAREN: -- there's something there.
4 THE COURT: And just for the record, I think it's not in
5 dispute that Mr. McKenzie represented Simpson, Junior, at his
6 trial and his appeal. Go ahead, sir.
7 MR. McLAREN: He represented Senior -- represented
8 Junior and Senior in the lower court --
9 THE COURT: Okay.
10 MR. McLAREN: -- and Senior in the appeal. Junior did
11 not appeal.
12 MR. McKENZIE: Junior did appeal
13 THE COURT: I thought -- yeah, Junior appealed.
14 MR. McKENZIE: Junior appealed also.
15 MS. WARNER: That's not right, is it?
16 MR. McLAREN: I don't -- I don't think that's correct.
17 THE COURT: Yeah, it is.
18 MR. McKENZIE : Junior appealed in the -- as in his --
19 in his case, not in this case.
20 MR. McLAREN: No, I'm talking about Senior's case.
21 MR. McKENZIE: Okay. No. But Junior did -- yeah, I
22 represented him in -- in his appeal in his -- his own case.
23 MR. McLAREN: I think that's correct.
24 MR.McKENZIE: I'm positive that's correct.
25 MR. McLAREN: I was --

1 THE COURT: And I'm --
2 MR. McLAREN: -- I was talking --
3 THE COURT: I'm pretty --
4 MR. McLAREN: -- about --
5 THE COURT: -- sure I read --
6 MR. McLAREN: -- Senior's case. I wasn't talking
7 about --
8 THE COURT: -- I read that opinion this week.
9 MR. McLAREN: Pardon me?
10 THE COURT: I think I read that opinion this week in
11 preparation for this hearing.
12 MR. McLAREN: So I need to put my client up to testify.
13 THE COURT: Okay. We'll do that in just a minute. You
14 want to go through the rest of the list? How about the Land Law
15 Firm?
16 MR. McLAREN: Well, I was going to take her through the
17 list because they're -- I don't --
18 THE COURT: Okay.
19 MR. McLAREN: -- that she can just testify.
20 THE COURT: Okay. Do you have any other witnesses other
21 than your client?
22 MR. McLAREN: I have my updated fee affidavit and, if
23 they want to cross-examine me, that's fine.
24 THE COURT: Okay. All right. Are you ready to proceed?
25 MR. McLAREN: I am, Your Honor.

1 MR. SMITH: Yes, Your Honor, we are. But I -- I would
2 take the position that this hearing today is only on a remand of
3 the fees. I didn't know we were here to consider any fees that
4 occurred other than through the date of the final decree.
5 THE COURT: How about that, Mr. McLaren?
6 MR. McLAREN: We kept on sweeping the fees to the end of
7 the case --
8 THE COURT: All right. Well, don't --
9 MR. McLAREN: -- when some of them you denied, some of
10 them you didn't deal with, and we still have the alimony case we
11 haven't finished, and I got to put up evidence about the fees in
12 that today.
13 THE COURT: Well, would it -- would it be an imposition
14 to hear, so Mr. Smith can be prepared with that issue, when we
15 hear the other attorney's fees issue? I hope we can hear it
16 tomorrow.
17 MR. McLAREN: Well, we were kind of hoping maybe we
18 could -- well, I'm not doing so good. We're trying to finish
19 today, if we could, if we move it along. But I don't --
20 THE COURT: I -- I don't think we're going to do that,
21 but we'll certainly try.
22 MR. McLAREN: Why don't I just start with my client and
23 then I'll decide whether or not I want to offer --
24 THE COURT: Okay. You're ready to do that?
25 MR. McLAREN: I am, Your Honor.

1 THE COURT: Ms. Simpson, would you come forward, please,
2 ma'am?
3 DAISY W. SIMPSON BRANDT, BEING DULY SWORN, TESTIFIES AS
4 FOLLOWS:
5 THE COURT: All right. Thank you, ma'am. Please be
6 seated and state your name for the record and please speak into
7 the microphone.
8 THE WITNESS: Daisy W. Simpson Brandt.
9 THE COURT: Thank you.
10 **DIRECT EXAMINATION**
11 BY MR. McLAREN:
12 Q. Ms. Simpson, we're here about the legal fees in the original
13 divorce action. That's what I want to talk to you about first,
14 okay? Now, I'm going to hand you what's been marked as
15 Plaintiff's Exhibit Number 11, and this is a copy of the South
16 Carolina Legal Directory, Official Directory of the South Carolina
17 Bar, 2003.
18 A. Uh-huh.
19 Q. And we have made a copy of the Clarendon County lawyers in
20 2003, when your case began. And in my brief, I've done a -- page
21 -- at page 4, I have outlined what I understand your testimony
22 will be in terms of who could represent you. Let's start with Ray
23 Chandler. Was Ray Chandler available to represent you in 2003?
24 A. He had already --
25 Q. Yes or no.

1 A. No.
2 Q. And why?
3 A. He had already represented Senior in our divorce case of '98,
4 1998.
5 Q. And did he -- Mr. Chandler also ultimately appear as a
6 witness in -- in your divorce case in this proceeding?
7 A. He did. Yes.
8 Q. And the other members of Mr. Chandler's firm, either existing
9 then or added later, that would have been Tara Austin.
10 A. (Nods head up and down.)
11 Q. You need to answer audibly, ma'am. You don't need to look at
12 the list. Just -- just stay --
13 A. But I --
14 Q. -- with me.
15 A. -- I don't know. I can't remember back.
16 Q. If --
17 A. But --
18 Q. -- if she was a member of that firm --
19 A. Uh-huh.
20 Q. -- she would be out as well, correct?
21 A. Right.
22 Q. And Joe Coffey, if he was a member of that firm, he would
23 have been out as well.
24 MR. SMITH: Your Honor --
25 A. Yes.

1 MR. SMITH: -- I -- objection, leading. I know we need
2 to move this along, but he's leading the witness.
3 MR. McLAREN: I am leading the witness and I --
4 THE COURT: Well, let's just -- I don't think it's
5 egregious because I think we know the answers to all of these, but
6 I'm going to let him lead some.
7 MR. McLAREN: Thank you, Your Honor.
8 Q. And Lisa Dennis Bagnel, if she was a member of the firm,
9 she'd be out as well, correct?
10 A. Yes.
11 Q. Ma'am?
12 A. Yes.
13 Q. You need to look at me and put that down. Put it down, okay?
14 And W. C. Coffey, Jr., had he been involved in any representation
15 with Mr. Simpson, Senior?
16 A. W. C. Coffey, Sr., he was my real estate lawyer.
17 THE COURT: They set up the -- he set up the LLCs,
18 didn't he, ma'am?
19 THE WITNESS: He did. He did.
20 THE COURT: Okay.
21 THE WITNESS: You're -- you're correct. He did do the
22 LLC.
23 Q. And Junior -- Coffey, Junior?
24 A. Joe Coffey, Jr.?
25 Q. Uh-huh.

1 A. He was in the same law firm.
2 Q. The same law firm. Okay. And did the Coffey's do legal work
3 for the LLCs?
4 A. Yes.
5 Q. They were parties to this case?
6 A. Yes.
7 Q. And did they do legal work for Junior and Senior?
8 A. Yes.
9 Q. Were they available to represent you?
10 A. No.
11 Q. Scott Robinson, Steve McKenzie, and William Johnson. Would
12 you have gone to them at the beginning of this case?
13 A. No.
14 Q. Why not?
15 A. Because -- do I need to tell the whole reason why I did not
16 go and I found an attorney out of town?
17 THE COURT: I -- I -- ma'am? I didn't understand you.
18 If you can move over here so she -- I can kind of see her now.
19 MR. McLAREN: I'll be glad to, Your Honor.
20 THE COURT: Why -- why didn't you feel like you could go
21 to them?
22 THE WITNESS: Because my husband told me over the years
23 that no matter what I did, he had the money and the power and the
24 paper trail, that he would take everything out of his name and put
25 it in somebody else's name and that I would have to do a paper

1 trail. I knew that I would have to do a paper trail because he
2 would do everything he could to keep me from having anything. And
3 I knew the local lawyers, you all work together with him. I had
4 to have somebody to do the paper trail that McLaren and Warner and
5 those did. And I had Bunt Wilson before and he was not a fighter.
6 He handled my niece's case and --
7 THE COURT: Did you retain him?
8 THE WITNESS: I did retain him in '98.
9 THE COURT: All right.
10 THE WITNESS: And he was not a fighter. He was not the
11 one that could do what I needed to be done.
12 THE COURT: Do you recall how much you paid him an hour?
13 THE WITNESS: I do not. That was in '98. But he always
14 told me that, no matter what -- and he did do that. In our decree
15 it shows where he took the property out of his name and put in
16 Kenny Tidwell's name. And so -- and Kenny Tidwell's brother out
17 of Charleston. So I knew that it had to be done and that's what I
18 did. I found somebody that could do it.
19 THE COURT: All right. Next person on the list, please,
20 sir.
21 Q. And other than -- ultimately Mr. McKenzie, Mr. Robinson, and
22 Mr. Johnson, all in the same firm, took on the case of Senior in
23 this case.
24 A. Correct.
25 Q. And John C. Land and the other members of the Land firm, were

1 they available to represent you?
2 A. No.
3 Q. Why?
4 A. They represented Billy and those in land deals.
5 Q. They what?
6 A. In land --
7 Q. Okay.
8 A. -- situations.
9 Q. Represented who?
10 A. Simpson, Senior, my husband, in -- in different things.
11 Q. And that would include whatever lawyers were in that law firm
12 or affiliated with them.
13 A. Yes, sir.
14 Q. How about Marion Riggs?
15 A. I would never have gone to Marion Riggs. He is a good man
16 and he does my real estate, but not for what I had to do.
17 THE COURT: And he doesn't do family law, does he?
18 THE WITNESS: No, sir.
19 THE COURT: Okay.
20 Q. David Epperson.
21 A. I think I talked to David Epperson, but -- and I talked to
22 MacDougal and those in Sumter, but they -- they wanted to know if
23 it was a million-dollar case and I didn't have anything to put
24 down on it, so I -- and I didn't know how much it was. I told
25 them I didn't know.

1 Q. Harry Devoe.
2 A. Didn't know him. I know people that have -- I also contacted
3 a lot of people when I had to do this that have been through --
4 Q. Ms. Simpson.
5 A. -- what I've been through --
6 Q. I -- I need you to stay with me. I --
7 A. -- and he's -- not a good lawyer.
8 Q. -- so stay with me, okay?
9 A. He's not a good lawyer.
10 Q. Mr. --
11 A. Okay.
12 Q. William Geddings, was he available?
13 A. Tommy Geddings?
14 Q. William T. --
15 A. He --
16 Q. -- Geddings --
17 A. -- he does --
18 THE COURT: It's Tommy Geddings.
19 A. Tommy Geddings does real estate for -- deals for Billy,
20 Senior.
21 Q. And did he have any kind of health condition in 2003 that
22 would have been difficult?
23 A. He did. He had, I think, a brain cancer or a tumor on his
24 brain or something at the time.
25 Q. And how about Deborah Koon? Did you know her?

1 A. No, I didn't.
2 Q. So, from your perspective, were there any other lawyers that
3 were not -- either not conflicted out because of prior
4 representation, or that you didn't have confidence in or that you
5 -- that would be available?
6 A. No, sir.
7 Q. And so you first contacted Mr. Warner?
8 Q. Yes, sir.
9 Q. And then he and I got together and handled your case
10 thereafter.
11 A. Yes, sir.
12 Q. And you agreed to pay $400 an hour to do that.
13 A. Yes, sir.
14 MR. McLAREN: Your Honor, right now I'm just addressing
15 the fee on remand, so I'm not going to go into the other fees that
16 are part of the -- the case.
17 THE COURT: Additional fees that you charge?
18 MR. McLAREN: Right.
19 THE COURT: Okay.
20 MR. McLAREN: Is that okay?
21 THE COURT: Yes, sir.
22 MR. McLAREN: Okay. That's all the questions I have.
23 THE COURT: All right. Any cross-examination?
24 MR. SMITH: Yes, Your Honor. I'll -- I'll -- I'll be
25 brief.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Ms. Brandt, how many attorneys in Clarendon County did you consult?

A. How many did I consult? I didn't in Clarendon County.

Q. And -- and the reason I understand is you didn't consult them because you felt like, one, either they wouldn't be aggressive enough or that they would act in concert with your husband.

A. Well they had already been in concert with my husband, either his lawyers or had already dealt with him, which would have been a conflict.

Q. How do you know that?

A. I lived with him 37 years. I knew who he handled and who handled his real estate and everything. Tommy --

Q. But --

A. -- Geddings and --

Q. So you're --

A. -- Billy Coffey and --

Q. You're saying John Land handled real estate transactions for him?

A. Well, he talked to John Land. I'm not sure about handling anything for him. But I wasn't sure.

Q. So if you knew that your husband talked to a lawyer, you wouldn't go to that lawyer?

A. Right.

1 Q. How many lawyers did you consult in Sumter?
2 A. Before I had my divorce action brought against him in '98,
3 three.
4 Q. Okay. Bunt Wilson was one.
5 A. He was.
6 Q. The other two were --
7 A. MacDougal and Self.
8 THE COURT: Who?
9 THE WITNESS: MacDougal and Self.
10 THE COURT: Okay. Who in that firm?
11 THE WITNESS: The -- one of them wouldn't handle it.
12 They turned it over to another one and then I didn't -- I didn't
13 go back to him after I talked to him I was not satisfied with him,
14 so I went with Bunt Wilson. This is at the same time.
15 THE COURT: All right.
16 Q. Now, when you filed this case, I believe, in 2003 --
17 A. Uh-huh.
18 Q. -- did you consult --
19 A. Yes, sir.
20 Q. -- with any attorneys in Sumter?
21 A. No, sir.
22 Q. Why not?
23 A. Because I'd already been through them.
24 Q. Okay.
25 A. And I knew they wouldn't -- wouldn't have -- and Bunt Wilson

1 was not a fighter. He's very nice man, maybe a good lawyer, but
2 he's not a fighter.
3 Q. How about Jeff Young?
4 A. And I needed somebody to do the paper trail. Who?
5 Q. Jeff Young?
6 A. No, sir. I didn't talk to him.
7 Q. Are you aware of other lawyers in Sumter that could have
8 handled your case?
9 A. Yes, sir. And Jan Warner was from Sumter. He was one that I
10 was aware of when he was in Sumter. And whenever he moved to
11 Columbia, I talked to Ms. Warner and she told me where he was.
12 Mr. Warner was on Main Street up there, and she told me where he
13 was, that he was still practicing law, and I called him.
14 Q. Okay.
15 A. Because he was in Sumter for years.
16 Q. What about Florence? Did you talk to any attorneys in
17 Florence?
18 A. No, sir. Distance-wise, Columbia's just as close as
19 Florence.
20 Q. Is there a particular reason that you chose Jan Warner?
21 A. Well, after I talked to him, I went and had a conference with
22 him and I talked to him and I was satisfied with him. And he said
23 he could do the paper trail, he could do whatever needed to be
24 done, and that's what I needed. I've never -- hadn't been through
25 this, you know? And I knew that once I headed into it, I needed

1 somebody that would be there for me.
2 Q. When you consulted with any of these attorneys, did you
3 discuss the possibility of any of the attorneys taking your case
4 on a contingency basis?
5 A. On a what?
6 Q. That you wouldn't have to pay them unless you made a
7 recovery?
8 THE COURT: That's not ethical, is it?
9 MR. McLAREN: No, it's not.
10 THE COURT: Not.
11 A. No.
12 Q. Okay.
13 THE COURT: I hope no one agreed to do that.
14 A. That would have been nice, but no.
15 Q. When you went to Jan Warner's office, is there anything about
16 his office or that meeting that made you want to hire him?
17 A. Anything about him? He's just -- told me what needed to be
18 done and he could get it done and --
19 Q. Did he -- did he tell you about the recovery in other cases,
20 that he had represented other parties?
21 A. Didn't discuss other cases.
22 Q. Did you see anything in his office that would have led you to
23 believe that he'd been successful in other cases?
24 A. No, sir. But being from Sumter and Clarendon area, Jan
25 Warner had a name, so -- and, also, Jan was a good -- he was a

1 professor at USC. He helped create some of the divorce laws, so
2 he had a name that was a good divorce lawyer, and I needed a good
3 divorce lawyer.
4 Q. And -- and you're saying there were no good divorce lawyers
5 in Sumter or Manning.
6 A. I didn't say that. There may be, but I knew Jan Warner.
7 Q. Thank you.
8 THE COURT: Any redirect?
9 MR. McLAREN: No, sir.
10 THE COURT: All right. Ms. Simpson, you may step down.
11 (The witness steps down.)
12 THE COURT: Any other witnesses?
13 MR. McLAREN: No, sir.
14 THE COURT: Okay. Mr. Smith, do you have any witnesses?
15 MR. SMITH: Your Honor, if I -- if I understand it
16 correctly, you're -- you're limiting the issue today to whether
17 there were -- to the locality and the hourly rate.
18 THE COURT: I think that's -- that's what they directed
19 me to do. Do you disagree with that, Mr. McLaren?
20 MR. McLAREN: I do not disagree, Your Honor.
21 THE COURT: Okay.
22 MR. SMITH: Well, Your Honor, if I could call Steve
23 McKenzie --
24 THE COURT: All right.
25 MR. SMITH: -- please.

1 T

2 THE COURT: Mr. McKenzie, come forward, please sir.

3 STEVEN McKENZIE, BEING DULY SWORN, TESTIFIES AS

4 FOLLOWS:

5 THE COURT: Thank you, sir. Please be seated. If you'd

6 state your name for the record.

7 THE WITNESS: Steven McKenzie.

8 THE COURT: All right. Thank you.

9 **DIRECT EXAMINATION**

10 BY MR. SMITH:

11 Q. Mr. McKenzie, you practice in Clarendon County?

12 A. I do.

13 Q. How long have you been practicing in Clarendon County?

14 A. Since 1994.

15 Q. And do you have experience in the Family Court?

16 A. I've been practicing since 1994 in Family Court.

17 Q. In 2003, at the time that this complaint was filed, did you

18 or your firm represent either Bill Simpson, Sr., or Bill Simpson,

19 Jr.?

20 A. No, we did not.

21 Q. And what firm were you with at that time?

22 A. Johnson, McKenzie, and Roberson.

23 Q. Did anyone else in your firm have a previous relationship

24 with either of these attorneys?

25 A. Not that I'm aware of.

1 Q. And had Mrs. Brandt come to your office, would you have
2 considered representing her?
3 A. I would have.
4 Q. And you're not aware that there would have been any
5 conflicts.
6 A. I'm not aware of any conflicts I have with -- I -- I did not
7 know Daisy Simpson or Billy Simpson or Bill Simpson prior to Billy
8 and Bill walking into my office with this complaint that -- that
9 she had served on them. I did not know them in the community and
10 did know that any of -- I didn't have any dealings with them at
11 all. I don't do real estate and I think Daisy did -- I mean, she
12 -- she did real estate closings, but I didn't have any dealings
13 with them at all.
14 Q. You've heard the -- the names of other attorneys in --
15 A. Correct.
16 Q. -- in Clarendon County? Are you aware of any, with your
17 personal knowledge, that would have conflicted any of these
18 attorneys out?
19 A. Not that I'm aware of. I know John Land does not do real
20 estate himself, but he had people in his office that do real
21 estate. I think his daughter, Ricci, does real estate at -- in
22 their office. And that would have been a conflict for Mrs.
23 Simpson, or Brandt, at this time because she was --
24 MR. McLAREN: Your Honor --
25 A. -- she was selling real estate.

1 MR. McLAREN: -- this is hearsay. He -- he doesn't have
2 personal knowledge of what these other lawyers would have by way
3 of conflict.
4 THE WITNESS: I -- I --
5 MR. McLAREN: It -- it -- it'd be hearsay and I move to
6 strike it.
7 THE WITNESS: I don't have any personal knowledge of
8 that.
9 THE COURT: Okay. I sustain the objection.
10 MR. McLAREN: Thank you.
11 A. I do know, in regards to personal knowledge at the trial of
12 this case, and when Mr. Chandler testified, it -- he -- he was --
13 he testified without objection from Mr. Warner or from Mr. McLaren
14 regarding the amount of the -- the regular amount of fees charged
15 in the area. There was no objection from them when he testified.
16 MR. McLAREN: Your Honor, one, that wasn't what was
17 asked of him and I move to strike it.
18 THE COURT: What was the question again?
19 MR. McLAREN: I know it wasn't -- it didn't go with the
20 answer he just gave. He was talking about John Land's office,
21 then he went off into what Mr. -- Mr. Chandler testified at trial.
22 What Mr. Chandler testified at trial is on the record and I don't
23 think it -- it's --
24 THE COURT: It's not relevant because his opinion was
25 disregarded. Is that what -- or should have been disregarded; is

1 that what you're saying?

2 MR. McLAREN: It -- it should have been disregarded,

3 number one, and number two --

4 THE COURT: Well, the Court of Appeals said it should

5 have been --

6 MR. McLAREN: There's not -- there's no probative value

7 to this witness testifying about what Mr. Chandler said.

8 THE COURT: Okay. I'll sustain it then.

9 MR. McLAREN: Thank you.

10 Q. Mr. McKenzie, what was your hourly rate in 2003?

11 A. One fifty, I believe.

12 Q. Are you aware or have personal knowledge of the rates charged

13 by other lawyers in --

14 A. In that timeframe, in -- in the Williamsburg --

15 MR. McLAREN: Objection, hearsay. No basis for him

16 to --

17 THE COURT: I -- I think he can testify to his general

18 knowledge as to figures charged in the area.

19 A. I can lay a basis for that. I've seen numerous attorneys'

20 fees affidavits over the years of practicing in that timeframe.

21 The range would have been from 125 to 250 an hour.

22 Q. Okay, sir.

23 THE COURT: One twenty-five to 250?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, sir.

1 Q. Now, Mr. McKenzie, are -- do attorneys from Sumter come to
2 Clarendon County to practice?
3 A. All the time.
4 Q. Have you been involved in any cases where you've had the
5 opportunity to witness their fee applications?
6 A. I have.
7 Q. And -- all right, do you have personal knowledge of what
8 those hourly rates would be --
9 A. I do.
10 Q. -- back in 2003 or 2004?
11 A. Yes.
12 Q. And what would that be?
13 A. The highest I would have seen back then would have been 250.
14 MR. McLAREN: Objection, hearsay. Move to strike.
15 THE COURT: I -- I think it's general knowledge and I
16 think that would be -- I -- I think it would be akin to say family
17 history and that's an exception to the hearsay rule. So I'm --
18 that's just a -- I'm going to allow it. Now, what was your answer
19 again?
20 A. Two fifty an hour.
21 THE COURT: Is the maximum?
22 THE WITNESS: That'd been max.
23 Q. Do attorneys from Florence come to Marion -- I mean, come to
24 Clarendon County --
25 A. They do.

1 Q. -- to practice? And how far is Florence?
2 A. Forty-five miles from Manning.
3 Q. In your opinion, do you have -- or in your personal
4 knowledge, do you have knowledge of competent family court lawyers
5 practicing in Clarendon County?
6 MR. McLAREN: Same objection, hearsay. No foundation.
7 THE COURT: Okay. I -- I note your objection and
8 overrule it.
9 MR. McLAREN: Thank you, Your Honor.
10 Q. From Florence County?
11 A. Yes, sir. Yes, I know of a number of very competent
12 attorneys in Florence.
13 Q. That would be available?
14 A. Yes. And in Williamsburg County, also.
15 Q. Attorneys that are competent in family court?
16 A. Sure.
17 Q. And do you have personal knowledge of, through fee
18 applications or any other way of what their hourly rates were in
19 2003 and 2004?
20 A. Same rate. Again, this is a very rural area and we can't
21 demand the kind of fees they get in Columbia and Charleston.
22 Q. All right, sir. Thank you, Mr. McKenzie.
23 A. Thank you.
24 THE COURT: Cross-examination?
25 MR. McLAREN: Yes, Your Honor.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. McLAREN:

4 Q. Mr. McKenzie, you were one of the lawyers for Mr. Simpson,

5 Senior and Junior, in the main case, correct?

6 A. And yes, I was.

7 Q. And ultimately there was an order issued disqualifying you as

8 counsel in the case, correct?

9 A. That's correct.

10 Q. Is that correct?

11 A. That's correct.

12 Q. And that was --

13 THE COURT: And that was in which case? I'm sorry.

14 MR. McLAREN: This case. Well, actually both cases,

15 this -- this divorce case as well as in the alimony termination.

16 THE COURT: Okay.

17 Q. And that order is dated July 15th, 2010; do you recall?

18 A. Yes.

19 MR. McLAREN: Your Honor, I would like to offer a -- a

20 copy of that order.

21 THE COURT: All right. And that's without objection?

22 MR. SMITH: Yes, sir.

23 THE COURT: Okay. It's admitted without objection.

24 (WHEREUPON, the afore-described Order was

25 entered into evidence as Plaintiff's Exhibit

1 Number 11.)

2 THE COURT: Let me look at that briefly before you start

3 back. Well, this is the order I signed; I remember it.

4 MR. McLAREN: Yes, sir.

5 THE COURT: Oh, okay. And Mr. McKenzie, without me

6 reading the whole order, you were disqualified because you were

7 now associated with the --

8 THE WITNESS: With -- with Mr. Timbes law firm.

9 THE COURT: All right. All right, Mr. McLaren, you can

10 go ahead, sir.

11 MR. McLAREN: Thank you, Your Honor. I think that's

12 Exhibit Number --

13 THE COURT REPORTER: Eleven.

14 THE COURT: Eleven.

15 MR. McLAREN: Eleven?

16 THE COURT REPORTER: Uh-huh.

17 Q. And, Mr. Chandler, you went with -- your firm went with his

18 firm; is that what happened?

19 A. That's right.

20 Q. And Mr. Chandler was a lawyer in this -- was a witness in

21 this case.

22 A. That's correct.

23 Q. And had been a lawyer in prior litigation between these

24 parties?

25 A. I'm not familiar with that --

1 Q. Okay. And how much did you charge Mr. Simpson?
2 A. In this case?
3 Q. Yeah.
4 A. I do not recall.
5 Q. You don't recall?
6 A. I don't recall, I think. I don't recall. It was -- I know
7 that it was somewhere south of the amount of the award that --
8 that Judge Turbeville handed in this case, somewhere between 50
9 and $60,000 I believe.
10 THE COURT: Somewhere what now?
11 THE WITNESS: Between 50 and $60,000 total.
12 THE COURT: Okay.
13 Q. And how much did you charge him an hour?
14 A. I don't recall.
15 Q. You don't recall how much you charged him in this case per
16 hour?
17 A. I don't -- charge him at -- no, at a --
18 Q. Was it 250?
19 A. I don't recall.
20 Q. Three hundred?
21 A. I don't recall.
22 Q. Three fifty?
23 A. If you say 10,000; I don't recall.
24 Q. Four hundred?
25 THE COURT: Well, let me ask you this, Mr. McKenzie.

1 Have you ever billed a case at, say, $300 an hour?
2 THE WITNESS: I have -- I do now, Your Honor.
3 THE COURT: All right. Now, when did you start billing
4 at that rate?
5 THE WITNESS: Just recently I was billing on a case at
6 $300 an hour, just recently -- just --
7 THE COURT: It's 300 now?
8 THE WITNESS: Yeah. I -- I signed a bill --
9 THE COURT: You went up to 300 an hour from what range?
10 THE WITNESS: From the 200 to -- to $250 range. I -- I
11 went up in increments back in -- when I started in this case, I
12 think that I was charging Billy Simpson -- and this is just -- I
13 don't have my affidavit, but I think it was 175 an hour. It could
14 have been 200; I don't recall. But it -- just it's that range,
15 and then --
16 Q. And then it went up after that?
17 A. I went up after that.
18 Q. So you'd be charging him more than that an hour.
19 A. Who?
20 Q. Billy Simpson.
21 A. No. I -- I charged whatever my price would have been. I
22 don't know, from my fee affidavit. I probably have it in one of
23 the books that I brought. I can go look for it if you'd like.
24 Q. And you know that Mr. MacDougal charges 550 an hour?
25 A. I do.

1 Q. And you know a lot of the divorce lawyers in Columbia,
2 Charleston charge in the range of four to $500 an hour?
3 A. They do.
4 Q. Some 550?
5 A. They do.
6 Q. And, in your experience, there have been cases where you have
7 seen where litigants don't feel comfortable being represented by a
8 local lawyer?
9 A. I -- I've seen that.
10 Q. And when they either -- where the other lawyers might be
11 conflicted out or there's no confidence and they need somebody
12 else for a divorce lawyer, they go to a surrounding city, correct?
13 A. Right. They come to me from Sumter.
14 Q. And you charge -- or, if the other lawyers they go to out of
15 town are -- charge typically a higher rate, correct?
16 A. The other lawyers that they go to out of town --
17 Q. That was a bad question.
18 A. Okay.
19 Q. Let me re-ask. If somebody doesn't feel comfortable staying
20 in their own community because the other lawyer, some of them are
21 conflicted out or they're afraid they can't handle the case, they
22 go to -- so they go to Columbia or go to Charleston and/or
23 Florence, some other place, and they pay a higher rate, typically?
24 A. Yeah, but that's their choice.
25 Q. That is their choice, somewhat. If the lawyers are

1 conflicted out, that's not a choice, is it?
2 A. If the lawyers are conflicted out, that would not be a choice
3 if they were conflicted out everywhere.
4 Q. Well --
5 A. But, I mean, if you -- if you only had Jan Warner and Jim
6 McLaren as the only possible attorneys you can go to in the -- in
7 the state of South Carolina, I would -- I would buy that argument,
8 yeah.
9 Q. You would agree with me, in terms of what me and Jan Warner
10 charged in this case, $400 an hour, that's a fair fee for us to
11 charge an hour based upon our experience and standing?
12 A. Not in Clarendon County.
13 Q. Let's --
14 A. In -- in --
15 Q. -- well, put Clarendon out.
16 A. -- in Columbia, yes, because you can -- you can get that in
17 Columbia because you have, you know, a half-million people live in
18 the surrounding area. In Clarendon County, you have 30,000 people
19 living here.
20 Q. Understand, but overall, in terms of what we charge, that's a
21 -- in our market, that's a fair and reasonable fee; would you
22 agree?
23 A. In -- in your market, yes.
24 Q. Okay. Now, you would agree with me that, if a lawyer in
25 Manning had previously represented Simpson, Senior, in divorce

1 proceedings, he couldn't represent Daisy?
2 A. If he --
3 Q. If that had happened.
4 A. If he'd represented him, that's correct.
5 Q. And you would agree with me that the members of that lawyer's
6 firm, by association, would likewise be conflicted out, correct?
7 A. That -- that would be correct.
8 Q. And, as you took her husband's case, you ultimately became
9 unavailable?
10 A. Right.
11 Q. Okay. As did your members of your -- of your --
12 A. That's --
13 Q. -- firm?
14 A. -- correct.
15 Q. And, if a firm did business work for the husband on
16 properties or business entities that were going to be litigated in
17 the Court, that lawyer's going to be out, correct?
18 A. That's right.
19 Q. And that lawyer's associates or partners are going to be out,
20 correct?
21 A. That's right.
22 Q. And you would agree with me that it wouldn't be fair for Ms.
23 Simpson to have to pick a lawyer who is inexperienced in family
24 law; you'd agree with that?
25 A. Yeah, I agree with that.

1 Q. And you would agree with me that, if the drive's 45 minutes
2 or an hour, or an hour and 15 minutes, that's not really a
3 material difference, is it?
4 A. That's not any material difference, but --
5 Q. It's some difference, but it's not material.
6 THE COURT: It's not really that material in a large
7 case. It's -- well, you'd --
8 THE WITNESS: I don't --
9 THE COURT: -- have to worry about --
10 THE WITNESS: -- I don't believe it's --
11 THE COURT: -- a lot of driving time.
12 THE WITNESS: -- I don't believe it's that material,
13 Your Honor. I would agree with that, yeah.
14 THE COURT: Okay.
15 MR. McLAREN: That's all the questions I have.
16 THE COURT: Okay. Redirect?
17 MR. SMITH: Yes, Your Honor.
18 **REDIRECT EXAMINATION**
19 BY MR. SMITH:
20 Q. Mr. McKenzie, you're -- you're under subpoena today?
21 A. I am.
22 Q. Thank you, sir. Nothing further.
23 THE COURT: Okay. Thank you, Mr. McKenzie.
24 MR. McLAREN: Moving faster than we thought, Your Honor.
25 THE COURT: Good. That's good

1 MR. McKENZIE: Can I --

2 THE COURT: No objection to -- you're excused.

3 MR. McKENZIE: May I be excused, Your Honor?

4 THE COURT: Yes, sir. No objections?

5 MR. McLAREN: No objection.

6 THE COURT: Okay. Any other witnesses?

7 MR. SMITH: No, sir.

8 THE COURT: None?

9 MR. McLAREN: No, sir.

10 THE COURT: Okay. Any reply?

11 MR. McLAREN: No, sir.

12 THE COURT: All right. Well, we've finished this trial
13 and, like I said, I'm going to take it under advisement. I might
14 read your memo early in the morning. I may make a decision
15 tomorrow. I -- I do not know. Are both sides prepared to go
16 forward on the alimony termination?

17 MR. McLAREN: Yes, sir.

18 MR. SMITH: Yes, sir.

19 THE COURT: All right. Let's take a 10-minute break.
20 How many witnesses did you say you have, Mr. McLaren?

21 MR. McLAREN: I think we have --

22 MS. WARNER: One.

23 THE COURT: One? And that's Ms. Brandt. I was calling
24 you Ms. Simpson. I'm sorry. How many witnesses you have?

25 MR. SMITH: Your Honor, I believe three.

1 THE COURT: Three. Okay. All right.

2 (OFF THE RECORD.)

3 (WHEREUPON THE PROCEEDINGS IN THE ABOVE HEARING WERE CONCLUDED)

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I, THE UNDERSIGNED, PATRICIA A. NYE, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING IN THE ABOVE CAPTIONED CASE, RELATIVE TO APPEAL IN THE FAMILY COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF JANUARY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

Patricia A. Nye

PATRICIA A. NYE

Feb 2011
(9 mos.)

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 THIRD JUDICIAL CIRCUIT CASE NO.: 2003-DR-14-128 **ORDER ON PLAINTIFF'S MOTION TO RECONSIDER ORDER ISSUED MAY ~~28~~ 24, 2010**

Hearing Dates:	**December 15, 2010 and January 6, 2011**
Presiding Judge:	**Gordon B. Jenkinson**
Plaintiff's Counsel:	**James T. McLaren and Carrie A. Warner**
Defendants' Counsel:	**Reid B. Smith, Paul E. Tinkler and Michael A. Timbes**
Court Reporter:	**Patricia Nye**

This matter came before the Court pursuant to Plaintiff's Notice of Motion and Motion to Reconsider and/or Alter and Amend Order issued May 28, 2010 that was filed on June 10, 2010.

Present and appearing before me on December 15, 2010 are Plaintiff and her counsel, James T. McLaren and Carrie A. Warner; Defendant William Simpson, Sr. and his counsel, Reid B. Smith; Defendant William Simpson, Jr. and his counsel, Paul E. Tinkler; and Michael A. Timbes, counsel for Simpson Farms, LLC. At the hearing on January 6, 2011 all parties and their respective counsel appeared; however, it was noted on the record that Michael A. Timbes was given notice of that hearing but voluntarily chose not to appear and had no objection to the hearing going forward.

Plaintiff cites 25 grounds upon which she asserts this Court failed to consider or otherwise erred in finding that Defendant William R. Simpson, Sr. was not in willful civil contempt, or

otherwise enforcing the Final Decree of Divorce issued on December 31, 2004, by reason of the failure to transfer certain real properties to Plaintiff as contained in the Decree and more specifically set out below.

Based upon the arguments of counsel, as well as the evidence and the record before me, the Court finds that Plaintiff shall be entitled to a one-half undivided interest in the property that has now been described as titled in the name of Simpson Farms, LLC (or W.R. Simpson Farms, LLC) as set forth in the Final Decree of Divorce at Paragraph 106 on Page 40 (rather than a 100% interest in those properties), thereby necessitating an adjustment in the total marital estate and resulting payments due from Defendant William R. Simpson, Sr. to Plaintiff, as fully explained hereafter. The Court also finds that all Defendants in all capacities, including but not limited to William R. Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and William R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC" or "W.R. Simpson Farms, LLC"), shall convey these properties to Plaintiff by general warranty deeds within twenty (20) days of the filing of this Order. The Court also finds that an adjustment shall be made as to the 6.7 acres to be transferred to Charlie Simpson, the daughter of Plaintiff and Defendant William R. Simpson, Sr., as agreed at the hearing.

The Court makes the following findings of fact, conclusions of law and disposition:

FINDINGS OF FACT

1. By Final Decree of Divorce dated December 31, 2004, the Honorable R. Wright Turbeville granted Plaintiff a divorce upon the ground of one (1) year continuous separation, among other things, and (a) required Defendant Simpson, Sr. to pay Plaintiff permanent periodic alimony of $1,000.00 per month; (b) required Defendant Simpson, Sr. to pay Plaintiff's and Charley's past due medical obligations totaling $16,734.00 (these were required by the

temporary order, but were not paid by Simpson, Sr. despite the Order); (c) found the value of the marital estate to be $2,327,654.00, of which $784,055.00 was apportioned to Plaintiff, to be accomplished by the transfer of certain accounts and real property valued at $437,500.00 together with a cash payment of $244,904.00; and (d) reserved the issue of attorney fees, costs, and expenses for determination at a later date with both Plaintiff and Defendant to submit affidavits with regard to attorneys' fees and costs.

2. To accomplish the division of marital assets, Page 40, Paragraph 106 of the Final Decree, Judge Turbeville ordered that certain real property to be transferred to Plaintiff, among other assets, as follows:

A.	2.1 acres	$7,500.00	(tract (c) in Decree)
B.	1.4 acres	$5,000.00	(tract (d) in Decree)
C.	161.1 acres	$175,000.00	(tract (e) in Decree)
D.	1.3 acres	$15,000.00	(tract (f) in Decree)
E.	6.7 acres	$5,000.00	(tract (g) in Decree)
F.	133.2 acres	$150,000.00	(tract (h) in Decree)
G.	house and 16 acres	$50,000.00	(tract (i) in Decree)

Did Ds file Motion to Reconsider on property division by Turbeville

3. By Order dated February 17, 2005, Judge Turbeville ordered Defendant Simpson, Sr., to pay $85,000.00 towards Plaintiff's attorney fees and costs.

4. Thereafter, Plaintiff appealed Judge Turbeville's Order Regarding Attorney Fees, and Defendant Simpson, Sr. appealed the Final Decree.

5. The Court of Appeals in its Unpublished Opinion dated April 4, 2007 affirmed the Final Decree and remanded the issues of attorneys' fees and costs to the Family Court for determination.

6. Since that time, Defendant Simpson, Sr. filed a Petition for Rehearing with the Court of Appeals which was subsequently denied. Additionally, Defendant Simpson, Sr. filed a Writ of Certiorari with the South Carolina Supreme Court which, again, was denied on February 21, 2008.

7. As discussed in detail below, on February 21, 2008, Defendant Simpson, Sr. individually, tendered quit claim deeds to Plaintiff purporting to transfer whatever interest he owned, individually, in the above properties, knowing that certain of these deeds (i.e., 161.1 acres (Tract (e) in Decree), 6.7 acres tract (Tract (g) in Decree) , 133.2 acres (Tract (h) in Decree), and the house and 16 acres (Tract (i) in Decree) would in essence transfer nothing to Plaintiff because the properties were titled in other names such as Simpson Farms, LLC, and W.R. Simpson Farms, LLC, the latter being a non-existent entity.

8. On February 28, 2008, the South Carolina Court of Appeals sent the Remittitur to the lower court.

9. On April 28, 2008, Plaintiff filed a Rule to Show Cause due to Defendants' lack of compliance with this Court's Decree, specifically Defendant Simpson, Sr.'s failure to transfer tracts c. through i. above as contained in the Decree, and seeking judgment interest thereon and/or benefits derived from the property accruing over the six (6) years since it was ordered that Plaintiff was to receive these properties, as well as an award of attorneys' fees and costs.

10. On July 17, 2008, a conference call was held with the Honorable Gordon B. Jenkinson in regard to Plaintiff's April 28, 2008 Rule to Show Cause.

11. On January 21, 2009, Plaintiff filed an additional Rule to Show Cause action which was also based upon the willful failure of Defendant William R. Simpson, Sr., to transfer $784,055.00 of the marital estate to Plaintiff to be accomplished by the transfer of certain accounts and real property valued at $437,500.00 together with a cash payment of $244,904.00, as well as pledging property belonging to Plaintiff under the Decree in order to pay the cash portion of the award under the Decree. Defendants William R. Simpson, Sr., and Simpson, Jr., and Simpson Farms, LLC, were personally served with the Rule to Show Cause on February 2, 2009.

12. An Interim Order was issued on February 26, 2009 by Judge Jenkinson which resolved the cash portion of the equitable division pursuant to the Decree, but held in abeyance the issue of Defendants' transfer of real estate and Plaintiff's additional attorneys' fees pursuant to remand by the South Carolina Court of Appeals.

13. The Interim Order also stipulated that the cash portion included Defendant's obligation to pay $85,000.00 in Plaintiff's attorney, together with judgment interest thereon pursuant to the Decree, which was paid.

14. A hearing in this matter was originally set for March 3, 2009, but was rescheduled by Order of the Honorable George M. McFaddin, Jr. on March 3, 2009 due to insufficient time, and was rescheduled for September 15, 2009. The Order of Continuance was served upon counsel for the parties.

15. After the hearing on September 15, 2009, Paul E. Tinkler requested that he be heard on behalf of Williams Simpson, Jr. due to his alleged lack of notice of the September 15, 2009 hearing and a subsequent hearing was scheduled on December 21, 2009, which request was allowed and heard.

16. This Court issued its May 28, 2010 Order as a result of the September 15, 2009 and December 21, 2009 hearings not finding Defendant Simpson, Sr. in willful contempt and not ordering him to transfer the subject properties to Plaintiff stating he was not required to do so under the Decree. Plaintiff filed her Motion to Reconsider and/or Alter and Amend that Order.

17. A hearing on Plaintiff's Motion to Reconsider was heard before this Court on December 15, 2010, and January 6, 2011.

PLAINTIFF'S MOTION TO RECONSIDER

18. Defendant Simpson, Sr. tendered seven (7) Quit-Claim Deeds purporting to transfer ownership to Plaintiff of the properties identified at Page 40, Paragraph 106(c)-(i) of

the Decree. Each of those seven (7) Quit-Claim Deeds state that Defendant Simpson, Sr., is transferring the subject properties "individually" and that he is only transferring his "personal right, title and interest." Four (4) of the seven (7) Quit-Claim Deeds have derivation clauses stating that the subject property is legally titled in the name of "W.R. Simpson Farms, LLC" or "Simpson Farms, LLC". The remaining three (3) Quit-Claim Deeds have derivation clauses reflecting that Defendant Simpson, Sr. is the legal title owner.

19. One of Plaintiff's attorneys, Mr. Warner, returned the seven (7) Quit-Claim Deeds to Defendant Simpson, Sr.'s attorney, Mr. McKenzie, stating Plaintiff's objections to the Quit-Claim Deeds as tendered. There is no evidence before the Court indicating that these Quit-Claim Deeds were ever recorded or returned to Mr. Warner. Plaintiff has never received ownership of the properties, despite the fact that the Decree was entered more than six (6) years ago.

20. At the hearing held on September 15, 2009 in this matter, Mr. McKenzie candidly testified and admitted the four (4) deeds purporting to transfer ownership of the properties legally titled in the names of Simpson Farms, L.L.C. or W. R. Simpson Farms, L.L.C. transferred nothing to Plaintiff. That certainly was not Judge Turbeville's intent as affirmed on appeal. Defendant Simpson, Sr. contends, however, that as the Decree only required "Simpson, Sr.", individually, to make the transfers, that Defendant Simpson, Sr. has done all that is required of him. The Court disagrees, as discussed below.

21. With regard to tract "i. House and 16 acres", the evidence and facts concerning legal title ownership that property are essentially undisputed. On May 7, 2002, Paul Terry Stone and Van Stone conveyed 16.5 acres to W.R. Simpson Farms, LLC (the property identified as the "house and 16 acres"), "less 3 acres surrounding the residence", for a net conveyance on that tract of 13.5 acres. This was the same deed that conveyed 135.7 acres to W.R. Simpson

Farms, LLC, less 2.5 acres, for a net conveyance of 133.2 acres (the property referred to as 133.2 acres – item (h) above). The fact that tract "i. House and 16 acres" has previously been misidentified as "house and 16 acres" is inconsequential. The property is actually 13.5 acres. It is nonetheless the identical property less the house and 3 acres retained by the original owners.

22. There was a Consent Order entered in a Circuit Court case, without prejudice to the rights of the parties in this case, brought to quiet title by Paul Terry Stone and Van Stone against the Simpsons, Simpson Farms, L.L.C. and a slew of other Defendants determining that Paul Terry Stone and Van Stone were rightful owners of house and 3 acres originally included in this 16 (+/-) acre tract of property. The other 13.5 acres unquestionably is legally titled in the name of "W.R. Simpson Farms, L.L.C.". In fact, there is no South Carolina limited liability company named "W.R. Simpson Farms, L.L.C." The correct name of the L.L.C. in this case is "Simpson Farms, L.L.C.", as shown in the caption of the Court of Appeals Opinion [*Daisy Wallace Simpson, v. William Robert Simpson, et. al.*, Unpublished Opinion No. 2007-UP-147, filed April 4, 2007] and registered in the Office of the South Carolina Secretary of State. Simpson, Sr. is the Registered Agent for this L.L.C.

23. There is also discrepancy between the Final Decree and the tendered Quit Claim Deed regarding "tract g". The Final Decree requires the transfer of 6.7 acres at a value of $35,000.00, referring to a particular tax map number. Mr. McKenzie testified that the property with that tax map number refers to a tract having only 3 acres. There was no evidence as to the value of that 3 acres tract. At the hearing, Plaintiff presented a plat describing the 6.7 acre tract as being the 6.7 acres surrounding the property gifted to the parties' daughter Charlie. By agreement reached at the hearing on January 6, 2011, a new deed will be prepared and ownership of the 6.7 acre tract surrounding the parties' daughter Charlie's home, will be

transferred to Charlie and removed from the marital estate. See ***Joint Exhibit #1*** from January 6, 2011 hearing, tax map #128-00-00-066-00.

24. As to the remaining real property ordered transferred to Plaintiff by the Decree, by letter from Steven S. McKenzie to Jan L. Warner, dated October 28, 2008 and received by Mr. Warner on October 31, 2008, Simpson, Sr. tendered seven (7) quitclaim deeds from him, individually, and in his personal capacity, to Daisy Wallace Simpson, for the properties identified in Paragraph 106 of the Final Decree dated December 31, 2004. It is undisputed that a deed from William Robert Simpson, individually, purporting to transfer legal title to property legally titled or owned in the name "W.R. Simpson Farms, L.L.C.", "Simpson Farms, L.L.C." or any other name is a nullity and transfers nothing. Thus, legal title to tract "e. 161.1 acres", tract "g. 6.7 acres", tract "h. 133.2 acres", and tract "i. House and 16 acres" remains, at this time, unchanged and ownership has not been transferred to Plaintiff, contrary to what was clearly contemplated by the December 31, 2004 Final Decree of Divorce.

25. The real estate identified in Paragraph 75 of the Final Decree of Divorce as tract "c. 2.1 acres," tract "d. 1.4 acres," and tract "f. 1.3 acres" is legally titled in the name of William Robert Simpson. The quit claim deeds tendered by Simpson, Sr. would effectively transfer ownership to tracts c, d and f to Plaintiff; however, they were returned by Mr. Warner to Mr. McKenzie and have not been returned or recorded.

26. In the Decree entered December 31, 2004, Judge Turbeville ordered "Simpson Sr. [Defendant William Robert Simpson, Sr.] shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above valued at $539,151.00." The question which this Court must decide is whether Defendant William Robert Simpson, Sr. has the ability or capacity by properly drawn deed(s) or other instrument to transfer ownership of

the four (4) tracts [tract "e. 161.1 acres", tract "g. 6.7 acres", tract "h. 133.2 acres", and tract "i. House and 16 acres" (actually 13.5 acres)] in question to Plaintiff Daisy Wallace Simpson.

27. In response to questions raised by the Court as to the effect of Plaintiff not receiving the real estate awarded to her by Judge Turbeville in his Decree (and not waiving but specifically reserving her position that this Court lacks the jurisdiction or authority to modify which properties are to be awarded to Plaintiff), Plaintiff submitted what was marked as Plaintiff's Exhibit 9 from the January 6, 2011 hearing in support of her Motion to Reconsider which indicates that if Plaintiff received all that she was entitled to under the Final Decree of Divorce, Plaintiff would receive in effect a 34/66 percentage division of marital assets in favor of Defendant, with Plaintiff receiving $784,055.00 in total marital assets, and Defendant receiving $1,543,599.00 in total marital assets.

28. Plaintiff's Exhibit 9 then indicates the effect on the equitable division that this Court's May 28, 2010 Order would impose by refusing to require Defendant William R. Simpson, Sr. to transfer those pieces of property identified above to Plaintiff. Plaintiff would then only receive $346,555.00, or 15% of the total marital estate; a net decrease of $437,500.00 in marital assets that she was entitled to under the Decree. Meanwhile, Defendant would receive 85% of the marital estate, or $1,981,099.00. Plaintiff argues this is not what Judge Turbeville intended when he issued his Decree, as affirmed on Appeal.

29. Alternatively, Plaintiff's Exhibit 9 states that if this Court awards Plaintiff only an undivided one-half interest in the real property legally titled in the name of Simpson Farms, LLC, rather than full ownership as required under the Court's May 28, 2010 Order, Plaintiff would then only receive $579,055.00, or 27% of the total marital estate, and an additional balancing cash payment of $133,250.00 would need to be paid by Defendant Simpson, Sr. to Plaintiff so that she would then have 34% of the total marital estate as intended under Judge Turbeville's Decree.

30. Assuming these calculations to be correct, the Court needs to further adjust the total marital estate and the resulting balancing cash payment because at the time of the hearing, the parties agreed that the 6.7 acres (Tax Map Number: 128-00-00-066-00) identified at Page 40, Paragraph 106g of the Final Decree (Joint Exhibit #1 from the January 6, 2011 hearing), was intended as a gift to the parties' daughter, Charlie Simpson, and as such, should not be included in the overall marital estate or in the properties to be transferred to Plaintiff, but would be transferred directly to Charlie Simpson by quit claim deed. With that agreement, the overall division and resulting percentages awarded, together with the balancing payment, must be adjusted further. Thus the actual marital estate becomes $2,105,154.00, with Plaintiff's thirty-four (34%) percent becoming $706,180.00 and Defendant William R. Simpson, Sr.'s sixty-six (66%) percent becoming $1,398,974.00. That then requires a balancing cash payment of $144,625.00.

31. The Court also considered the competing arguments made by Defendants, including Defendant William Simpson, Jr. in his counsel's "Memorandum In Response to Submission of Plaintiff at the Hearing on January 6, 2011." Defendant Simpson, Jr. argues that he does not have a transferable interest in the real property belonging to Simpson Farms, LLC, because he is only a member of that LLC and does not have the authority to transfer anything. Defendant Simpson, Jr. further argues that the Final Decree never ordered the LLC nor Defendant Simpson, Jr. to transfer the subject property to Plaintiff. Finally, Defendant Simpson, Jr. argues in favor of this Court transferring other property to Plaintiff, rather than property belonging to the LLC, to effectuate the division under the Final Decree so that the parties are not in business together. Defendants concede, however, that the calculations set forth in Plaintiff's Exhibit 9 are correct.

32. The Decree requires that Simpson, Sr. shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above valued at $539,151."

The Decree does not limit Defendant Simpson, Sr.'s capacity by which he is to transfer the subject properties to Plaintiff. It does not say that he is to convey the subject property in his "individual" capacity, or limit what is to be transferred to Defendant Simpson, Sr.'s "personal right, title or interest." The Decree simply directs Defendant Simpson, Sr. to transfer the property to Plaintiff without limitation.

33. It is black letter law that it should be presumed that the original trial judge knew what he intended, particularly as he was affirmed on appeal, and that it is the responsibility of this Court to now fashion a remedy to carry out that intent. Without doubt Judge Turbeville intended that at the end of the day, Plaintiff would be the fee simple absolute owner of the properties set forth in Paragraph 106 of the Decree, free of lien or other encumbrances.

34. The Caption on the Decree reflects that Defendant Simpson, Sr. was a party-Defendant, individually and as shareholder/member of Simpson Farms, L.L.C. Paragraph 6, at Page 3 of the Decree reiterates the dual capacities in which Defendant Simpson, Sr. is a party to this action, both individually and as an owner of Simpson Farms, LLC. Paragraph 13, at Page 4 of the Decree notes that Simpson Farms, LLC is a party-defendant to this suit. At Paragraph 5, Page 42 of the Decree, Judge Turbeville granted liens in favor of Plaintiff against William R. Simpson, Sr., individually, William R. Simpson, Sr. and William R. Simpson, Jr. as owners of Simpson Farms, LLC; Simpson Farms, LLC; and, William R. Simpson, Sr. as fifty percent partner in S&T Land Developers.

35. When Judge Turbeville ordered Defendant Simpson, Sr. to transfer to Plaintiff the property set forth in Paragraph 106 of the Final Decree, he clearly intended that Defendant Simpson, Sr. do so in whatever capacity and by whatever means was necessary to effectuate a lawful and valid transfer of ownership of these properties to Plaintiff, free and clear of all liens and encumbrances. To assume otherwise defies logic and the clear intent of the Decree.

36. Defendant Simpson, Sr. now argues that because actual legal title was not held in his name, that he has no obligation other than to execute and deliver Quit-Claim Deeds which do not legally transfer ownership of the subject properties to Plaintiff. That was not the intent of the Decree. Defendants Simpson, Sr. and Simpson, Jr., individually and as owners of the LLC, and the LLC itself were parties to the Decree. The properties are either legally titled in the names of Defendant Simpson, Sr. or the LLC. On appeal, Defendant Simpson, Sr. argued that certain of the properties were not owned by him; rather, that they were owned by the LLC. The Court of Appeals rejected those arguments.

37. South Carolina law is clear and unequivocal that the Family Court has jurisdiction to equitable divide property legally titled in the names of third parties. S.C. Code § 20-3-630 (Supp 2009) provides, in relevant part, as follows:

> (A) 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 *Section 20-3-620* regardless of how legal title is held, except the following, which constitute nonmarital property:.....*(emphasis added)

38. South Carolina case law is also clear and unequivocal that the Family Court has jurisdiction to equitable divide property legally titled in the names of third parties e.g. see *Williams v. Williams*, 374 S.C. 149, 647 S.E.2d 256 (Ct. App. 2007); *Hough v. Hough*, 312 S.C. 344, 440 S.E.2d 387 (Ct. App. 1994); *Sexton v. Sexton*, 298 S.C. 359, 380 S.E.2d 832 (1989).

39. An individual or entity may own property, both real and personal, legally or equitably. The mere fact that "legal" title to a particular property is held in the name of another person or entity is not conclusive as to any claim or claims made by others as to equitable ownership of that property. Here, Judge Turbeville heard and decided the competing claims between William Robert Simpson (Defendant Simpson, Sr.), William Robert Simpson, Jr. (Defendant Simpson, Jr.), Simpson Farms, L.L.C. (a/k/a W.R. Simpson Farms, L.L.C.) and Daisy Wallace Simpson (Plaintiff) to the various properties at issue in this case. Each of the

competing litigants was a party to the action and is bound by the December 31, 2004 Final Decree issued by Judge Turbeville. Under Rule 70, *S.C.R.C.P.*, this Court has the authority and duty to enforce Judge Turbeville's Decree, and the findings and directions of the South Carolina Court of Appeals.[1]

40. The fact that the South Carolina Court of Appeals found that the subject properties were owned by Defendant Simpson, Sr., does not distinguish between legal and equitable title or ownership nor does it absolve Defendant Simpson, Sr. from complying with the December 31, 2004 Final Decree as affirmed by the South Carolina Court of Appeals. All Defendant's, in all capacities, have the duty to comply. Defendant Simpson, Sr. and the other Defendants, in all capacities, now have the legal responsibility to execute and deliver to Plaintiff whatever deeds or take such action as is necessary to transfer to Plaintiff fee simple absolute title ownership in the subject properties, free and clear of all liens and encumbrances.

41. After careful consideration of the arguments of counsel, including the Memoranda submitted by counsel for the parties, as well as the evidence presented, this Court finds that all Defendants in all capacities, including Defendant William Robert Simpson, Sr, individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr. individually and as shareholder/member of Simpson Farms, LLC, , and Simpson Farms, LLC (whether known as "Simpson Farms, LLC" or "W.R. Simpson Farms, LLC"), shall join in their conveyance to Plaintiff conveying a fee simple absolute one-half undivided interest in the Simpson Farms, LLC (or W.R. Simpson Farms, LLC as the case may be) property (tracts e, h and i) discussed above by general warranty deeds, free and clear of all liens and encumbrances, except for the 6.7 acres (tract g) otherwise known as "Charlie's property" to be conveyed directly to Charlie Simpson by quit claim deed by all such Defendants. These conveyances shall occur within twenty (20) days of the filing of this Order.

42. In fashioning the appropriate remedy, this Court is bound to do what was intended by Judge Turbeville in his Decree, as affirmed on appeal. It is clear that this Court has the authority to direct an appropriate *means* to accomplish that intended result by requiring all Defendant's to join in the execution of appropriate deeds to do so. The more difficult issue is dealing with the conflict in the Decree language to implement exactly which party is to receive what property and the resulting ambiguity. On one hand, Plaintiff was granted specific properties (tracts e, g, h, and i), yet the Decree finds that Defendant William R. Simpson, Sr. only owns one-half of the Simpson Farms, LLC and it now appears that tracts e, g, h, and i are owned by Simpson Farms, LLC or William R. Simpson, LLC, which the Court considers one in the same. Balancing these competing interests, it appears fair and equitable for this Court to effectively reduce the marital estate by one-half (1/2) of the subject LLC properties (tracts e, g, h, and i) and re-divide the marital estate in the same percentages intended by Judge Turbeville and to adjust the necessary balancing payment accordingly.

43. Plaintiff has requested judgment interest on these properties she was to receive under the Final Decree of Divorce, or some part or all of the benefits derived from the property awarded to her, but not conveyed. Because I am not awarding a money judgment, I decline to award judgment interest on these properties.

44. I find that the prior liens and restraining orders previously imposed and ordered shall remain in full force and effect against all Defendants in all capacities until all Defendants have complied and Plaintiff and Charlie Simpson have received the property to which they are entitled.

THEREFORE, IT IS ACCORDINGLY

ORDERED:

A. All Defendants in all capacities, including Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr.,

individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute and properly record general warranty deeds and do all other acts necessary to transfer and convey to Plaintiff fee simple absolute ownership, free and clear of all liens and encumbrances, a one-half undivided interest in the property referenced above as items (e), (h) and (i) of Paragraph 106 of the Decree;

B. All Defendants in all capacities, including Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute and properly record general warranty deeds and do all other acts necessary to transfer and convey to Plaintiff fee simple absolute ownership, free and clear of all liens and encumbrances, a one-half undivided interest in the property referenced above as items (c), (d) and (f) of Paragraph 106 of the Decree;

C. The 6.7 acres otherwise known as "Charlie's property" shall be conveyed directly to Charlie Simpson by quit claim deed, free and clear of all liens and encumbrances, and all Defendants in all capacities (Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute, and properly record all documents necessary to effectuate this transfer immediately, including but not limited to quit claim deeds and do all other acts necessary to transfer and convey to Charlie Simpson fee absolute ownership, free and clear of all liens and encumbrances, the 6.7 acre tract referred to in Joint Exhibit #1 from the January 6, 2011 hearing;

D. All of the above conveyances shall be completed within twenty (20) days of the filling of this Order;

E. The cash balancing payment of $144,625.00 shall be paid by Defendant William R. Simpson, Sr., to Plaintiff within twenty (20) days of the filing of this Order, together with interest at the rate for judgments from the original due date (January 30, 2005) until paid in full;

F. Plaintiff's request for judgment interest, or payment for the benefits derived by Defendants from the property awarded to Plaintiff, is denied; and

G. All prior liens and restraining orders previously imposed and ordered shall remain in full force and effect against all Defendants in all capacities until all Defendants have complied and Plaintiff and Charlie Simpson have received the property to which they are entitled.

AND IT IS SO ORDERED.

_____

Gordon B. Jenkinson, Family Court Judge
Third Judicial Circuit

In Chambers
Williamsburg, South Carolina
February __, 2011

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF CLARENDON	)	MANNING, S.C.
	)	MANNING, SOUTH CAROLINA
WILLIAM SIMPSON, JR.	)	
PLAINTIFF,	)	DOCKET NO. 2004-DR-14-243
V	)	JUNE 29,2011
BECKY H. SIMPSON and WADE INGLE,	)	
DEFENDANTS.	)	

BEFORE THE HONORABLE GORDON B. JENKINSON, JUDGE

WILLIAM JOHNSON, ESQUIRE
STEVE MCKENZIE, ESQUIRE
REPRESENTING THE PLAINTIFF

PATRICIA A. NYE
OFFICIAL COURT REPORTER
FOR THE THIRD JUDICIAL
CIRCUIT

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EXHIBITS

PAGE

(none offered)

1 (WHEREUPON COURT WAS CONVENED WITH ALL PARTIES PRESENT.)
2 This is the case of William R. Simpson, Jr., versus
3 Becky H. Simpson and Wade Ingel. It is case number 2011
4 DR-14-123. Present in the courtroom is Mr. William
5 Johnson and Mr. Steven McKenzie. You're also associated
6 with the --
7 MR. MCKENZIE: Yes, sir. I was associated with --
8 In regards to the Rule To Show Cause with Ms. Simpson
9 I'm not here on the admission of the Pro Hac Vice I
10 think that's a separate matter and separate motion.
11 THE COURT: Okay.
12 MR. JOHNSON: Yes, sir. And Your Honor --
13 THE COURT: All right. Mr. Johnson, I would be happy
14 to hear from you.
15 MR. JOHNSON: Thank you.
16 THE COURT: Do you have proof of service of that
17 motion, is it in the file?
18 MR. JOHNSON: Yes, sir.
19 THE COURT: I see it.
20 MR. JOHNSON: Yes, sir.
21 THE COURT: Okay.
22 MR. MCKENZIE: And the -- the caption that you just
23 gave us is the correct caption for the Motion to Protect,
24 Ms. Gertist (Phonetic spelling)
25 THE COURT: Okay. All right. And I have looked at

1 the file, and everything appears to be in order.
2 MR. JOHNSON: Okay. All right.
3 THE COURT: There's no written objections in the
4 Motion?
5 MR. JOHNSON: No, sir, there is no objection, Ms.
6 Gertist, of course, is licensed appropriately in the
7 State of North Carolina.
8 THE COURT: Okay. Thank you. So that handles that.
9 Now, we're going to proceed with the rule?
10 MR. McKENZIE: Yes, sir.
11 THE COURT: And that's the same caption?
12 MR. McKENZIE: It would be a different caption.
13 THE COURT: Different caption.
14 MR. McKENZIE: Your Honor, the caption on that is
15 2004-DR-14-243.
16 THE COURT: Two forty three?
17 MR. JOHNSON: Yes, sir.
18 THE COURT: Okay. And is Mr. Ingel, a party that
19 came down also?
20 MR. JOHNSON: He is a party Defendant, but he's not
21 subject to the Rule to Show to Cause.
22 THE COURT: Okay.
23 MR. JOHNSON: It's just Ms. --
24 THE COURT: So the name that's in there is Becky H.
25 Simpson?

1 MR. JOHNSON: That's correct.

2 THE COURT: And I see where she has been personally
3 served in this matter. And I see that it looks like she
4 has filed a letter dated June 23, 2011, apparently, I can
5 take it for a Pro-Se answer, she asked that The Court
6 renounce his complaint, which I take to mean, that she's
7 asking to be dismissed. Have there been any offers of
8 settlement by her. She makes some reference to the
9 payment of $6,006.21, from her retirement account.

10 MR. JOHNSON: Your Honor, there has been -- there
11 was a letter, where she offered to -- to do that.

12 THE COURT: Yes, sir.

13 MR. JOHNSON: And I will hand up to you a letter
14 that we sent back to her.

15 THE COURT: All right.

16 MR. JOHNSON: With a proposed consent order. As you
17 can see that it is previous to the June 23rd date that
18 you referenced. This exchange happened in May, and we
19 sent that to her saying, you want to pay, that's fine,
20 here is the consent order, send the check that would be
21 Federal Expressed.

22 THE COURT: Okay.

23 MR. JOHNSON: And we've heard nothing from her since
24 that time.

25 THE COURT: All right. Wait just a minute, please.

1 You want to offer some testimony?
2 MR. McKENZIE: We can, Your Honor, or we can offer
3 up a certified copy of The Court's Statement about how
4 far Ms. Simpson is behind. I think it's a sum of $600.
5 THE COURT: All right. Well, in light of the recent
6 Supreme Court case, I think it's *Turner Versus Jones*,
7 we'll be walking on egg shells, I guess with these cases.
8 So, let's take some brief testimony, please.
9 MR. MCKENZIE: Thank you, Your Honor, we can do
10 that. Your Honor, we would call Bill Simpson to the
11 stand.
12 THE COURT: All right. Come forward, please, Mr.
13 Simpson.
14 MR. SIMPSON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:
16 THE COURT: Please be seated, and state your name
17 for the record.
18 WITNESS: Bill Simpson.
19 DIRECT EXAMINATION BY
20 MR. MCKENZIE:
21 Q Mr. Simpson, you are a resident of Clarendon County?
22 A Yes, I am.
23 Q And can you tell me, do you know where your ex-wife,
24 Becky H. Simpson, I think she's now known as Becky H. --
25 A Ingel.

1 Q Do you know where she currently resides?
2 A She's in Montana.
3 Q She's in Montana. And I think that we have actually
4 filed a service order -- this order, Rule to Show Cause,
5 on her personally in Montana, is that correct?
6 A Yes, sir.
7 Q And I think that you went to some great expense in
8 regards to that; is that correct?
9 A That's right.
10 Q I'm going to hand you a copy of that.
11 A She was actually in Colorado, for some time, and
12 then she moved, and it took us a while to locate where
13 she had gone to, because she wasn't corresponding with
14 her children in any kind of way.
15 Q Now, pursuant to your divorce decree back in 2004,
16 you obtained custody of your -- both of the minor
17 children in the marriage; is that correct?
18 A Yes.
19 Q And is Ms. Simpson was ordered to pay child support,
20 and The Court has a copy of the child support.
21 MR. MCKENZIE: Your Honor, I would at this time
22 ask The Court, unless Ms. Daisy Brandt, step-mother-in-
23 law, formal mother-in-law, of the defendant --
24 THE COURT: All right. And what's your
25 request?

1 MR. MCKENZIE: I would request that she not be
2 permitted in the courtroom. There's no reason for her to
3 be here. She's not representing anybody.
4 THE COURT: Okay. Well, in general, we have an
5 open door policy.
6 MR. MCKENZIE: I understand that, Your Honor, I
7 understand that, but I think that it would disrupt court.
8 THE COURT: She's outside right now, so then
9 you make your motion again when she comes back in.
10 MR. MCKENZIE: All right.
11 Q. We were talking, and I think you were given custody
12 of your children, right?
13 A Yes.
14 Q And who -- and tell us the children's names.
15 A Cody Simpson, and Caitlyn (phonetic spelling)
16 Simpson.
17 Q Okay. And pursuant to the, I think --
18 THE COURT: Excuse me for interrupting. I
19 think Ms. Simpson and I guess her new husband are in the
20 courtroom, and you had a motion?
21 MR. MCKENZIE: I just think Your Honor, I think
22 this is an open court, unless they're here -- I
23 understand that this is an open court, and they can be
24 here to observe as far as the testimony representing Ms.
25 Ingel, but it would be inappropriate at this point in

1 time.

2 THE COURT: Well, I think so too, but we'll cross

3 that bridge when we get to it. You can have a seat Mrs.

4 -- it's Brandt now isn't it?

5 MS. BRANDT: Yes.

6 MR. McKENZIE CONTINUES DIRECT:

7 Q Mr. Simpson, do you -- we were talking earlier, and

8 you were awarded custody of your two minor children?

9 A Yes, sir.

10 Q And since that time, I think one of those children

11 is actually over the age of 18?

12 A Right, and still involved in school. He goes to

13 Frances Marion, in Florence.

14 Q Okay. And there's been no subsequent order, to

15 modify, or change with the child support; is that

16 correct?

17 A Not that I'm aware of.

18 Q But you do have a minor child at home, what's her

19 name?

20 A Caitlin Simpson.

21 Q Caitlin, and how old is she?

22 A She's just turned 16.

23 Q And The Court has been provided a print-out from The

24 Family Court, showing that the -- your ex-wife, Ms.

25 Ingel, is currently behind in child support. Can you

1 tell The Court how she has paid you over the years since
2 your divorce in regards to child support?
3 A She would pay me monthly, she would pay a month, I
4 guess in advance, and she would send the check to The
5 Court. And she'd received, or we had -- I had to pay --
6 to pay her right at 350,000 or $360,000.
7 THE COURT: Three hundred fifty-six thousand?
8 WITNESS: Three hundred and fifty or sixty, I'm not
9 exactly sure of the amount.
10 THE COURT: Okay. That was in the settlement of the
11 '04 case?
12 WITNESS: Yes, sir.
13 THE COURT: Thank you, sir.
14 MR. McKENZIE CONTINUES DIRECT:
15 Q And so, that's part of the property division, but as
16 far as her paying you child support, can you tell us how
17 frequently, and regularly she paid child support to you?
18 A Not any in the past couple years I don't think.
19 Q Okay. And we'll provide The Court with a copy of
20 the print out. Have you received anything in the last
21 three months?
22 A No, sir.
23 Q Okay.
24 A I don't think in the past three years, I'm not sure
25 exactly, but it's a very minimum that she's paying

1 anyway.
2 Q I think the order amount is a little over $200 a
3 month, is that correct?
4 A Uh-huh.
5 Q Is that yes?
6 A Yes.
7 Q Okay. So she has not paid you any child support
8 since that time; is that correct, or at least the past
9 three months?
10 A The original, I think was added in there, and upped
11 it a little bit to $329, or something, I'm not exactly
12 sure of the figure.
13 Q But The Court has a print out and you would agree
14 with whatever The Court has?
15 A Yes, sir.
16 Q And you would agree that readjustment amount that
17 she owes is in the print out?
18 A Yes, sir.
19 Q Okay.
20 THE COURT: That for the record is $6995.30?
21 MR. MCKENZIE: That's correct, Your Honor.
22 THE COURT: Okay.
23 Q You had Ms. Ingel served in Montana at great
24 expense, I'm assume?
25 A Yes, sir.

1 Q And you also incurred attorney's fees, in regards to
2 this action?
3 A That's right.
4 Q And I'm going to hand you a copy. When I say great
5 expense, actually, sir, there is a process where there's
6 a $25 fee. I'm going to hand you a copy of the affidavit
7 of attorney's fees. Is that your copy of the affidavit
8 of attorney's fees?
9 A Yes, sir.
10 Q Are you asking The Court to have her to pay your
11 attorney's fees in this action?
12 A Yes, sir.
13 Q Okay. And will you tell us the amount on the second
14 page, the total amount of the attorney fees?
15 A $1,282.50.
16 Q Okay. And would it have been necessary for you to
17 bring this action if Ms. Ingel paid her child support as
18 ordered?
19 A Not at all.
20 Q You have seen Ms. Ingel's proposal in regard to
21 retirement and your attorney, Mr. Johnson, co-counsel of
22 mine, has sent her a response in regards to her proposal.
23 She has not responded back to you, has she?
24 A No.
25 Q Okay. Has she responded back to Mr. Johnson, as far

1 as you know?
2 A No, sir.
3 Q Okay. Are you asking The Court today, to find her
4 in willful contempt of The Court's order?
5 A Yes, sir.
6 Q For failure to pay child support?
7 A Yes, sir.
8 Q Are you asking The Court to incarcerate her until
9 she pays this amount of money?
10 A Yes, sir.
11 Q Okay. Are you asking The Court to also fine her, or
12 incarcerate her for failure to appear today?
13 A Yes, sir.
14 Q Okay. I mean, she was given notice of this hearing,
15 is that correct?
16 A Yes, sir.
17 Q And you went through the expense to have her served,
18 and notice of this hearing, is that right?
19 A Yes, sir.
20 Q And she has not appeared today in spite of The
21 Court's Order, Rule to Show Cause, for her to appear?
22 A Right.
23 Q And so you're asking for not only for her
24 incarceration for failure to pay child support, but also
25 failure to appear?

1 A Yes, sir.
2 MR. MCKENZIE: That's all the questions I have.
3 THE COURT: Okay. Mr. McKenzie, do you remember how
4 much in retirement funds that Mrs. Simpson was paid?
5 MR. MCKENZIE: I do not, Your Honor.
6 THE COURT: Okay. And when was the case finalized
7 from the Supreme Court, or The Court of Appeals. I don't
8 think it went further than The Court of Appeals?
9 MR. JOHNSON: I think it went to -- it's 2008, Your
10 Honor.
11 THE COURT: So that's when she was paid the -- do
12 you have that decree?
13 MR. MCKENZIE: I have Judge Seegar-Andrews' decree.
14 It's attached to your Rule to Show Cause, I believe, Your
15 Honor, in the file. You'll want to put it back in.
16 THE COURT: I'll leave it in. You have it right
17 there, and I'll give it back to you. I see it.
18 MR. MCKENZIE: You see it? And it references the
19 child support payment on -- paragraph 3.
20 THE COURT: The Court Administration has sent us
21 some guidelines to hopefully set aside the United States
22 Supreme Court case of *Turner versus Rodgers*. And what I
23 have to do is make a finding that the defendant has the
24 ability to make these payments. And you said she
25 received these funds in 2008?

1 MR. MCKENZIE: Yes, sir.
2 THE COURT: Okay. And that was for -- let me see
3 how much that was.
4 MR. MCKENZIE: If you look back, I think to the
5 property division. On page 20, Your Honor.
6 THE COURT: Yeah, there's some on 20. It says
7 213,876?
8 MR. MCKENZIE: That's correct, Your Honor.
9 THE COURT: All right. Were the other funds in
10 addition to that?
11 MR. MCKENZIE: You're talking about --
12 THE COURT: Or that's it. That's the total for the
13 wife?
14 MR. MCKENZIE: Total for the wife, but he also, had
15 to pay attorney's fees,
16 WITNESS: All together, it's $37,500 up front.
17 MR. MCKENZIE: And additional attorney's fees at the
18 beginning of the case, that Mr. Warner, classified as
19 seed money.
20 THE COURT: Did your wife ever work during the
21 marriage?
22 WITNESS: Yes, sir.
23 THE COURT: What did she do?
24 WITNESS: She worked at Piggly Wiggly, and worked at
25 the school as a teacher.

1 THE COURT: Does she have a high school education?
2 WITNESS: Yes, sir.
3 THE COURT: So she has nothing to keep her, health
4 wise, from work?
5 WITNESS: No, sir. I think she's -- by
6 correspondence that she had got a year or so from my
7 daughter, that she had went back to school, and was
8 teaching where she's at out in Montana also.
9 THE COURT: Okay. I don't believe that I have any
10 more questions. Any follow up on my question?
11 MR. MCKENZIE: Nothing, Your Honor, other than that,
12 you know, Your Honor, I think it satisfies The Supreme
13 Court's opinion, that you were talking about. She does,
14 and she wrote into The Court itself, saying that she did
15 have money to pay these fees.
16 THE COURT: She did have what?
17 MR. MCKENZIE: She did have money on, or at least an
18 account that she could draw from. The problem is that
19 she'd never -- she did not appeared here today to tell
20 you.
21 THE COURT: Are you referring to the retirement
22 account?
23 MR. MCKENZIE: I am.
24 THE COURT: Okay.
25 MR. MCKENZIE: So there is money, obviously there,

1 and there was money from equable distribution, so she can
2 pay this.
3 THE COURT: Okay. All right.
4 MR. MCKENZIE: Thank you, Your Honor. Your Honor,
5 No further questions.
6 THE COURT: Okay. And you said you had nothing
7 further?
8 MR. MCKENZIE: Nothing further.
9 THE COURT: It is the ruling of The Court that Mrs.
10 Becky H. Simpson, is in wrongful civil contempt of Court,
11 and she's sentenced to 60 days in the Clarendon County
12 Detention Center, and I'm not going to allow any work
13 release. She can purge herself by the payment of the
14 arrearages of $6,995.30, within 30 days. Also, pay
15 attorney's fees of $1280.50, within 30 days, and court
16 cost of $250, within 30 days. Anything else?
17 MR. MCKENZIE: Your Honor, the only thing that at
18 the -- and I've asked this before -- to Family Court
19 judges and gotten mixed opinion about this: My
20 understanding of Rule to Show cause is there are two
21 basic concepts that we agree on. One is the failure of
22 the person to do something that is ordered previously.
23 And also, we have an order from The Court, requiring her
24 to appear. And so, if she would've been here to appear
25 today, so she has willfully disobeyed the Order that

1 required her to appear and show cause. So we would ask
2 The Court to address that issue regarding her failure to
3 appear. Obviously she can purge herself because she has
4 these fees, but you have a Court Order that said that she
5 had to appear today, in person to show cause. And so,
6 we're asking The Court to also address that issue, the
7 fact, the Rule of failure to appear.
8 THE COURT: I don't think I've been asked to address
9 that separately, and that's what you've given me.
10 MR. MCKENZIE: Well, I asked, Mr. Simpson, if he --
11 that's why I asked him on the stand.
12 THE COURT: Okay.
13 MR. MCKENZIE: If you wanted it -- because we didn't
14 know whether she would appear or not. And obviously, she
15 didn't. She did not appear; she chose not to appear. And
16 so, I think that's a separate issue in regards to the
17 contempt power of The Court, and basically, and excuse
18 the expression, slap in the face of The Court for not
19 appearing. When you have an order that says appear, then
20 you're supposed to appear.
21 THE COURT: Okay.
22 MR. MCKENZIE: And we'd ask The Court to address
23 that issue.
24 THE COURT: Okay. Ms. Brandt, you're raising your
25 hand, you're not a party to this action, nor are you an

1 attorney. Do you want to say something?
2 MS. BRANDT: Yes, sir.
3 THE COURT: Well, stand up, please, ma'am.
4 MS. BRANDT: Becky didn't have the money to get a
5 lawyer. She didn't have any money to get a plane ticket
6 here. She's working three jobs, doing everything she
7 can. They both lost their jobs, so she's doing
8 everything that she can, but she has a cashier's check
9 for the 6,000 or whatever she told them that she would
10 pay, ready to come, but she did not have any money to
11 come see her -- for the funeral for her step father. She
12 doesn't have any money to be here from Montana.
13 THE COURT: Well, Ms. Brandt, Mr. Johnson, wrote her
14 on May 20th, and apparently, before that she had these
15 funds available. And it doesn't take more than 30 days
16 to access money out of retirement account. Why didn't
17 she do it before today?
18 MS. BRANDT: She wrote a letter to The Court,
19 saying --
20 THE COURT: Well, a letter -- she's been through
21 enough legal proceedings to know that by simply writing a
22 letter --
23 MS. BRANDT: I'm just stating what she said.
24 THE COURT: All right. Thank you, ma'am.
25 MS. BRANDT: Can we be excused?

1 THE COURT: Ma'am?

2 MS. BRANDT: Can we be excused?

3 THE COURT: Yes, ma'am, you may leave. Mr.

4 McKenzie, I believe I addressed your last issue, your

5 separate issue by way of The Court cost. And I know no

6 one knows The Court's cost, but given the distance that

7 she would have to travel, I'm not going to impose any

8 different sanctions, any additional sanctions.

9 MR. MCKENZIE: Thank you, Your Honor.

10 THE COURT: But if you all would prepare an order

11 for me.

12 MR. MCKENZIE: Thank you, Your Honor. That will be

13 a $200 court cost, Your Honor?

14 THE COURT: Two hundred and fifty dollars.

15 MR. McKENZIE: Would you address the issue of any

16 future payments as far as if she misses any future

17 payments. Didn't you mean to put that in your order,

18 also?

19 THE COURT: You want an additional purge provision?

20 MR. McKENZIE: Additional purge provision --

21 THE COURT: Here's what I'll do, I generally go

22 about three months out, that she cannot miss more than

23 one payment over the next three months.

24 MR. McKENZIE: That will be fine, Your Honor.

25 (WHERE UPON THE MATTER IN THIS CASE WAS CONCLUDED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, PATRICIA A. NYE, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING IN THE ABOVE CAPTIONED CASE, RELATIVE TO APPEAL IN THE FAMILY COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 29TH DAY OF JUNE 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

_____

PATRICIA A. NYE

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	DOCKET #: 2004-DR-14- 243
William R. Simpson, Jr.,	)	
Plaintiff,	)	
vs.	)	ORDER FROM RULE TO SHOW CAUSE
Becky H. Simpson, n/k/a Becky H. Ingle and Wade Ingle,	)	
Defendants.	)	

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 7/6/11
Beulah J. Coleto
CLERK OF COURT
CLARENDON COUNTY, SC

PRESIDING JUDGE: **The Honorable Gordon B. Jenkinson**
ATTORNEY FOR PLAINTIFF: **William H. Johnson and Steven S. McKenzie**
ATTORNEY FOR DEFENDANT: **Did not Appear**
COURT REPORTER: **Patsy Nye**
HEARING HELD: **June 29, 2011**

This matter was scheduled to come before me this 29th day of June, 2011 pursuant to an Order and Rule to Show Cause signed by The Honorable George M. McFaddin, Jr. on March 31, 2011 directing the Defendant to appear and show cause why she has failed to abide by the terms of this Court's Order from hearings dated February 14, and 16, 2006 and this Court's subsequent Order dated March 6, 2006. Present and appearing at the hearing were the Plaintiff, along with his attorneys, William H. Johnson, Esquire, of the Clarendon County Bar and Steven S. McKenzie, Esquire, of the Clarendon County Bar. The Defendant, Becky Ingle, was not present and was not represented by an attorney. The Court noted that she was served with proper notice of the date, time and place of this hearing and that she has filed an Answer in the form of two (2) letters, one to Mr. Johnson and one to the Court.

GBJ #1

The Court then heard testimony offered by the Plaintiff and his counsel, reviewed the Court's file and previous Orders, and received arguments from the Plaintiff's attorneys.

At the end of the hearing, William H. Johnson, the attorney for the Plaintiff offered his fee affidavit related to and reflecting attorney's fees and costs arising from this action on behalf of his client to enforce this Court's Order.

Based upon the testimony and evidence received, the Court makes the following:

FINDINGS OF FACTS

1. This Court has continued jurisdiction over the parties to this action and the subject matter of this action.

2. The parties were previously before this Court on February 14 and 16, 2006 for a hearing in this matter. At that hearing the Defendant, Becky H. Ingle, was ordered to pay the Plaintiff child support in the amount of $233.05 per month, through the Clarendon County Family Court.

3. In a subsequent hearing held on March 6, 2006, the Plaintiff's child support obligation was increased to Three Hundred Fourteen ($314.00) Dollars per month, to be paid through the Clarendon County Family Court.

4. The records of the Clerk of Court indicate that the Defendant has failed to pay as ordered, which failure to pay has created an arrearage owed to the Plaintiff in the amount of Six Thousand Six Hundred Ninety-Five and no/100ths ($6,995.00) Dollars.

5. The Defendant has not made any payment since March 8, 2010.

6. In compliance with the order entered dividing the marital estate of the parties, the Defendant received over $213,000.00 in assets. This value, with interest, was paid to the Defendant in 2008.

7. In her letter to the Court dated May 12, 2011, the Defendant indicated that she had the means available to pay the amount owed.

CONCLUSIONS OF LAW

1. An adult who willfully violates, neglects, or refuses to obey or perform a lawful Order of the Court...may be proceeded against for contempt of Court. S.C. Code Ann. §20-7-1350 (supp. 2006).

2. "In a proceeding for contempt for violation of a Court Order, the moving party must show the existence of a Court Order and the facts establishing the respondent's non-compliance with the Order." Hawkins v. Mullins, 359 S.C. 497, 501, 597 SE 2nd 897, 899 (Ct. App. 2004).

3. In cases where the Plaintiff seeks to hold the Defendant in contempt for failure to pay child support, the United States Supreme Court has recently held that, in order to satisfy constitutional safeguards, the Court must also provide the Defendant an opportunity at a hearing to respond to statements and questions about his or her financial status and also the Court must make an express finding that the Defendant has an ability to pay. Turner v. Rogers, ___ U. S. ____, 131, S.Ct. 1624(2011).

4. In this case, the Plaintiff has directed the Court's attention to previous Orders of this Court requiring that the Defendant pay child support to the Plaintiff. The Plaintiff has also provided uncontroverted evidence that the Defendant has failed to pay as ordered by the Court, and in fact that this failure has continued over a significant period of time. An appropriate hearing was held wherein

JB #3

the Defendant, had she appeared, would have been provided with the opportunity to respond to questions about her financial status. The Defendant failed to appear to take advantage of that opportunity. Further, the Defendant acknowledged in her correspondence to this Court that by using assets currently in her "retirement pension plan," she was able to pay the amount owed. Based upon the combination of these facts, this Court finds that the Defendant had the ability to pay the amount owed.

5. Accordingly, this Court finds that the Defendant, Becky H. Ingle, is in willful civil contempt of this Court for failing to pay child support as ordered. As a result of this willful civil contempt, the Defendant, Becky H. Ingle, is sentenced to incarceration for a period of sixty (60) days in the Clarendon County Detention Center. During this incarceration, the Defendant will not be eligible for work release nor will credit be allowed to reduce the sentence on the basis of "good time."

6. The Defendant may purge herself of this contempt by the payment, within thirty (30) days of June 29, 2011, of the sum of Six Thousand Nine Hundred Ninety-Five and no/100ths ($6,995.00) Dollars constituting the current arrearage of child support owed, along with Court costs in the amount of Two Hundred Fifty and no/100ths ($250.00) Dollars and also attorney's fees to the Plaintiff's counsel in the amount of One Thousand Two Hundred Eighty Two and 50/100ths ($1,282.50) Dollars. The payment of the arrearage and Court costs shall be paid directly to the Clarendon County Family Court. The attorney's fees awarded shall be made payable to William H. Johnson and forwarded directly to the Plaintiff's attorney at Post Office Box 137, 411 North Brooks Street, Manning, South Carolina 29102.

#4

7. In addition, should the Defendant fail to pay on or before the first day of the month in which it is due, the child support payment due to the Plaintiff, and this failure to pay occurs more than once within ninety (90) days of the date of the hearing, such failure to pay on the part of the Defendant shall constitute an additional act of contempt which shall subject the Defendant to sixty (60) days incarceration at the Clarendon County Detention Center. In the event of such failure to pay, the Plaintiff need only to file an affidavit with the Clerk of the Family Court substantiating that failure to pay upon receipt of which the Clerk of the Family Court is authorized to issue a bench warrant for the arrest of the Defendant for the purposes of insuring the service of sixty (60) days of incarceration.

ACCORDINGLY, it is hereby Ordered as follows:

1. The Defendant, Becky H. Ingle, is hereby sentenced to incarceration at the Clarendon County Detention Center for sixty (60) days as a result of the Defendant's willful civil contempt. The Defendant may purge herself of this contempt by the following actions:

a. Payment, via the Clarendon County Family Court, of the amount of Six Thousand Nine Hundred Ninety-Five and no/100ths ($6,995.00) Dollars arrearage owed,

b. Payment, via the Clarendon County Family Court, of Two Hundred Fifty and no/100ths ($250.00) Dollars Court costs;

c. Payment, to William H. Johnson, One Thousand Two Hundred Eighty Two and 50/100ths ($1,282.50) Dollars attorney's fees and costs.

Each of these payments must be made on or before July 29, 2011. In the event said payments are not made, the Plaintiff may file an affidavit with the Clerk of the Family Court confirming the same, at which point the Clerk of the Family Court is hereby directed to issue a bench warrant for the arrest

of the Defendant for the purpose of serving the sentence herein imposed.

2. In the event the Defendant shall fail to make when due, more than one of the regular monthly child support payments due within the next three (3) months, the Plaintiff may file an affidavit confirming the same with the Clerk of the Family Court, upon receipt of which, the Clerk of the Family Court shall issue a bench warrant for the arrest of the Defendant, and she shall serve a sentence of sixty (60) days incarceration at the Clarendon County Detention Center.

AND IT IS SO ORDERED.

The Honorable Gordon B. Jenkinson
Presiding Judge, Family Court
Third Judicial Circuit

July 1, 2011

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON William R. Simpson, Jr., Plaintiff, vs. Becky H. Simpson, nka Becky H. Ingle, Defendant.	)))))))))))))))	IN THE FAMILY COURT THIRD JUDICIAL CIRCUIT 2011-DR-14-123 **AFFIDAVIT OF** **JOSEPH F. GELDRICH**

STATE OF MONTANA
COUNTY OF LAKE

Personally appeared before me Joseph F. Geldrich, being duly sworn, says:

1. I am a resident of Montana and am over 18 years of age.
2. I am not a party to nor interested in this action.
3. My address is 52930 Geldrich Lane, Charlo, MT 59824.
4. I have been a private investigator since 1999.
5. Prior to 1999 I was employed with the Lake County Sherriff's office for 21 years, from 1975-1998. I served as County Sherriff for the last 13 years of my 21 year tenure.
6. From 1975 to 1977 I was employed with the Ronan Police Department in Ronan Montana.
7. I was contacted by William R. Simpson, Jr. on September 8, 2011 for the purpose of locating Becky Simpson, nka Becky H. Ingle in connection with an outstanding South Carolina Court Order to have her arrested for contempt of court.
8. I conducted surveillance of Ms. Simpson/Ingle from the evening of September 8, 2011 through October 11, 2011.

9. I notified Deputy Funke of the Sherriff's office on how he could find Ms. Simpson/Ingle.

10. It is my understanding she was arrested on October 12, 2011.

11. I have not had any further connection with this case, other than providing this affidavit, since that time.

Joseph Geldrich

Date: September 24, 2012

SWORN to and subscribed before me this

24th day of September, 2012

Mary Kensvold / Mary Kensvold

Notary Public for Montana
My Commission Expires: 3/1/2013

Residing at Polson, Montana

LAKE COUNTY SHERIFFS OFFICE

ARREST REPORT - 211AR0001235 INGLE, BECKY HILL

Sector R001 Level 9
NOT REVIEWED

PERSONAL DATA

Name	INGLE, BECKY HILL		
Address			
Phone			
DOB / POB	SC COLUMBIA		
Age	39		
SocSec			
Marital Status	M		
CitizenShip	US		
OLN-St			
Agency#	20733		
State#		FBI#	
Military		Military#	
Occupation	PARAEDUCATOR		
Employer / School	RONAN SCHOOL DIST.		
School-Grade	14		
Description	F WN 503 120		
Eyes	BROWN	Glasses	CONTACTS
Hair	LONG STRAIGHT BROWN		
Skin Complexion	LIGHT	Posture	ERECT
Build	AVERAGE	Speech	NORMAL
Nose	NORMAL	Ears	NORMAL
Mouth	NORMAL	Teeth	NORMAL
Fingerprint#			
Prob/Parole/Mental	NOT ON PROBATION OR PAROLE		
Priors	YES		
S.M.T/Clothing			
Gang		ID How/By	

ARREST DATA

Arrest#	211AR0001235		
Alternate#			
Time Arrested	10/12/2011 11:30		
How	WARRANT		
Arrested By	MGEHLGEHL		LCSO MT0240000
Hold For	DISTRICT COURT		
Who Notified			
Arrested Where	RONAN PRE SCHOOL RONAN		
Sector	R001		
Time Booked	10/12/2011 20:28		
Pod/Bed	C / 01		
Booked By	RADOSSDOS, LANNYVANM		
Scheduled Release			
Time Released	10/27/2011 09:41		
How	OR		
Released By	DO/15JACO		
To Whom	INGLE,BECKY		

Sector R001 Level 9
NOT REVIEWED

OFFENSES

10/12/2011 11:30	LOCAL, WARRANT WARRANT OUT OF COUNTY				MISDEM
Occurred Where	RONAN PRE SCHOOL RONAN				
Court	JUSTICE COURT	BAIL	20000.00	Return	
CR#		NCIC		Warrant/Docket#	

LAKE COUNTY SHERIFF'S OFFICE
INITIAL REPORT - 211CR0023033

Sector 20 Level 6
NOT REVIEWED

CORE DATA

Case Report#	211CR0023033
Other#	
Master CR#	
Classification	
Ranking	
Reported As	WARRANTS
Time Reported	10/12/2011 10:50
Taken By	DEETZKDEE
Reported How	DISPATCH
Time of Occurrence	To
Injuries	
Weapons	
Scene	DAY CARE ON DIVISION
Sector	20
Premise	
Time Dispatched	
Time On Scene	10/12/2011 10:56 \1519
Time Cleared Scene	10/12/2011 11:53
Assigned To	LCSO MGEHLGEHL
Cleared	

SCENE TIMES

\1519 10-97	DEETZKDEE	10/12/11 10:56
\1519 10-15	DEETZKDEE	10/12/11 11:01
\1519 10-19	DEETZKDEE	10/12/11 11:53
\1519 10-98	DEETZKDEE	10/12/11 11:53

DISPATCH WRITTEN BY DEETZKDEE ON 10/12/2011

10:53 DEETZKDEE> 1519 ADV THAT HE IS GOING TO ATTEMPT TO LOCATE A FEMALE THAT IS WANTED OUT OF SOUTH CAROLINA. 1519 ADV THAT HE WILL BE GOING INTO THE DAY CARE LOCATED ON DIVISION BEHIND TRIBE.-

11:01 \1519 10-15> EN ROUTE TO DETENTION, STARTING 169907

11:48 DEETZKDEE> 1519 ADV SUBJECT IN DETENTION, WARRANT HAS BEEN SERVED, SIGNED AND FAXED BACK TO SC.
-

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE FAMILY COURT 2004-DR-14-243
William R. Simpson, Jr., PLAINTIFF, VS. Becky H. Simpson, n/k/a Becky Ingle, and Wade Ingle, DEFENDANTS.	)	TRANSCRIPT OF RECORD October 27, 2011 Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE GORDON B. JENKINSON, Judge

A P P E A R A N C E S:

STEVEN S. MCKENZIE, Esquire
Attorney for the Plaintiff

S. WAYNE GAMBLE, III, Esquire
Attorney for the Defendant

MISSY BROWN
Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Marilyn Wilson				
BY THE COURT:	4			
BY MR. GAMBLE:		7		
BY MR. MCKENZIE:		9		17
CERTIFICATE OF REPORTER	22			

E X H I B I T S

NO.	DECRIPTION	ID	EV
	No exhibits presented at hearing.		

1 P R O C E E D I N G S

2 OCTOBER 27, 2011

3 (Whereupon, Court convened when the following matters
4 were had:)

5 THE COURT: This is the case of William R.
6 Simpson, Jr., versus Becky H. Simpson, now know as Becky H.
7 Ingle, and Wade Ingle, before the Court pursuant to Mr.
8 Gamble's -- S. Wayne Gamble's notice of motion and motion
9 and he is present on behalf of the Defendants. Mr. Steve
10 McKenzie is here on behalf of the Plaintiff.

11 Unless I hear an objection from either one of you I
12 think it might be prudent to let me call the Clerk of the
13 Family Court to get an update on exactly what's been paid
14 and then I'll hear from you, Mr. Gamble, and then Mr.
15 McKenzie.

16 Is that okay, gentlemen?

17 MR. GAMBLE: That'd be fine, Your Honor.

18 THE COURT: Okay. Ms. Wilson, would you come
19 forward, please, and be sworn? Right over here. Place
20 your left hand on that bible and raise your right hand,
21 please.

22 **MARILYN WILSON,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 EXAMINATION BY THE COURT:

25 Q. All right. If you would, please, ma'am, please state

1 your name for the record.
2 A. Marilyn Wilson.
3 Q. And I believe you are the head clerk of the family
4 court for Clarendon County?
5 A. That's correct.
6 Q. And in that capacity you, of course, have the payment
7 records for the Simpson case that's before me today?
8 A. Yes, sir.
9 THE COURT: And it appears that we last went to
10 court on June 29th, 2011, on a rule to show cause; is that
11 right, gentlemen?
12 MR. GAMBLE: That's correct, Your Honor.
13 MR. MCKENZIE: That's correct, Your Honor.
14 Q. And apparently at that time Mrs. Ingle was ordered to
15 pay -- at that hearing to pay back child support in the
16 amount of $6,995, attorney's fees of $1,282.50, and court
17 costs in the amount of $250. Is that your understanding?
18 A. Yes, sir.
19 Q. Have those amounts been paid?
20 A. Yes, sir. Everything has been paid.
21 Q. Okay. Was it paid within the 30-day window? I
22 believe I had a 30-day window on that order.
23 A. Okay. Can I just tell you payments on the printout?
24 Is that what you -- the dates?
25 Q. Yes, ma'am.

1 A. The $6,006.20 was paid on July 6th, 2011. A payment of
2 315 was paid on July 22nd, 2011. A payment of $1,003.80 was
3 paid on July 25th, 2011. And a payment of 314 was paid on
4 August 8th, 2011, and another payment of 314 was paid on
5 August 29th, 2011.
6 Q. Okay. Now, so everything that I ordered to be paid
7 has been paid?
8 A. It was a zero balance as of 7/25/11 so that would have
9 been ---
10 Q. Within that 30-day window?
11 A. --- within the 30 days.
12 Q. Okay. And there was some language in my order that
13 another condition of the purge provision was that Mrs.
14 Ingle was not to miss more than one payment subsequent to
15 my order. Did she miss more than one payment?
16 A. The regular child support payment was paid on June --
17 excuse me, July 22nd, and it was due on July 1st. And the
18 second payment, August payment, was paid on August 8th, due
19 on August 1st.
20 Q. Okay. Do I understand you correctly to say that she
21 did not miss more than one payment?
22 A. I'm not saying she didn't miss more than one payment,
23 she was ---
24 Q. She never got two payments behind subsequent to my
25 order, did she?

1 A. Right.

2 Q. And I believe a bench warrant was issued by you for

3 her arrest.

4 A. Right.

5 THE COURT: Cross examination, Mr. Gamble?

6 MR. GAMBLE: Yes, Your Honor.

7 CROSS EXAMINATION BY MR. GAMBLE:

8 Q. Since these payments, is she still up to date in her

9 child support?

10 A. The last payment was made on -- it was actually

11 yesterday. It's dated today because it was after closeout.

12 And she now has a credit of 361.10.

13 Q. Okay. And as far as the -- the order in this case, do

14 you know when that was served on her?

15 A. The affidavit of personal service, order for rule to

16 show cause, was served on July 18th, 2011.

17 Q. Okay. And so when that was served on her she already

18 would have missed the July 1st payment because she didn't

19 know what the order said until July 18th; is that right?

20 A. That's correct.

21 Q. Since she started making payments -- at one point did

22 she send you a check that was a counter check, a bank

23 counter check?

24 A. Right.

25 Q. And your office -- you --you've learned since then

1 sent that back?

2 A. Right.

3 Q. And she's replaced that check?

4 A. Right. That's correct.

5 MR. GAMBLE: I have no other questions.

6 THE COURT: All right. Let me ask you a question

7 and then I'll get to you, Mr. McKenzie.

8 Has Mrs. Simpson ever been held in contempt for

9 failure to make support payments before?

10 THE WITNESS: Judge, I'd have to look at that for

11 a moment. I'm not sure.

12 THE COURT: Can you help me with that, Mr.

13 McKenzie?

14 MR. MCKENZIE: She has, Your Honor.

15 THE COURT: All right. Do you know how long ago

16 that was?

17 MR. MCKENZIE: It's been some -- it's been some

18 time. It's whenever she was living in South Carolina. But

19 she moved to Montana about four years ago, four or five

20 years ago, and that's when she stopped making ---

21 THE COURT: She's not been held in contempt since

22 she moved to Montana?

23 MR. MCKENZIE: Yes, sir. Because we couldn't

24 find her.

25 THE COURT: Okay. That answers my question.

1 MR. MCKENZIE: Yes, sir.

2 THE COURT: Okay. Cross examination, Mr.

3 McKenzie?

4 MR. MCKENZIE: Thank you, Your Honor.

5 CROSS EXAMINATION BY MR. MCKENZIE:

6 Q. You have a copy of the Court's order; is that correct?

7 A. I do.

8 Q. And your job as the clerk of court is to enforce the

9 orders ---

10 A. That's correct.

11 Q. --- of the Court. And I'm going to hand you a copy of

12 Family Court Rule 24 and can you read paragraph A for us?

13 A. Determination of arrearage?

14 Q. Yes.

15 A. Clerks of Court shall review all child support and

16 periodic alimony accounts paid through the clerk of court.

17 This review shall be conducted at least once a month. An

18 account shall be considered in arrears if a scheduled

19 payment has not been received when review is made and at

20 least five working days have passed.

21 Q. Okay. Now turn to paragraph 7 of Judge Jenkinson's

22 order from the rule to show cause hearing.

23 A. Would it be page 6?

24 Q. It'd be page 5, paragraph 7.

25 A. Oh, sorry. Sorry.

1 Q. Page 5, paragraph 7.

2 A. Okay. Page 5, paragraph 7?

3 Q. Yes.

4 A. I'm there.

5 Q. Can you read that for us into the record?

6 THE COURT: Give me just a minute to put my hand

7 on that.

8 MR. MCKENZIE: Page 5, Your Honor, paragraph 7.

9 THE COURT: Page 5?

10 MR. MCKENZIE: Yes, sir, paragraph 7.

11 THE COURT: Paragraph what?

12 MR. MCKENZIE: Paragraph 7.

13 THE COURT: Seven?

14 MR. MCKENZIE: Paragraph 7, yes, sir, on page 5.

15 Page 5, paragraph 7.

16 THE COURT: Oh, okay.

17 Q. Can you read that for us?

18 A. Okay. In addition, should the Defendant fail to pay

19 on or before the first day of the month in which it is due,

20 the child support payment due to the Plaintiff, and this

21 failure to pay occurs more than once within 90 days of the

22 date of the hearing ---

23 Q. All right. Let me stop you right there. When was the

24 day of the hearing?

25 A. The date of the hearing was June 29th, 2011.

1 Q. Okay. When was the next day that the child support --
2 or when was the next time that child support -- she pays
3 monthly; is that correct?
4 A. Right.
5 Q. And so she only would have had three times that she
6 could have been late ---
7 A. Within the 90 days.
8 Q. --- within the 90-day period?
9 A. Right.
10 Q. So from the date of that hearing the next payment date
11 was due July 1st; is that right?
12 A. That's correct.
13 Q. And I know that she was not served with the order
14 until July 18th, but according to what you testified to, she
15 actually made -- started complying with the order on July
16 6th. She made a $6,000 payment towards the arrearage, did
17 she not?
18 A. That's correct.
19 Q. And then I think you told me by July 22nd she made her
20 next child support payment, but she was served on July 18th.
21 A. That's correct.
22 Q. So even though she was -- she wasn't in contempt at
23 that point in time in July, it wasn't until the August
24 payment where she was more than five days late, August 8th,
25 she made the next payment; is that right? Child support

1 payment?
2 A. That's correct.
3 Q. So, you issued the bench warrants because she missed
4 -- or she was late more than twice within a 90-day period
5 of time in compliance with paragraph 7 of this order?
6 A. That's correct.
7 Q. Okay. So, you, and part of your duties as a clerk, is
8 that Rule 24 requires you to periodically review these
9 files; is that right?
10 A. That's correct.
11 Q. And so when Mr. Simpson filed his affidavit with the
12 Court, did that alert you to the fact that you needed to go
13 look at this file?
14 A. Right.
15 Q. And is that the reason that you issued the bench
16 warrant?
17 A. That's it.
18 Q. Okay. So, Judge Jenkinson's order said that she
19 couldn't miss more than two payments -- she could have
20 gone, as long as she complied with the order, because she
21 was served the order on July 22nd, if she'd made the August
22 payment on time we wouldn't be here today, would we?
23 A. That's correct.
24 Q. Because she would only have missed one payment.
25 A. One.

1 Q. But she was two payments late and therefore that --
2 that paragraph 7 kicked in?
3 A. That's right. That's correct.
4 THE COURT: Give me your copy of the order. I
5 don't -- I didn't get all of the order. It's just a
6 complete mess. It's not anybody's fault but mine.
7 (Whereupon, order was handed up to the Court.)
8 THE COURT: All right. Tell me again what your
9 argument is that Ms. Wilson seems to agree with?
10 MR. MCKENZIE: Your Honor, you ordered that if
11 she was more than two payments late from the date of the
12 hearing, the date of the hearing was the 29th of June, her
13 next payment, because she pays monthly, was due on July 1st.
14 So from the date of -- and you've got to understand the --
15 the Defendant had the opportunity to be here for that
16 hearing ---
17 THE COURT: I understand.
18 MR. MCKENZIE: --- and chose not to be here. And
19 so when you choose not to be at a hearing you choose it at
20 your own peril. So she would have heard that had she been
21 at the hearing.
22 But, anyway, she was served with the order on -- on
23 July 22nd and all she had to do was make that payment on
24 August 1st as the order said, because she had the order in
25 her hand, and she never would have been in contempt of

1 court. When she was late on the August payment, when it
2 was received on August 8th, that's whenever this provision
3 kicked in and triggered.
4 THE COURT: And she hadn't made the July payment?
5 MR. MCKENZIE: She -- she made the July payment
6 on the 22nd.
7 THE COURT: Of July?
8 MR. MCKENZIE: Of July, which was 20 -- I'm
9 sorry, 17 days late. And she -- so the next payment -- and
10 she wasn't in contempt at that point. She had to -- she
11 had to be late twice within a 90-day period of time and
12 that's what that provision says.
13 THE COURT: Well, ---
14 MR. MCKENZIE: So the next payment was due August
15 1st.
16 THE COURT: --- I don't know if that's what that
17 provision says. And of course those are my -- those are my
18 words. And I will tell you this, and this hasn't come up
19 before and Ms. Wilson and I have talked about the wisdom of
20 using this type of trigger, and I can tell you that it was
21 my intention that the second payment had to be missed and
22 not being late on two payments. My intention was that if
23 two -- if she's two payments behind, then it is triggered.
24 And y'all didn't have the benefit of that.
25 MR. MCKENZIE: Your Honor, ---

1 THE COURT: One other thing while we're talking
2 about this. Let me ask you this. And I've thought a lot
3 about this. Of course Mrs. Ingle was found in willful
4 civil contempt of court.
5 MR. MCKENZIE: Yes, sir.
6 THE COURT: And will you agree with me -- do you
7 agree with Mrs. Wilson that she is current now?
8 MR. MCKENZIE: I will agree that she's current
9 now, Your Honor.
10 THE COURT: Okay.
11 MR. MCKENZIE: I'll agree that for four years she
12 never made a payment.
13 THE COURT: All right. And I think I was
14 ambiguous in that provision and I will think very seriously
15 before I ever use that provision again because it's subject
16 to more than one interpretation.
17 But I think both of you will agree with me with a
18 civil contempt citation I have to give the Defendant, in
19 this case Mrs. Ingle, the keys to the courthouse. And it
20 would be my position, and I'll hear from you further on it,
21 if she's caught up she's gotten the keys to the courthouse
22 and should be released.
23 Now I'll hear from you on that further.
24 MR. MCKENZIE: Your Honor, ---
25 THE COURT: Do you agree with my position on the

1 law if it's civil contempt I have to give her the keys --
2 the way to get out?
3 MR. MCKENZIE: Your Honor, I think your order
4 stands. I think your order is written. It wasn't
5 appealed. There was no motion made to amend, alter. She
6 had -- she was served with the order on the 22nd and she had
7 30 days in which to appeal the order and, Your Honor, if
8 you'll look at Rule 26.
9 THE COURT: I looked at it.
10 MR. MCKENZIE: And Rule 26 says once you sign
11 that order it's the -- it's the law of this case.
12 THE COURT: How about my interpretation of my
13 order where I say it was my intention that if she is two
14 payments behind, not late twice within that window?
15 And Mrs. Wilson can tell you I use that quite often,
16 more often than she wants me to use it.
17 But, Ms. Wilson, would you agree with my
18 interpretation as far as being supported by previous cases?
19 THE WITNESS: And you're saying you meant two
20 payments -- missing two payments?
21 THE COURT: Yes.
22 THE WITNESS: Not behind?
23 THE COURT: Not -- not being late on two
24 payments, but missing -- not making two payments.
25 MR. MCKENZIE: Your Honor, I -- I can tell you I

1 was in that courtroom that day and you said if she is late
2 more than twice in the next 90-day period of time that's
3 another willful contention -- willful contempt of court.
4 THE COURT: Well I don't recall having said that.
5 And that was not my intention.
6 And again I go back to the proposition if that's what
7 I said -- if we got the transcript and that's what I said,
8 I was in error, because I do have to give her the keys to
9 the courthouse and this being an equity court that would be
10 -- that is my ruling.
11 I hadn't let you say what you wanted to on the motion.
12 And then I'll get back to you, Mr. McKenzie.
13 Anything else?
14 MR. GAMBLE: I was just going to have her read
15 the second part of Rule 24 that he brought. Rule 24(b)
16 says that the Clerk would issue a rule to show cause.
17 That's what they're talking about here. Not the present
18 situation that we have before us.
19 RECROSS EXAMINATION BY MR. GAMBLE:
20 Q. The -- the other thing, as far as the bench warrant, I
21 think, Ms. Wilson, you -- you told me that you had looked
22 at the actual order after you issued the bench warrant?
23 A. I did.
24 Q. And that the affidavit did not quite conform to what
25 you needed in the affidavit?

1 A. Yes ---

2 Q. That you might -- you might have had reservations

3 about it if you had compared the two prior to issuing the

4 bench warrant?

5 A. The affidavit actually stated that the Defendant has

6 failed and refused to make the payment by the 1st day of

7 August 2011.

8 Q. Right. It didn't say she missed ---

9 A. Two payments.

10 Q. --- missed two payments or been late on two payments?

11 A. Right.

12 MR. GAMBLE: That's all I have, Your Honor.

13 THE COURT: All right.

14 And, Mr. McKenzie, ---

15 MR. MCKENZIE: Your Honor -- Your Honor, just for

16 the record, all we can do is go by the court orders. I

17 mean if the court order is wrong -- this order hasn't been

18 appealed. I mean I don't know what else we can do. I mean

19 if the order says that she can't be more -- miss -- and

20 that's a separate order -- offense of contempt. That's

21 what that paragraph says. And I don't understand how we

22 can be -- how we have not complied with our provision.

23 My client hadn't received child support in four years.

24 THE COURT: Do you have the trial -- do you have

25 the transcript?

1 MR. MCKENZIE: No, sir. I didn't know I needed a
2 transcript. I thought the order stood by itself. And I
3 thought if a transcript ---
4 THE COURT: Well, Mr. McKenzie, I don't ever
5 recall in four years on this job using the wording that you
6 have in paragraph 7 of the complaint. I may be mistaken.
7 But it was my intention to -- to give her a grace period of
8 approximately 30 or 35 days. Otherwise I think that would
9 be very harsh and ---
10 MR. MCKENZIE: Well, Your Honor, I think you were
11 harsh on her that day. She hadn't appeared when she was
12 ordered to appear. You were upset with her for not
13 appearing.
14 THE COURT: For not sending the check when she
15 had the funds. And that's why I only gave her 90 days to
16 pay.
17 MR. MCKENZIE: And Your Honor was very upset that
18 she didn't appear after she'd been ordered to appear. I
19 mean she had a failure to appear for a rule to show cause.
20 She was ordered to appear in the Clarendon County
21 Courthouse and she didn't appear.
22 THE COURT: And that's why I granted the relief
23 you requested.
24 MR. MCKENZIE: And part of that was the fact that
25 you were upset and you said that she couldn't be late more

1 than twice in a 90-day period of time.

2 THE COURT: Well I don't believe I said that.

3 But I've been wrong before. But this being an equity court

4 and this woman has brought her account current -- and

5 another thing we have to look at, this -- my order was

6 signed July 1st and she wasn't served until 17 days later.

7 And from a fairness standpoint she didn't have 30 days even

8 to rectify these so-called late payments.

9 MR. MCKENZIE: She was late on August 1st, Your

10 Honor. That July 22nd didn't hold her in contempt, the

11 August 1st held her in contempt. That's the payment that

12 held her in contempt, that violated your order. That was

13 the second late payment.

14 THE COURT: Well, isn't Rule 24, isn't that more

15 geared to the clerk's instructions on how to handle these

16 rules?

17 MR. MCKENZIE: Yes, sir, but that gives her the

18 instructions on how -- how to -- you know, she's supposed

19 to periodically review it. She would have -- she would

20 have done this anyway. Mr. Simpson's affidavit just merely

21 said, you know, go in and look at this -- look at my case

22 because I think there's a violation of the court order.

23 And whenever she saw it ---

24 THE COURT: Well does it say anything in that

25 rule that I'm to be governed by that? Isn't that a

1 directive to the clerk of court to keep up with these rules
2 and these late payments?
3 MR. MCKENZIE: Yes, sir.
4 THE COURT: Anything else, Mr. McKenzie?
5 MR. MCKENZIE: No, sir.
6 THE COURT: Okay.
7 Would you prepare me an order, Mr. Gamble? And do you
8 want to do a form order lifting the bench warrant and then
9 you can get some more detail on the -- expand on the
10 reasons and I want all of those reasons covered in there,
11 please, sir.
12 MR. GAMBLE: I sure will. All right. Thank you,
13 Your Honor.
14 THE COURT: Thank y'all very much.
15 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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1 CERTIFICATE OF REPORTER

2 I, the undersigned Missy Brown, Official Court
3 Reporter for the Ninth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete transcript of record of all the
6 proceedings had and evidence introduced in the hearing of
7 the captioned case, relative to appeal, in the Family Court
8 for Clarendon County, South Carolina, heard in Berkeley
9 County, South Carolina, on the 27th day of October 2011.
10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.
12 March 22, 2012
13
14
15 Missy Brown
16 Court Reporter
17
18
19
20
21
22
23
24
25

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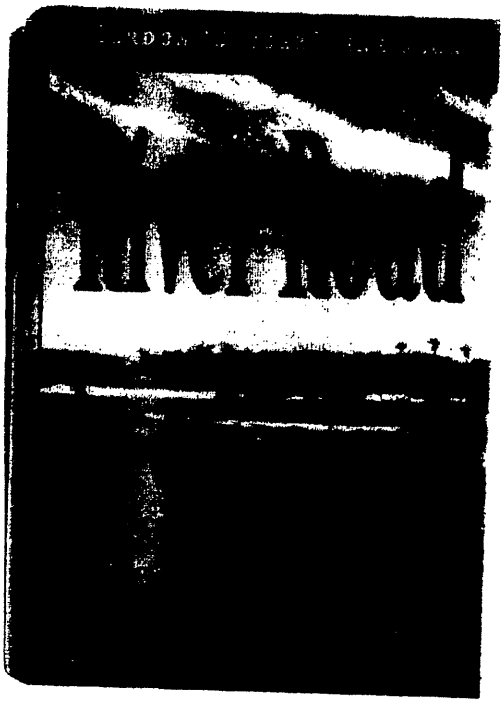

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William Simpson Sr.
2526 W R Simpson Road
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803.225.0389

September 26, 2012

BY HAND DELIVERY

Jane O. Shuler, Esq.
Chief Counsel
Judicial Merit Selection Commission
104 Gressette Senate Office Building
1101 Pendelton Street, Room 104
Columbia, SC 29202

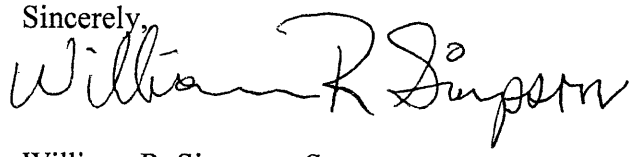
Re: Formal Judicial Complaint Against
Judge Gordon B. Jenkinson of the
South Carolina Family Court of the Third Judicial Court
In re: *Daisy Wallace Simpson vs. William Robert Simpson, Sr., et al.,*
Case No. 03-DR-14-128

Dear Ms. Shuler:

I am submitting my Affidavit/Complaint against Judge Gordon Jenkinson in the attached binder which includes Tabs 1 through 6 of documents related to my testimony.

Thank you in advance for your attention to this matter. I look forward to hearing from you.

Sincerely,



William. R. Simpson, Sr.

Enc. Gray Binder with tabs 1-6

Daisy Wallace Simpson vs. William Robert Simpson, Sr., Individually and as shareholder/member of Simpson Farms, LLC And William R. Simpson, Jr., as a shareholder/member of Simpson Farms, LLC.
Case No. 03-DR-14-128

(a) Allegations of wrongdoing or misconduct on the part of the candidate:

Background: My divorce was initially heard by Judge Turbeville of the Family Court in Manning. He was the trial judge who wrote and filed the"Final Decree of Divorce" dated December 31, 2004 (Tab 1 Attached). This Final Order identified in detail the division of the marital property of this 34 year marriage. This was a complex and cantankerous divorce that involved many tracts of land. The plaintiff sought to include as marital assets property that was either not mine to transfer or property that was in an LLC in which I am half member. In sum and substance, Judge Turbeville's order awarded plaintiff cash and land totalling $784,055. I have complied with this Order and have paid all ordered attorneys fees and court costs.

Judge Turbeville addressed division of tracts of land in his Final Order at paragraph "4." of page 41 by stating the following:

*"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 Simpson Farms, LLC, and against S&T Land Developers ... ".*

I appealed the Final Order. The ***plaintiff did not appeal***. Subsequent to Judge Turbeville's Final Decree Order in December, 2004, he retired. Judge Jenkinson took his place. The Court of Appeals upheld Judge Turbeville's Final Order, remanding only as to attorneys' fees. At this point I was confident in the Court of Appeal's decision and understood that on remand before Judge Jenkinson was the sole issue of attorneys' fees. In fact, subsequent to the Court of Appeals review, on May 28, 2010 (Tab #2 attached) Judge Jenkinson concluded in his Order that I was *not* in contempt of Judge Turbeville's Order; that I cannot transfer real estate titled in an LLC , citing S.C. Code of Laws, Section 33-44-501(a)

JUDICIAL MERIT SELECTION COMMISSION	)	
	)	
In the Matter of:	)	WITNESS AFFIDAVIT FORM
	)	
The Honorable Gordon B. Jenkinson, Kingstree, SC	)	
	)	
Candidate for 3rd Circuit, Seat 3	)	
	)	
	)	

AFFIDAVIT OF WILLIAM R. SIMPSON, SR.

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least five (5) days prior to the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is October 30, 2012.

In regard to my intended testimony, I will offer information as to the following:

1. My name is William R. Simpson, Sr. I am 62 years of age. I live at 2526 W.R. Simpson Road, Manning, SC 29102. My home and work telephone number is 803.225.0389.

2. Other persons who have knowledge of the facts concerning my testimony:

   Steven S. McKenzie, Esq.
   Coffey, Chandler & Kent
   P.O. Box 1292
   8 South Brooks Street
   Manning, SC 29102

   Paul E. Tinkler, Esq. [for William R. Simpson, Jr.]
   Law Offices of Paul E. Tinkler
   154 King Street, Third Floor
   Charleston, SC 29402

3. The nature of the testimony regarding the qualifications of the above-named judicial candidate, including:

The nature of my testimony will consist of Judge Jenkinson's misconduct in my divorce case captioned:

1976, (as amended); and that Plaintiff's request for attorneys' fees on this matter were denied. But that he would hear us on attorneys' fees at another time. The next hearing before Judge Jenkinson, eight months later, was January 6, 2011.

(b) Specific dates, places and times at which or during which such allegations took place:

January 6, 2011 hearing before Judge Jenkinson:

It was my understanding that at this hearing the only issues before the court were alimony and attorneys' fees. I felt ambushed when plaintiff's counsel introduced an exhibit to the court revisiting the issue of property division given that the Court of Appeals had upheld Judge Turbeville's Final Order. Plaintiff's counsel introduced the exhibit into the record. Judge Jenkinson accepted it and inappropriately heard plaintiff's counsel on the issue of property division all over again. Judge Jenkinson ignored the Court of Appeals Order which upheld Judge Turbeville's Final Order and he also threw out his own Order of May 28, 2010 [Tab 4 is copy of Transcript of January 6, 2011 hearing.] Judge Jenkinson arbitrarily took it upon himself to circumvent legal procedure and ignore the Order from the Court of Appeals.

Below are some transcript references of the January 6, 2011 hearing that I would point out to the Commission as to the back and forth concerning this new exhibit relitigating what had already been ruled on and upheld.

Page 25, Lines 10-14: colloquy between counsel and the Court where the Court admits that it is bound by Judge Turbeville's percentages but revises the Original order anyway.

Page 28: lines 15 -21: colloquy where the Court asks counsel about "some sort of cashing out" to plaintiff and an objection by counsel about going beyond the scope of the hearing. Not only was this beyond the scope of the hearing but beyond his jurisdiction.

Page 29, lines 4-6: The Court says, "But I don't believe I have the authority to alter the terms of paragraph 106 of Judge Turbeville' decree." He does anyway.

Page 40: Lines 8-10: Mr. Tinkler, representing William Simpson, Jr., says that this hearing was scheduled to hear alimony and attorneys' fees , not property division. Mr. Tinkler requests that he be given some time after the hearing to respond and the Court says it will do that. But then the Court goes ahead and makes a ruling anyway at **page 42, lines 1-16**, even though he just told Tinkler he would give him time to respond. Mr. Tinkler reminds the court

at page 43, lines 23-25 that earlier the court had agreed to give him time to respond to plaintiff's exhibit which outlined their view of how the property should be divided (post-court of appeals staying Judge Turbeville's Final Order.) Page 45, lines 24 and 25 and into page 46. Mr. Tinkler points out to the court that the effect of the court's ruling revising the property division in essence puts Simpson, Jr. in the position of giving property away twice. At this point the court gives Defendants seven days to respond. Upon this agreement Mr Tinkler does not attend the afternoon session. But at page 116, lines 12-15 the court says it may make a decision tomorrow, inconsistent with having said he would allow Mr. Tinkler to respond before he ruled.

Page 48, Lines 3-12: Discussion about my ability to pay an additional cash award (that was not in the original Order) and Judge Jenkinson says at lines 11 and 12: "Well, doesn't your client have a very close relationship with the Bank of Greeleyville? This was an inappropriate comment and what's the relevance?"

Page 60: Discussion about conveying land by quitclaim deed. In the past it hasn't been acceptable for me to provide quitclaim deeds but now it is. Confusing and inconsistent.

Page 68, Lines 15-25 and page 69, Lines 1-25:, Defendant Simpson, Jr. addresses the court on the court hearing issues that were not on the calendar. I believe the court should not have continued to hear counsel on anything that involved Simpson, Jr. because his attorney, Mr. Tinkler, was not present for the afternoon session. Given the nature of this case, that would have been the prudent thing to do.

(c) Names of persons present during such allegations took place, or have knowledge of

Reid B. Smith, Esq. (for Defendant Simpson, Sr.]
Bird & Smith, P.A.
1712 St. Julian Place, Suite 102
Columbia, SC 29204
803.779.2255

Paul E. Tinkler, Esq. [morning session only; appeared for Defendant Simpson, Jr.]
Law Offices of Paul E. Tinkler
154 King Street, Third Floor
Charleston, SC 29402

(d) How this information relates to the qualifications of the judicial candidate.

Judge Jenkinson's conduct in ignoring the Court of Appeals Order and revising the Final Divorce Decree violates and is contrary to the rules of judicial conduct and undermines the bedrock of legal procedure in our legal system.

(4) **List of documents to be produced at the hearing relating to my testimony regarding the qualifications of the judicial candidate:**

Numbered Tabs in Binder:

1. 12/31/2004 Judge Turbeville's Final Order
2. 4/4/2007 Court of Appeals Order upholding Final Order, remanding only on attorneys' fees
3. 5/28/2010 Judge Jenkinson' s Order acknowledging Court of Appeals' Remand on Attorneys' fees and that Simpson, Sr. was not in contempt and could not transfer property in LLC
4. 1/ 6/2011 Hearing Transcript before Judge Jenkinson
5. February 2011 Jenkinson Order (reversing his May 28, 2010 Order & ignores Court of Appeals Order)
6. 2011 Judge Jenkinson publishes 300 page fiction novel: Copy of cover page of book: "River Road"

(5) **Other facts pertinent to the screening of this judicial candidate**.

In summary, Judge Jenkinson's misconduct in my case consisted of:

1. Inappropriate comment on the record about my relationship with a bank, inferring that I should be able to pay more money.
2. He changed a prior judge's Final order which to my understanding of South Carolina law he can't do, unless there's new evidence and there was not.
3. He changed a Final Order in favor of plaintiff but I would note that the *plaintiff had not preserved the issue for appeal nor appealed the Final Order*. How can Judge Jenkinson make any changes after the fact under these circumstances?
4. He violated legal procedure by re-hearing what had already been adjudicated by a trial court and upheld by a higher court.
5. He inexplicably reversed his own order of eight months earlier.
6. He accepted evidence on an issue already litigated and upheld by the Court of Appeals.
7. He specifically violated Canon 2(A) of the Code of Judicial Conduct.
8. His vacillation in orders and deviation from normal procedure has caused me continued undue emotional and financial distress.

9. I believe that Judge Jenkinson was inattentive and distracted during my case, one of the reasons being his publication of a 300 page fiction novel published in 2011.

10. I also believe Judge Jenkinson's physical ability is impaired with respect to his hearing. It became apparent at the hearings that he was having difficulty hearing the parties. He also was reading our lips as we spoke.

<u>The Code of Judicial Conduct</u>: The Code of Judicial Conduct, Rule 501, SCACR states:"

Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities);

Canon 2(A)(a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary);

Canon 3(a judge shall perform the duties of judicial office impartially and diligently);

Canon 3(B)(2)(a judge shall be faithful to the law and maintain professional competence in it); Canon 3(B)(8)(a judge shall dispose of all judicial matters promptly, efficiently and fairly); and Canon 3(C)(1)(a judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business)."

<u>Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR</u>:

<u>Rule 7(a)(1)</u> it shall be ground for discipline for a judge to violate the Code of Judiial Conduct.

Rule 7(a)(7) it shall be ground for discipline for a judge to willfully violate a valid court order issued by a court of this state.

I believe Judge Jenkinson's misconduct falls within the parameters of Rule 501 and 502 of the SCACR. I respectfully request this Commission to ask Judge Jenkinson to explain his reasoning and rationale for his conduct in this case.

I understand that the information I have provided is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission, I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.

Respectfully submitted,

William R. Simpson, Sr.

Sworn to me this 21 day of September, 2012

Aimee A. McWhite L.S.

Notary Public of South Carolina

My Commission Expires: 4-12-22

AIMEE A. MCWHITE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 4-12-2022

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1. 12/31/2004 Judge Jenkinson's Final Order of Divorce in Sr.' s Divorce
2. 4/4/2007 Court of Appeals Order Upholder Lower Court
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4. 1/6/2011 Hearing Transcript
5. 2/2011 Judge Jenkinson's Order (reversing his 5/28/2010 Order)
6. Copy of cover page of Judge Jenkinson's book: River Road

JUDGE TURBEVILLE
ORIGINAL ORDER

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., & Simpson Farms, LLC Scott L. Robinson

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

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2005 JAN -5 AM 10:08
W P & B, LLP
LEGAL SERVICE
OF SC, PA

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.

RWT

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.

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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

RLOt

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.

Att. fees

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".

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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.

RWT

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.

RWL

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.

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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

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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:**

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(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.

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(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 3rd 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

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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) **<u>The standard of living established during the marriage</u>:**

(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) **<u>The current and reasonably anticipated earnings of both spouses</u>:**

(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) **<u>The current and reasonably anticipated expenses and needs of both spouses:</u>**

(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.

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(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

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month payable on the fifth (5th) 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.

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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 the farm from 1981 to 1989 at a reduced wage of $120.00 per week (and sometimes did not get anything at all) in order to get an interest in the property. Simpson, Jr. testified that he did 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 time 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, 1994 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

RWC

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

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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

RWT

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

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(47) .69 acres	15,000
(66) 1.4 acres	17,500
	$425,000

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, 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. Bridwell testified that the debt as of the date of filing was $184,457.00. The net value at filing 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
	Total	$844,650

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

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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			
			-80,000.00	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			
			-41,800.00	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			
			-20,000.00	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

RWC

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 [illegible] Simpson, Sr.'s farm equipment, but none of them would do so because it belonged to [illegible]son, Sr. The Court finds this explanation for failure to appraise the farm equipment [illegible] weak. This situation should have been brought to the attention of the Court prior to [illegible] arrangements could have been made to inventory and appraise the farm equipment. [illegible]er, 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 [illegible]ert. Mr. Hobbs testified that the bulk of the material he had received from Defendant [illegible]son came in "dribbles and drabs", but most of the information came over the weekend [illegible] trial. He corroborated Plaintiff's position that she could not secure appropriate records [illegible] Defendant Simpson, Sr.

78. Through Plaintiff's Exhibit # 33, Mr. Hobbs' produced a summary of Simpson, [illegible] general ledger that was prepared by Mr. Gibbons. As of December 31, 2002, Simpson, [illegible] records showed advances or loans to Simpson, Jr. of $44,100.00, yet there were no 1099's [illegible] to Simpson, Jr. On Simpson, Sr.'s income returns, these advances were deducted from his [illegible] as miscellaneous expenses. On Simpson, Jr.'s tax return, there was no entry for the [illegible]00.00.

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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.

RWC

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

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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

RWt

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

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

Based upon the foregoing findings and conclusions, I hereby identify the marital 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.

RWL

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.

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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.

RWL

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.

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(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

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division in kind. While division in kind is possible to some degree, the nature of Simpson, 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) *(Court has considered son's work in improving it, though no one put a value on it.)*	62,500 (25%)	187,500 (75%)
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
		$539,151

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

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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.

s/ R Wright Turbeville
R. Wright Turbeville
Family Court Judge
Third Judicial Circuit

Manning, South Carolina
December 31, 2004

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Daisy Wallace Simpson,
Respondent/Appellant,

v.

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., Appellants/Respondents.

Appeal From Clarendon County
R. Wright Turbeville, Family Court Judge

Unpublished Opinion No. 2007-UP-147
Submitted December 1, 2006 – Filed April 4, 2007

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Steven Smith McKenzie, of Manning, for Appellants-Respondents.

C. Dixon Lee, James T. McLaren, Jan L. Warner, of Columbia, for Respondent-Appellant.

WILLIAMS, J.: In this domestic action, William Robert Simpson (Husband) appeals the family court's order, arguing the family court erred in (1) failing to rule on his motion for a retroactive decrease in alimony and a return of attorney's fees and costs; (2) its award of equitable distribution; (3) awarding his former wife, Daisy Wallace Simpson (Wife) alimony; (4) finding Husband's yearly income is $150,000 per year; (5) its valuation of property; (6) characterizing him as not having cooperated in the discovery process; and (7) awarding Wife attorney's fees and costs. Wife also appeals the award of attorney's fees. We affirm in part, reverse in part, and remand.

FACTS

Husband and Wife married in 1968, and resided in Clarendon County, South Carolina

throughout the duration of the marriage. When the couple first married, they bought a mobile home and lived on property owned by Husband's father.

In 1971, Husband's father died, and his will left a life estate in the Simpson family home to Husband's mother, with the remainder to Husband. Husband asked Wife to quit her job at a manufacturing plant in Manning to stay home with his mother. The couple moved into the house and lived there throughout the remainder of the marriage. Husband's mother lived at the house for one year until she remarried. Although Husband's interest in the house did not fully vest until his mother's death in 1991, the couple substantially renovated the home. Husband and Wife completed most of the renovations themselves. The couple has three children. Two of the children are emancipated and the youngest was attending college at the time of the hearing.

During the marriage, Wife had several outside jobs but primarily stayed at home and took care of the family. Husband became a successful farmer and land owner and eventually developed some of his land into residential lots.

In 1989, pursuant to a hand-written agreement between William Simpson, Jr., (Simpson, Jr.) and Husband, Simpson, Jr. began working for Husband. The agreement provided that Simpson, Jr. would work on the family farm for $120 per week. In exchange for his low salary, Husband would provide Simpson, Jr. with equity in the land and farm machinery. In 2000, a month after Husband and Wife reconciled, Husband began to transfer most of the property he owned into Simpson Farms, L.L.C. (the LLC).

The couple separated three times during the marriage. The first separation occurred in the 1980's and the second in 1999. In 1999, the parties began formal litigation, but they reconciled in 2000. The parties' final separation occurred in 2003.

After the parties reconciled in 2000, Wife began attending real estate classes and eventually earned her real estate license. Husband did not approve of Wife's pursuit of her real estate license and did not speak to her during this time. Husband purchased and sold numerous properties, often using other real estate agents.

On March 4, 2003, Wife filed this action against Husband, the LLC, and Simpson, Jr.**[1]** Wife also requested, *inter alia*, separate support and maintenance, equitable division of the marital estate, and attorney's fees. At the temporary hearing, the family court ordered Husband to pay Wife $1,000 per month *pendente lite* spousal support. Further, the family court ordered Husband to advance Wife $15,000 *pendente lite* attorney's fees with the caveat that the family court could treat the fees as a credit toward Wife's equitable apportionment at the final hearing.

Most of the three day trial concerned the value of Husband's vast property holdings and the amount of Husband's income. Husband testified he did not know exactly what he owned. In many instances, the value Husband assigned to his properties and assets contradicted what he reported on his tax returns. Further, Husband testified the LLC never filed a tax return nor did it have an operating account. Although Husband denied selling his interest in S & T Land Developers (S & T) after litigation commenced, a deed dated March 10, 2003—six days after Wife instituted her action—showed that Husband transferred his fifty percent interest to Ray Tidwell for $5. During trial, Wife's expert testified the value of

Husband's fifty percent interest in S & T was $318,000. Husband also testified that he pays Simpson, Jr. a different amount each year. He could not recall what he paid his son the previous year.

The family court found that Husband and Simpson, Jr. were not credible witnesses. The family court based its decision, in part, on testimony of Husband's witness, Tracy Amos, a certified public accountant. Amos admitted Husband undervalued assets, failed to report to her his antique car collection, and failed to report on his tax return a sale of timber for $40,000. The family court found Husband repeatedly testified that he did not know what he owned. In his responses to discovery it appeared that he made "little effort" to assist his lawyer or the court to identify what he owned. The family court also found Husband testified that he purchased property with cash to assist sellers in avoiding taxation. Ultimately, the family court found Husband tried to hide his true income and ultimately determined his income was $150,000, which was the amount he reported to banks and other lending institutions.

The family court awarded Wife $1,000 per month in periodic permanent alimony and awarded her 34% of the marital property, valued at $784,055. In making an equitable division of the marital property, the family court recognized the existence of the LLC and awarded Wife half of Husband's fifty percent interest, while leaving Simpson, Jr.'s fifty percent interest intact. The family court reserved the issue of attorney's fees and costs and asked that both parties submit affidavits regarding fees and costs no later than January 15, 2005.

On January 11, 2005, Husband filed a Rule 59(e) motion asking the family court to reconsider its order. The morning of the hearing on the Rule 59(e) motion and the remaining issue of attorney's fees, the clerk of court brought the family court the Notice of Appeal filed by Husband. The family court took the position that the filing of the notice divested it of jurisdiction to hear the Rule 59(e) motion, and Husband's attorney agreed. Thereafter, the family court dismissed the Rule 59(e) motion and proceeded with the attorney's fees hearing. After the hearing, the family court awarded Wife $85,000 in attorney's fees and costs. Both parties appeal.

STANDARD OF REVIEW

On appeal from the family court, this Court has the authority to find facts in accordance with its own view of the preponderance of the evidence. Rutherford v. Rutherford, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). This broad scope of review does not require us to disregard the family court's findings, and we remain mindful of the fact the family court, who saw and heard the parties, is in a better position to evaluate their credibility and assign weight to their testimony. Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981).

ISSUES

I. Husband's Appeal

A. Did the family court err in failing to rule on Husband's post-trial motion for a retroactive decrease in alimony and a return of attorney's fees and costs

awarded to Wife at the temporary hearing?

B. Did the family court err in its equitable division of the marital property?

C. Did the family court err in awarding wife alimony?

D. Did the family court err in finding Husband's yearly income was $150,000?

E. Did the family court err in its valuation of Husband's properties?

F. Did the family court improperly characterize Husband as uncooperative in the discovery process?

G. Did the family court err by awarding Wife attorney's fees?

II. Wife's Appeal

A. Did the family court err in failing to award Wife the full amount of requested attorney's fees and costs?

LAW/ANALYSIS

I. Husband's Appeal

A. Post-trial Motion

Husband argues the family court erred in failing to rule on his Rule 59(e), SCRCP, motion for a decrease in alimony and a return of temporary attorney's fees and costs. We disagree.

Rule 205, SCACR, provides that upon service of the Notice of Appeal, "the appellate court shall have exclusive jurisdiction over the appeal . . . ." In Elam v. S.C. Dep't of Transp., the South Carolina Supreme Court recognized "that a party may attempt to file both a Rule 59(e) motion and a notice of appeal. If [that] does occur, one or the other will be inappropriate . . . ." 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) (citing Hudson v. Hudson, 290 S.C. 215, 216, 349 S.E.2d 341, 342 (1986) (holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature)). Under Elam and Hudson the appellant should notify the appellate court of the pending post-trial motion in writing, and the clerk will dismiss the case with prejudice. Rule 225, SCACR offers the alternative of moving the appellate court to lift the automatic stay of the lower court proceedings so that the post trial motion may be heard.

Husband exercised neither of these options which would have kept jurisdiction in the family court. In fact, Husband agreed with the family court that the Court of Appeals had exclusive jurisdiction once the notice of appeal had been filed. In any event, even though the family court dismissed Husband's Rule 59(e) motion, we find the divorce decree did address Husband's arguments concerning a reduction in Wife's alimony and a return of attorney's fees awarded at the temporary hearing.

The divorce decree awarded Wife $1,000 per month in permanent periodic alimony. The family court concluded Wife was entitled to alimony pursuant to the statutory factors, and accordingly, the family court denied Husband's request for a decrease in the alimony awarded at the pendente lite hearing.

Husband also maintains the family court failed to rule on his motion for a return of the

attorney's fees and costs, which he paid to Wife at the temporary hearing. After a separate hearing on the issue of attorney's fees and costs, the family court issued an order stating "in addition to the fees awarded at the temporary hearing, an additional contribution of $85,000 would be reasonable." Therefore, the family court took into consideration the pendente lite attorney's fees and rejected Husband's argument that he was entitled to the money he advanced to Wife during the hearing.

B. Equitable Distribution Award

Husband assigns numerous points of error to the family court's equitable distribution of marital assets. First, Husband argues the family court failed to consider the debts of the LLC and farming equipment in making its award. Husband also argues the family court erred by awarding certain properties to Wife and awarding the Buck and Bull Country Store to Husband. Lastly, Husband argues the family court improperly awarded Wife a part of the marital home and surrounding acreage that he transferred into the LLC three years previously. We address each argument in turn.

1. Failure to Consider Debts

Initially, we note Husband's first assignment of error—that the family court failed to consider the debts of the LLC and farm equipment when distributing assets to the parties—is not preserved for our review. To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but it must have been raised to and ruled upon by the family court. Charleston County Dep't of Soc. Servs. v. Jackson, 368 S.C. 87, 104-05, 627 S.E.2d 765, 775 (Ct. App. 2006) (citing Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.")). Although Husband made a Rule 59(e) motion, for the reasons stated above, the family court dismissed the motion without a ruling. Therefore, this issue is not preserved.

Even if this issue was preserved, we find that any error in the family court's failure to properly assess the debt of the LLC stems from Husband's lack of candor with the court. The apportionment of marital property is within the family court's sound discretion, and we will not disturb the apportionment on appeal absent an abuse of that discretion. Bowers v. Bowers, 349 S.C. 85, 97, 561 S.E.2d 610, 616 (Ct. App. 2002). Section 20-7-472 of the South Carolina Code (Supp. 2005) lists fifteen factors for the family court to consider when apportioning the marital estate and vests the family court with the discretion to determine what weight should be assigned to each factor. Thomas v. Thomas, 346 S.C. 20, 25, 550 S.E.2d 580, 583 (Ct. App. 2001). On review, we look to the overall fairness of the apportionment, and if the result, taken as a whole, is equitable, courts weighing specific factors differently than the family court is irrelevant. Id.

At the outset, we note the family court did consider Husband's debt in lands owned by Husband in conjunction with partners excluding Simpson, Jr. The family court took into account the debts of S & T, which were $184,457, and subtracted that debt from Husband's fifty percent interest when it found Husband's interest had a value of $218,772. The family court took into consideration the debt on lands owned by Husband and his partner, Mr. Jonte, when assessing the value of Husband's interest in those lands as $51,250. Additionally, the family court's order specifically lists each factor set forth in section

20-7-472, and under the debt factor provides: "In making the equitable apportionment, as set forth below, the [c]ourt has considered all liabilities in coming up with the marital estate which is after liabilities based on my view of the evidence." We also observe that Wife's expert testified that none of the properties owned by Husband or the LLC had any recorded mortgages.

Husband points to a handwritten document he submitted to the family court, which purportedly shows his debts, to bolster his argument that the family court erroneously concluded he showed no documentary evidence of debts. We find the family court properly discounted this evidence because to find Husband's handwritten document of debts credible, the family court would have to consider Husband to be credible. The record is replete with evidence that Husband undervalued his assets. Further, as noted previously, his fixed asset and equipment records do not match the depreciation schedule on his tax return. Also, when asked how much money he owed banks, Husband's reply was "I don't know." The family court's order plainly states, "I find as a fact that the credibility of Defendant's [sic] Simpson, Jr., and Simpson, Sr., are subject to significant question." Therefore, it is evident from the family court's order that the court was aware of the statutory factors and considered the debt based on the submitted credible evidence. Accordingly, we find the family court did not err.

2. Award of Property and Buck and Bull Country Store

Next, Husband argues the family court erred by awarding property that was in the LLC to Wife and awarding him the Buck and Bull Country Store. Husband contends that the family court could not give Wife certain pieces of real property because they were part of the LLC. We disagree.

Husband did not raise this issue to the family court, and the family court dismissed his subsequent Rule 59(e) motion. Therefore, this issue is not preserved for our review.**[2]** See Hatfield v. Hatfield, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997) (issue must be raised to and ruled on by family court to be preserved for appellate review).

Even if this issue was preserved, we find no merit to Husband's claim that the property awarded to Wife was part of the LLC. The family court order distinguishes the property owned individually by Husband from the property owned by the LLC. The family court based its conclusion on research performed by Wife's expert who researched public records to ascertain what Husband owned individually, with other partners, and as a member of the LLC. The family court awarded Wife six parcels of property and Husband argues that two of the six parcels were in the LLC. He points to the testimony of one of his expert witnesses who testified: "[I]tem D-7 was purchased two years after the formation of the LLC . . . ." However, it is unclear from the testimony that D-7 is the piece of property Husband refers to in his brief. Furthermore, it is unclear whether the LLC or Husband purchased the property. As to the second parcel, Husband points to the deed purporting to show the property's transfer into the LLC. The deed shows numerous transfers, and it is unclear as to whether this particular parcel was included in the transfers.

It was husband's burden to show the property had been transferred to the LLC. See Hodge v. Hodge, 305 S.C. 521, 526, 409 S.E.2d 436, 439 (Ct. App. 1991) ("A spouse who wishes to claim that certain property is not part of the marital estate has the burden of presenting witnesses or evidence to establish its non-marital character . . . ."). Since Husband did not

present credible evidence to support his contention, he failed to meet that burden. Accordingly, we find the property the family court awarded to Wife was individually owned by Husband, and was not property owned by the LLC.

As to the award of the Buck and Bull Country Store and surrounding property to Husband, we find no error in the family court's decision. Simpson, Jr. operates the store, and the record indicates the store is thriving. The family court is vested with the authority to apportion marital property, and we can discern no error in the family court's decision to award Husband the store, especially in light of the contentious relationship between Simpson, Jr. and Wife. See Rampey v. Rampey, 286 S.C. 153, 156, 332 S.E.2d 213, 215 (Ct. App. 1985) ("Apportionment of the marital estate is a matter left to the sound discretion of the family court.") (citation omitted). Therefore, we find no merit to Husband's contention Wife should have been awarded the store.

3. Award of Interest in Marital Home

Next, Husband argues the family court improperly awarded Wife a part of the marital home and surrounding acreage that he transferred into the LLC three years previously. Husband contends the family court should have charged him with only half the home's value of $122,500, instead of the entire value of $245,000 because Simpson, Jr., as a member of the LLC, owned half of the house. At most, Husband believes Wife was entitled to half of his fifty percent interest in the marital home. We disagree.

Husband does not dispute the family court's finding the home he inherited was transmuted into marital property; his only argument is that he transferred the house into the LLC. The family court's order provides "[i]t is not clear to the [c]ourt the marital home was ever transferred into the LLC, and it will be considered separately." Husband's brief points to numerous places in the record that he believes show the marital home was transferred into the LLC. However, these places in the record show only that Husband owned the marital home, along with numerous other properties. Accordingly, because Husband did not meet his burden in showing the marital home was in the LLC, we find the family court properly charged Husband with the home's full value.

C. Alimony Award

Husband argues the family court erred by awarding permanent periodic alimony to Wife. Husband contends Wife makes more than $30,000 and is capable of supporting herself. We disagree.

The decision to award alimony "rests within the sound discretion" of the family court, and absent an abuse of discretion, it will not be disturbed on appeal. Dearbury v. Dearbury, 351 S.C. 278, 282, 569 S.E.2d 367, 369 (2002) (citing Clardy v. Clardy, 266 S.C. 270, 222 S.E.2d 771 (1976)). When awarding alimony, the family court must consider and weigh the following statutory factors set forth in section 20-3-130(C) of the South Carolina Code (Supp. 2005):

> (1) the duration of the marriage . . . [and] the ages of the parties at the time of the marriage and at the time of divorce or separate maintenance action . . . ; (2) the physical and emotional condition of each spouse; (3) the educational background of each spouse . . . ; (4) the employment history and earning

> potential of each spouse; (5) the standard of living established during the marriage; (6) the current and reasonably anticipated earnings of both spouses; (7) the current and reasonably anticipated expenses and needs of both spouses; (8) the marital and nonmarital properties of the parties . . . ; (9) custody of the children . . . ; (10) marital misconduct or fault . . . ; (11) the tax consequences to each party . . . ; (12) the existence and extent of any support obligation from a prior marriage . . . ; and (13) such other factors the court considers relevant.

In its final order, the family court thoroughly examined each of the statutory factors and made specific findings under each factor. The family court considered the duration of the marriage, finding the parties' marriage was a long-term marriage that spanned thirty-five years. The family court also found that Husband was in good health and that Wife was currently in relatively good health, despite having to take medication for high cholesterol and a rapid heartbeat. Further, the family court made extensive findings regarding the employment history and earning potential of each spouse. The focus of these findings primarily centered on Husband's attempt to hide his income. The family court ultimately concluded that Husband's income and assets greatly exceeded what he reported in his financial declaration. The family court found Husband's income to be $155,000 per year. Notably, the family court considered Husband's assertion that he did not have the funds sufficient to support Wife; however, he did have funds to continue purchasing assets in the name of S & T, a company in which he claims to have no ownership. The family court found that the children attended private schools, Husband owned an antique car collection, and the parties extensively renovated their home. The family court concluded the parties had an upper middle class family lifestyle.

The family court found that although Wife initially quit her job at Husband's insistence to be a homemaker, she is currently employed as a real estate agent. The family court further found that Wife works solely on a commission basis and that during the six-month period from January 1 to June 15, 2004, her gross revenue on homes she sold was $30,555. Out of the $30,555, the real estate company, Agent Owned Realty, withheld $10,928.92 in franchise fees. This finding is corroborated in the record by the testimony of Claude Loadholt, the president of Agent Owned Realty, who testified that Wife pays numerous fees and overhead to the company. Loadholt testified that in addition to franchise fees and overhead Wife pays many of her own expenses, including advertising, automobile, and continuing education expenses. With those expenses in mind, Wife's net income for that six-month period can be estimated to be close to $15,000. Therefore, we find the family court correctly concluded her net income was $30,000 per year. Considering the discrepancy in income and the needs of the parties, we hold the family court did not abuse its discretion by awarding alimony.

D. Husband's Yearly Income

Husband argues the family court erred when it found his income was $150,000 per year. He contends his income was approximately $60,000-$70,000 per year. We disagree.

The family court found that Husband's annual income was $150,000 per year based upon a NBSC financial statement Husband gave the bank in which he represented his annual income was $150,000 per year. Husband argues that two certified public accountants, Mark Hobbs and Tracey Amos, both found his income was approximately $60,000 per year. This

testimony was based upon Husband's tax returns, which both experts, when questioned, admitted were not complete. For example, Hobbs testified that neither Husband nor Simpson, Jr.'s tax returns show the Buck and Bull Country Store as having either a gain or loss. Further, Hobbs testified it was unusual that Husband's general ledger was "so different" from his tax returns. For example, the ledger showed payments to Simpson, Jr. as payments in 2002, but in 2003, the payments to Simpson, Jr. were classified as miscellaneous. Hobbs opined that any time he saw records as "mixed up" as Husband's, a heightened fraud risk existed because the records indicated that he wanted to change the classification of his assets and liabilities on a yearly basis.

Additionally, Hobbs found Husband's fixed asset and equipment records could not be reconciled to the depreciation schedule on his tax returns. The difference between the two amounted to over $700,000. Hobbs also testified that the LLC has never filed a tax return and because Husband has no formula by which he pays Simpson, Jr., he is able to shift his income around.**[3]**

Amos testified that Husband informed her he no longer had approximately sixty pieces of farm equipment; however, those assets were listed in the depreciation schedule on his tax return. Further, Husband sold timber for $40,000, and this sale was not listed on his tax return. Moreover, when asked whether Husband's intentions could be to dupe Wife out of her interest in the property and at the same time not pay income tax, Amos conceded it was a possibility.

Therefore, the evidence presented at trial showed that Husband made significantly more income than he reported, and he manipulated Simpson, Jr.'s income to any level he desired. We find the family court was left with no alternative but to use Husband's statement that he submitted to the bank showing his income was $150,000. We also recognize that Husband made no effort to cooperate in identifying his assets and income and "cannot complain of an error which his own conduct has induced." Cox v. Cox, 290 S.C. 245, 248, 349 S.E.2d 92, 93 (Ct. App. 1986) (citing Shearer v. Deshon, 240 S.C. 472, 126 S.E.2d 514 (1962)); see also Patrick v. Britt, 364 S.C. 508, 513, 613 S.E.2d 541, 543-44 (Ct. App. 2005) (finding when husband failed to provide the court with any meaningful representation of his actual income that husband "would be hard pressed to complain of the family court's ruling . . . the court of appeals does not sit to relieve self-inflicted wounds") (citations omitted). Accordingly, we find no error in the family court finding Husband's income is $150,000 per year.

E. Valuation of Property

Husband argues the family court erred in its valuation of the property owned by the LLC. Husband contends the family court erroneously accepted Wife's expert's value of the land at $1,244 per acre. We disagree.

Again, we note Husband did not raise this issue to the family court, nor was this issue ruled upon in any subsequent Rule 59(e) motion; therefore, this issue is not preserved for our review. See Riggs v. Riggs, 353 S.C. 230, 237, 578 S.E.2d 3, 6 (2003) (citing Hatfield v. Hatfield, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997) (issue must be raised to and ruled on by family court to be preserved for appellate review))**[4]**.

Even if this issue was preserved, we find no error in the family court's valuation of the land

owned by the LLC. The family court has broad discretion in valuing marital property, and this court will affirm the findings of the family court when the findings below are supported by the evidence.
Fields v. Fields, 342 S.C. 182, 187, 536 S.E.2d 684, 686 (Ct. App. 2000) (citing Smith v. Smith, 327 S.C. 448, 459, 486 S.E.2d 516, 519 (Ct. App. 1997) ("[A]n appellate court will affirm the family court's valuation of marital property if it is within the range of the evidence presented.")).

During the trial, Husband presented Tracy Amos, a certified public accountant and a certified valuation analyst, as an expert witness. She testified that she valued the total amount of land owned by Husband using the values for each individual property that Husband supplied. Additionally, Amos' testimony revealed that for one of the properties, Husband submitted to her an appraisal value of $6,500, but that the tax assessment on that property for 2004 was $107,600. Further, she found at least sixty items of farm equipment that Husband no longer owned listed on his depreciation schedule that he submitted to the IRS. In light of the fact Husband's own witness could not explain Husband's inconsistent reporting of assets nor his undervaluing of his assets, we find no error in the family court's decision to forgo using his expert's valuation.

Wife presented Beth Linhardt, a certified and licensed real estate appraiser, as an expert witness. The family court found that Linhardt's asset listing was "inaccurate and based on only one method, comparable sales." The family court also found Linhardt had a difficult time determining what property had been acquired and sold by Husband due to the lack of income or expense records maintained by Husband or Simpson, Jr. Further, the family court's order found that Linhardt had difficulty determining what property Husband owned because he failed to provide a list of his property, and she had to look in several counties to determine what Husband owned. Linhardt testified she spent 1,248 hours attempting to identify all of the property owned by Husband.

Ultimately, Linhardt concluded that the LLC's assets were $846,650, and that Husband's fifty percent share would be half of this value. Because the family court found Linhardt's valuation was "incomplete at best," the court had to make adjustments to the value based on the evidence before it. The record reveals the family court took into consideration Linhardt's lists of property that showed what Husband owned individually, and what he owned as a member of the LLC. The family court was careful to eliminate the properties on Linhardt's appraisal which had been duplicated or sold. The family court found the marital home was not in the LLC and subtracted its acreage from the remaining property when it came up with 481.86 acres of property in the LLC. The family court then valued the property at $599,650, which is $1,244 per acre.

After reviewing the record, we find the family court's rejection of Husband's valuation of his property was well within its discretion, especially because Husband presented no credible evidence of valuation. See Smith v. Smith, 294 S.C. 194, 198, 363 S.E.2d 404, 407 (Ct. App. 1987) ("The weight the trial court affords the testimony of witnesses, including parties, is discretionary with the trial court . . . . In valuing marital assets, the trial court 'is fully within its discretion to choose the valuations of one party over those of the other party.'") (citations omitted). In this particular case the family court had a difficult task in determining what property Husband owned and in subsequently valuing it. Under the difficult circumstances of this case, the family court valued the property to the best of its ability. Accordingly, we hold that the family court considered fully all of the evidence presented,

and we assign no error in the family court's determination of the value of the marital property.

F. Discovery

Husband argues the family court improperly characterized him and Simpson, Jr. as uncooperative in the discovery process. We disagree.

Again, we note this argument, having not been raised to and ruled upon by the family court, is not preserved for our review. See Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715.**[5]** However, even if this issue was preserved, we find the family court properly characterized Husband as uncooperative in the discovery process.

The family court's order provided:

> [I]t has been difficult for this [c]ourt to make a final determination of [Husband's] assets and income[,] and the [c]ourt has had to cross reference the testimony of all parties and witnesses as no one presented a clear and precise picture of the identification of the marital assets. [Husband] testified on numerous occasions that he did not know what he owned, and his responses to interrogatories and other discovery indicate to the [c]ourt he made little effort to clarify what he owned during the course of this litigation.

Husband's answers to Wife's interrogatories begin our inquiry into Husband's non-cooperation during the discovery process. Out of the forty-three questions Wife submitted, Husband replied sixteen times "this information is not available at this time." Other times, he simply replied that the questions would be answered before the hearing. During his deposition, when Wife's counsel asked Husband, "Why didn't you answer [the interrogatory asking you] to identify the financial institution or lenders by name and address? Is there any reason you didn't answer that?" Husband's response was "No." When asked when he sold property within the last five years, Husband's response was "I don't know." At one point during his deposition, Husband testified that he "didn't know exactly" what he owned.

The record is replete with examples of Husband's stubborn refusal to be candid with the family court. Further, Husband seems to argue that because he submitted numerous documents to the family court, he did comply with discovery; however, his tax returns were incomplete at best, and numerous experts testified to the fact Husband underreported the value of his assets and his income. We find the family court was properly skeptical of any of Husband's handwritten submitted documents that he alleges show his financial worth. Accordingly, the family court properly characterized Husband as uncooperative in the discovery process.

G. Attorney's Fees

Husband argues the family court erred in even considering Wife's request for fees and costs because her documentation in support of fees was untimely. Husband contends, because Wife did not file a Rule 6(b), SCRCP, motion for an enlargement of time, the family court should not have considered her documentation. We disagree.

The family court's final order provides: "The matter of attorney's fees, and costs, and expenses is hereby reserved, and counsel for both Plaintiff and Defendants shall submit to this [c]ourt affidavits . . . not later than January 15, 2005." Wife submitted her affidavit for attorney's fees and costs on January 18, 2005. Husband contends it was error to award attorney's fees without ruling on his motion relating to the timeliness of Wife's supporting documentation. However, he did not argue the family court's failure to address his motion at the hearing on Wife's Rule 59(e) motion for reconsideration of the award of attorney's fees. This issue, not having been ruled upon by the family court, is not preserved for our review. An issue cannot be raised for the first time on appeal, but it must have been raised to and ruled upon by the family court to be preserved for appellate review. Lucas, 359 S.C. at 511, 598 S.E.2d at 715.

Even if this issue was preserved, we find no error in the family court's decision to rule on the issue of attorney's fees. January 15, 2005, was a Saturday. Monday, January 17, 2005 was Martin Luther King Jr. Day, a state and federal holiday and the family court was closed. Wife filed her attorney's fee affidavit with the clerk of the family court on the first day the family court was open after January 15. Accordingly, Wife's affidavit was timely filed because holidays and the weekends extend court filing deadlines. See Rule 6(a), SCRCP ("The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday."). Accordingly, the family court judge did not commit error in ruling on this issue.

II. Wife's Appeal

A. Attorney's Fees & Costs

Wife argues the family court erred by not awarding Wife adequate attorney's fees and expenses. Further, Wife maintains the family court erroneously limited its consideration of the factor of "customary legal fees for similar services" to the local geographic area where the trial was held.

The total marital estate in this case is valued at nearly $2.4 million. Wife was awarded $1,000 per month in alimony, and her equitable share in the marital assets was $784,055. Wife employed two attorneys from Columbia. Her attorneys charged $400 per hour for their work, $200 per hour for associates, and $100 per hour for paralegal work. Her two expert witnesses, Hobbs, the CPA, and Linhardt, the appraiser, charged $23,458.88 and $51,000, respectively, for their work in assessing and valuing the marital estate.

Wife argues the family court abused its discretion by not giving sufficient consideration to Husband's material misrepresentations, non-disclosure of income, and undervaluation of marital assets. The court made numerous findings regarding Husband's intentional non-disclosure of information and misrepresentations, including:

> [Husband's] Financial Declaration is not an accurate reflection of his spendable income . . . . It is now clear to the [c]ourt that the Husband's income and assets greatly exceed that which has been reported on his Financial Declarations. . . . I find that [Husband] has obfuscated his true income and assets . . . . [Husband] testified he purchased property with cash so that sellers could avoid taxation. . . . 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. . . . I find as a fact that the credibility of the Defendants Simpson Jr. and Simpson Sr. are subject to significant question. . . . The demeanor of [Husband] while testifying before this [c]ourt and his own admissions as to some of his financial transactions raise questions in the [c]ourt's mind as to how open and honest he has been with [Wife] and the [c]ourt regarding his economic transactions. . . .

The record supports the family court's conclusions that Husband's behavior unnecessarily complicated this case. It is important to remember when analyzing attorney's fees that this Court does not sit to relieve self-inflicted wounds. Rish v. Rish by and Through Barry, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988). Likewise, this Court looks unfavorably on cases, such as this one, where a party withholds information that is necessary for the proper adjudication of the matters under consideration. Skipper v. Skipper, 278 S.C. 104, 106, 292 S.E.2d 596, 598 (1982). Husband's lack of cooperation in discovery forced Wife's attorneys to obtain relevant information through other more difficult means. See Johnson v. Johnson, 296 S.C. 289, 372 S.E.2d 107 (Ct. App. 1988) (Because Husband's behavior caused Wife to incur additional expenses in the form of attorney's fees at trial and on appeal, those expenses should be included in the family court's determination of attorney's fees on remand.).

In E.D.M. v. T.A.M., the South Carolina Supreme Court delineated the four factors used to determine whether attorney's fees are warranted in a given case:

(1) the party's ability to pay his or her own fee;

(2) beneficial results obtained by the attorney;

(3) the parties' respective financial conditions;

(4) the effect of the attorney's fee on each parties' standard of living.

307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). Additionally, in Glasscock v. Glasscock, the South Carolina Supreme Court clarified the six factors used to determine a reasonable attorney's fee:

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

(2) the time necessarily devoted to the case;

(3) professional standing of counsel;

(4) contingency of compensation;

(5) beneficial results obtained;

(6) customary legal fees for similar services.

304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

In the present case, we find the family court properly identified and applied the Glasscock

factors until it considered the last factor, "the customary legal fees for similar services" factor. The family court's order reads "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." This conclusion is not supported by the record. Ray Chandler, Husband's former attorney, testified as follows:

> Q: Ray, you say you've been practicing law for twenty-seven years?
>
> A: I've been practicing law for thirty-three years. I've been practicing domestic law until last year when I have it up. Twenty-seven, twenty-eight years.
>
> Q: What were your rates when you gave up the good domestic practice per hour?
>
> A: About two hundred and fifty dollars an hour in this county.
>
> Q: What is your observation of the average rates of domestic fees in Clarendon, Lee, Williamsburg, in the Third Circuit, Sumter County?
>
> A: I think the numbers that I see run between a hundred and sixty, seventy-five, eighty-five dollars.

Mr. Chandler did not testify as to the customary fees for a complex case such as this one. W.C. Coffey never testified about rates whatsoever. Instead, his testimony concerned the common practice of father-son farmer teams setting up LLC's in which to hold their land and equipment.

On the other hand, the family court was presented with affidavits from Wife's attorneys as well as attorneys Lon Shull III and Mark Taylor, all of whom testified that $400 per hour is a reasonable and customary rate in Clarendon County for family law experts who try complicated cases like the one at bar. Our Supreme Court has approved the practice of considering attorneys' resumes or professional standing as well as attorneys' affidavits when deciding appropriate attorney's fees. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989). Additionally, the court may consider whether the case was contested in good faith, whether the proof was simple or complicated because of the extent that material facts were disputed, and whether trial preparation by the attorneys required unusual skill, effort, or investment of time. Prevatte v. Asbury Arms, 302 S.C. 413, 417, 396 S.C. 642, 644 (1990).

The record shows this was not an average case; rather it was a quite complex case which required unusual skill, effort, and time. The family court was presented with testimony of four lawyers concerning customary fees for similar services in a complex case. However, the court relied on testimony of Husband's former attorney who testified regarding average rates for a domestic case. This was error.

Numerous cases in South Carolina list attorney's fees charged in the locality for similar services as a factor to be considered in awarding attorney's fees. See e.g., Blumberg v. Nealco Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (emphasis added); Meene v. Keowee Key Prop. Owners Ass'n Inc., 368 S.C. 557, 569, 629 S.E.2d 690, 697 (Ct. App.

2006); Rowell v. Whisnant, 360 S.C. 181, 185-86, 600S.E.2d 96, 99 (Ct. App. 2004). Therefore, we cannot assign error to the family court's consideration of the local geographic area in determining the proper attorney's fees.

Accordingly, the portion of the family court's order regarding attorney's fees and costs is reversed and remanded for the family court to properly assess the facts of the case and the Glasscock factors in accordance with our decision.

CONCLUSION

For the reasons stated above, the family court's order is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.[6]

ANDERSON, and HUFF, JJ., concur.

---

[1] Wife named Simpson, Jr. as a defendant because he is a member of the LLC.

[2] This issue was not raised in Husband's Rule 59(e) motion and would not have been preserved even if the motion had gone forward.

[3] We also note that Simpson, Jr.'s tax return and his accumulation of assets cannot be reconciled. For example, in 2001 he purchased $14,000 worth of real estate and his tax return showed an income of $17,000. Despite a tax return never showing an income greater than $26,000, in 2003, Simpson, Jr. owned $150,000 worth of farm equipment.

[4] This issue was not raised in Husband's motion for reconsideration.

[5] Husband did raise this issue in the Rule 59(e) motion, which the family court dismissed.

[6] We decide this case without oral argument pursuant to Rule 215, SCACR.

May 24, 2010

COPY Jenkinson

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	DOCKET NO.: 2003-DR-14-0128
DAISY WALLACE SIMPSON,	)	
Plaintiff,	)	
vs.	)	ORDER
WILLIAM ROBERT SIMPSON, 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.	)	
Defendants.	)	

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OF ORIGINAL FILED IN THIS OFFICE
DATE 5/28/10
Beulah G. Roberts
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CLARENDON COUNTY, SC

2010 MAY 28 PM 1:29

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

Hearing Dates:	September 15, 2009 and December 21, 2009
Presiding Judge:	Gordon B. Jenkinson
Attorneys for Plaintiff:	James T. McLaren Jan L. Warner (September 15, 2009 hearing) Carrie A. Warner (December 21, 2009 hearing)
Attorneys for Defendant William Robert Simpson, individually and as member of W. R. Simpson Farms, LLC.:	Steven S. McKenzie Reid B. Smith
Defendant William R. Simpson, Jr.:	Paul E. Tinkler
W.R. Simpson Farms, LLC	Paul Thurmond
Court Reporter:	Patsy A. Nye

GBJ #1

PROCEDURAL HISTORY

This matter was heard before the undersigned at Manning, South Carolina on September 15, 2009, and at Kingstree, South Carolina on December 21, 2009. Present and appearing at the hearing in Manning, South Carolina were Plaintiff Daisy Wallace Simpson; James T. McLaren and Jan L. Warner, attorneys for the Plaintiff Daisy Wallace Simpson; Steven S. McKenzie and Reid B. Smith, attorneys for the Defendant William Robert Simpson; and, William R. Simpson, Jr., who appeared without counsel. Defendant William Robert Simpson did not appear personally but was represented by his attorneys.

After the September 15, 2009 hearing, Paul E. Tinkler, Attorney for Defendant William R. Simpson, Jr., requested an opportunity to appear before the Court, due to his lack of notice of the hearing. The Court granted his request and conducted a hearing on December 21, 2009.

Present and appearing at the hearing in Kingstree, South Carolina were Plaintiff Daisy Wallace Simpson; James T. McLaren and Carrie A. Warner, attorneys for the Plaintiff Daisy Wallace Simpson; Defendant William Robert Simpson; Steven S. McKenzie and Reid B. Smith, attorneys for the Defendant William Robert Simpson ; William R. Simpson, Jr.; Paul E. Tinkler, attorney for William R. Simpson, Jr.; and Paul Thurmond, attorney for W.R. Simpson Farms, L.L.C.

Defendant William Robert Simpson and Plaintiff Daisy Wallace Simpson were formerly husband and wife and were divorced by Final Decree of this Court entered December 31, 2004 by the Honorable R. Wright Turberville. That Final Decree awarded Plaintiff a total of Seven Hundred Eighty-Four Thousand and Fifty-Five Dollars ($784,055.00) as equitable division. This

award required a cash payment to Plaintiff of Two Hundred Forty-Four Thousand Nine Hundred and Four Dollars ($244,904.00) plus a transfer of real estate and improvements to Plaintiff that was valued by the Final Decree at Five Hundred Thirty-Nine Thousand One Hundred and Fifty One Dollars ($539,151.00). The property required to be transferred to Plaintiff, as identified in paragraph 106 at page 40 of the December 31,2005 Final Decree, is as follows:

a.	Plaintiff retains her accounts at filing	$ 18,209.00
b.	Edward R. Jones accounts	$ 83,442.00
c..	2.1 acres	$ 7,500.00
d.	1.4 acres	$ 5,000.00
e.	161.1 acres	$175,000,00
f.	1.3 acres	$ 15,000.00
g.	6.7 acres	$ 5,000.00
h.	133.2 acres	$150,000,00
i.	house and 16 acres	$ 50,000.00

By Order Regarding Attorneys Fees entered February 17, 2005, Judge Turbeville ordered Defendant William Robert Simpson to pay Plaintiff the sum of Eighty-Five Thousand Dollars ($85,000.00), as a contribution towards Plaintiff's attorney fees.

Defendants filed appeals to the South Carolina Court of Appeals as did Plaintiff. By Unpublished Opinion filed April 4, 2007, the South Carolina Court of Appeals affirmed Plaintiff's alimony and equitable division awards as set forth in the Final Decree. The Court of Appeals reversed this Court's Order regarding attorney's fees and remanded the case for this court to properly assess the facts of the case and the Glascock factors in accordance with the Court of Appeals decision.

Defendant then sought Certiorari from the South Carolina Supreme Court which was denied on February 21,2008,

Plaintiff initiated the matter now before the Court by Notice of Motion and Motion,

#3

Affidavit and Complaint for Issuance of Order and Rule to Show Cause filed with this Court on April 29, 2008. In that Motion and Complaint, Plaintiff seeks to enforce various aspects of the December 31, 2004 Final Decree and the February 17, 2005 Order Regarding Attorneys Fees previously issued by this Court and to address issues remanded to this Court following appeals by both Plaintiff and Defendants from that Final Decree and Order Regarding Attorneys Fees.

On April 29, 2008, this Court issued a Rule to Show Cause scheduling a hearing on Plaintiff's aforesaid Motion for July 17, 2008,

On July 17, 2008 the Court, recognizing that the 30 minutes scheduled for the hearing on that date was insufficient to take evidence on all contested issues, conducted a hearing by conference call. As a result of that hearing certain issues were resolved and other issues were left open for future determination as is more fully reflected in this Court's March 6, 2009 Interim Order on Plaintiff's Contempt Action.

On January 21,2009 Plaintiff filed an *Ex Parte* Motion, Verification, and Complaint for Issuance of Order raising additional issues. On January 21, 2009 this Court issued a Rule to Show Cause requiring all Defendants to appear at a hearing on those issues scheduled for March 3, 2009. That hearing was continued by Order of this Court entered March 12, 2009. The March 3, 2009 hearing was rescheduled for September 15, 2009 and conducted on that date.

ISSUES

The issues in the two Orders and Rules to Show Cause before this Court include Plaintiffs request for enforcement of the Final Decree by this Court requiring Defendant to pay the cash portion of the equitable division judgment along with judgment interest thereon; to pay the Eighty-Five Thousand Dollars ($85,000.00) attorney fees along with judgment interest; and, to transfer the above identified real estate to Plaintiff.

#4

Plaintiff seeks an Order holding Defendants in contempt for (1) not satisfying the cash portion of the equitable division judgment under the Final Decree; (2) not transferring the real estate to satisfy the property portion of the equitable division award; and, (3) not paying the Eighty-Five Thousand Dollars ($85,000.00) in attorneys fees.

As set out in the Interim Order on Plaintiff's Contempt Action entered March 6, 2009, the issue involving the cash portion of the equitable division judgment under the Final Decree; payment of the Eighty-Five Thousand Dollars ($85,000.00) in attorney fees; and, Plaintiff's request for judgment interest on those amounts was resolved by Defendant William R. Simpson, Sr. paying to Plaintiff Daisy Wallace Simpson the sum of Five Hundred Ninety-seven Thousand Eight Hundred and Twenty-nine Dollars and 01/100 ($597,829.01). This payment represented the cash portion of the equitable division judgment, including the Edward R. Jones accounts, and Defendant's required contribution to Plaintiff's attorney fees, plus interest through the date of payment.

The issues remaining for this Court to resolve are:

1. The transfer of the real estate due to Plaintiff to satisfy the real property portion of the equitable division award to Plaintiff in the Final Decree.

2. The issue of additional attorney fees and costs for Plaintiff as remanded to this Court by the South Carolina Court of Appeals.

3. Plaintiff's requests for an award of attorney fees and costs in this proceeding, Plaintiff's Contempt Actions.

FINDINGS OF FACT

After considering the record in this case, as well as the testimony, exhibits, and arguments of counsel, this court makes the following Findings of Facts.

Paragraph 75 of the Final Decree dated December 31, 2004 found that the real property identified as tract "e. 161.1 acres," tract "h. 133.2 acres," and tract "i. House and 16 acres" were owned individually by William Robert Simpson. The Court of Appeals found that "... the property that the Family Court awarded to wife was individually owned by husband, and was not property owned by the LLC."

William Robert Simpson is not the record title holder of this real property. Tract e and tract h are titled in the name of Simpson Farms, L.L.C. Judge Turbeville and Judge Segars-Andrews both found that Simpson Jr. owned a 50% interest in the LLC. The findings of Judge Turbeville and Judge Segars-Andrews were not reversed.

William R. Simpson, Jr. Testified at the September 15, 2009 hearing that he would not consent to the LLC transferring real estate belonging to Simpson Farms, L.L.C. to the Plaintiff.

By letter from Steven S. McKenzie to Jan L. Warner, dated October 28, 2008, William R. Simpson tendered seven quitclaim deeds to Daisy Wallace Simpson, for the properties identified in Paragraph 106 of the Final Decree dated December 31, 2004.

William Robert Simpson made a good faith effort to transfer the tracts that he owned to Daisy Wallace Simpson. Ms. Simpson's attorneys objected to this conveyance since it was not a general warranty deed. The Final Decree of Divorce does not require that the conveyances be made by general warranty deed.

William Robert Simpson was very hesitate to execute a general warranty deed because he could be liable for breaching the general warranty of the deed.

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The real estate identified in Paragraph 75 of the Final Decree of Divorce as tract "c. 2.1 acres," tract "d. 1.4 acres," and tract "g. 6.7 acres" is titled in the name of William Robert Simpson.

The quit claim deed tendered by Mr. Simpson effectively transferred title to tracts c and d to the Plaintiff, Daisy Wallace Simpson.

Prior to the September 15, 2009 hearing, William Robert Simpson transferred the real estate, identified above as tract g, to the parties daughter. This transfer accomplished the intention of the parties.

In the Decree entered December 31, 2004, The Honorable R. Wright Turbeville ordered only William Robert Simpson to convey those tracts set out in paragraph 106 and not the other named Defendants.

It was the position of the Plaintiff's attorney at the hearing on September 15, 2009 that they would proceed on the Rule as it related to William Robert Simpson, Sr. only.

CONCLUSIONS

1. William R. Simpson, Sr. is not held in willful civil contempt of Court, as he made a good faith effort to comply with the final Decree entered December 31, 2004.

2. A conveyance of real estate titled in the name of Simpson Farms, L.L.C. can only be done by the LLC. As a member of the LLC, William R. Simpson, Sr, individually, does not have a transferable interest in property belonging to the LLC. See S.C. Code of Laws § 33-44-501 (a) (1976, as amended.)

3. The Plaintiff's request for attorneys fees regarding the filing Plaintiff's Rule to Show Cause is hereby denied. However this Court makes no findings of fact or conclusions of law

#7

regarding Plaintiff's collateral request for attorney's fees from the remand order of the Court of Appeals. That matter regarding attorneys fees, in light of the remand order, will be addressed by this Court at a separate hearing to be scheduled hereafter.

NOW, THEREFORE, it is accordingly

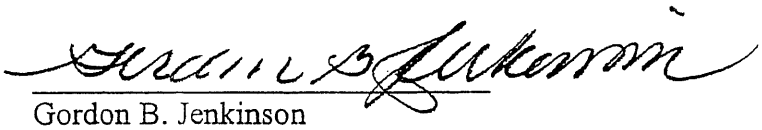
ORDERED, ADJUDGED AND DECREED as follows:

1. William R. Simpson, Sr. is not held in willful civil contempt of Court.

2. The Plaintiff's request for attorneys fees regarding the Plaintiff's Rule to Show Cause is hereby denied.

3. Matters related to the remand of attorneys fees by the Court of Appeals will be addressed at a separate hearing to be scheduled hereafter and heard by this Court. Any rulings within this Order are without prejudice to either party regarding attorneys fees as a consequence of the Court of Appeals Order of Remand.

AND IT IS SO ORDERED.



Gordon B. Jenkinson
Family Court Judge
Third Judicial Circuit

Kingstree, South Carolina
May 24, 2010

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)	IN THE FAMILY COURT KINGSTREE, SOUTH CAROLINA
DAISY WALLACE SIMPSON,) PLAINTIFF,)) VERSUS,)) WILLIAM R. SIMPSON, Sr.,) INDIVIDUALLY AND AS A) SHAREHOLDER/MEMBER OF) SIMPSON FARMS, LLC. AND) WILLIAM R. SIMPSON, JR.,) INDIVIDUALLY AND AS A) SHAREHOLDER/MEMBER OF) SIMPSON FARMS, LLC.) DEFENDANTS))	TRANSCRIPT OF RECORD CASE NO: 2003-DR-14-128 DATE: JANUARY 6, 2011

B E F O R E: THE HONORABLE GORDON B. JENKINSON

A P P E A R A N C E S:

JAMES T. McLAREN, ESQUIRE
CARRIE WARNER, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

REID SMITH, ESQUIRE
ATTORNEYS FOR THE DEFENDANT
WILLIAM R. SIMPSON, SR.

MR. PAUL TINKLER, ESQUIRE
REPRESENTING THE DEFENDANT
WILLIAM R. SIMPSON, JR.

PATSY A. NYE
OFFICIAL COURT REPORTER

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1 PROCEEDINGS

2 THE COURT: Okay. This is the case of Daisy Wallace
3 Simpson versus William Robert Simpson, individually and as
4 shareholder/member of Simpson Farms, LLC; and William R. Simpson,
5 Jr., as a shareholder/member of Simpson Farms, LLC. It's a
6 Clarendon County case and it's Docket Number 2003-DR-14-128.
7 Present in the courtroom is Mr. Jim McLaren and Ms. Carrie Warner
8 along with their client, Mrs. Simpson. Also present is Mr. Reid
9 Smith and Mr. Paul Tinkler along with their client, Mr. William
10 Robert Simpson. Also present is Mr. William R. Simpson, Jr., I
11 believe.

12 I believe this matter is before the Court for a -- an
13 interpretation, or reinterpretation of the final decree of Judge
14 Wright Turbeville, which was dated December 31st, 2004, as it
15 relates specifically to the equitable division issues and more
16 specifically as to how that decree effects the properties known as
17 the Simpson Farms, LLC. I understand that another issue before
18 the Court is my reconsideration of the attorney's fees awarded by
19 Judge Turbeville under that same order, based upon the remand by
20 the South Carolina Court of Appeals. And, as I understand it,
21 there's an additional case to be heard, hopefully today, which is
22 2008-DR-456. Mr. William Robert Simpson, Jr. -- Senior, I'm
23 sorry, is the plaintiff and Ms. Daisy Wallace Simpson is the
24 defendant with the same attorneys being involved in that matter.

25 So is it anything -- and let's -- let's take the -- take

1 them in order -- is there anything from the attorneys to be put on
2 record as it relates to the equitable division interpretation?
3 MR. McLAREN: Your Honor, if it please the Court, from
4 the plaintiff's standpoint, we brought a rule to show cause to
5 enforce Judge Turbeville's decree so the property -- real property
6 awarded to her would be transferred to her in accordance with that
7 decree, as affirmed, on appeal. And we came before the Court,
8 Your Honor eventually issued an order on it and it kind of left us
9 in a place where we didn't get the property and the decree, from
10 our viewpoint, wasn't enforced. And we had asked for relief
11 against all the defendants. We asked the property be conveyed,
12 that our client would be made whole because the property was
13 ordered transfer some six, seven, eight years ago at this point.
14 And, so we did a motion to reconsider, and as a part of that
15 process, I understand Your Honor is wrestling with the concept of
16 what was intended and how to enforce it; what's the appropriate
17 action.
18 THE COURT: And I think the term "wrestling" is very
19 appropriate and a very appropriate term.
20 MR. McLAREN: Yes. And I -- and I -- I understand. So
21 that -- that's, from our viewpoint, why we're here, at least on
22 the first part. I'd also point out that Mr. Timbes appeared
23 previously and he talked to Mr. Tinkler. Mr. Tinkler can address
24 the fact that Mr. Timbes is not here and has waived the right to
25 be here.

1 MR. TINKLER: Your Honor, that -- that is correct. Mr.
2 Timbes and I talked after receiving Your Honor's letter dated; I
3 think it was, December 29th about this event today. And we
4 believe Your Honor has made a ruling that fully understands that
5 the LLC is a legal entity and the Court has honored that legal
6 entity in his prior pronouncements. And having made sure that the
7 Court got that point, Mr. Timbes told me that he did not believe
8 it was necessary for him to appear today. He waived his
9 appearance.
10 THE COURT: Okay. And I don't have any problem with
11 that. Do you, Mr. McLaren?
12 MR. McLAREN: I do not. And -- and Your Honor's letter
13 to all of us on the, I think it was the 29th of December,
14 indicated that you intended to speak with us about the letter of
15 ruling that we got, and I understand that Mr. Timbes, knowing
16 that, determined he didn't need to appear and that -- I understand
17 that.
18 THE COURT: Okay. And I did that mainly to give y'all a
19 heads up to let you know what my thoughts were, to hopefully see
20 if the parties could move toward a resolution of the issues
21 relating to equitable division, and I --
22 MR. McLAREN: Your Honor --
23 THE COURT: -- see that --
24 MR. McLAREN: -- if I may --
25 THE COURT: -- you have not.

1 MR. McLAREN: -- just again, some housekeeping issues.
2 THE COURT: Okay.
3 MR. McLAREN: Before we began, we agreed that on the
4 attorney fees issue -- and I know we haven't gotten there yet --
5 we premarked Exhibits -- Plaintiff's Exhibits 1 through 11, which
6 are part of the record already and you can simply take judicial
7 notice by --
8 THE COURT: Okay.
9 MR. McLAREN: -- it would be prudent, and I thought it'd
10 been easier for Your Honor to mark those as separate exhibits for
11 this proceeding. And that would be Number 1 is the Final Decree
12 of Divorce, Number 2 is Judge Turbeville's Order regarding
13 attorney fees, Number 3 is the Court of Appeals Opinion, the --
14 Number 4 is the Supreme Court denial of cert, Number 5 is the
15 Order granting costs on appeal, Number 6 is the original Affidavit
16 that Mr. Warner and I submitted in the original trial. The
17 Affidavit, Number 7, of Mark Taylor is the original affidavit he
18 submitted in the original trial, and the Affidavit of Lon Shull,
19 Number 8, is the original Affidavit that Mr. Shull submitted in
20 the original proceeding, which is already part of the record, but
21 I wanted to mark those for Your Honor's convenience.
22 THE COURT: Okay.
23 MR. McLAREN: And that's with consent --
24 THE COURT: And you want them --
25 MR. McLAREN: -- of counsel.

1 THE COURT: -- marked independent?

2 MR. McLAREN: They're -- they are marked already.

3 THE COURT: Oh, marked already. Okay. And without

4 objection, of course.

5 MR. McLAREN: And -- and may I hand those up to Your

6 Honor?

7 THE COURT: Yes, sir.

8 MR. McLAREN: The -- the other thing I wanted to

9 address, Your Honor, and I'd like to mark -- Your Honor sent us a

10 -- by letter on December 29th, I believe it is, 2010, a

11 preliminary ruling, and then we talked a little bit in chambers

12 this morning about what you're doing and our positions on that and

13 where, from each parties, that would leave us. And I would like

14 to mark that as an exhibit. Counsel already --

15 THE COURT: Okay.

16 MR. McLAREN: -- has a copy of it, and this is only

17 intended as an aid to the Court.

18 THE COURT: Has that document been changed since we

19 looked at it in chambers?

20 MR. McLAREN: No -- no, sir.

21 THE COURT: Okay.

22 MR. McLAREN: So that would be Exhibit Number 9,

23 Plaintiff's Exhibit Number 9.

24 THE COURT: And that's without objection?

25 MR. SMITH: Yes, sir.

1 THE COURT: Okay.

2 (WHEREUPON, the foregoing Letter was marked

3 Plaintiff's Exhibit Number 9 and received into

4 evidence.)

5 MR. McLAREN: If I may just address that for briefly --

6 THE COURT: All right.

7 MR. McLAREN: -- Your Honor.

8 THE COURT: And let me interrupt you. I need to do

9 this, if I may. I apologize and -- and maybe get on the record

10 what we discussed in chambers. And I'm looking specifically on

11 page 40 of Judge Turbeville's decree, paragraph 106, which we've

12 been through many, many times.

13 MR. McLAREN: Page 40, Your Honor?

14 THE COURT: Forty. Yes, sir.

15 MR. McLAREN: Paragraph 106?

16 THE COURT: You have it?

17 MR. McLAREN: Yes, sir.

18 THE COURT: Okay. We -- this -- it appears to be maybe

19 some discrepancies in the decree as far as several tracts of land,

20 but starting up at paragraph -- or item C, the 2.1 acres. I

21 understand that that's not in dispute. That's been accounted for?

22 And I'm going by my notes from previous hearings that item D, the

23 1.4 acres, there's no discrepancy there. The item E, the 161.1

24 acres, is that one of the LLC tracts?

25 MR. SMITH: Yes, sir, it is.

1 THE COURT: Oh, okay. Is the acreage correct or were
2 the -- would it be half of that?
3 MR. SMITH: Your Honor, I believe the acreage is correct
4 on that one.
5 THE COURT: And that's with -- is that the total acreage
6 owned by the LLC, or one-half that's allotted to Mr. Simpson,
7 Senior?
8 MR. SMITH: Your Honor, the trial court found that the
9 value was 175 for the entire 161 acres.
10 THE COURT: So the value is correct for one-half?
11 MR. SMITH: Yes, sir.
12 THE COURT: Okay.
13 MR. SMITH: No, no. You're not --
14 THE COURT: And the same thing would be for item H, the
15 133.2 acres, and it's LLC.
16 MR. SMITH: Your Honor, if I could correct something,
17 please.
18 THE COURT: Yes, sir.
19 MR. SMITH: The 175 is the total value for the entire
20 tract --
21 THE COURT: Okay.
22 MR. SMITH: -- not -- not the one-half interest -- not
23 of -- one-half the value.
24 THE COURT: Okay. And I think somewhere in the decree
25 the total value of those LLCs was -- or one-half was like 299,000

1 and some change?

2 MR. SMITH: Yes, sir. That's what Judge Turbeville

3 found --

4 THE COURT: Okay.

5 MR. SMITH: -- on page 26 of the decree.

6 THE COURT: Okay. Okay, thank you.

7 MR. SMITH: Your Honor, if I could --

8 MR. TINKLER: And we would not --

9 MR. SMITH: -- enter something into the record --

10 THE COURT: Yes, sir.

11 MR. TINKLER: -- right now. When we indicated

12 previously that we would consent to the Court addressing the issue

13 of -- of the -- Mr. Simpson's half interest in the LLC, we -- I --

14 I would like for the record to reflect that we're consenting only

15 for that limited purpose and not for any other purpose.

16 THE COURT: As relates to Simpson, Senior's, one-half

17 interest in the LLC.

18 MR. SMITH: Yes, sir.

19 THE COURT: And you have no objection to that position?

20 MR. SMITH: No, sir.

21 THE COURT: Of course, that's been his position all

22 along, wasn't it?

23 MR. SMITH: Yes, sir. It has --

24 THE COURT: Okay.

25 MR. SMITH: -- been.

1 THE COURT: Okay. All right. Anything else for the
2 record?
3 MR. McLAREN: Yes, I do.
4 THE COURT: Okay.
5 MR. McLAREN: Your Honor, the -- the 161 is titled --
6 161.1, is in Simpson Farms, LLC.
7 THE COURT: Okay.
8 MR. McLAREN: And -- and it makes a difference because
9 some of them are in Simpson Farms, LLC, which really exists, and
10 some of the property is in W.R. Simpson's Farm, LLC, which doesn't
11 exist.
12 THE COURT: Okay.
13 MR. McLAREN: And -- and I can read those out, and
14 that's -- the 161 we talked about is in the Simpson's Farms, LLC.
15 THE COURT: Okay.
16 MR. McLAREN: Tract -- that's in tract E.
17 THE COURT: Okay.
18 MR. McLAREN: And then tract G, the 6.7 acres, that's in
19 Simpson Farms, LLC.
20 THE COURT: Okay. And that's really three acres,
21 according to the testimony of Steve McKenzie.
22 MR. McLAREN: Well, and according to the testimony of my
23 client, that's really the property that goes around Charlie's
24 house.
25 THE COURT: Okay. And -- and --

1 MR. McLAREN: And --

2 THE COURT: -- let me -- let me interject this, and I --
3 I think what we decided in chambers was, tract F, 1.3 acres, which
4 is Charlie's house. G, 6.7, that's really three acres, according
5 to Mr. McKenzie. And I, a house and 16 acres, which involved the
6 Stone family, but those are really not in dispute.

7 MR. SMITH: That's correct, Your Honor.

8 THE COURT: Okay. All right.

9 MR. McLAREN: I -- I apologize, Your Honor. And I
10 apologize for being a little slow, but I'm trying to jump around
11 between what Your Honor's asking, the decree, and our documents to
12 reflect what's titled in which, so I don't want my silence to be
13 taken --

14 THE COURT: Be acquiescence.

15 MR. McLAREN: -- as acquiescence --

16 THE COURT: Okay.

17 MR. McLAREN: -- and I -- if I can just go through this
18 real quick and --

19 THE COURT: Well, let -- let's do it this way, and I
20 know I'm jumping around. Your Plaintiff's Number 11, your
21 spreadsheet --

22 MR. McLAREN: Yes, sir.

23 THE COURT: -- and you allocate, or indicate, that --
24 well, let -- let me ask you this way: That in no way reflects any
25 interest of either party in tracts F, G, and I, the smaller

1 tracts?

2 MR. McLAREN: Is what Your Honor is saying is that --

3 THE COURT: Mr. McLaren --

4 MR. McLAREN: F --

5 THE COURT: -- just give me --

6 MR. McLAREN: -- F --

7 THE COURT: -- one minute, please. I'm just signing a

8 previous emergency order, and then I'll be back.

9 (OFF THE RECORD.)

10 THE COURT: All right, sir. You may go ahead.

11 MR. McLAREN: Can I -- Your Honor, can I -- Your Honor,

12 can I sit so I can shuffle papers and talk and write at the same

13 time?. Looking at Exhibit --

14 THE COURT: And I think I misidentified it. It looks

15 like it's Exhibit Number 9.

16 MR. McLAREN: Looking at Exhibit Number 9, the 133.2

17 acres, that is in W. R. Simpson Farms, LLC, that doesn't exist.

18 THE COURT: That's the 131 acres?

19 MR. McLAREN: Yes, sir.

20 THE COURT: All right.

21 MR. McLAREN: The --

22 THE COURT: Is that the --

23 MR. McLAREN: -- tract --

24 THE COURT: -- one --

25 MR. McLAREN: -- I --

1 THE COURT: -- did you say -- I'm sorry, what did you
2 say it was in?
3 MR. McLAREN: W. R. Simpson Farms, LLC, doesn't exist.
4 THE COURT: And it does not exist?
5 MR. McLAREN: Doesn't exist.
6 THE COURT: Okay. Is that on your client's side of the
7 spreadsheet? I mean Mr. Smith's client?
8 MR. McLAREN: The -- that was awarded to my -- that
9 property was awarded to my client.
10 THE COURT: Okay.
11 MR. McLAREN: Okay? The tract I, the house and 16
12 acres, that's in W. R. Simpson Farms, LLC, that doesn't exist.
13 And that was awarded to my client.
14 THE COURT: And you say it doesn't exist?
15 MR. McLAREN: Doesn't exist.
16 THE COURT: That -- that's I? So you -- you're telling
17 me your client is entitled to a credit or some sort of offset for
18 the nonexistence of that property?
19 MR. McLAREN: Oh, the property exists. The LLC doesn't
20 exist.
21 THE COURT: Okay.
22 MR. McLAREN: The property exists. The LLC doesn't
23 exist.
24 THE COURT: Well, if I grant the request that it be
25 conveyed to your client, who's going to be the grantor of that

1 deed?

2 MR. McLAREN: Well, we asked in our rule to show cause

3 that all the defendants be compelled to join in the deed,

4 transferring it to my client.

5 THE COURT: Okay.

6 MR. McLAREN: Okay?

7 THE COURT: And that should cover it?

8 MR. McLAREN: Yes, sir. I believe so.

9 THE COURT: All right.

10 MR. McLAREN: Tract --

11 THE COURT: Let -- let -- well, let's do these maybe one

12 tract at a time. Is there any dispute as far as that is

13 concerned?

14 MR. SMITH: Your Honor, I -- I believe that the issue of

15 W. R. Simpson Farms and Simpson Farms, LLC, was addressed by Judge

16 Turbeville and he basically found that they were one in the same.

17 That the -- that the property was in the LLC, even though there

18 may have been a mistake --

19 THE COURT: All right. But there's --

20 MR. TINKLER: -- in it's name.

21 THE COURT: -- no contention that Simpson, Junior, owned

22 part of that, is it?

23 MR. TINKLER: Yes, sir. He does own a half interest in

24 that -- the LLC owns that real estate.

25 THE COURT: Have we talked about this before?

1 MR. TINKLER: No, sir. This is -- and I think this has
2 been going -- going beyond what we had agreed to --
3 THE COURT: I think so, too.
4 MR. TINKLER: -- go into.
5 THE COURT: All right. You may proceed, Mr. McLaren.
6 MR. McLAREN: Can I have one second, Your Honor?
7 THE COURT: Well, what was the --
8 MR. McLAREN: And so --
9 THE COURT: -- intended --
10 MR. McLAREN: -- well, look --
11 THE COURT: -- effect of the Stone quiet title action?
12 MR. McLAREN: The Stones -- the Stones had given the
13 property. They gave a deed originally, but reserved three or 3.5
14 acres unto themselves.
15 THE COURT: The Simpsons did?
16 MR. McLAREN: The Stones deeded it, the house and 16
17 acres --
18 THE COURT: And reserved three point --
19 MR. McLAREN: -- to W. R. Simpson Farms, LLC, reserving
20 unto -- unto the Stones, the house and either three or 3.5 acres,
21 if I remember correctly. So in the quiet title action, we all
22 agreed without prejudice that that three or 3.5-acre tract
23 belonged to the Stones.
24 THE COURT: Okay. So we're looking at about 12.5 acres
25 in the marital estate?

1 MR. McLAREN: I think it's about 13, actually.
2 THE COURT: All right.
3 MR. McLAREN: But --
4 THE COURT: And -- and Mr. Smith contends that that's
5 owned by the LLC and, as a result, half owned by Junior and half
6 owned by Senior.
7 MR. McLAREN: Right. And, you know, he -- Mr. Smith's
8 position is that -- that Your Honor can't award Junior's half of
9 the LLC. Well, if the property never was titled in the name of
10 Simpson Farms, LLC, he can't have a -- he can't have an interest
11 in it, particularly when Judge Turbeville and the Court of Appeals
12 said that the husband owned it. The Court made that determination
13 already, but now they want to say oh no, that -- that's really one
14 in the same with the LLC, but they're two different names. W. R.
15 Simpson Farms, LLC doesn't exist. Simpson Farms, LLC, does exist.
16 Can -- can I go back to -- and kind of start again for a
17 second --
18 THE COURT: Well --
19 MR. McLAREN: -- if I may? Exhibit Number 9, what I
20 intended to do here was to address Your Honor's letter to help us
21 all understand where your ruling would leave us, if you did what
22 you --
23 THE COURT: And that's why I jumped over to the -- what
24 I -- these tracts that I thought were not in dispute, and then I
25 could say, well, what -- what is in dispute? And then I could

1 reidentify the marital estate.

2 MR. McLAREN: If I could start again and try --

3 THE COURT: All right, sir.

4 MR. McLAREN: -- and -- try to address that. First, we

5 say it is *res judicata* and binding on this Court as to which

6 properties are owned by Senior. Judge Turbeville said what's

7 owned by him. The Court of Appeals affirmed it when specifically

8 addressing the issue. If Your Honor goes back and readjusts the

9 property division by saying, no, Judge Turbeville, you are

10 incorrect and, Court of Appeals, you're incorrect, which I

11 respectfully submit, Your Honor, does not have the jurisdiction to

12 do. I think you -- you have the right to enforce my client

13 getting the property, which was Judge Turbeville's intent and the

14 Court of Appeals' intent, and have jurisdiction to order any or

15 all of the defendants, as we've requested, to convey the property

16 so she gets what Judge Turbeville ordered, just so we're clear on

17 that.

18 But, if Your Honor goes beyond that and says, no, I'm

19 going to go back and make an adjustment.

20 THE COURT: All right. Let me --

21 MR. McLAREN: What I did in the --

22 THE COURT: Okay. Let me stop you for a minute.

23 MR. McLAREN: Okay.

24 THE COURT: Let me go ahead and -- and, if I rule on

25 these things as we come up, and these tracts as we come up, I

1 think I'm going to get a better handle. Because if I hear all of
2 these arguments for another hour or hour and-a-half, then I have
3 to go back, it becomes very difficult for me to separate what has
4 been said.
5 As I indicated in chambers, and as I indicated in my
6 memorandum, I feel like, as a Court of equity, I have the -- the
7 right and the duty to rule on what I feel like Judge Turbeville
8 intended, even though I'm well aware of the wording of the Court
9 of Appeals' decision, which I have read and reread many times.
10 But it's clear throughout the reading of the decree that
11 Judge Turbeville intended for only one-half of the Simpson Farms,
12 LLC, to be included in the marital estate. I looked at wording
13 such as page 22, paragraph 59. And Judge Turbeville says the wife
14 knew of the arrangements with the father and the son and the LLC
15 and that it was 50/50. Also, on paragraph 65 he makes a finding
16 that Simpson, Senior, should be charged with 50% of the property
17 in the LLC, the Simpson Farms, LLC, that was acquired -- I'm
18 sorry, that the wife acquiesced in this plan for three years after
19 the transfer. All right. And I know that -- that the Court of
20 Appeals -- I'd say indirectly said that all of it was included in
21 the marital estate, but I respectfully disagree with that. I
22 telling you I'm just saying this for the record because I have a
23 feeling that my words here today are going to be typed and sent to
24 Columbia. So that is my basis for overruling your objection as
25 far as reinterpreting Judge Turbeville's order.

in fa
of SP

1 All right, sir. You may proceed.

2 MR. McLAREN: All right. If I may go back to what I've

3 attempted to do, and I -- and I don't want to be interpreted I'm

4 agreeing that Your Honor can go back --

5 THE COURT: I understand.

6 MR. McLAREN: -- and rule that, so --

7 THE COURT: And I -- I think you're --

8 MR. McLAREN: -- but I --

9 THE COURT: -- fully protected on the record.

10 MR. McLAREN: -- and I just want to point out what the

11 effect of that will be. On Exhibit 9, entitled "Equitable

12 Division per Final Decree," we laid out what property was awarded

13 under the decree --

14 THE COURT: All right. Now, where in the decree are you

15 looking at?

16 MR. McLAREN: It's really the whole decree.

17 THE COURT: Okay. I'm -- I'm not --

18 MR. McLAREN: I mean, it's --

19 THE COURT: -- quite sure --

20 MR. McLAREN: -- it's intended to be --

21 THE COURT: Okay.

22 MR. McLAREN: -- a summary.

23 THE COURT: You're looking at your summary. Okay.

24 MR. McLAREN: I'm looking at -- at Exhibit Number 9.

25 This is intended to show what property was awarded to whom, what

1 the Court said title was, generally --

2 THE COURT: Okay.

3 MR. McLAREN: -- and the values and the overall

4 division. The bottom line of that is on the third page of that

5 exhibit where my client was supposed to end up with $784,055, or

6 34% of what Judge Turbeville found the marital estate to be. So

7 that's where I started my analysis.

8 THE COURT: Okay.

9 MR. McLAREN: The second exhibit is the effect of the

10 failure to transfer. At this point, none of the properties have

11 been transferred and we all seen this -- I mean, Mr. McKenzie sent

12 a -- sent Mr. Warner quit claim deeds, which were very limited

13 deeds. We sent those back. They've never been recorded and I've

14 asked for them back. I've never gotten the deeds back, so at this

15 point, none of that property's been transferred, with the

16 exception of the Charlie property we've talked about, and we dealt

17 with the three acres -- and it was three acres with the Stone

18 property. So --

19 THE COURT: And those have been transferred?

20 MR. McLAREN: Yeah, that's been done.

21 THE COURT: All right. How does your analysis treat the

22 daughter's property and the valuation, I believe, of $35,000?

23 MR. McLAREN: We ignored it.

24 THE COURT: Ignored it.

25 MR. McLAREN: Okay.

1 THE COURT: Are y'all agreeing, Mr. Smith and Mr.
2 Tinkler, in ignoring that for purposes of trying to even up the
3 division?
4 MR. SMITH: Your Honor, not necessarily because that
5 property was factored into valuating the marital estate.
6 MR. McLAREN: Well, I say I ignored it. We -- that's --
7 that's really not correct because it's --
8 THE COURT: All right. Now, who is credited with that
9 property? Is Ms. Simpson?
10 MR. McLAREN: That -- that goes on -- supposed to go on
11 Ms. Simpson's side.
12 THE COURT: Okay.
13 MR. McLAREN: But --
14 THE COURT: And is Mr. Simpson given credit for it going
15 in Mrs. Simpson's --
16 MR. McLAREN: He's not supposed to get credit for it.
17 She was supposed to get it under the decree, but the two of them
18 determined to give it to Charlie.
19 THE COURT: All right. She's gotten credit and then is
20 there any objection as far as that credit going on this side of
21 the Court?
22 MR. McLAREN: It really shouldn't go on either side
23 because --
24 THE COURT: Okay.
25 MR. McLAREN: -- they both decided --

1 THE COURT: So we don't have to talk about that. I just
2 want to make --
3 MR. McLAREN: I don't -- I don't think we do because --
4 THE COURT: Okay.
5 MR. McLAREN: -- they both agreed that that would go to
6 Charlie, so they -- they did that. The next -- the -- the effect
7 of failure to transfer is that next exhibit that, if she doesn't
8 get any of that property, which includes Charlie's, so you got to
9 jiggle with that, she's down to a 15% division and only $346,000.
10 But where Your Honor is going is the next exhibit -- our
11 next page exhibit, the effect of the 12/29/10 ruling. I took the
12 first pages of the decree and then, on the second page of that
13 part of the exhibit that's highlighted -- it's got the dark on it
14 -- we went ahead and made the adjustment. It looks like this.
15 THE COURT: Okay. That's what was transferred over.
16 Okay. I see.
17 MR. McLAREN: And, if you look at the -- that
18 highlighted part, for instance, next to the one -- 161.1 acres, we
19 reduced that to a 50% interest in accordance with Your Honor's
20 preliminary ruling just to see where that would leave us. And we
21 did the same thing with the 6.7 acres, which was Charlie's, the
22 three -- 133.2 acres and the house and 16 acres. We reduced those
23 to 50%. Okay?
24 THE COURT: Okay.
25 MR. McLAREN: And, if you go to the far right column,

1 because the wife is still supposed to get that property, the
2 property she's supposed to get is that reduced half interest,
3 that's the value that -- that it -- that, under your ruling, she
4 would get. Okay?
5 THE COURT: Okay.
6 MR. McLAREN: So then you go to the next page, assuming
7 she gets the half -- reduced half interest that changes the total
8 of the marital estate. And if you want to do what Judge
9 Turbeville said to do and do 34% --
10 THE COURT: I'm -- I believe I'm bound by his
11 percentages.
12 MR. McLAREN: Maybe, maybe not.
13 THE COURT: May -- well, maybe not, but I'm -- that's my
14 ruling.
15 MR. McLAREN: I think she ought to get 50%, frankly, but
16 I understand what you're saying.
17 THE COURT: All right.
18 MR. McLAREN: So, but if you leave it at the 34, and
19 this is an intended example only, he has to pay an additional
20 133,250 to get back to the 34%.
21 THE COURT: Okay.
22 MR. McLAREN: On the other hand, if you say, okay, I
23 don't want -- and I'm not suggesting, as I'm saying by way of
24 example, if you say, okay, I don't want to leave these people in
25 business together. Mr. -- Mr. Simpson, Senior, you keep the --

1 you keep that half and you pay her cash instead. It gets them out
2 of business completely, then he would --
3 THE COURT: You say --
4 MR. McLAREN: -- have to pay her --
5 THE COURT: -- you thought the -- you said half. I
6 thought you said house at first, but you're talking about half.
7 MR. McLAREN: Half.
8 THE COURT: Okay.
9 MR. McLAREN: The half that you reduced it --
10 THE COURT: Okay.
11 MR. McLAREN: -- from 100% to a 50% interest. To get to
12 -- back to a 34 and not have her not get any of that property,
13 then you would need a -- the cash payment would be the $38,250.
14 Okay? And that would be 87,500 for the 161.1 acres, 17,500 for
15 the 6.7 acres, 75,000 for the 133.2 acres, and 25,000 for the
16 house and 16, which is actually 13 acres. So, if you put the
17 original cash of 133,250 plus those additional items, it brings it
18 up to 338,250 if you turn it into cash.
19 THE COURT: All right.
20 MR. McLAREN: Okay? Now what --
21 THE COURT: Yeah.
22 MR. McLAREN: -- we've not addressed --
23 THE COURT: I -- I -- you lost me. You lost me right
24 there. Are you back on the last page?
25 MR. McLAREN: May I approach, Your Honor?

1 THE COURT: Yes, sir. All right. Those are your
2 figures there. These -- these handwritten figures are not on my
3 sheet, are they?
4 MR. McLAREN: No.
5 THE COURT: Okay.
6 MR. McLAREN: They're not. I -- I sat and figured that
7 out while --
8 THE COURT: Well, no wonder you --
9 MR. McLAREN: -- we were on break.
10 THE COURT: -- lost me.
11 MR. McLAREN: And if you go back here --
12 THE COURT: Does Mr. Smith have those --
13 MR. McLAREN: He does.
14 THE COURT: -- forms?
15 MR. SMITH: Your Honor, I got them this morning. I
16 haven't had a chance to look them over and I'm following with Mr.
17 McLaren as he goes through.
18 THE COURT: All right. When we get a break, would y'all
19 make a -- make me a copy of that? You were saying that Mr.
20 Simpson owes Mrs. Simpson how much?
21 MR. McLAREN: One -- this number right here.
22 THE COURT: Mr. Smith, do you -- y'all want to come up
23 here and look at this?
24 MR. TINKLER: Yes, sir, Your Honor.
25 MR. McLAREN: The 130 -- the 133,250.

1 THE COURT: Okay.

2 MR. McLAREN: -- plus 133,350 -- well, that -- that's a

3 -- that's our number. Eighty-seven five --

4 THE COURT: All right. Where does that come in from?

5 MR. McLAREN: That's coming from the 161.1 acres.

6 THE COURT: Oh, so you hadn't factored those in yet?

7 MR. McLAREN: I hadn't -- well, we -- we had her just

8 getting the property --

9 THE COURT: Okay.

10 MR. McLAREN: -- because you're -- you're -- you're

11 saying that --

12 THE COURT: You -- this -- this theory is to -- to cash

13 her out and -- and dissolve any joint ownership.

14 MR. McLAREN: That's right.

15 THE COURT: Okay. You gentlemen have any objection to

16 that, if -- and I'm not saying I'm ruling this way -- do you have

17 any objections to some sort of cashing out, if Mr. Simpson,

18 Senior's, given a reasonable period of time to do that?

19 MR. SMITH: Your Honor, renewing our objection about

20 this going beyond the scope of what we had agreed, and also, I do

21 not agree with Mr. McLaren's analysis, but --

22 THE COURT: And I'm going to give you a chance to

23 respond to it.

24 MR. SMITH: But -- but, understanding the Court's

25 inclination, it --

1 THE COURT: Well, let -- let me say this. Absent an
2 agreement, I don't think I can -- can turn around and require
3 Senior to cash out the LLCs. They're just going to have to work
4 it out even if he -- we have wind up partitioning. But I don't
5 believe I have the authority to alter the terms of paragraph 106
6 of Judge Turbeville's decree.
7 MR. McLAREN: The problem is, before she got 100% of it,
8 so there wasn't an ownership problem.
9 THE COURT: I -- I understand.
10 MR. McLAREN: By giving her -- by reducing ownership --
11 THE COURT: I understand.
12 MR. McLAREN: -- to half, you leave them in a business
13 deal --
14 THE COURT: Well, I think -- I think Judge Turbeville
15 said something in the decree to the effect that maybe Mrs. Simpson
16 was being a little unreasonable in insisting on a total cash
17 settlement to -- when they were negotiating because it wasn't --
18 there was some liquidity, but there was so much more in real
19 estate, farm equipment, the store. So I don't feel like I can go
20 behind Judge Turbeville's decision, so.
21 MR. McLAREN: I agree with that.
22 THE COURT: In toto; is that what you're saying?
23 MR. McLAREN: Yes, sir.
24 THE COURT: Okay.
25 MR. McLAREN: But -- and I also would point out that

1 maybe there was some great wisdom in what my -- my client had to
2 say about a cash out. We wouldn't be six, seven years in more
3 litigation.
4 THE COURT: I understand that, but that's --
5 MR. McLAREN: Can I just give you these numbers so
6 we're --
7 THE COURT: That's fine. If you'll give me -- you'll
8 just stamp it and put them on --
9 MR. McLAREN: I --
10 THE COURT: -- the record.
11 MR. McLAREN: -- I'd be glad to do it. I'm sorry.
12 (WHEREUPON, the foregoing document was marked
13 Plaintiff's Exhibit Number 10 and received
14 into evidence.) McLaren's figures
15 MR. McLAREN: So, Your Honor, if you start with 133,250
16 cash payment to get to 34,000, and if you were to order a cash out
17 on what would become fractional interest, if you re-did the
18 property division -- we're not agreeing to it, but if you did that
19 -- we'd either add $87,500 for the 161.1-acre tract.
20 THE COURT: Okay.
21 MR. McLAREN: You would need to add 17,500 for the
22 6.7-acre tract. You would need to add 75,000 for the 133.2 acre
23 tract and 25,000 for the house and 16, now 13, acre tract. That
24 total cash would be $338,250. And what that does not consider is
25 that this decree was issued in 2003 or 2004 and Mr. Simpson has

1 had the use of the property, earned money and received subsidies
2 and other earnings on the property. It's my client's property.
3 It became her property when that decree was entered and we offered
4 evidence of that previously and, you know, she's not anywhere near
5 being whole. You could treat it like a money judgment and add
6 judgment interest to it, or you could inquire as to his --
7 THE COURT: Well, didn't quite some time ago Mr.
8 Simpson, Senior, do what he felt like he should do under the terms
9 of the order and in accordance with the instructions of his
10 attorney?
11 MR. McLAREN: He did what was cute. He gave my client
12 nothing and his lawyer testified he gave her nothing. The only
13 thing he gave her was three minor tracts that were titled in his
14 name and then, in his deeds, I -- that were prepared by his
15 lawyer, it said Simpson, Senior, individually only and not in any
16 other capacity. He knew what he doing. He knew he intended to
17 transfer nothing. And --
18 THE COURT: Okay, sir.
19 MR. McLAREN: So no, that -- if you're asking was that
20 in good faith, should he benefit from that? No, I don't think he
21 should.
22 THE COURT: Okay. Anything else as far as this last
23 spreadsheet?
24 MR. McLAREN: No, sir.
25 THE COURT: All right. Mr. Smith? And I direct your

1 attention to -- I guess it's the next to the last page, paragraph
2 E, the property that's in the shaded section.
3 MR. SMITH: Yes, sir.
4 THE COURT: What if -- what objection do you have, if
5 any, as far as how Mr. McLaren characterized those properties?
6 MR. SMITH: Your Honor, I -- I do not believe that those
7 properties are owned individually.
8 THE COURT: Now, I'm not talking about owned
9 individually, whether or not they should be included in the
10 marital estate.
11 MR. SMITH: Yes, Your Honor, they should be included in
12 the marital estate because -- well, in -- if I could rephrase,
13 Your Honor.
14 THE COURT: Okay.
15 MR. SMITH: To the extent the properties belong to the
16 LLC, and it was determined that those properties added value to
17 the LLC, then Mr. Simpson's interest in the LLC, represented by
18 these properties, is an asset of the marital estate. We do not
19 dispute that.
20 THE COURT: Okay. So you're saying that if I should
21 enter -- and it's consistent with my memorandum of December 29th,
22 as far as the LLC property, the two properties. Would you object
23 to my ordering Mr. Simpson to make these conveyances?
24 MR. SMITH: Yes, sir.
25 THE COURT: Why?

1 MR. SMITH: Because the properties are titled in the
2 name of the LLC.
3 THE COURT: Well, you're telling me that -- that the --
4 I'm correct in saying that half of the LLC, and not 100% of the
5 LLC, is in the marital estate.
6 MR. SMITH: Yes, sir.
7 THE COURT: But you're telling me that because the --
8 it's titled in the name of the LLC that Mrs. Simpson doesn't get
9 it?
10 MR. SMITH: I'm saying that Mr. Simpson, Senior, as the
11 Court recognized in its May 2010 order, doesn't have the capacity
12 as a member of the LLC to convey --
13 THE COURT: Well, but --
14 MR. SMITH: -- LLC's property.
15 THE COURT: -- the LLC's a party defendant.
16 MR. SMITH: But the order only directed that Mr. Simpson
17 convey --
18 THE COURT: I understand --
19 MR. SMITH: -- property.
20 THE COURT: -- that, but it -- the -- in interpreting
21 this order, it cuts both ways.
22 MR. SMITH: Yes, sir.
23 THE COURT: That is, I can tell Mr. -- Judge
24 Turbeville's intention was, at least in my opinion, that one-half
25 of the LLC's a part of the marital estate. And I've got to read

1 into the decree his intention as far as the conveyance of these
2 other properties. It would defeat his order; would it not?
3 MR. SMITH: It would -- by force -- by requiring the LLC
4 to convey the property would defeat the intent of the order.
5 THE COURT: I mean, do you not believe that was just a
6 drafting oversight or Scribner's error?
7 MR. SMITH: Your Honor, I believe it goes back to the
8 testimony of the plaintiff's expert, Cath Lindhart, who was not
9 sure who owned which properties. Her testimony was set out, or
10 using Exhibit 25 from the trial, Ms. Lindhart went out and
11 testified -- and if the Court would allow me, I have a copy of
12 Exhibit 25. Your Honor, I think -- I beg the Court's indulgence.
13 THE COURT: Okay.
14 MR. SMITH: My -- my file has gotten -- has grown.
15 THE COURT: Okay.
16 MR. SMITH: Your Honor, I'd -- would ask that we be
17 allowed to introduce in this hearing what was marked as Exhibit 25
18 in the --
19 THE COURT: Okay.
20 MR. SMITH: -- trial in the--
21 THE COURT: Is there --
22 MR. SMITH: -- family court.
23 THE COURT: -- any objection?
24 MR. McLAREN: No objection.
25 MR. TINKLER: None.

1 THE COURT: All right. Okay.
2 (WHEREUPON, the foregoing prior exhibit was
3 marked Defendant's Exhibit Number 1 and
4 received into evidence.)
5 THE COURT: Okay, sir.
6 MR. SMITH: Your Honor, this exhibit was prepared by Ms.
7 Lindhart, which sets out property acquired during the marriage,
8 now or formerly W. R. --
9 THE COURT: Okay. So, but now, wasn't this -- this
10 witness, I would say, was -- maybe impeached is not the proper
11 word, but -- but she was discredited in some of her entries.
12 MR. SMITH: Yes, sir. Judge Turbeville specifically
13 found that in his decree -- I believe it was in the order awarding
14 attorney's fees --
15 THE COURT: Okay.
16 MR. SMITH: -- that her analysis was not helpful to the
17 Court at all.
18 THE COURT: Okay.
19 MR. SMITH: It was -- is --
20 THE COURT: Well, tell me what you --
21 MR. SMITH: -- incomplete.
22 THE COURT: -- purport to show by this exhibit, please.
23 MR. SMITH: That the confusion surrounding the title to
24 the property is not attributable to Mr. Simpson, but it's
25 attributable to the plaintiff's expert witness.

1 THE COURT: What were -- regardless of --
2 MR. McLAREN: I -- I object --
3 THE COURT: Hold on.
4 MR. McLAREN: -- to that.
5 THE COURT: Wait just a minute.
6 MR. McLAREN: Let's don't --
7 THE COURT: I don't -- I don't think that's really
8 before me. I think everybody agrees that there was confusion. I
9 think everybody will agree that we're still confused somewhat
10 today, but we're going to try to resolve these issues. But let
11 ask you this, Mr. Smith. If these -- and I'm going back to next
12 to the last page, the shaded properties.
13 MR. SMITH: Yes, sir.
14 THE COURT: If all of those properties were titled in
15 the name of Mr. Simpson, Senior, and Ms. Daisy Simpson, it
16 wouldn't be any problems if I agreed with Mr. McLaren's
17 methodology to order the -- the -- that those properties be
18 conveyed to Mrs. Simpson.
19 MR. SMITH: Yes, Your Honor. If they were titled in the
20 name of Mr. Simpson individually.
21 THE COURT: You'd have no problem with that?
22 MR. SMITH: No, sir.
23 THE COURT: Okay. And consequently, and trying to be
24 consistent with my earlier rulings, would it then follow, to
25 reinstitute the 34/66 division, wouldn't it be appropriate or

1 proper for me to order Mr. Simpson, Senior, to make a cash
2 disbursement of $133,250 to Mrs. Simpson?
3 MR. SMITH: Your Honor, the -- understanding the Court's
4 inclination to somehow correct this morass, yes, Your Honor, I
5 think that would be the appropriate solution.
6 THE COURT: Okay.
7 MR. SMITH: And it's something that should've happened
8 in the original trial.
9 THE COURT: Yeah. All right, thank you for your candor.
10 Anything else, Mr. McLaren -- Mr. Tinkler, I'm sorry.
11 MR. TINKLER: Thank you, Your Honor. I just want to --
12 MR. SMITH: Your Honor, I'm -- I apologize for
13 interrupting, but could I make one more comment about --
14 THE COURT: Yes, sir.
15 MR. SMITH: -- about Plaintiff's Exhibit 9? I do not
16 necessarily agree with Mr. McLaren's end result. I have a
17 spreadsheet --
18 THE COURT: The 133,250?
19 MR. SMITH: Yes, sir. We -- I -- I would agree with
20 that, but when he goes back and he adds the other numbers, I'm not
21 sure that I agree with that.
22 THE COURT: Now, which numbers are you talking about?
23 MR. SMITH: The additional real estate that he factored
24 in.
25 THE COURT: Which additional real estate?

1 MR. SMITH: Your Honor, let me withdraw that comment. I
2 think I'm confusing myself and the Court.
3 THE COURT: I confused myself already a few times this
4 morning.
5 MR. McLAREN: Well, that's the real candor.
6 THE COURT: But -- but you -- you stand by what you said
7 about if the properties that were shaded were titled in Mr.
8 Simpson, Senior, or Mrs. Simpson. And if I require the conveyance
9 of those properties to Mrs. Simpson, then she would be entitled to
10 a -- an additional disbursement of $133,250?
11 MR. SMITH: Yes.
12 THE COURT: Okay. All right. Mr. Tinkler.
13 MR. TINKLER: Thank you, Your Honor. I got involved in
14 this case well after these trials, well after these appeals. And
15 my task, as I understood it, was to defend Junior against
16 potential charges of contempt. And Your Honor heard those
17 arguments over the course of a long period of time and Your Honor
18 has found --
19 THE COURT: Was Mr. Simpson, Junior, a -- a defendant in
20 that contempt action, too?
21 MR. TINKLER: Well, he -- he's actually was.
22 THE COURT: Okay.
23 MR. TINKLER: There -- there was more than one pleading
24 filed by Mr. Warner during the course of -- of my involvement with
25 the case, and one of those pleadings did actually have his name on

1 it. He was seeking contempt --

2 THE COURT: Okay.

3 MR. TINKLER: -- and you may recall that Mr. Warner

4 later appeared at -- before the Court at a hearing, which I was

5 not present because I didn't have notice of it, and said that he

6 was only proceeding against Simpson, Senior. But -- but be that

7 as it may, I understood my task to defend this gentleman against

8 a --

9 THE COURT: But there's --

10 MR. TINKLER: -- contempt --

11 THE COURT: -- that potential.

12 MR. TINKLER: There was that potential and -- and, so

13 anyway, I think I've seen him through that and we've had a -- a

14 motion for rehearing of Your Honor's order. I think we appeared

15 in early December and, if I recall correctly, and Your Honor

16 declined to reconsider your prior ruling that he was not in

17 contempt. So he'd done everything, as I understand it, under the

18 order that he was required to do. You will recall that he was not

19 ordered to transfer any property. The LLC was not ordered to

20 transfer any property; only Mr. Simpson, Senior, was.

21 And so we understand that -- what the Court is wrestling

22 with and we -- we sort of said that at -- at the hearing. We

23 don't agree that the Court has the power to -- or the jurisdiction

24 to just go modify Judge Turbeville's order. We do think the Court

25 has -- probably does have the power to interpret it and then

1 somehow try to work your way out of this mess. I -- I would agree
2 with that. But after the hearing in early December and after Your
3 Honor's ruling that you -- your letter ruling of December 29th,
4 you said you wanted to -- you sort of had concluded that Judge
5 Turbeville only considered one-half of the LLC value to be part of
6 the marital estate. We agree with that. And your letter further
7 said at this hearing this morning you wanted to expound on your
8 reason. Now, this hearing was originally scheduled, as I
9 understand it, only to address the issues of alimony and
10 attorney's fees.
11 THE COURT: Well, I -- I was under the impression that I
12 -- and I -- I think that I received, on -- on a agreement and
13 consent by all of the attorneys, that I will also -- it -- it was
14 properly before me to make the determination as far as these
15 tracts that we're arguing about here today.
16 MR. TINKLER: Well, in any event, I -- I thought I'd
17 better come back up here today and --
18 THE COURT: Okay.
19 MR. TINKLER: -- and hear the Court expound its reasons
20 for that sentence in your --
21 THE COURT: And I'm -- I'm going to do that in just a
22 minute.
23 MR. TINKLER: And -- and I -- you know we would love to
24 -- to hear your -- your whole reasoning on that. I don't think I
25 -- I was prepared to do an analysis like Mr. McLaren, so what I

1 would ask the Court to do, we'd like to hear Your Honor's reasons
2 and we would like the opportunity, after hearing you expand your
3 reasoning, to respond to it. And that's all I'm requesting.
4 THE COURT: Okay. And I've probably already given my
5 reasons, but I'll go back through them in a -- in a --
6 MR. SMITH: All right, sir.
7 THE COURT: -- few minutes. Thank you, sir. And I -- I
8 will allow you to do that. Mr. McLaren, anything else before I
9 rule?
10 MR. McLAREN: Just one. And I wanted to correct one
11 statement. Procedurally there were two rules before the Court.
12 The second rule to show cause was against all defendants in all
13 capacities. And the statement by Mr. Warner, if you look at it in
14 context, was not to say he was only proceeding against Senior, and
15 I briefed that in our memorandum. I just wanted to correct that.
16 We do not agree with what Mr. Tinkler said about that.
17 THE COURT: Okay.
18 MR. McLAREN: Thank you.
19 THE COURT: Anything else?
20 MR. McLAREN: That's it.
21 THE COURT: Well, as y'all know by my memorandum and by
22 what I -- I have said this morning, I am going to try to attempt
23 to interpret Judge Turbeville's ruling because it's -- I think all
24 parties will concede that there's some ambiguities, particularly
25 as it relates to the direction that -- that only Mr. Simpson,

1 Senior, will make the conveyances set out in paragraph 106 of his
2 order. But I feel like that there is a question of jurisdiction,
3 but this being the Court of equity and the Court of fairness, I am
4 going to rule that in plaintiff's Exhibit Number 9, the subsection
5 E, the highlighted or shaded properties are to be conveyed to Mrs.
6 Simpson to effectuate the terms of Judge Turbeville's decree.
7 And, as a result, Mrs. Simpson will be owed an additional $133,250
8 to effectuate the division of 34% to Mrs. Simpson and 66% to Mr.
9 Simpson. And my order will reflect that all other named
10 defendants will join in these conveyances to ensure that Mrs.
11 Simpson gets a free -- a title free and clear. I'm requiring that
12 these be general warranty deeds to the extent of Mr. Simpson,
13 Senior's, 50% interest in the LLC. And, of course, the LLC will
14 have to join in these conveyances. It may be that they may need
15 to be conveyed to an intermediary and then to Mrs. Simpson.
16 Whatever needs to be done, I'm ordering that to be done.
17 Mr. Smith, do you want to confer -- why don't we do
18 this. Why don't we take about a five-minute bathroom break and
19 then I'll hear from your arguments and I would like to hear from
20 your client as far as what would be fair as far as a payment of
21 these sums. Now, let's --
22 MR. SMITH: Your Honor, if I could get one point of
23 clarification, please.
24 THE COURT: Okay.
25 MR. SMITH: Is the Court's ruling that the property in

1 Exhibit 9, the shaded portion, under section E, are you ruling
2 that that property is to be conveyed in addition to the cash
3 payment?
4 THE COURT: That property is to be conveyed and then the
5 cash payment was to be paid. Does that answer your question?
6 MR. SMITH: Yes, sir. I -- I think it does.
7 THE COURT: Yes, sir. Did I follow your methodology
8 correctly Mr. McLaren?
9 MR. McLAREN: Yes, sir.
10 THE COURT: Okay. Let's take about a five or six minute
11 break and then we'll see where we are.
12 MR. McLAREN: Thank you, Your Honor.
13 (OFF THE RECORD)
14 THE COURT: Okay, about the -- as far as the payment --
15 and I'll get to you in just a second.
16 MR. SMITH: Your Honor, if I -- I am so sorry. We were
17 talking about other matters, could you give me one minute, please?
18 THE COURT: Well, what -- what we can do is, I'm going
19 to probably break for lunch after we finish with this. Y'all can
20 talk about it at lunch and then come back together.
21 MR. SMITH: Yes, sir.
22 THE COURT: Thank you, sir. All right. Mr. Tinkler.
23 MR. TINKLER: Your Honor, I just want to say maybe on
24 the record, as I understood, when I got up and made remarks, I --
25 we were going to have the opportunity to respond to Mr. McLaren's

1 exhibit before Your Honor make -- made a ruling.

2 THE COURT: And you did, and I apologize for that.

3 MR. TINKLER: And I -- you appear to have made at least

4 a preliminary ruling. And -- and I wanted the opportunity to

5 respond to that, and I don't want to argue with the Court.

6 THE COURT: I'll -- I'll give you that that -- and I'll

7 do -- I'll do this. I'll -- I'll hear your response and I'll

8 consider it over lunch --

9 MR. TINKLER: Okay.

10 THE COURT: -- unless you want to go back to Charleston.

11 MR. TINKLER: Well, what I was thinking is, let -- let

12 me just point out an example. As I understand Mr. McLaren's

13 presentation here, the value of the marital estate had been

14 reduced, if you take Judge Turbeville's numbers.

15 THE COURT: Yes, I -- I think it has. I think I -- I

16 would agree with that. Do you agree with that, Mr. McLaren?

17 MR. McLAREN: Yes, sir.

18 THE COURT: All right.

19 MR. TINKLER: But -- but maybe I'm missing something,

20 but the value of what Daisy's getting have gone up.

21 MR. McLAREN: I disagree with that.

22 THE COURT: All right. Now, give me a little more --

23 MR. TINKLER: Well --

24 THE COURT: -- specifics.

25 MR. TINKLER: If -- if I -- well, she -- she's getting

1 all of this property, which I -- I think was already ordered that
2 Mr. Simpson, Senior, convey to her, but it's in the LLC. She was
3 already -- she was already ordered to do that, but now under Your
4 Honor's ruling and under his analysis, she's -- she's entitled to
5 an additional $133,000 in cash. He's already --
6 THE COURT: But haven't those real estate values been
7 decreased by my rulings or we've -- some of them have been
8 disregarded, such as Charlie's property?
9 MR. TINKLER: Well, they have, but -- well, I -- I mean,
10 I'm not sure of what Your Honor's ruling is. I'm just confused,
11 to be honest.
12 THE COURT: All right. Well, let -- let me tell you
13 what my ruling is and then I'll let you continue.
14 MR. TINKLER: Okay.
15 THE COURT: That all of the properties in the shaded
16 area under paragraph E, the Court finds are -- are part of the
17 marital estate. And I think Mr. Smith conceded that had they been
18 titled in Mr. Simpson, Senior, and/or Mrs. Simpson, that they
19 would be subject to equitable division and -- subject to division.
20 And he also agreed, if that was in fact the case, and Mr.
21 McLaren's methodology of Mrs. Simpson being entitled to an
22 additional $133,250 in cash, would effectuate the 34/66 division
23 as mandated by Judge Turbeville.
24 MR. TINKLER: Well, I -- I just think the effect of what
25 Your Honor's ruling is, if I understand it, is Junior has given

1 away that property twice. He gave it away in his divorce --

2 THE COURT: Well, after all is said and done and these

3 conveyances are made, I believe Junior will still wind up with 50%

4 of the LLC; would he not, Mr. McLaren? Bits in favor of McLaren -- while adhering Tinkler

5 MR. McLAREN: Yes, sir.

6 THE COURT: Okay. I'm not affecting Junior's 50%

7 interest.

8 MR. TINKLER: All right. So, Your Honor, we'll have to

9 analyze --

10 THE COURT: Okay.

11 MR. TINKLER: -- this exhibit and then -- and then, if

12 Your Honor is going to give --

13 THE COURT: Well, and why don't I do this. Since y'all

14 just got the exhibit today, why don't I give y'all seven days to

15 submit anything as far as Mr. McLaren's calculations and so forth.

16 MR. TINKLER: All right, sir. I -- that's fair.

17 That's --

18 THE COURT: Okay.

19 MR. TINKLER: -- very fair, Your Honor.

20 THE COURT: All right.

21 MR. TINKLER: And if -- with that in mind, I don't -- I

22 don't think that it's necessary for me to come back to the

23 afternoon session, which I believe, is just going to deal with the

24 issue of --

25 THE COURT: Attorney's fees --

1 MR. TINKLER: -- attorney's fees and --

2 THE COURT: -- and then, if we get to it, the alimony

3 termination.

4 MR. SMITH: That's correct.

5 THE COURT: Okay.

6 MR. TINKLER: Thank you, Your Honor.

7 THE COURT: Do y'all have any objection excusing Mr.

8 Tinkler?

9 MR. SMITH: No, sir.

10 MR. McLAREN: I'll miss him, but it's okay for him to go

11 back to Charleston.

12 THE COURT: All right. So you're --

13 MR. TINKLER: Thank you.

14 THE COURT: -- excused. You, too. Thank y'all for

15 coming. Anything else before we break for lunch? Let's try to

16 get back here as close to maybe 1:15 as we can. That'll give us

17 about -- about an hour and 10 minutes. If you need more time,

18 take it, but let's try to get back as quickly as we can and then

19 we'll start next on the attorney's fees issue.

20 MR. McLAREN: Thank you, Your Honor.

21 (THE COURT RECESSED FOR LUNCH.)

22 THE COURT: Do we have everyone back?

23 MR. SMITH: Yes, sir. I believe so.

24 THE COURT: I believe so.

25 MR. SMITH: All the --

1 THE COURT: Okay.

2 MR. SMITH: -- defendants.

3 THE COURT: Have you had the opportunity to confer with

4 your client as far as the payment of that award?

5 MR. SMITH: Yes, Your Honor. And -- and, preserving our

6 objections on the jurisdiction of the Court, Mr. Simpson's

7 financial position right now is -- is in a dire predicament and we

8 can't state with any particularity when exactly he could come up

9 with the money. The only way would be to borrow the money and, in

10 today's credit market, I'm not sure. So we're --

11 THE COURT: Well, doesn't your client have a very close

12 relationship with the Bank of Greeleyville?

13 MR. SMITH: Your Honor, he would still need to qualify

14 for their -- their credit requirements, and when Mr. Simpson had

15 to come up with money to pay to -- to address a previous rule to

16 show cause --

17 THE COURT: About three or $400,000, wasn't it?

18 MR. SMITH: Your Honor, it was closer to, I think,

19 600,000.

20 THE COURT: Okay.

21 MR. SMITH: So he's -- he's --

22 THE COURT: Is he individually or through any LLCs that

23 he controls has -- have any unencumbered farmland?

24 MR. SMITH: Your Honor, I -- I know that he had to

25 pledge property to secure the loan --

1 THE COURT: I understand.

2 MR. SMITH: -- to pay the others, if I could consult

3 with my client.

4 (Mr. Smith confers with the defendant.)

5 MR. SMITH: No, sir.

6 THE COURT: Okay. Well, the other side of that coin is

7 Mrs. Simpson has been without her property for a number of years,

8 and that's not all of Mr. Simpson's fault; I'm aware of that.

9 What's your position, Mr. McLaren, immediate payment?

10 MR. McLAREN: Yes, sir. I mean, it's been a long time

11 and, you know, I've -- I said earlier it should not only be the

12 payment but it should be her share of whatever was earned on the

13 property since it was originally ordered conveyed. You know, I --

14 it is -- he just needs to find a way. He's got a lot of property.

15 He's got a lot of wealth, a lot more than client does and, if Your

16 Honor orders it, he'll find a way to do it.

17 THE COURT: Well, and I didn't -- and I'm making these

18 rulings subject to any objections that Mr. Tinkler may have as far

19 as the Plaintiff's Exhibit Number 9 submitted this morning, but I

20 am going to require that the -- the real estate be conveyed within

21 20 days of the filing of the decree. And I think I said this

22 morning, but I want these deeds to be general warranty deeds, no

23 quit claim deeds. And I am going to require that the monies be

24 paid to Mrs. Simpson within 90 days and, if it's not paid after 90

25 days, then interest will run at the rate of 10% until paid in

1 full. That does not -- that provision, as far as the interest,
2 does not in any way alleviate the obligation to pay the money
3 within the time frame.
4 MR. McLAREN: Now, does that run from --
5 THE COURT: That'll just give Mrs. Simpson some
6 protection.
7 MR. McLAREN: Does that run from the date of filing of
8 the decree as well?
9 THE COURT: I'm sorry?
10 MR. McLAREN: Does that run -- does the 90 days run from
11 the date of the filing of the decree?
12 THE COURT: Of the -- of this decree. Okay. Yes, sir.
13 And once we get clearance from Mr. Tinkler, I'd ask you to prepare
14 the order, Mr. McLaren.
15 MR. McLAREN: I'll be glad to do that, Your Honor.
16 THE COURT: Anything else on those issues?
17 MR. McLAREN: Your Honor, could you specifically rule on
18 whether or not we're entitled to either judgment interest or to
19 share in the earnings of the property since the decree was
20 originally entered by Judge Turbeville?
21 THE COURT: Yes, sir.
22 MR. SMITH: Your Honor, I -- I think there's case law
23 that, if the obligation is to convey property or in-kind property,
24 as opposed to a monetary payment, that the recipient is not
25 entitled to interest. And I -- I've got some case law on that

1 that I could hand up to the Court.

2 THE COURT: Well, is that -- is that before me today?

3 MR. McLAREN: Well, it was in the original rule that

4 requested it. It was not granted in the order that Your Honor

5 issued and we move to reconsider that and ask that you do include

6 interest or sharing in what was earned or what my client would

7 have been able to do with the property had it been conveyed to her

8 when intended by the Court.

9 THE COURT: Well -- well, I don't have anything in front

10 of me to make that decision, though, do I?

11 MR. McLAREN: Yes, sir.

12 THE COURT: In what way?

13 MR. McLAREN: The original rule that started the process

14 asked for that -- that relief. When you issued the last order,

15 you did not address that, so part of our motion to reconsider,

16 which we are here on today and have been in the last hearing as

17 well, we asked that Your Honor address that issue and award

18 interest or the earnings on the property that my client would have

19 otherwise had, had the property been given to her back in 2003.

20 THE COURT: Well, that cuts both ways, doesn't it? Mr.

21 Simpson, Senior, has retained farmland properties that I would say

22 have markedly gone down in value.

23 MR. McLAREN: I don't know whether it has or not, Your

24 Honor.

25 THE COURT: Well, that's just my general, conventional

1 wisdom that all farmland in this area -- timberland, hunting land
2 or whatever, has -- has gone down quite drastically. You disagree
3 with that Mr. Smith?
4 MR. SMITH: No, sir. Your Honor, in my experience with
5 farmers is that farmland has declined in value.
6 MR. McLAREN: I -- I don't know that. I'm not aware of
7 any--
8 THE COURT: Well, that's just from my general knowledge
9 of this area, and it's --
10 MR. McLAREN: We've not put together any evidence about
11 any of that. I just -- I don't know the answer to it.
12 And the -- not to change the subject, but you also need
13 to rule on that piece of acreage that Mr. McKenzie testified
14 about.
15 THE COURT: Which acreage?
16 MR. McLAREN: That was the property paragraph G, where
17 there's a 6.7 acres.
18 THE COURT: All right. Give me just a minute. In
19 paragraph 106, subsection G?
20 MR. McLAREN: G. And if I remember correctly, Your
21 Honor, it appears the dispute -- Mr. McKenzie said, when he
22 prepared the deeds, that he did not find a 6.7-acre tract that
23 matched up with the tax map number that was in either in
24 Lindhart's report or in the decree; I don't remember which one.
25 But he did find a three-acre tract --

1 THE COURT: Uh-huh.

2 MR. McLAREN: -- that matched the tax map number.

3 THE COURT: Titled in whose name? One of the

4 defendants?

5 MR. SMITH: Mr. Simpson, Senior, Your Honor. I have a

6 copy of that deed that --

7 THE COURT: Okay. I --

8 MR. SMITH: -- matches the --

9 THE COURT: -- thought we --

10 MR. SMITH: -- tax map.

11 THE COURT: -- disposed of all of these issues this

12 morning.

13 MR. McLAREN: That one you didn't. You started to, but

14 we never -- you said we -- and your letter does on the 29th.

15 THE COURT: That's why -- that's why I got on -- off on

16 the task of going through these three items that we talked about

17 in chambers, F, G, and I that I thought were in dispute, and after

18 we finished our conference, I thought we were under the impression

19 that they were not in dispute.

20 MR. McLAREN: I apologize. I'm not trying to confuse,

21 but -- but the -- my client would be left a half interest in

22 whatever property they deed, so I think you need to clarify which

23 property it is to deed on that one piece.

24 THE COURT: All right. But your exhibit, Plaintiff's 9

25 introduced this morning, does not deal with the subsection G, 6.7

1 acres that we think -- these three acres. It does not deal with
2 that.
3 MR. McLAREN: It does deal with that.
4 THE COURT: Does or does not? I'm sorry.
5 MR. McLAREN: It -- it does.
6 THE COURT: Well --
7 MR. McLAREN: And -- and what -- the way it deals with
8 it, it cuts the value in half to seventeen-five, so she'll get a
9 half interest in that property. The question is: What is that
10 property? And there's two competing sets of evidence. Mr.
11 McKenzie said that when you match up the tax map number --
12 THE COURT: I understand. I remember that.
13 MR. McLAREN: -- it's a three -- three acre, not 6.7.
14 Our evidence was that, if you match up the acreage on the value,
15 the 6.7 to 6.7, it is the property that surrounds what we all
16 Charlie's property. And therefore our view is, because there is
17 confusion in that part of the decree, that Your Honor needs to
18 decide which -- which piece of property it is, it's three acres or
19 6.7.
20 THE COURT: Well, is there any testimony in the record,
21 other than Mr. McKenzie's testimony --
22 MR. McLAREN: My --
23 THE COURT: -- that it is three acres.
24 MR. McLAREN: -- my client's testimony, when we put up
25 the plat. That was in a number of hearings ago.

1 THE COURT: Well, I went home at lunch thinking we'd at
2 least had resolved the equitable division issues, but I was wrong.
3 MR. McLAREN: I -- I'm sorry, Your Honor.
4 THE COURT: Is this unimproved property?
5 MR. McLAREN: Yes.
6 THE COURT: All right. Well, my handwritten notes on
7 this decree is -- it is my writing saying it's valued at $35,000.
8 MR. McLAREN: Your Honor --
9 THE COURT: And that's --
10 MR. McLAREN: -- we have a --
11 THE COURT: -- Charlie's house, isn't it?
12 MR. McLAREN: Yes.
13 THE COURT: Well, now we --
14 MR. McLAREN: Wait a minute.
15 THE COURT: -- we took Charlie's house out of the mix.
16 MR. SMITH: I believe Charlie's house, Your Honor, was
17 the 1.3-acre tract.
18 MR. McLAREN: There's a 1.3 is Charlie's.
19 THE COURT: Okay.
20 MR. McLAREN: Charlie got that. I mean, it's out of our
21 mix, but Charlie has that property.
22 THE COURT: All right. That's what I understand, too.
23 MR. McLAREN: And the 6.7 acres is the property that
24 surrounds Charlie's property. And that's the property we think
25 should be deeded to my client, at least the half interest that you

1 now --

2 THE COURT: Why -- why wouldn't it a -- a 34 -- a 34%

3 interest of that tract to your client?

4 MR. McLAREN: Because the property division -- well,

5 there's two levels to it. One, you reduced what's in the estate

6 by 50%, saying 50% is in an LLC, so that leaves the property. But

7 the property in its -- in its totality, under the original award,

8 was awarded to my client. Now she'll only get half because only

9 half is in the marital estate, so she will get half of the 6.7

10 acres, not -- not the full 6.7 acres. So in our memo -- and I

11 don't whether Your Honor has that handy or not -- I addressed

12 specifically that letter, or that issue, and, if I just may read

13 it in short.

14 THE COURT: Yes, sir.

15 MR. McLAREN: "Plaintiff will now address the

16 discrepancy between the final decree and the tendered quit claim

17 deed regarding tract G. The final decree requires transfer of 6.7

18 acres at a value of 35,000, referring to a particular tax map

19 number. Mr. McKenzie testified that the property with that tax

20 map number refers to a tract having only three acres. There is no

21 evidence as to the value of that other three-acre tract that Mr.

22 McKenzie found. At the hearing plaintiff presented a plat

23 describing the 6.7-acre tract as being the 6.7 acres surrounding

24 the property..." --

25 THE COURT: All right. And who is that -- in the legend

1 of the plat, who does it list as the property owner?
2 MR. McLAREN: I'd have to pull the plat, Your Honor. I
3 -- I didn't --
4 THE COURT: Well, just because there's a plat doesn't
5 mean it's owned by the marital estate, does it?
6 MR. McLAREN: No, but it helps us identify which
7 property it is because, if you map the acreage in the decree, it
8 is 6.7, but the property that Mr. McKenzie found is only three
9 acres.
10 THE COURT: Well, I mean, Mr. McKenzie is a member of
11 the bar and here now for other purposes, but why shouldn't I give
12 deference to his opinion?
13 MR. McLAREN: Well, I -- I don't think you should not
14 give deference to his opinion, but we put -- and so I think you
15 need to look at the totality of the facts. The facts are: Judge
16 Turbeville intended to award a, what was identified as a 6.7-acre
17 tract at 35,000.
18 THE COURT: Which contains, as I understand it,
19 Charlie's home.
20 MR. McLAREN: Surrounded Charlie's home.
21 THE COURT: But he didn't value 6.7 acres as an
22 unimproved small tract of land at $35,000, did he?
23 MR. McLAREN: He did because it's -- it's -- I want to
24 say like swamp land, it's -- it's -- what do you call it?
25 THE PLAINTIFF: It's wetlands.

1 MR. McLAREN: It's wetlands.

2 THE PLAINTIFF: Wetlands, right.

3 THE COURT: Well, we can -- if wetlands, it wouldn't be

4 worth anywhere near that.

5 MR. McLAREN: That's what the judge valued it at. And

6 then -- but the tax map number refers to a piece of property that

7 no one's ever dealt with and it's -- and it's only three acres.

8 So Your Honor would need to decide which piece of property. It's

9 the three acres or it's 6.7.

10 THE COURT: All right. Well, what if I give the 6.7

11 acres to Mrs. Simpson and we adjust the figures from this morning

12 based upon that asset going into her column, and Mr. Simpson would

13 be willing to -- or would be obligated to pay less than the

14 133,000 and some change? Would that be a way to resolve it?

15 MR. McLAREN: Can I ask my client --

16 THE COURT: Yes, sir.

17 MR. McLAREN: -- something, Your Honor?

18 (Mr. McLaren confers with the plaintiff.)

19 MR. McLAREN: Your first question, Your Honor, was how

20 is the 6.7 acres titled. It's titled to W. R. Simpson Farms, LLC.

21 THE COURT: Which is non-existent.

22 MR. McLAREN: Which doesn't exist, but you said that,

23 because it's an LLC, it falls to the -- the LLC category. My

24 client does not want the property in that way, but what she would

25 be willing to do is handle it the same way we handle Charlie's

1 house and -- and just give her, give Charlie, that 6.7 acres and
2 take out of --
3 THE COURT: Or whatever acreage it is.
4 MR. McLAREN: What -- what everybody --
5 THE COURT: Okay.
6 MR. McLAREN: -- it'd be -- it'd be the acreage around
7 her house, and then take that out, then we got to adjust the
8 numbers again.
9 THE COURT: Mr. Smith, what -- would you discuss that
10 with your client, please?
11 MR. SMITH: Yes, sir.
12 THE COURT: You need to step outside?
13 MR. SMITH: If -- if I could make sure I understand it
14 because I was trying to find that property in my notes --
15 THE COURT: Okay.
16 MR. SMITH: -- Your Honor. Now, what was --
17 THE COURT: Repeat that, please, Mr. McLaren.
18 MR. SMITH: All right. The real estate surrounding
19 Charlie's house.
20 MR. McLAREN: Six point seven acres surrounding
21 Charlie's house. It is the wetlands property. Take that out of
22 the marital estate; give it to Charlie. That will then lower the
23 amount of the total marital estate, then do the 34%/66% division
24 again. That'll adjust the cash number. And just give it to
25 Charlie and not fight about it.

1 MR. SMITH: Your Honor, if you would give me a couple
2 minutes?
3 THE COURT: Yes, sir. Go ahead.
4 (Mr. Smith confers with the defendant.)
5 (OFF THE RECORD)
6 MR. SMITH: Your Honor, I apologize for taking --
7 THE COURT: That's all right.
8 MR. SMITH: -- so long, but this is a very confusing
9 issue trying to identify this property. And I think it's just
10 further evidence of how convoluted this particular case it. But,
11 subject to our reservations of objections to the jurisdiction, we
12 -- my client will agree to that.
13 THE COURT: And whatever acreage it is in this --
14 whatever we do, I think we need to provide it as a quit claim deed
15 for whatever acreage it is. And it will be conveyed to the
16 parties' daughter, Charlie, and that will resolve that issue.
17 MR. SMITH: That value will be -- be taken out of the
18 marital estate for the purposes of Mr. McLaren's calculations.
19 THE COURT: Do you agree with that, Mr. McLaren?
20 MR. McLAREN: I'm just writing it down, Your Honor. I
21 guess I do. We're taking -- it would be the property, the 6.7
22 acres, more or less, that surrounds Charlie's property, not that
23 other three-acre tract, that that goes to Charlie by appropriate
24 general warranty deed by whoever needs to sign it. And that --
25 THE COURT: Well, I think -- just -- just so there's --

1 since there is a discrepancy in the acreage, I think it'd be fair
2 to say that there would -- to do a quit claim deed by all these
3 possible owners because, if there's a -- is a general warranty
4 deed for 6.7 acres, it's re-surveyed, is turned out to be three
5 acres or less, then that puts the onus on Mr. Simpson, Senior.
6 MR. McLAREN: I'm not concerned about it being five
7 acres or six acres or seven acres or 6.7. I just want to make
8 sure we're talking about the property that was shown on the plat
9 in evidence that --
10 THE COURT: Okay. Do we have that tax map number?
11 Let's put that in the record, if we could please.
12 MR. SMITH: Your Honor, I'd --
13 MR. McLAREN: That's the property it would not be.
14 MR. SMITH: Your Honor --
15 THE COURT: Sir?
16 MR. SMITH: -- I believe I have that.
17 MR. McLAREN: That tax map would not be that -- that --
18 the tax map property. It's the other property that's shown on the
19 plat. We're trying to find the plat and I can't put my hands on
20 it.
21 THE COURT: So you're saying the tax map number is
22 combined with Charlie's residence and whatever acreage that's
23 situated upon.
24 MR. McLAREN: I believe I've got it.
25 THE COURT: Okay.

1 MR. McLAREN: You're asking me about which tax map
2 number. One --
3 THE COURT: Just so we can identify it so there won't be
4 any mistake after we leave here after the decree's drawn.
5 MR. McLAREN: Do you know what it is? I don't know what
6 it is.
7 MR. SMITH: I -- I -- this is the tax map number, but
8 that's also the same tax map number of the real estate in the deed
9 that Steve referred to.
10 MR. McLAREN: Can we ask Mr. McKenzie to help us with
11 this?
12 THE COURT: You're going to take his word?
13 MR. McLAREN: Mr. McKenzie okay. He bought me lunch.
14 (Mr. McLaren and Mr. Smith conferring with Mr. Steven McKenzie.)
15 W.R. SIMPSON, JR.: -- discussion about the LLC
16 property, how am I supposed to convey my 50% of the LLC
17 shareholder with her in this property that you're telling -- that
18 I have to order -- if you order me to convey the property today
19 that -- where, in my LLC code of laws, if I can read them, I have
20 to be in 100% agreeance to become a shareholder --
21 THE PLAINTIFF: Well, in --
22 MR. SIMPSON, JR.: -- or someone else in the property.
23 How -- how am I supposed to end up with my property?
24 THE COURT: Well, if you --
25 MR. SIMPSON, JR.: -- when it's said and done --

1 THE COURT: -- to be honest with you, Mr. Simpson,
2 Junior, other than closing a few real estate loans, I didn't do a
3 whole lot of real estate work, particularly as it applied to LLCs.
4 And Mr. Smith, a few months ago, was nice enough to provide me
5 with the statute of -- one of the statutes, as far as conveying
6 property, and I suggested this morning -- I don't know if I'm
7 correct, but maybe possibly the LLC would deed the property to a
8 third person acting as an intermediary, and the third person could
9 sign a deed to Mrs. Simpson for one-half of that property, and
10 then re-convey the property, or your -- your share back to you. I
11 don't know exactly how it can be done.
12 MR. SIMPSON, JR.: But -- but my share -- I've already
13 testified under oath I'm not willing to give her my share of the
14 LLC and I'm not willing to let any part of the LLC go to -- go
15 anywhere. It's in the LLC.
16 THE COURT: I -- well, I understand your position, but
17 that's not before me today.
18 MR. SIMPSON, JR.: You ordered --
19 THE COURT: I'm just trying --
20 MR. SIMPSON, JR.: -- you ordered --
21 THE COURT: -- to interpret --
22 MR. SIMPSON, JR.: -- to give it away --
23 THE COURT: -- Judge Turbeville's --
24 MR. SIMPSON, JR.: -- earlier, though --
25 THE COURT: -- decision, which --

1 MR. SIMPSON, JR.: -- Your Honor.

2 THE COURT: -- I interpreted it to be that half of the

3 LLC was marital property, or half of the value. And it'd been a

4 lot easier if -- and he has his reasons for doing this, I know --

5 if he put a value on the 100% of the LLC and given -- and required

6 Mr. Simpson, Senior, to give Mrs. Simpson the value of that --

7 that money. That -- that's not here today and I really don't --

8 MR. SIMPSON, JR.: The order --

9 THE COURT: -- mean to --

10 MR. SIMPSON, JR.: -- the decree that --

11 THE COURT: -- cut you off.

12 MR. SIMPSON, JR.: -- Judge Turbeville goes into the --

13 split the details of --

14 THE COURT: I'm sorry, speak up a little louder.

15 MR. SIMPSON, JR.: The -- Judge Turbeville, in that

16 decree, order decree, goes on in explicit details of the cutting

17 down on the LLC property and its value and awards that in monetary

18 fees, which we've already paid.

19 THE COURT: I understand, but that -- that's not before

20 me this afternoon. And I'd like to get these issues straight

21 today and, if you want to bring something through Mr. Tinkler on

22 that, that -- I'd be happy to hear it, but I -- I can't hear it

23 this afternoon. Let's go back to your property.

24 MR. McLAREN: Your Honor, we have -- Mr. Smith's kindly

25 provided me what I call photographic -- an aerial shot of the

1 property and I've taken a pen and outlined the property, which is
2 what we have identified as 6.7 acres. It could be more or less
3 than that. And I've written on it, "subject property to Charlie,"
4 so that property goes to Charlie, and it appears that -- can I
5 hand that up to Your Honor --
6 THE COURT: Yes, sir.
7 MR. McLAREN: -- and go ahead -- I would like to make
8 this a joint exhibit.
9 MR. SMITH: Your Honor, this is with the understanding
10 that, although there is a plat, we're using this only to identify
11 the property. We're not making any warranties or guarantees about
12 the boundaries or -- or any of that because there appears to be
13 some confusion as -- as to exactly what's there.
14 THE COURT: All right. As I understand it then, y'all
15 are agreeing to convey -- everyone, both sides agreeing to convey
16 -- and that is the LLCs, any entities that either --
17 MR. SMITH: No, sir.
18 THE COURT: -- party can --
19 DEFENDANT SIMPSON, SR.: We're not -- we're not --
20 THE COURT: Please speak through your attorney, please,
21 sir.
22 (Mr. Smith confers with the defendant.)
23 MR. SMITH: Your Honor, I think this gets back to our
24 reservations of the objections to the Court --
25 THE COURT: And you're protected on that.

1 MR. SMITH: -- doing this, but -- but just for purposes
2 of this, this particular tract, I believe, is titled in the name
3 of Mr. Simpson individually.
4 THE COURT: Okay.
5 MR. SMITH: And Mr. Simpson individually has no
6 objection to conveying the -- the property that's been identified
7 without any warranties as to the boundaries or the -- the acreage
8 or anything of that sort.
9 THE COURT: But he does warrant to you and to the Court
10 that it's titled in his name individually.
11 MR. SMITH: Yes, sir.
12 THE COURT: Okay. Any objection to that?
13 MR. McLAREN: I think the deed ought to be what we -- I
14 think real estate lawyers call a limited warranty deed. He's --
15 he's warranting that he holds title and that he can convey title.
16 THE COURT: Any objection to that, Mr. Smith?
17 MR. SMITH: Your Honor, I -- I don't have a problem with
18 a limited warranty deed.
19 (Mr. Smith confers with the defendant.)
20 MR. SMITH: Your Honor, we would prefer to limit it to a
21 quit claim because of the questions about the -- the dimensions
22 and the size of the property. And I --
23 THE COURT: Okay.
24 MR. SMITH: -- I think a quit claim deed --
25 THE COURT: I -- I think that would be reasonable and,

1 of course, it would convey any interest individually owned by Mr.
2 Simpson.
3 MR. McLAREN: Well, he -- we're taking his word today
4 that it's in his name. And the information we've been operating
5 under so far was that it wasn't under his name. So, if we're
6 going to put in an order that he warrants and guarantees to this
7 Court that it's in his name --
8 THE COURT: Well, that's why asked did you just ask Mr.
9 Smith and he said his client does warrant to the Court, through
10 him, that he owns or holds title individually to this piece of
11 land.
12 MR. McLAREN: I just want to make sure that's the --
13 THE COURT: Okay.
14 MR. McLAREN: -- real clear.
15 MR. SMITH: Yes, sir.
16 THE COURT: All right.
17 MR. McLAREN: Can I mark that a joint exhibit?
18 MR. SMITH: That's fine.
19 MR. McLAREN: Can I show that to Your Honor before --
20 I'll mark, then I'll hand you --
21 THE COURT: Yes, go ahead and mark it, if you would,
22 please.
23 (WHEREUPON, the foregoing plat was marked as
24 Joint Exhibit 1 and received into evidence.)
25 MR. McLAREN: And I'll get copies for everybody when

1 we're done, Your Honor. I was going to show that to Your Honor.
2 That's Charlie's house.
3 THE COURT: Okay.
4 MR. McLAREN: That the -- what we've described as the
5 surrounding property, 6.7 acres more or less.
6 THE COURT: Okay.
7 MR. McLAREN: Okay?
8 THE COURT: All right. Thank you. Does that resolve
9 all of the -- does that resolve all the property issues? Any
10 equitable division issues?
11 MR. SMITH: Yes, sir.
12 MR. McLAREN: The -- the only issue left open is the
13 question I'd pose first is, what about interest, what about
14 earnings on the property she should have gotten back in 2003?
15 THE COURT: Okay. And I'll get back to that in a
16 minute. Is there anything else other than the equitable division
17 of the property in this particular case? Mr. Simpson, Junior, you
18 want to say something else?
19 MR. SIMPSON, JR.: Yes, sir. Any --
20 THE COURT: And I wish Mr. Tinkler had -- had stayed if
21 there were going to be some issues coming up.
22 MR. SMITH: Yes, sir.
23 MR. SIMPSON, JR.: Well, we didn't know exactly what all
24 was going to be before the Court because it seems to be that Mr.
25 McLaren can put in anything before the Court, as he did last time,

1 and this -- this stuff, we didn't know what we were coming into
2 Court for the last time, other than 24-hour notice before. And
3 now we come in here -- we were going to take care of alimony
4 issues and attorney fees, and now we've got into opening up
5 everything about the LLC and you've already ordered all my
6 property away, where in all of the records that says there's no
7 jurisdictional issues, which he's already -- and you ended up
8 doing it anyway. And I was just wondering how we're going to get
9 beyond that with the Court move -- by making all --
10 THE COURT: Well --
11 THE DEFENDANT SIMPSON, JR.: -- of that.
12 THE COURT: -- I'm going to make my ruling, which I have
13 made, subject to Mr. Tinkler's filing any objections as far as the
14 math and anything related to the exhibit, Plaintiff's Number 9, I
15 believe it was, about all of the division and the property and the
16 payment to Mrs. Simpson.
17 THE DEFENDANT SIMPSON, JR.: Well, the other --
18 THE COURT: And --
19 THE DEFENDANT SIMPSON, JR.: -- thing, too --
20 THE COURT: -- in your -- your remedy would be to file
21 an appeal and that -- I know you're familiar with that process.
22 MR. SMITH: Your Honor, I --
23 MR. SIMPSON, JR.: Well, the other thing is, too, all of
24 the property that's in this -- that we have conveyed -- my father
25 and I have conveyed monetary things to do with property that was

1 in the order that hasn't been picked through, or whatever, yet.
2 But there was my aunts and uncle and -- and my other aunt's
3 property, that that was part of the equitable division that he
4 actually -- we settled and paid that default of the Court to get
5 it settled in that part, but none of that -- none of those issues
6 have been brought up. Van Stone's house was given away to Ms.
7 Simpson and they took that out. And the store property was valued
8 at $250,000; we paid that out of the LLC and to the equitable
9 division. And I just want it all to be before the Court that, if
10 it's all going to be opened up and they're going to pick the
11 pieces out of the property that they want, I'd like to get a
12 little couple pieces of property that I want out of there if I'm
13 going to be a member of the LLC. I just want to -- I want to get
14 that clarified to the Court that that's where we're at today with
15 the property, giving away --
16 THE COURT: Since Mr. Paul --
17 THE DEFENDANT SIMPSON, JR.: -- to whoever they want.
18 THE COURT: -- Tinkler is your attorney of record and
19 you can -- you can have him file whatever motions that need to be
20 done and we -- we'll do that.
21 MR. SIMPSON, JR.: Okay.
22 MR. McLAREN: Your Honor, I would point out, just for
23 the record, that your letter of December 29th, 2010, to me, Ms.
24 Warner, Reid Smith, Paul Tinkler, Michael Timbes, said, "It's
25 going to be my ruling that Judge Turbeville's order only awards

1 one-half the value of the LLC to the marital estate. I am going
2 to elaborate on the reasons for my decision on January 6th and
3 7th...", that's today and tomorrow, "...when we are hearing the
4 remaining issues. I also want to discuss with the attorneys the
5 remaining dispute as to the 6.7-acre tract...," which is what
6 we're discussing now. So I just want to point out we all had
7 notice why we're here.
8 THE COURT: Okay.
9 MR. McLAREN: And Your Honor asked the question of does
10 that take care of the equitable division issue, and as I said, it
11 was the interest and earning issue is -- is in there. And there's
12 a side issue on some of the fees throughout this process. Your
13 Honor has either denied them or said, "I'm going to take that up
14 at the end." And there are fees relating to the alimony part that
15 we haven't finished yet, there are fees --
16 THE COURT: We haven't even started that, have we?
17 MR. McLAREN: Right. So --
18 THE COURT: Okay.
19 MR. McLAREN: -- what I did was just did a fee affidavit
20 an updated the affidavit that goes from the time of the decree,
21 when we finished that in the main case, up till now, but allocated
22 it between the different hearings so that Your Honor can consider
23 that for whatever you want to with it.
24 THE COURT: I'll -- I'll consider it. I'm not going to
25 necessarily --

1 MR. McLAREN: But I just don't --
2 THE COURT: -- say that --
3 MR. McLAREN: -- want it --
4 THE COURT: -- I'll agree with it.
5 MR. McLAREN: -- before close and I sit down and say
6 that's it because there are some fee issues that we'll take up
7 when we get to that part.
8 THE COURT: Well, you want to take them up today?
9 MR. McLAREN: Well, I was going to take them up when we
10 get to the fee part, because I think --
11 THE COURT: Oh, okay. Okay.
12 MR. McLAREN: -- we're doing the equitable division.
13 THE COURT: All right. Anything else on the equitable
14 division, Mr. McLaren, Mr. --
15 MR. McLAREN: No, sir. Other than those two --
16 MR. SMITH: The only thing to address -- I don't think
17 this is before the Court, but I would cite to the Court the case
18 of Christie vs. Christie, which stands for the proposition that
19 when property, as opposed to money, is ordered to be transferred,
20 that interest does not accrue on that transfer.
21 THE COURT: It does not accrue?
22 MR. SMITH: No, sir. Christie vs. Christie -- and I
23 have a copy --
24 THE COURT: All right. If you would just give a copy to
25 my assistant, Pam. But you're saying it does not accrue.

1 MR. SMITH: That's right.

2 THE COURT: Okay. Anything else, Mr. McLaren, on your

3 motion for interest or appreciation or whatever?

4 MR. McLAREN: No, sir.

5 THE COURT: All right. I'm going to respectfully deny

6 that motion.

7 MR. McLAREN: Okay.

8 THE COURT: Are we now ready to move on to the

9 attorney's fees issue as remanded by the Court of Appeals?

10 MR. McLAREN: Yes, sir.

11 THE COURT: Okay. As I understand it, the relevant case

12 is this same caption, Ms. Daisy Simpson versus the same

13 defendants, and in the unpublished opinion submitted December 1st,

14 2006, the Court of Appeals, among other things, remanded to this

15 Court the issue of attorney's fees.

16 MR. McLAREN: Yes, sir. Can I ask Mr. Smith --

17 (Mr. McLaren conferring with Mr. Smith

18 THE COURT: As I understand the issue on remand, I'll

19 read it and y'all correct me if I'm wrong. My review is limited,

20 of course, to the amount of the fee, but in particular under

21 Glasscock vs. Glasscock. The customary legal fees for similar

22 circumstances. Do you agree with that, Mr. McLaren?

23 MR. McLAREN: I agree that what the Court of Appeals

24 said was that is -- we may be saying the same thing -- that the --

25 the hourly rates in the locale are but one factor. And the Court

1 of Appeals disagreed with the holding that reduced the fee down
2 to, I think, 200 or $250 an hour. And --
3 THE COURT: Well, it was hard to see what -- number one,
4 it was hard to see what hourly rate Judge Turbeville used. He had
5 done -- I think Mr. Chandler testified it was $575 an hour, maybe
6 a little more. And the Court of Appeals says it was even wrong to
7 consider Mr. Chandler's opinion because he was a former attorney
8 for Ms. Simpson; is that right?
9 MR. McLAREN: Yes, sir. And if -- I've done a memo on
10 this issue if I may --
11 THE COURT: Okay.
12 MR. McLAREN: -- hand that up.
13 THE COURT: Well, it's obvious from the length of this
14 memo, I don't intend -- from the time reference, I'm going to need
15 to take it under advisement.
16 MR. McLAREN: Probably.
17 THE COURT: All right. Mr. Smith, do you agree on my
18 assessment of what issues, as far as the attorney fees, are before
19 me?
20 MR. SMITH: Yes, sir. I do, but I would -- I would also
21 note that the Court of Appeals reversed Judge Turbeville and
22 remanded. It was simply not a remand.
23 THE COURT: Okay. I understand that. Yes, sir. Maybe
24 I didn't state it correctly, but yes, I -- I understand that.
25 MR. McLAREN: If I could just -- just give the nutshell

1 of our -- our position.

2 THE COURT: Yes, sir.

3 MR. McLAREN: Judge Turbeville basically said, okay, the

4 lawyers testified that in Clarendon County we charge X amount of

5 dollars, and I think he said 185 to 250. And the Court of Appeals

6 said that it was not appropriate -- reversed and said it was not

7 appropriate as to -- to focus on that issue in that way. And the

8 clear inference is the fee needed to be increased. Now, the

9 question becomes: Why does it need to be increased? And, if so,

10 what should the increase be?

11 So, well, this is where I started and that's how the

12 client walked into the office, because there were no lawyers in

13 Manning, where they live, that could take the case because they

14 were conflicted out in large part because they'd either

15 represented Mr. Simpson, Senior, in a prior matrimonial action, or

16 had represented Senior or Junior or LLC --

17 THE COURT: And I've also found, from practicing for 33

18 years in a town very similar to Manning, here in Kingstree, that

19 if they don't have conflicts, people just want to go out of town

20 to get divorce lawyers because they just don't want all their

21 business known in town.

22 MR. McLAREN: Well --

23 THE COURT: I agree with that as far as Clarendon

24 County, but tell me about Sumter County.

25 MR. McLAREN: Well, Sumter County -- let me see, John

1 MacDougal comes to mind; he charges $550 --
2 THE COURT: Well --
3 MR. McLAREN: -- an hour.
4 THE COURT: -- is that in the record?
5 MR. McLAREN: Now, you just asked me how this --
6 THE COURT: Well, we need -- I'm -- I'm talking about
7 available attorneys. I'm not talking about fees right now. And
8 I'm hearing you on the fees, but --
9 MR. McLAREN: Well, I'm just -- I'm just -- I know as a
10 lawyer, in terms of what we all charge, and I know that the
11 lawyers over there are in the -- depending on the case --
12 THE COURT: Well, and I told --
13 MR. McLAREN: -- MacDougal's --
14 THE COURT: -- I told y'all in chambers this morning, I
15 didn't realize this issue would be in front of me for about two
16 years, and I've taken mental notes and I made some copies of the
17 fee petitions, which we cannot locate. But there are good lawyers
18 in Sumter now, good matrimonial lawyers, such as Harry Wilson,
19 that charge in the $200 range.
20 MR. McLAREN: But --
21 THE COURT: I think that's a little low right now
22 myself, but I --
23 MR. McLAREN: I think -- I don't think it's appropriate
24 to go outside the record. With the record, in this case, is we
25 have our affidavit, Mr. Warner and I; Mr. Shull's affidavit from

1 Charleston; Mr. Taylor's affidavit from West Columbia, and they
2 talk about customary and usual fees. That is what's in the record
3 in addition to Mr. Chandler and Mr. Coffey. And the Court of
4 Appeals --
5 THE COURT: Are you saying I'm bound by the record to
6 adopt Mr. Taylor and Mr. Shull's fee schedule?
7 MR. McLAREN: I think that you're bound by the record in
8 terms of what you can consider.
9 THE COURT: That -- I'm sorry?
10 MR. McLAREN: In terms of what you can consider.
11 THE COURT: Okay.
12 MR. McLAREN: Now, what you conclude from what you
13 consider is within Your Honor's province. And I think you need to
14 do what's fair and appropriate. And Shull and Taylor said that
15 $400 is a reasonable and customary fee for a complicated case, as
16 they describe it, as Judge Turbeville described it, and as the
17 Court of Appeals described it.
18 THE COURT: In -- but in this area, do they say in this
19 area? And when I say "in this area," I'm looking obviously at
20 this circuit, maybe Florence, maybe Orangeburg.
21 MR. McLAREN: I -- I'll quote from the Court of Appeals.
22 "The Family Court was presented with the affidavits from...," --
23 THE COURT: Give me that --
24 MR. McLAREN: "...wife's attorneys..." --
25 THE COURT: -- page number.

1 MR. McLAREN: -- "...as -- as well as attorney Ron..."
2 THE COURT: Mr. McLaren, give me that page number,
3 please.
4 MR. McLAREN: Oh, I'm sorry, page 3. I apologize, Your
5 Honor. It's the first full paragraph on page 3.
6 "...Ron Shull and Mark Taylor, all who testified that
7 $400 per hour is a reasonable and customary rate in Clarendon
8 County for a family law expert to try complicated cases like the
9 one at bar. Our Supreme Court has approved the practice of
10 considering attorneys' resumes or professional standing, as well
11 as the attorneys' affidavits, when deciding appropriate fees. The
12 record shows this is not an average case, rather it's quite a
13 complex case requiring unusual, skill, effort, and time. The
14 family court was presented with testimony of four lawyers
15 concerning customary fees for similar services in a complex case.
16 However, the Court relied on testimony of the husband's former
17 attorney who testified regarding averages rates for a domestic
18 case. This was error."
19 So let me tell you where I think that leaves us. Why
20 did -- you know, if you can buy whatever kind of car you want to
21 buy. People can make a choice to buy a Ford Falcon, they can buy
22 a Mercedes, they can buy some place in between; that's their
23 choice. But some people don't have choices. Here the local
24 lawyers were in large part conflicted out. And I pulled the 2003
25 lawyers directory, and in the memo -- and my client will testify

1 to this -- virtually every lawyer listed in Manning that would be
2 available to hear the case was conflicted out because they either
3 represented Senior, Junior, or the LLC.
4 THE COURT: Or knew them very well.
5 MR. McLAREN: Pardon me?
6 THE COURT: Or knew them very well.
7 MR. McLAREN: Yes.
8 THE COURT: Okay.
9 MR. McLAREN: Or, you know, so she had to go out of town
10 and she did go out of town.
11 THE COURT: And I'll accept that. I don't believe
12 that's going to be in dispute, but how far out of town did she
13 have to go? And I'll say this: I've tried cases and I've had Mr.
14 Taylor out of Columbia, and Mr. Shull; only Mr. Shull in another
15 case was in Charleston, and they submitted affidavits in that
16 range. And I agree that is the appropriate fee for Charleston and
17 Columbia. I just question whether or not it's appropriate -- big
18 fee for this rural circuit.
19 MR. McLAREN: Well, we addressed that issue and that --
20 that begins at page 4 of our brief, and we went and found cases
21 that dealt with exactly that issue. What happens when a litigant
22 has to go out of circuit or out of town to get a lawyer? Is the
23 out-of-town lawyer bound by the fees of the local lawyers who were
24 unavailable -- would have charged had they taken the case?
25 THE COURT: Well, I can name at least four good,

1 crackerjack lawyers in -- in Sumter, which would be Michael Self,
2 T. Davis, Bunt Wilson, Ken Young -- I'm not trying to step on
3 anybody's toes. There are other good lawyers there, but I -- I
4 just question whether or not they had to go that far out of
5 Manning.
6 MR. McLAREN: Well, first, Michael Self couldn't take
7 the case because he was one of the lawyer that, I believe, one of
8 Simpsons consulted with, and --
9 THE COURT: Okay.
10 MR. McLAREN: -- so -- and so he'd be out. I don't know
11 about the rest, but I -- again, we kind of get on thin ice when we
12 get into stuff that's not part of the record because those
13 lawyers, you don't know whether they had a conflict or not,
14 whether they'd be available. You assume that they were, but I
15 know for one that Michael Self and John MacDougal would not be
16 available because I asked them for their fee affidavits --
17 THE COURT: And he --
18 MR. McLAREN: -- and they said I, I can't get involved
19 because we talked to -- I'm just dancing a little bit. So my --
20 my only -- my thinking is we should stay within the record on the
21 affidavits that are there.
22 THE COURT: Okay.
23 MR. McLAREN: And, when we took this case, we said in
24 our affidavits, we charged her less than our normal rates because
25 they were either at or it was shortly after that, went to like 450

1 or 500, depending on the case. And we took our 400 and we stuck
2 through it all this time. And the fees have been enormous. I
3 mean, they've been huge. Now we've been through the -- the main
4 case. We've been through an appeal. We've been through
5 contempts, and we have been trying to get this case to a
6 conclusion and was trying to get the property awarded.
7 But, anyway, the case law is that when you go out of
8 town, and you have a good reason to do it, you pay the out-of-town
9 rates. That's the basic bottom line of it. And I know Your
10 Honor's going to take this under advisement. I'd appreciate your
11 reading the cases, which I think you would. And these issues have
12 been addressed elsewhere. Our circuit's not -- our -- our --
13 Court of Appeals and Supreme Court does not address the issue,
14 that I'm aware of. I think they'd love to address it. I don't --
15 I'm not --
16 THE COURT: And I think they're probably going to, you
17 know.
18 MR. McLAREN: Well, I don't know whether they are or
19 not, but I -- I think that the right thing to do is award our fees
20 at $400 an hour, given these circumstances And -- and if there's
21 a factual dispute about the unavailability of these lawyers, I
22 want my client to testify to that so I have record about it. And
23 I brought the book and -- or Your Honor can take judicial notice
24 at who would have conflict. We need to handle that so I have a
25 record, but -- because that's a lynchpin on my --

1 THE COURT: All right. Well, let me stop you. Mr.
2 Smith, do y'all dispute -- and I would be inclined to rule that
3 way, but I'll hear from you -- that -- that it would be difficult
4 to find a member of the Clarendon County Bar that would not have a
5 conflict and could have been involved in representation.
6 MR. SMITH: Your Honor, if I could consult with my
7 client.
8 (Mr. Smith consults with the defendant.)
9 MR. SMITH: Your Honor, we -- we -- don't know enough to
10 -- whether to stipulate to that or not. I don't think we're in a
11 position --
12 THE COURT: And I will say this: If I make that ruling,
13 that doesn't necessarily mean that I -- I don't agree that a
14 lawyer, either in Orangeburg, Florence, Sumter, or even
15 Williamsburg County for that matter could not have been retained
16 in this case.
17 MR. SMITH: Yes, sir. I understand, but I don't think
18 we have enough facts to make that -- that stipulation.
19 THE COURT: Okay. Okay. All right. And I cut you off,
20 but you're going to need to offer some testimony?
21 MR. McLAREN: Well, I was going to have my client
22 testify. And if I could just read it off specifically, I think
23 they'll agree.
24 THE COURT: Okay.
25 MR. McLAREN: And I've got the directory here, which I'd

1 just like to mark as an exhibit. That's 2003 Official Directory
2 of the South Carolina Bar.
3 THE COURT: This is Clarendon County?
4 MR. McLAREN: It's -- well, it's the whole book, but
5 these are the Clarendon County. That's Plaintiff's Exhibit Number
6 10.
7 (WHEREUPON, the afore-described Directory of
8 the South Carolina Bar was entered into
9 evidence as Plaintiff's Exhibit Number 11.)
10 THE COURT: Okay. You got a fair amount of lawyers over
11 there that don't practice.
12 MR. McLAREN: But this -- this was the group that was
13 available then, and if I could just read them out. And I -- if
14 Mr. Smith would confer with his client, Ray Chandler was --
15 THE COURT: Disqualified.
16 MR. McLAREN: -- was -- was disqualified --
17 THE COURT: Okay.
18 MR. McLAREN: -- because he was Simpson, Senior's,
19 previous divorce counsel and testified in this case, so he'd be
20 out. Is there any dispute about that?
21 MR. SMITH: Your Honor, I -- I'm trying to think to the
22 reasons for Mr. McKenzie disqualification, and I believe it was
23 because that firm had represented her present spouse.
24 THE COURT: Well, now Mr. McKenzie represented Simpson,
25 Junior, didn't he, in the --

1 MR. McLAREN: Senior.

2 THE COURT: He was not disqualified.

3 MR. McLAREN: Well they actually represented both,

4 wasn't it?

5 THE PLAINTIFF: Yeah.

6 THE COURT: Mr. McKenzie, can you help us with that?

7 MR. McKENZIE: Your Honor, prior to -- and -- and I

8 haven't looked at the list, but prior to me being retained by Mr.

9 Simpson, Senior; Mr. Simpson, Junior, I had no affiliation with

10 either one of them or Mrs. Simpson. Ms. Simpson is the plaintiff

11 in this action, so the only thing I can say about what I'm hearing

12 from Mr. McLaren is, is that there was an attorney in Clarendon

13 County available to -- to represent Ms. Simpson, and that would

14 have been me. If she --

15 THE COURT: And you were available?

16 MR. McKENZIE: I was available.

17 THE COURT: And that -- that was before --

18 MR. McKENZIE: Before --

19 THE COURT: -- your representation?

20 MR. McKENZIE -- well, I had -- I had --

21 THE COURT: They didn't --

22 MR. McKENZIE: -- no knowledge of these --

23 THE COURT: Okay.

24 MR. McKENZIE: -- these two gentlemen prior to that.

25 THE COURT: So there would have been no disqualification

1 if they'd sought to hire you; is that what you're saying?
2 MR. McKENZIE: That's what I'm saying.
3 THE COURT: Okay.
4 MR. McKENZIE: And -- and, also, I don't know of any
5 disqualification --
6 MR. McLAREN: Well, I'll get to that in a minute.
7 MR. McKENZIE: Okay.
8 THE COURT: All right. Well, let me say this for the
9 record.
10 MR. McLAREN: But why -- this is where I get that
11 anyway. Why don't I put my client on the stand and she'll testify
12 to it. I don't need to argue with him about it. It's -- they're
13 not going to agree with me. I mean, Mr. McKenzie saying he was
14 available, he wasn't available because he got hired by Mr.
15 Simpson, Senior, and got in the case, so --
16 THE COURT: Junior or Senior?
17 MR. McLAREN: Both.
18 THE COURT: Well, Mrs. Simpson brought the action, so I
19 would assume that neither Simpsons were represented at the time
20 that they were served, and they could have sought the services --
21 or she could have sought the services of Mr. --
22 MR. McLAREN: I'll ask --
23 THE COURT: -- McKenzie.
24 MR. McLAREN: -- her about it on the witness stand.
25 THE COURT: Okay.

1 MR. McLAREN: I think there --
2 THE COURT: Okay.
3 MR. McLAREN: -- there's something there.
4 THE COURT: And just for the record, I think it's not in
5 dispute that Mr. McKenzie represented Simpson, Junior, at his
6 trial and his appeal. Go ahead, sir.
7 MR. McLAREN: He represented Senior -- represented
8 Junior and Senior in the lower court --
9 THE COURT: Okay.
10 MR. McLAREN: -- and Senior in the appeal. Junior did
11 not appeal.
12 MR. McKENZIE: Junior did appeal
13 THE COURT: I thought -- yeah, Junior appealed.
14 MR. McKENZIE: Junior appealed also.
15 MS. WARNER: That's not right, is it?
16 MR. McLAREN: I don't -- I don't think that's correct.
17 THE COURT: Yeah, it is.
18 MR. McKENZIE : Junior appealed in the -- as in his --
19 in his case, not in this case.
20 MR. McLAREN: No, I'm talking about Senior's case.
21 MR. McKENZIE: Okay. No. But Junior did -- yeah, I
22 represented him in -- in his appeal in his -- his own case.
23 MR. McLAREN: I think that's correct.
24 MR.McKENZIE: I'm positive that's correct.
25 MR. McLAREN: I was --

1 THE COURT: And I'm --
2 MR. McLAREN: -- I was talking --
3 THE COURT: I'm pretty --
4 MR. McLAREN: -- about --
5 THE COURT: -- sure I read --
6 MR. McLAREN: -- Senior's case. I wasn't talking
7 about --
8 THE COURT: -- I read that opinion this week.
9 MR. McLAREN: Pardon me?
10 THE COURT: I think I read that opinion this week in
11 preparation for this hearing.
12 MR. McLAREN: So I need to put my client up to testify.
13 THE COURT: Okay. We'll do that in just a minute. You
14 want to go through the rest of the list? How about the Land Law
15 Firm?
16 MR. McLAREN: Well, I was going to take her through the
17 list because they're -- I don't --
18 THE COURT: Okay.
19 MR. McLAREN: -- that she can just testify.
20 THE COURT: Okay. Do you have any other witnesses other
21 than your client?
22 MR. McLAREN: I have my updated fee affidavit and, if
23 they want to cross-examine me, that's fine.
24 THE COURT: Okay. All right. Are you ready to proceed?
25 MR. McLAREN: I am, Your Honor.

1 MR. SMITH: Yes, Your Honor, we are. But I -- I would
2 take the position that this hearing today is only on a remand of
3 the fees. I didn't know we were here to consider any fees that
4 occurred other than through the date of the final decree.
5 THE COURT: How about that, Mr. McLaren?
6 MR. McLAREN: We kept on sweeping the fees to the end of
7 the case --
8 THE COURT: All right. Well, don't --
9 MR. McLAREN: -- when some of them you denied, some of
10 them you didn't deal with, and we still have the alimony case we
11 haven't finished, and I got to put up evidence about the fees in
12 that today.
13 THE COURT: Well, would it -- would it be an imposition
14 to hear, so Mr. Smith can be prepared with that issue, when we
15 hear the other attorney's fees issue? I hope we can hear it
16 tomorrow.
17 MR. McLAREN: Well, we were kind of hoping maybe we
18 could -- well, I'm not doing so good. We're trying to finish
19 today, if we could, if we move it along. But I don't --
20 THE COURT: I -- I don't think we're going to do that,
21 but we'll certainly try.
22 MR. McLAREN: Why don't I just start with my client and
23 then I'll decide whether or not I want to offer --
24 THE COURT: Okay. You're ready to do that?
25 MR. McLAREN: I am, Your Honor.

1 THE COURT: Ms. Simpson, would you come forward, please,
2 ma'am?
3 DAISY W. SIMPSON BRANDT, BEING DULY SWORN, TESTIFIES AS
4 FOLLOWS:
5 THE COURT: All right. Thank you, ma'am. Please be
6 seated and state your name for the record and please speak into
7 the microphone.
8 THE WITNESS: Daisy W. Simpson Brandt.
9 THE COURT: Thank you.
10 **DIRECT EXAMINATION**
11 BY MR. McLAREN:
12 Q. Ms. Simpson, we're here about the legal fees in the original
13 divorce action. That's what I want to talk to you about first,
14 okay? Now, I'm going to hand you what's been marked as
15 Plaintiff's Exhibit Number 11, and this is a copy of the South
16 Carolina Legal Directory, Official Directory of the South Carolina
17 Bar, 2003.
18 A. Uh-huh.
19 Q. And we have made a copy of the Clarendon County lawyers in
20 2003, when your case began. And in my brief, I've done a -- page
21 -- at page 4, I have outlined what I understand your testimony
22 will be in terms of who could represent you. Let's start with Ray
23 Chandler. Was Ray Chandler available to represent you in 2003?
24 A. He had already --
25 Q. Yes or no.

1 A. No.
2 Q. And why?
3 A. He had already represented Senior in our divorce case of '98,
4 1998.
5 Q. And did he -- Mr. Chandler also ultimately appear as a
6 witness in -- in your divorce case in this proceeding?
7 A. He did. Yes.
8 Q. And the other members of Mr. Chandler's firm, either existing
9 then or added later, that would have been Tara Austin.
10 A. (Nods head up and down.)
11 Q. You need to answer audibly, ma'am. You don't need to look at
12 the list. Just -- just stay --
13 A. But I --
14 Q. -- with me.
15 A. -- I don't know. I can't remember back.
16 Q. If --
17 A. But --
18 Q. -- if she was a member of that firm --
19 A. Uh-huh.
20 Q. -- she would be out as well, correct?
21 A. Right.
22 Q. And Joe Coffey, if he was a member of that firm, he would
23 have been out as well.
24 MR. SMITH: Your Honor --
25 A. Yes.

1 MR. SMITH: -- I -- objection, leading. I know we need
2 to move this along, but he's leading the witness.
3 MR. McLAREN: I am leading the witness and I --
4 THE COURT: Well, let's just -- I don't think it's
5 egregious because I think we know the answers to all of these, but
6 I'm going to let him lead some.
7 MR. McLAREN: Thank you, Your Honor.
8 Q. And Lisa Dennis Bagnel, if she was a member of the firm,
9 she'd be out as well, correct?
10 A. Yes.
11 Q. Ma'am?
12 A. Yes.
13 Q. You need to look at me and put that down. Put it down, okay?
14 And W. C. Coffey, Jr., had he been involved in any representation
15 with Mr. Simpson, Senior?
16 A. W. C. Coffey, Sr., he was my real estate lawyer.
17 THE COURT: They set up the -- he set up the LLCs,
18 didn't he, ma'am?
19 THE WITNESS: He did. He did.
20 THE COURT: Okay.
21 THE WITNESS: You're -- you're correct. He did do the
22 LLC.
23 Q. And Junior -- Coffey, Junior?
24 A. Joe Coffey, Jr.?
25 Q. Uh-huh.

1 A. He was in the same law firm.
2 Q. The same law firm. Okay. And did the Coffey's do legal work
3 for the LLCs?
4 A. Yes.
5 Q. They were parties to this case?
6 A. Yes.
7 Q. And did they do legal work for Junior and Senior?
8 A. Yes.
9 Q. Were they available to represent you?
10 A. No.
11 Q. Scott Robinson, Steve McKenzie, and William Johnson. Would
12 you have gone to them at the beginning of this case?
13 A. No.
14 Q. Why not?
15 A. Because -- do I need to tell the whole reason why I did not
16 go and I found an attorney out of town?
17 THE COURT: I -- I -- ma'am? I didn't understand you.
18 If you can move over here so she -- I can kind of see her now.
19 MR. McLAREN: I'll be glad to, Your Honor.
20 THE COURT: Why -- why didn't you feel like you could go
21 to them?
22 THE WITNESS: Because my husband told me over the years
23 that no matter what I did, he had the money and the power and the
24 paper trail, that he would take everything out of his name and put
25 it in somebody else's name and that I would have to do a paper

1 trail. I knew that I would have to do a paper trail because he
2 would do everything he could to keep me from having anything. And
3 I knew the local lawyers, you all work together with him. I had
4 to have somebody to do the paper trail that McLaren and Warner and
5 those did. And I had Bunt Wilson before and he was not a fighter.
6 He handled my niece's case and --
7 THE COURT: Did you retain him?
8 THE WITNESS: I did retain him in '98.
9 THE COURT: All right.
10 THE WITNESS: And he was not a fighter. He was not the
11 one that could do what I needed to be done.
12 THE COURT: Do you recall how much you paid him an hour?
13 THE WITNESS: I do not. That was in '98. But he always
14 told me that, no matter what -- and he did do that. In our decree
15 it shows where he took the property out of his name and put in
16 Kenny Tidwell's name. And so -- and Kenny Tidwell's brother out
17 of Charleston. So I knew that it had to be done and that's what I
18 did. I found somebody that could do it.
19 THE COURT: All right. Next person on the list, please,
20 sir.
21 Q. And other than -- ultimately Mr. McKenzie, Mr. Robinson, and
22 Mr. Johnson, all in the same firm, took on the case of Senior in
23 this case.
24 A. Correct.
25 Q. And John C. Land and the other members of the Land firm, were

1 they available to represent you?
2 A. No.
3 Q. Why?
4 A. They represented Billy and those in land deals.
5 Q. They what?
6 A. In land --
7 Q. Okay.
8 A. -- situations.
9 Q. Represented who?
10 A. Simpson, Senior, my husband, in -- in different things.
11 Q. And that would include whatever lawyers were in that law firm
12 or affiliated with them.
13 A. Yes, sir.
14 Q. How about Marion Riggs?
15 A. I would never have gone to Marion Riggs. He is a good man
16 and he does my real estate, but not for what I had to do.
17 THE COURT: And he doesn't do family law, does he?
18 THE WITNESS: No, sir.
19 THE COURT: Okay.
20 Q. David Epperson.
21 A. I think I talked to David Epperson, but -- and I talked to
22 MacDougal and those in Sumter, but they -- they wanted to know if
23 it was a million-dollar case and I didn't have anything to put
24 down on it, so I -- and I didn't know how much it was. I told
25 them I didn't know.

1 Q. Harry Devoe.
2 A. Didn't know him. I know people that have -- I also contacted
3 a lot of people when I had to do this that have been through --
4 Q. Ms. Simpson.
5 A. -- what I've been through --
6 Q. I -- I need you to stay with me. I --
7 A. -- and he's -- not a good lawyer.
8 Q. -- so stay with me, okay?
9 A. He's not a good lawyer.
10 Q. Mr. --
11 A. Okay.
12 Q. William Geddings, was he available?
13 A. Tommy Geddings?
14 Q. William T. --
15 A. He --
16 Q. -- Geddings --
17 A. -- he does --
18 THE COURT: It's Tommy Geddings.
19 A. Tommy Geddings does real estate for -- deals for Billy,
20 Senior.
21 Q. And did he have any kind of health condition in 2003 that
22 would have been difficult?
23 A. He did. He had, I think, a brain cancer or a tumor on his
24 brain or something at the time.
25 Q. And how about Deborah Koon? Did you know her?

1 A. No, I didn't.
2 Q. So, from your perspective, were there any other lawyers that
3 were not -- either not conflicted out because of prior
4 representation, or that you didn't have confidence in or that you
5 -- that would be available?
6 A. No, sir.
7 Q. And so you first contacted Mr. Warner?
8 Q. Yes, sir.
9 Q. And then he and I got together and handled your case
10 thereafter.
11 A. Yes, sir.
12 Q. And you agreed to pay $400 an hour to do that.
13 A. Yes, sir.
14 MR. McLAREN: Your Honor, right now I'm just addressing
15 the fee on remand, so I'm not going to go into the other fees that
16 are part of the -- the case.
17 THE COURT: Additional fees that you charge?
18 MR. McLAREN: Right.
19 THE COURT: Okay.
20 MR. McLAREN: Is that okay?
21 THE COURT: Yes, sir.
22 MR. McLAREN: Okay. That's all the questions I have.
23 THE COURT: All right. Any cross-examination?
24 MR. SMITH: Yes, Your Honor. I'll -- I'll -- I'll be
25 brief.

1 CROSS-EXAMINATION

2 BY MR. SMITH:

3 Q. Ms. Brandt, how many attorneys in Clarendon County did you

4 consult?

5 A. How many did I consult? I didn't in Clarendon County.

6 Q. And -- and the reason I understand is you didn't consult them

7 because you felt like, one, either they wouldn't be aggressive

8 enough or that they would act in concert with your husband.

9 A. Well they had already been in concert with my husband, either

10 his lawyers or had already dealt with him, which would have been a

11 conflict.

12 Q. How do you know that?

13 A. I lived with him 37 years. I knew who he handled and who

14 handled his real estate and everything. Tommy --

15 Q. But --

16 A. -- Geddings and --

17 Q. So you're --

18 A. -- Billy Coffey and --

19 Q. You're saying John Land handled real estate transactions for

20 him?

21 A. Well, he talked to John Land. I'm not sure about handling

22 anything for him. But I wasn't sure.

23 Q. So if you knew that your husband talked to a lawyer, you

24 wouldn't go to that lawyer?

25 A. Right.

1 Q. How many lawyers did you consult in Sumter?
2 A. Before I had my divorce action brought against him in '98,
3 three.
4 Q. Okay. Bunt Wilson was one.
5 A. He was.
6 Q. The other two were --
7 A. MacDougal and Self.
8 THE COURT: Who?
9 THE WITNESS: MacDougal and Self.
10 THE COURT: Okay. Who in that firm?
11 THE WITNESS: The -- one of them wouldn't handle it.
12 They turned it over to another one and then I didn't -- I didn't
13 go back to him after I talked to him I was not satisfied with him,
14 so I went with Bunt Wilson. This is at the same time.
15 THE COURT: All right.
16 Q. Now, when you filed this case, I believe, in 2003 --
17 A. Uh-huh.
18 Q. -- did you consult --
19 A. Yes, sir.
20 Q. -- with any attorneys in Sumter?
21 A. No, sir.
22 Q. Why not?
23 A. Because I'd already been through them.
24 Q. Okay.
25 A. And I knew they wouldn't -- wouldn't have -- and Bunt Wilson

1 was not a fighter. He's very nice man, maybe a good lawyer, but
2 he's not a fighter.
3 Q. How about Jeff Young?
4 A. And I needed somebody to do the paper trail. Who?
5 Q. Jeff Young?
6 A. No, sir. I didn't talk to him.
7 Q. Are you aware of other lawyers in Sumter that could have
8 handled your case?
9 A. Yes, sir. And Jan Warner was from Sumter. He was one that I
10 was aware of when he was in Sumter. And whenever he moved to
11 Columbia, I talked to Ms. Warner and she told me where he was.
12 Mr. Warner was on Main Street up there, and she told me where he
13 was, that he was still practicing law, and I called him.
14 Q. Okay.
15 A. Because he was in Sumter for years.
16 Q. What about Florence? Did you talk to any attorneys in
17 Florence?
18 A. No, sir. Distance-wise, Columbia's just as close as
19 Florence.
20 Q. Is there a particular reason that you chose Jan Warner?
21 A. Well, after I talked to him, I went and had a conference with
22 him and I talked to him and I was satisfied with him. And he said
23 he could do the paper trail, he could do whatever needed to be
24 done, and that's what I needed. I've never -- hadn't been through
25 this, you know? And I knew that once I headed into it, I needed

1 somebody that would be there for me.
2 Q. When you consulted with any of these attorneys, did you
3 discuss the possibility of any of the attorneys taking your case
4 on a contingency basis?
5 A. On a what?
6 Q. That you wouldn't have to pay them unless you made a
7 recovery?
8 THE COURT: That's not ethical, is it?
9 MR. McLAREN: No, it's not.
10 THE COURT: Not.
11 A. No.
12 Q. Okay.
13 THE COURT: I hope no one agreed to do that.
14 A. That would have been nice, but no.
15 Q. When you went to Jan Warner's office, is there anything about
16 his office or that meeting that made you want to hire him?
17 A. Anything about him? He's just -- told me what needed to be
18 done and he could get it done and --
19 Q. Did he -- did he tell you about the recovery in other cases,
20 that he had represented other parties?
21 A. Didn't discuss other cases.
22 Q. Did you see anything in his office that would have led you to
23 believe that he'd been successful in other cases?
24 A. No, sir. But being from Sumter and Clarendon area, Jan
25 Warner had a name, so -- and, also, Jan was a good -- he was a

1 professor at USC. He helped create some of the divorce laws, so
2 he had a name that was a good divorce lawyer, and I needed a good
3 divorce lawyer.
4 Q. And -- and you're saying there were no good divorce lawyers
5 in Sumter or Manning.
6 A. I didn't say that. There may be, but I knew Jan Warner.
7 Q. Thank you.
8 THE COURT: Any redirect?
9 MR. McLAREN: No, sir.
10 THE COURT: All right. Ms. Simpson, you may step down.
11 (The witness steps down.)
12 THE COURT: Any other witnesses?
13 MR. McLAREN: No, sir.
14 THE COURT: Okay. Mr. Smith, do you have any witnesses?
15 MR. SMITH: Your Honor, if I -- if I understand it
16 correctly, you're -- you're limiting the issue today to whether
17 there were -- to the locality and the hourly rate.
18 THE COURT: I think that's -- that's what they directed
19 me to do. Do you disagree with that, Mr. McLaren?
20 MR. McLAREN: I do not disagree, Your Honor.
21 THE COURT: Okay.
22 MR. SMITH: Well, Your Honor, if I could call Steve
23 McKenzie --
24 THE COURT: All right.
25 MR. SMITH: -- please.

1 T

2 THE COURT: Mr. McKenzie, come forward, please sir.

3 STEVEN McKENZIE, BEING DULY SWORN, TESTIFIES AS

4 FOLLOWS:

5 THE COURT: Thank you, sir. Please be seated. If you'd

6 state your name for the record.

7 THE WITNESS: Steven McKenzie.

8 THE COURT: All right. Thank you.

9 **DIRECT EXAMINATION**

10 BY MR. SMITH:

11 Q. Mr. McKenzie, you practice in Clarendon County?

12 A. I do.

13 Q. How long have you been practicing in Clarendon County?

14 A. Since 1994.

15 Q. And do you have experience in the Family Court?

16 A. I've been practicing since 1994 in Family Court.

17 Q. In 2003, at the time that this complaint was filed, did you

18 or your firm represent either Bill Simpson, Sr., or Bill Simpson,

19 Jr.?

20 A. No, we did not.

21 Q. And what firm were you with at that time?

22 A. Johnson, McKenzie, and Roberson.

23 Q. Did anyone else in your firm have a previous relationship

24 with either of these attorneys?

25 A. Not that I'm aware of.

1 Q. And had Mrs. Brandt come to your office, would you have
2 considered representing her?
3 A. I would have.
4 Q. And you're not aware that there would have been any
5 conflicts.
6 A. I'm not aware of any conflicts I have with -- I -- I did not
7 know Daisy Simpson or Billy Simpson or Bill Simpson prior to Billy
8 and Bill walking into my office with this complaint that -- that
9 she had served on them. I did not know them in the community and
10 did know that any of -- I didn't have any dealings with them at
11 all. I don't do real estate and I think Daisy did -- I mean, she
12 -- she did real estate closings, but I didn't have any dealings
13 with them at all.
14 Q. You've heard the -- the names of other attorneys in --
15 A. Correct.
16 Q. -- in Clarendon County? Are you aware of any, with your
17 personal knowledge, that would have conflicted any of these
18 attorneys out?
19 A. Not that I'm aware of. I know John Land does not do real
20 estate himself, but he had people in his office that do real
21 estate. I think his daughter, Ricci, does real estate at -- in
22 their office. And that would have been a conflict for Mrs.
23 Simpson, or Brandt, at this time because she was --
24 MR. McLAREN: Your Honor --
25 A. -- she was selling real estate.

1 MR. McLAREN: -- this is hearsay. He -- he doesn't have
2 personal knowledge of what these other lawyers would have by way
3 of conflict.
4 THE WITNESS: I -- I --
5 MR. McLAREN: It -- it -- it'd be hearsay and I move to
6 strike it.
7 THE WITNESS: I don't have any personal knowledge of
8 that.
9 THE COURT: Okay. I sustain the objection.
10 MR. McLAREN: Thank you.
11 A. I do know, in regards to personal knowledge at the trial of
12 this case, and when Mr. Chandler testified, it -- he -- he was --
13 he testified without objection from Mr. Warner or from Mr. McLaren
14 regarding the amount of the -- the regular amount of fees charged
15 in the area. There was no objection from them when he testified.
16 MR. McLAREN: Your Honor, one, that wasn't what was
17 asked of him and I move to strike it.
18 THE COURT: What was the question again?
19 MR. McLAREN: I know it wasn't -- it didn't go with the
20 answer he just gave. He was talking about John Land's office,
21 then he went off into what Mr. -- Mr. Chandler testified at trial.
22 What Mr. Chandler testified at trial is on the record and I don't
23 think it -- it's --
24 THE COURT: It's not relevant because his opinion was
25 disregarded. Is that what -- or should have been disregarded; is

1 that what you're saying?

2 MR. McLAREN: It -- it should have been disregarded,

3 number one, and number two --

4 THE COURT: Well, the Court of Appeals said it should

5 have been --

6 MR. McLAREN: There's not -- there's no probative value

7 to this witness testifying about what Mr. Chandler said.

8 THE COURT: Okay. I'll sustain it then.

9 MR. McLAREN: Thank you.

10 Q. Mr. McKenzie, what was your hourly rate in 2003?

11 A. One fifty, I believe.

12 Q. Are you aware or have personal knowledge of the rates charged

13 by other lawyers in --

14 A. In that timeframe, in -- in the Williamsburg --

15 MR. McLAREN: Objection, hearsay. No basis for him

16 to --

17 THE COURT: I -- I think he can testify to his general

18 knowledge as to figures charged in the area.

19 A. I can lay a basis for that. I've seen numerous attorneys'

20 fees affidavits over the years of practicing in that timeframe.

21 The range would have been from 125 to 250 an hour.

22 Q. Okay, sir.

23 THE COURT: One twenty-five to 250?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, sir.

1 Q. Now, Mr. McKenzie, are -- do attorneys from Sumter come to
2 Clarendon County to practice?
3 A. All the time.
4 Q. Have you been involved in any cases where you've had the
5 opportunity to witness their fee applications?
6 A. I have.
7 Q. And -- all right, do you have personal knowledge of what
8 those hourly rates would be --
9 A. I do.
10 Q. -- back in 2003 or 2004?
11 A. Yes.
12 Q. And what would that be?
13 A. The highest I would have seen back then would have been 250.
14 MR. McLAREN: Objection, hearsay. Move to strike.
15 THE COURT: I -- I think it's general knowledge and I
16 think that would be -- I -- I think it would be akin to say family
17 history and that's an exception to the hearsay rule. So I'm --
18 that's just a -- I'm going to allow it. Now, what was your answer
19 again?
20 A. Two fifty an hour.
21 THE COURT: Is the maximum?
22 THE WITNESS: That'd been max.
23 Q. Do attorneys from Florence come to Marion -- I mean, come to
24 Clarendon County --
25 A. They do.

1 Q. -- to practice? And how far is Florence?
2 A. Forty-five miles from Manning.
3 Q. In your opinion, do you have -- or in your personal
4 knowledge, do you have knowledge of competent family court lawyers
5 practicing in Clarendon County?
6 MR. McLAREN: Same objection, hearsay. No foundation.
7 THE COURT: Okay. I -- I note your objection and
8 overrule it.
9 MR. McLAREN: Thank you, Your Honor.
10 Q. From Florence County?
11 A. Yes, sir. Yes, I know of a number of very competent
12 attorneys in Florence.
13 Q. That would be available?
14 A. Yes. And in Williamsburg County, also.
15 Q. Attorneys that are competent in family court?
16 A. Sure.
17 Q. And do you have personal knowledge of, through fee
18 applications or any other way of what their hourly rates were in
19 2003 and 2004?
20 A. Same rate. Again, this is a very rural area and we can't
21 demand the kind of fees they get in Columbia and Charleston.
22 Q. All right, sir. Thank you, Mr. McKenzie.
23 A. Thank you.
24 THE COURT: Cross-examination?
25 MR. McLAREN: Yes, Your Honor.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. McLAREN:

4 Q. Mr. McKenzie, you were one of the lawyers for Mr. Simpson,

5 Senior and Junior, in the main case, correct?

6 A. And yes, I was.

7 Q. And ultimately there was an order issued disqualifying you as

8 counsel in the case, correct?

9 A. That's correct.

10 Q. Is that correct?

11 A. That's correct.

12 Q. And that was --

13 THE COURT: And that was in which case? I'm sorry.

14 MR. McLAREN: This case. Well, actually both cases,

15 this -- this divorce case as well as in the alimony termination.

16 THE COURT: Okay.

17 Q. And that order is dated July 15th, 2010; do you recall?

18 A. Yes.

19 MR. McLAREN: Your Honor, I would like to offer a -- a

20 copy of that order.

21 THE COURT: All right. And that's without objection?

22 MR. SMITH: Yes, sir.

23 THE COURT: Okay. It's admitted without objection.

24 (WHEREUPON, the afore-described Order was

25 entered into evidence as Plaintiff's Exhibit

1 Number 11.)
2 THE COURT: Let me look at that briefly before you start
3 back. Well, this is the order I signed; I remember it.
4 MR. McLAREN: Yes, sir.
5 THE COURT: Oh, okay. And Mr. McKenzie, without me
6 reading the whole order, you were disqualified because you were
7 now associated with the --
8 THE WITNESS: With -- with Mr. Timbes law firm.
9 THE COURT: All right. All right, Mr. McLaren, you can
10 go ahead, sir.
11 MR. McLAREN: Thank you, Your Honor. I think that's
12 Exhibit Number --
13 THE COURT REPORTER: Eleven.
14 THE COURT: Eleven.
15 MR. McLAREN: Eleven?
16 THE COURT REPORTER: Uh-huh.
17 Q. And, Mr. Chandler, you went with -- your firm went with his
18 firm; is that what happened?
19 A. That's right.
20 Q. And Mr. Chandler was a lawyer in this -- was a witness in
21 this case.
22 A. That's correct.
23 Q. And had been a lawyer in prior litigation between these
24 parties?
25 A. I'm not familiar with that --

1 Q. Okay. And how much did you charge Mr. Simpson?
2 A. In this case?
3 Q. Yeah.
4 A. I do not recall.
5 Q. You don't recall?
6 A. I don't recall, I think. I don't recall. It was -- I know
7 that it was somewhere south of the amount of the award that --
8 that Judge Turbeville handed in this case, somewhere between 50
9 and $60,000 I believe.
10 THE COURT: Somewhere what now?
11 THE WITNESS: Between 50 and $60,000 total.
12 THE COURT: Okay.
13 Q. And how much did you charge him an hour?
14 A. I don't recall.
15 Q. You don't recall how much you charged him in this case per
16 hour?
17 A. I don't -- charge him at -- no, at a --
18 Q. Was it 250?
19 A. I don't recall.
20 Q. Three hundred?
21 A. I don't recall.
22 Q. Three fifty?
23 A. If you say 10,000; I don't recall.
24 Q. Four hundred?
25 THE COURT: Well, let me ask you this, Mr. McKenzie.

1 Have you ever billed a case at, say, $300 an hour?
2 THE WITNESS: I have -- I do now, Your Honor.
3 THE COURT: All right. Now, when did you start billing
4 at that rate?
5 THE WITNESS: Just recently I was billing on a case at
6 $300 an hour, just recently -- just --
7 THE COURT: It's 300 now?
8 THE WITNESS: Yeah. I -- I signed a bill --
9 THE COURT: You went up to 300 an hour from what range?
10 THE WITNESS: From the 200 to -- to $250 range. I -- I
11 went up in increments back in -- when I started in this case, I
12 think that I was charging Billy Simpson -- and this is just -- I
13 don't have my affidavit, but I think it was 175 an hour. It could
14 have been 200; I don't recall. But it -- just it's that range,
15 and then --
16 Q. And then it went up after that?
17 A. I went up after that.
18 Q. So you'd be charging him more than that an hour.
19 A. Who?
20 Q. Billy Simpson.
21 A. No. I -- I charged whatever my price would have been. I
22 don't know, from my fee affidavit. I probably have it in one of
23 the books that I brought. I can go look for it if you'd like.
24 Q. And you know that Mr. MacDougal charges 550 an hour?
25 A. I do.

1 Q. And you know a lot of the divorce lawyers in Columbia,
2 Charleston charge in the range of four to $500 an hour?
3 A. They do.
4 Q. Some 550?
5 A. They do.
6 Q. And, in your experience, there have been cases where you have
7 seen where litigants don't feel comfortable being represented by a
8 local lawyer?
9 A. I -- I've seen that.
10 Q. And when they either -- where the other lawyers might be
11 conflicted out or there's no confidence and they need somebody
12 else for a divorce lawyer, they go to a surrounding city, correct?
13 A. Right. They come to me from Sumter.
14 Q. And you charge -- or, if the other lawyers they go to out of
15 town are -- charge typically a higher rate, correct?
16 A. The other lawyers that they go to out of town --
17 Q. That was a bad question.
18 A. Okay.
19 Q. Let me re-ask. If somebody doesn't feel comfortable staying
20 in their own community because the other lawyer, some of them are
21 conflicted out or they're afraid they can't handle the case, they
22 go to -- so they go to Columbia or go to Charleston and/or
23 Florence, some other place, and they pay a higher rate, typically?
24 A. Yeah, but that's their choice.
25 Q. That is their choice, somewhat. If the lawyers are

1 conflicted out, that's not a choice, is it?
2 A. If the lawyers are conflicted out, that would not be a choice
3 if they were conflicted out everywhere.
4 Q. Well --
5 A. But, I mean, if you -- if you only had Jan Warner and Jim
6 McLaren as the only possible attorneys you can go to in the -- in
7 the state of South Carolina, I would -- I would buy that argument,
8 yeah.
9 Q. You would agree with me, in terms of what me and Jan Warner
10 charged in this case, $400 an hour, that's a fair fee for us to
11 charge an hour based upon our experience and standing?
12 A. Not in Clarendon County.
13 Q. Let's --
14 A. In -- in --
15 Q. -- well, put Clarendon out.
16 A. -- in Columbia, yes, because you can -- you can get that in
17 Columbia because you have, you know, a half-million people live in
18 the surrounding area. In Clarendon County, you have 30,000 people
19 living here.
20 Q. Understand, but overall, in terms of what we charge, that's a
21 -- in our market, that's a fair and reasonable fee; would you
22 agree?
23 A. In -- in your market, yes.
24 Q. Okay. Now, you would agree with me that, if a lawyer in
25 Manning had previously represented Simpson, Senior, in divorce

1 proceedings, he couldn't represent Daisy?
2 A. If he --
3 Q. If that had happened.
4 A. If he'd represented him, that's correct.
5 Q. And you would agree with me that the members of that lawyer's
6 firm, by association, would likewise be conflicted out, correct?
7 A. That -- that would be correct.
8 Q. And, as you took her husband's case, you ultimately became
9 unavailable?
10 A. Right.
11 Q. Okay. As did your members of your -- of your --
12 A. That's --
13 Q. -- firm?
14 A. -- correct.
15 Q. And, if a firm did business work for the husband on
16 properties or business entities that were going to be litigated in
17 the Court, that lawyer's going to be out, correct?
18 A. That's right.
19 Q. And that lawyer's associates or partners are going to be out,
20 correct?
21 A. That's right.
22 Q. And you would agree with me that it wouldn't be fair for Ms.
23 Simpson to have to pick a lawyer who is inexperienced in family
24 law; you'd agree with that?
25 A. Yeah, I agree with that.

1 Q. And you would agree with me that, if the drive's 45 minutes
2 or an hour, or an hour and 15 minutes, that's not really a
3 material difference, is it?
4 A. That's not any material difference, but --
5 Q. It's some difference, but it's not material.
6 THE COURT: It's not really that material in a large
7 case. It's -- well, you'd --
8 THE WITNESS: I don't --
9 THE COURT: -- have to worry about --
10 THE WITNESS: -- I don't believe it's --
11 THE COURT: -- a lot of driving time.
12 THE WITNESS: -- I don't believe it's that material,
13 Your Honor. I would agree with that, yeah.
14 THE COURT: Okay.
15 MR. McLAREN: That's all the questions I have.
16 THE COURT: Okay. Redirect?
17 MR. SMITH: Yes, Your Honor.
18 **REDIRECT EXAMINATION**
19 BY MR. SMITH:
20 Q. Mr. McKenzie, you're -- you're under subpoena today?
21 A. I am.
22 Q. Thank you, sir. Nothing further.
23 THE COURT: Okay. Thank you, Mr. McKenzie.
24 MR. McLAREN: Moving faster than we thought, Your Honor.
25 THE COURT: Good. That's good

1 MR. McKENZIE: Can I --
2 THE COURT: No objection to -- you're excused.
3 MR. McKENZIE: May I be excused, Your Honor?
4 THE COURT: Yes, sir. No objections?
5 MR. McLAREN: No objection.
6 THE COURT: Okay. Any other witnesses?
7 MR. SMITH: No, sir.
8 THE COURT: None?
9 MR. McLAREN: No, sir.
10 THE COURT: Okay. Any reply?
11 MR. McLAREN: No, sir.
12 THE COURT: All right. Well, we've finished this trial
13 and, like I said, I'm going to take it under advisement. I might
14 read your memo early in the morning. I may make a decision
15 tomorrow. I -- I do not know. Are both sides prepared to go
16 forward on the alimony termination?
17 MR. McLAREN: Yes, sir.
18 MR. SMITH: Yes, sir.
19 THE COURT: All right. Let's take a 10-minute break.
20 How many witnesses did you say you have, Mr. McLaren?
21 MR. McLAREN: I think we have --
22 MS. WARNER: One.
23 THE COURT: One? And that's Ms. Brandt. I was calling
24 you Ms. Simpson. I'm sorry. How many witnesses you have?
25 MR. SMITH: Your Honor, I believe three.

1 THE COURT: Three. Okay. All right.

2 (OFF THE RECORD.)

3 (WHEREUPON THE PROCEEDINGS IN THE ABOVE HEARING WERE CONCLUDED)

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I, THE UNDERSIGNED, PATRICIA A. NYE, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING IN THE ABOVE CAPTIONED CASE, RELATIVE TO APPEAL IN THE FAMILY COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF JANUARY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

Patricia A. Nye

PATRICIA A. NYE

Feb 2011
(9 mos.)

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	
	)	CASE NO.: 2003-DR-14-128
Daisy Wallace Simpson,	)	
	)	
Plaintiff,	)	**ORDER ON PLAINTIFF'S MOTION TO RECONSIDER ORDER ISSUED MAY ~~28~~ 29, 2010**
	)	
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.	)	

Hearing Dates:	**December 15, 2010 and January 6, 2011**
Presiding Judge:	**Gordon B. Jenkinson**
Plaintiff's Counsel:	**James T. McLaren and Carrie A. Warner**
Defendants' Counsel:	**Reid B. Smith, Paul E. Tinkler and Michael A. Timbes**
Court Reporter:	**Patricia Nye**

This matter came before the Court pursuant to Plaintiff's Notice of Motion and Motion to Reconsider and/or Alter and Amend Order issued May 28, 2010 that was filed on June 10, 2010.

Present and appearing before me on December 15, 2010 are Plaintiff and her counsel, James T. McLaren and Carrie A. Warner; Defendant William Simpson, Sr. and his counsel, Reid B. Smith; Defendant William Simpson, Jr. and his counsel, Paul E. Tinkler; and Michael A. Timbes, counsel for Simpson Farms, LLC. At the hearing on January 6, 2011 all parties and their respective counsel appeared; however, it was noted on the record that Michael A. Timbes was given notice of that hearing but voluntarily chose not to appear and had no objection to the hearing going forward.

Plaintiff cites 25 grounds upon which she asserts this Court failed to consider or otherwise erred in finding that Defendant William R. Simpson, Sr. was not in willful civil contempt, or

otherwise enforcing the Final Decree of Divorce issued on December 31, 2004, by reason of the failure to transfer certain real properties to Plaintiff as contained in the Decree and more specifically set out below.

Based upon the arguments of counsel, as well as the evidence and the record before me, the Court finds that Plaintiff shall be entitled to a one-half undivided interest in the property that has now been described as titled in the name of Simpson Farms, LLC (or W.R. Simpson Farms, LLC) as set forth in the Final Decree of Divorce at Paragraph 106 on Page 40 (rather than a 100% interest in those properties), thereby necessitating an adjustment in the total marital estate and resulting payments due from Defendant William R. Simpson, Sr. to Plaintiff, as fully explained hereafter. The Court also finds that all Defendants in all capacities, including but not limited to William R. Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and William R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC" or "W.R. Simpson Farms, LLC"), shall convey these properties to Plaintiff by general warranty deeds within twenty (20) days of the filing of this Order. The Court also finds that an adjustment shall be made as to the 6.7 acres to be transferred to Charlie Simpson, the daughter of Plaintiff and Defendant William R. Simpson, Sr., as agreed at the hearing.

The Court makes the following findings of fact, conclusions of law and disposition:

FINDINGS OF FACT

1. By Final Decree of Divorce dated December 31, 2004, the Honorable R. Wright Turbeville granted Plaintiff a divorce upon the ground of one (1) year continuous separation, among other things, and (a) required Defendant Simpson, Sr. to pay Plaintiff permanent periodic alimony of $1,000.00 per month; (b) required Defendant Simpson, Sr. to pay Plaintiff's and Charley's past due medical obligations totaling $16,734.00 (these were required by the

temporary order, but were not paid by Simpson, Sr. despite the Order); (c) found the value of the marital estate to be $2,327,654.00, of which $784,055.00 was apportioned to Plaintiff, to be accomplished by the transfer of certain accounts and real property valued at $437,500.00 together with a cash payment of $244,904.00; and (d) reserved the issue of attorney fees, costs, and expenses for determination at a later date with both Plaintiff and Defendant to submit affidavits with regard to attorneys' fees and costs.

2. To accomplish the division of marital assets, Page 40, Paragraph 106 of the Final Decree, Judge Turbeville ordered that certain real property to be transferred to Plaintiff, among other assets, as follows:

A.	2.1 acres	$7,500.00	(tract (c) in Decree)
B.	1.4 acres	$5,000.00	(tract (d) in Decree)
C.	161.1 acres	$175,000.00	(tract (e) in Decree)
D.	1.3 acres	$15,000.00	(tract (f) in Decree)
E.	6.7 acres	$5,000.00	(tract (g) in Decree)
F.	133.2 acres	$150,000.00	(tract (h) in Decree)
G.	house and 16 acres	$50,000.00	(tract (i) in Decree)

Did Not File Motion to Reconsider on property division by Turbeville

3. By Order dated February 17, 2005, Judge Turbeville ordered Defendant Simpson, Sr., to pay $85,000.00 towards Plaintiff's attorney fees and costs.

4. Thereafter, Plaintiff appealed Judge Turbeville's Order Regarding Attorney Fees, and Defendant Simpson, Sr. appealed the Final Decree.

5. The Court of Appeals in its Unpublished Opinion dated April 4, 2007 affirmed the Final Decree and remanded the issues of attorneys' fees and costs to the Family Court for determination.

6. Since that time, Defendant Simpson, Sr. filed a Petition for Rehearing with the Court of Appeals which was subsequently denied. Additionally, Defendant Simpson, Sr. filed a Writ of Certiorari with the South Carolina Supreme Court which, again, was denied on February 21, 2008.

7. As discussed in detail below, on February 21, 2008, Defendant Simpson, Sr. individually, tendered quit claim deeds to Plaintiff purporting to transfer whatever interest he owned, individually, in the above properties, knowing that certain of these deeds (i.e., 161.1 acres (Tract (e) in Decree), 6.7 acres tract (Tract (g) in Decree) , 133.2 acres (Tract (h) in Decree), and the house and 16 acres (Tract (i) in Decree) would in essence transfer nothing to Plaintiff because the properties were titled in other names such as Simpson Farms, LLC, and W.R. Simpson Farms, LLC, the latter being a non-existent entity.

8. On February 28, 2008, the South Carolina Court of Appeals sent the Remittitur to the lower court.

9. On April 28, 2008, Plaintiff filed a Rule to Show Cause due to Defendants' lack of compliance with this Court's Decree, specifically Defendant Simpson, Sr.'s failure to transfer tracts c. through i. above as contained in the Decree, and seeking judgment interest thereon and/or benefits derived from the property accruing over the six (6) years since it was ordered that Plaintiff was to receive these properties, as well as an award of attorneys' fees and costs.

10. On July 17, 2008, a conference call was held with the Honorable Gordon B. Jenkinson in regard to Plaintiff's April 28, 2008 Rule to Show Cause.

11. On January 21, 2009, Plaintiff filed an additional Rule to Show Cause action which was also based upon the willful failure of Defendant William R. Simpson, Sr., to transfer $784,055.00 of the marital estate to Plaintiff to be accomplished by the transfer of certain accounts and real property valued at $437,500.00 together with a cash payment of $244,904.00, as well as pledging property belonging to Plaintiff under the Decree in order to pay the cash portion of the award under the Decree. Defendants William R. Simpson, Sr., and Simpson, Jr., and Simpson Farms, LLC, were personally served with the Rule to Show Cause on February 2, 2009.

12. An Interim Order was issued on February 26, 2009 by Judge Jenkinson which resolved the cash portion of the equitable division pursuant to the Decree, but held in abeyance the issue of Defendants' transfer of real estate and Plaintiff's additional attorneys' fees pursuant to remand by the South Carolina Court of Appeals.

13. The Interim Order also stipulated that the cash portion included Defendant's obligation to pay $85,000.00 in Plaintiff's attorney, together with judgment interest thereon pursuant to the Decree, which was paid.

14. A hearing in this matter was originally set for March 3, 2009, but was rescheduled by Order of the Honorable George M. McFaddin, Jr. on March 3, 2009 due to insufficient time, and was rescheduled for September 15, 2009. The Order of Continuance was served upon counsel for the parties.

15. After the hearing on September 15, 2009, Paul E. Tinkler requested that he be heard on behalf of Williams Simpson, Jr. due to his alleged lack of notice of the September 15, 2009 hearing and a subsequent hearing was scheduled on December 21, 2009, which request was allowed and heard.

16. This Court issued its May 28, 2010 Order as a result of the September 15, 2009 and December 21, 2009 hearings not finding Defendant Simpson, Sr. in willful contempt and not ordering him to transfer the subject properties to Plaintiff stating he was not required to do so under the Decree. Plaintiff filed her Motion to Reconsider and/or Alter and Amend that Order.

17. A hearing on Plaintiff's Motion to Reconsider was heard before this Court on December 15, 2010, and January 6, 2011.

PLAINTIFF'S MOTION TO RECONSIDER

18. Defendant Simpson, Sr. tendered seven (7) Quit-Claim Deeds purporting to transfer ownership to Plaintiff of the properties identified at Page 40, Paragraph 106(c)-(i) of

the Decree. Each of those seven (7) Quit-Claim Deeds state that Defendant Simpson, Sr., is transferring the subject properties "individually" and that he is only transferring his "personal right, title and interest." Four (4) of the seven (7) Quit-Claim Deeds have derivation clauses stating that the subject property is legally titled in the name of "W.R. Simpson Farms, LLC" or "Simpson Farms, LLC". The remaining three (3) Quit-Claim Deeds have derivation clauses reflecting that Defendant Simpson, Sr. is the legal title owner.

19. One of Plaintiff's attorneys, Mr. Warner, returned the seven (7) Quit-Claim Deeds to Defendant Simpson, Sr.'s attorney, Mr. McKenzie, stating Plaintiff's objections to the Quit-Claim Deeds as tendered. There is no evidence before the Court indicating that these Quit-Claim Deeds were ever recorded or returned to Mr. Warner. Plaintiff has never received ownership of the properties, despite the fact that the Decree was entered more than six (6) years ago.

20. At the hearing held on September 15, 2009 in this matter, Mr. McKenzie candidly testified and admitted the four (4) deeds purporting to transfer ownership of the properties legally titled in the names of Simpson Farms, L.L.C. or W. R. Simpson Farms, L.L.C. transferred nothing to Plaintiff. That certainly was not Judge Turbeville's intent as affirmed on appeal. Defendant Simpson, Sr. contends, however, that as the Decree only required "Simpson, Sr.", individually, to make the transfers, that Defendant Simpson, Sr. has done all that is required of him. The Court disagrees, as discussed below.

21. With regard to tract "i. House and 16 acres", the evidence and facts concerning legal title ownership that property are essentially undisputed. On May 7, 2002, Paul Terry Stone and Van Stone conveyed 16.5 acres to W.R. Simpson Farms, LLC (the property identified as the "house and 16 acres"), "less 3 acres surrounding the residence", for a net conveyance on that tract of 13.5 acres. This was the same deed that conveyed 135.7 acres to W.R. Simpson

Farms, LLC, less 2.5 acres, for a net conveyance of 133.2 acres (the property referred to as 133.2 acres – item (h) above). The fact that tract "i. House and 16 acres" has previously been misidentified as "house and 16 acres" is inconsequential. The property is actually 13.5 acres. It is nonetheless the identical property less the house and 3 acres retained by the original owners.

22. There was a Consent Order entered in a Circuit Court case, without prejudice to the rights of the parties in this case, brought to quiet title by Paul Terry Stone and Van Stone against the Simpsons, Simpson Farms, L.L.C. and a slew of other Defendants determining that Paul Terry Stone and Van Stone were rightful owners of house and 3 acres originally included in this 16 (+/-) acre tract of property. The other 13.5 acres unquestionably is legally titled in the name of "W.R. Simpson Farms, L.L.C.". In fact, there is no South Carolina limited liability company named "W.R. Simpson Farms, L.L.C." The correct name of the L.L.C. in this case is "Simpson Farms, L.L.C.", as shown in the caption of the Court of Appeals Opinion [*Daisy Wallace Simpson, v. William Robert Simpson, et. al.*, Unpublished Opinion No. 2007-UP-147, filed April 4, 2007] and registered in the Office of the South Carolina Secretary of State. Simpson, Sr. is the Registered Agent for this L.L.C.

23. There is also discrepancy between the Final Decree and the tendered Quit Claim Deed regarding "tract g". The Final Decree requires the transfer of 6.7 acres at a value of $35,000.00, referring to a particular tax map number. Mr. McKenzie testified that the property with that tax map number refers to a tract having only 3 acres. There was no evidence as to the value of that 3 acres tract. At the hearing, Plaintiff presented a plat describing the 6.7 acre tract as being the 6.7 acres surrounding the property gifted to the parties' daughter Charlie. By agreement reached at the hearing on January 6, 2011, a new deed will be prepared and ownership of the 6.7 acre tract surrounding the parties' daughter Charlie's home, will be

transferred to Charlie and removed from the marital estate. See ***Joint Exhibit #1*** from January 6, 2011 hearing, tax map #128-00-00-066-00.

24. As to the remaining real property ordered transferred to Plaintiff by the Decree, by letter from Steven S. McKenzie to Jan L. Warner, dated October 28, 2008 and received by Mr. Warner on October 31, 2008, Simpson, Sr. tendered seven (7) quitclaim deeds from him, individually, and in his personal capacity, to Daisy Wallace Simpson, for the properties identified in Paragraph 106 of the Final Decree dated December 31, 2004. It is undisputed that a deed from William Robert Simpson, individually, purporting to transfer legal title to property legally titled or owned in the name "W.R. Simpson Farms, L.L.C.", "Simpson Farms, L.L.C." or any other name is a nullity and transfers nothing. Thus, legal title to tract "e. 161.1 acres", tract "g. 6.7 acres", tract "h. 133.2 acres", and tract "i. House and 16 acres" remains, at this time, unchanged and ownership has not been transferred to Plaintiff, contrary to what was clearly contemplated by the December 31, 2004 Final Decree of Divorce.

25. The real estate identified in Paragraph 75 of the Final Decree of Divorce as tract "c. 2.1 acres," tract "d. 1.4 acres," and tract "f. 1.3 acres" is legally titled in the name of William Robert Simpson. The quit claim deeds tendered by Simpson, Sr. would effectively transfer ownership to tracts c, d and f to Plaintiff; however, they were returned by Mr. Warner to Mr. McKenzie and have not been returned or recorded.

26. In the Decree entered December 31, 2004, Judge Turbeville ordered "Simpson Sr. [Defendant William Robert Simpson, Sr.] shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above valued at $539,151.00." The question which this Court must decide is whether Defendant William Robert Simpson, Sr. has the ability or capacity by properly drawn deed(s) or other instrument to transfer ownership of

the four (4) tracts [tract "e. 161.1 acres", tract "g. 6.7 acres", tract "h. 133.2 acres", and tract "i. House and 16 acres" (actually 13.5 acres)] in question to Plaintiff Daisy Wallace Simpson.

27. In response to questions raised by the Court as to the effect of Plaintiff not receiving the real estate awarded to her by Judge Turbeville in his Decree (and not waiving but specifically reserving her position that this Court lacks the jurisdiction or authority to modify which properties are to be awarded to Plaintiff), Plaintiff submitted what was marked as Plaintiff's Exhibit 9 from the January 6, 2011 hearing in support of her Motion to Reconsider which indicates that if Plaintiff received all that she was entitled to under the Final Decree of Divorce, Plaintiff would receive in effect a 34/66 percentage division of marital assets in favor of Defendant, with Plaintiff receiving $784,055.00 in total marital assets, and Defendant receiving $1,543,599.00 in total marital assets.

28. Plaintiff's Exhibit 9 then indicates the effect on the equitable division that this Court's May 28, 2010 Order would impose by refusing to require Defendant William R. Simpson, Sr. to transfer those pieces of property identified above to Plaintiff. Plaintiff would then only receive $346,555.00, or 15% of the total marital estate; a net decrease of $437,500.00 in marital assets that she was entitled to under the Decree. Meanwhile, Defendant would receive 85% of the marital estate, or $1,981,099.00. Plaintiff argues this is not what Judge Turbeville intended when he issued his Decree, as affirmed on Appeal.

29. Alternatively, Plaintiff's Exhibit 9 states that if this Court awards Plaintiff only an undivided one-half interest in the real property legally titled in the name of Simpson Farms, LLC, rather than full ownership as required under the Court's May 28, 2010 Order, Plaintiff would then only receive $579,055.00, or 27% of the total marital estate, and an additional balancing cash payment of $133,250.00 would need to be paid by Defendant Simpson, Sr. to Plaintiff so that she would then have 34% of the total marital estate as intended under Judge Turbeville's Decree.

30. Assuming these calculations to be correct, the Court needs to further adjust the total marital estate and the resulting balancing cash payment because at the time of the hearing, the parties agreed that the 6.7 acres (Tax Map Number: 128-00-00-066-00) identified at Page 40, Paragraph 106g of the Final Decree (Joint Exhibit #1 from the January 6, 2011 hearing), was intended as a gift to the parties' daughter, Charlie Simpson, and as such, should not be included in the overall marital estate or in the properties to be transferred to Plaintiff, but would be transferred directly to Charlie Simpson by quit claim deed. With that agreement, the overall division and resulting percentages awarded, together with the balancing payment, must be adjusted further. Thus the actual marital estate becomes $2,105,154.00, with Plaintiff's thirty-four (34%) percent becoming $706,180.00 and Defendant William R. Simpson, Sr.'s sixty-six (66%) percent becoming $1,398,974.00. That then requires a balancing cash payment of $144,625.00.

31. The Court also considered the competing arguments made by Defendants, including Defendant William Simpson, Jr. in his counsel's "Memorandum In Response to Submission of Plaintiff at the Hearing on January 6, 2011." Defendant Simpson, Jr. argues that he does not have a transferable interest in the real property belonging to Simpson Farms, LLC, because he is only a member of that LLC and does not have the authority to transfer anything. Defendant Simpson, Jr. further argues that the Final Decree never ordered the LLC nor Defendant Simpson, Jr. to transfer the subject property to Plaintiff. Finally, Defendant Simpson, Jr. argues in favor of this Court transferring other property to Plaintiff, rather than property belonging to the LLC, to effectuate the division under the Final Decree so that the parties are not in business together. Defendants concede, however, that the calculations set forth in Plaintiff's Exhibit 9 are correct.

32. The Decree requires that "Simpson, Sr. shall transfer to Plaintiff within thirty (30) days of the date of this Decree property set forth in Paragraph 106 above valued at $539,151."

The Decree does not limit Defendant Simpson, Sr.'s capacity by which he is to transfer the subject properties to Plaintiff. It does not say that he is to convey the subject property in his "individual" capacity, or limit what is to be transferred to Defendant Simpson, Sr.'s "personal right, title or interest." The Decree simply directs Defendant Simpson, Sr. to transfer the property to Plaintiff without limitation.

33. It is black letter law that it should be presumed that the original trial judge knew what he intended, particularly as he was affirmed on appeal, and that it is the responsibility of this Court to now fashion a remedy to carry out that intent. Without doubt Judge Turbeville intended that at the end of the day, Plaintiff would be the fee simple absolute owner of the properties set forth in Paragraph 106 of the Decree, free of lien or other encumbrances.

34. The Caption on the Decree reflects that Defendant Simpson, Sr. was a party-Defendant, individually and as shareholder/member of Simpson Farms, L.L.C. Paragraph 6, at Page 3 of the Decree reiterates the dual capacities in which Defendant Simpson, Sr. is a party to this action, both individually and as an owner of Simpson Farms, LLC. Paragraph 13, at Page 4 of the Decree notes that Simpson Farms, LLC is a party-defendant to this suit. At Paragraph 5, Page 42 of the Decree, Judge Turbeville granted liens in favor of Plaintiff against William R. Simpson, Sr., individually; William R. Simpson, Sr. and William R. Simpson, Jr. as owners of Simpson Farms, LLC; Simpson Farms, LLC; and, William R. Simpson, Sr. as fifty percent partner in S&T Land Developers.

35. When Judge Turbeville ordered Defendant Simpson, Sr. to transfer to Plaintiff the property set forth in Paragraph 106 of the Final Decree, he clearly intended that Defendant Simpson, Sr. do so in whatever capacity and by whatever means was necessary to effectuate a lawful and valid transfer of ownership of these properties to Plaintiff, free and clear of all liens and encumbrances. To assume otherwise defies logic and the clear intent of the Decree.

36. Defendant Simpson, Sr. now argues that because actual legal title was not held in his name, that he has no obligation other than to execute and deliver Quit-Claim Deeds which do not legally transfer ownership of the subject properties to Plaintiff. That was not the intent of the Decree. Defendants Simpson, Sr. and Simpson, Jr., individually and as owners of the LLC, and the LLC itself were parties to the Decree. The properties are either legally titled in the names of Defendant Simpson, Sr. or the LLC. On appeal, Defendant Simpson, Sr. argued that certain of the properties were not owned by him; rather, that they were owned by the LLC. The Court of Appeals rejected those arguments.

37. South Carolina law is clear and unequivocal that the Family Court has jurisdiction to equitable divide property legally titled in the names of third parties. S.C. Code § 20-3-630 (Supp 2009) provides, in relevant part, as follows:

> (A) 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 *Section 20-3-620* regardless of how legal title is held, except the following, which constitute nonmarital property:.....*(emphasis added)

38. South Carolina case law is also clear and unequivocal that the Family Court has jurisdiction to equitable divide property legally titled in the names of third parties: e.g. see *Williams v. Williams*, 374 S.C. 149, 647 S.E.2d 256 (Ct. App. 2007); *Hough v. Hough*, 312 S.C. 344, 440 S.E.2d 387 (Ct. App. 1994); *Sexton v. Sexton*, 298 S.C. 359, 380 S.E.2d 832 (1989).

39. An individual or entity may own property, both real and personal, legally or equitably. The mere fact that "legal" title to a particular property is held in the name of another person or entity is not conclusive as to any claim or claims made by others as to equitable ownership of that property. Here, Judge Turbeville heard and decided the competing claims between William Robert Simpson (Defendant Simpson, Sr.), William Robert Simpson, Jr. (Defendant Simpson, Jr.), Simpson Farms, L.L.C. (a/k/a W.R. Simpson Farms, L.L.C.) and Daisy Wallace Simpson (Plaintiff) to the various properties at issue in this case. Each of the

competing litigants was a party to the action and is bound by the December 31, 2004 Final Decree issued by Judge Turbeville. Under Rule 70, *S.C.R.C.P.*, this Court has the authority and duty to enforce Judge Turbeville's Decree, and the findings and directions of the South Carolina Court of Appeals.

40. The fact that the South Carolina Court of Appeals found that the subject properties were owned by Defendant Simpson, Sr., does not distinguish between legal and equitable title or ownership nor does it absolve Defendant Simpson, Sr. from complying with the December 31, 2004 Final Decree as affirmed by the South Carolina Court of Appeals. All Defendant's, in all capacities, have the duty to comply. Defendant Simpson, Sr. and the other Defendants, in all capacities, now have the legal responsibility to execute and deliver to Plaintiff whatever deeds or take such action as is necessary to transfer to Plaintiff fee simple absolute title ownership in the subject properties, free and clear of all liens and encumbrances.

41. After careful consideration of the arguments of counsel, including the Memoranda submitted by counsel for the parties, as well as the evidence presented, this Court finds that all Defendants in all capacities, including Defendant William Robert Simpson, Sr, individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr. individually and as shareholder/member of Simpson Farms, LLC, , and Simpson Farms, LLC (whether known as "Simpson Farms, LLC" or "W.R. Simpson Farms, LLC"), shall join in their conveyance to Plaintiff conveying a fee simple absolute one-half undivided interest in the Simpson Farms, LLC (or W.R. Simpson Farms, LLC as the case may be) property (tracts e, h and i) discussed above by general warranty deeds, free and clear of all liens and encumbrances, except for the 6.7 acres (tract g) otherwise known as "Charlie's property" to be conveyed directly to Charlie Simpson by quit claim deed by all such Defendants. These conveyances shall occur within twenty (20) days of the filing of this Order.

42. In fashioning the appropriate remedy, this Court is bound to do what was intended by Judge Turbeville in his Decree, as affirmed on appeal. It is clear that this Court has the authority to direct an appropriate *means* to accomplish that intended result by requiring all Defendant's to join in the execution of appropriate deeds to do so. The more difficult issue is dealing with the conflict in the Decree language to implement exactly which party is to receive what property and the resulting ambiguity. On one hand, Plaintiff was granted specific properties (tracts e, g, h, and i), yet the Decree finds that Defendant William R. Simpson, Sr. only owns one-half of the Simpson Farms, LLC and it now appears that tracts e, g, h, and i are owned by Simpson Farms, LLC or William R. Simpson, LLC, which the Court considers one in the same. Balancing these competing interests, it appears fair and equitable for this Court to effectively reduce the marital estate by one-half (1/2) of the subject LLC properties (tracts e, g, h, and i) and re-divide the marital estate in the same percentages intended by Judge Turbeville and to adjust the necessary balancing payment accordingly.

43. Plaintiff has requested judgment interest on these properties she was to receive under the Final Decree of Divorce, or some part or all of the benefits derived from the property awarded to her, but not conveyed. Because I am not awarding a money judgment, I decline to award judgment interest on these properties.

44. I find that the prior liens and restraining orders previously imposed and ordered shall remain in full force and effect against all Defendants in all capacities until all Defendants have complied and Plaintiff and Charlie Simpson have received the property to which they are entitled.

THEREFORE, IT IS ACCORDINGLY

ORDERED:

A. All Defendants in all capacities, including Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr.,

individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute and properly record general warranty deeds and do all other acts necessary to transfer and convey to Plaintiff fee simple absolute ownership, free and clear of all liens and encumbrances, a one-half undivided interest in the property referenced above as items (e), (h) and (i) of Paragraph 106 of the Decree;

B. All Defendants in all capacities, including Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute and properly record general warranty deeds and do all other acts necessary to transfer and convey to Plaintiff fee simple absolute ownership, free and clear of all liens and encumbrances, a one-half undivided interest in the property referenced above as items (c), (d) and (f) of Paragraph 106 of the Decree;

C. The 6.7 acres otherwise known as "Charlie's property" shall be conveyed directly to Charlie Simpson by quit claim deed, free and clear of all liens and encumbrances, and all Defendants in all capacities (Defendant William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC, and Williams R. Simpson, Jr., individually and as shareholder/member of Simpson Farms, LLC, and Simpson Farms, LLC (whether known as "Simpson Farms, LLC or W.R. Simpson Farms, LLC"), shall prepare, execute, and properly record all documents necessary to effectuate this transfer immediately, including but not limited to quit claim deeds and do all other acts necessary to transfer and convey to Charlie Simpson fee absolute ownership, free and clear of all liens and encumbrances, the 6.7 acre tract referred to in Joint Exhibit #1 from the January 6, 2011 hearing;

D. All of the above conveyances shall be completed within twenty (20) days of the filling of this Order;

E. The cash balancing payment of $144,625.00 shall be paid by Defendant William R. Simpson, Sr., to Plaintiff within twenty (20) days of the filing of this Order, together with interest at the rate for judgments from the original due date (January 30, 2005) until paid in full;

F. ~~Plaintiff's request for judgment~~ interest, or payment for the benefits derived by Defendants from the property awarded to Plaintiff, is denied; ~~and~~

G. All prior liens and restraining orders previously imposed and ordered shall remain in full force and effect against all Defendants in all capacities until all Defendants have complied and Plaintiff and Charlie Simpson have received the property to which they are entitled.

AND IT IS SO ORDERED.

_____

Gordon B. Jenkinson, Family Court Judge
Third Judicial Circuit

In Chambers
Williamsburg, South Carolina
February __, 2011

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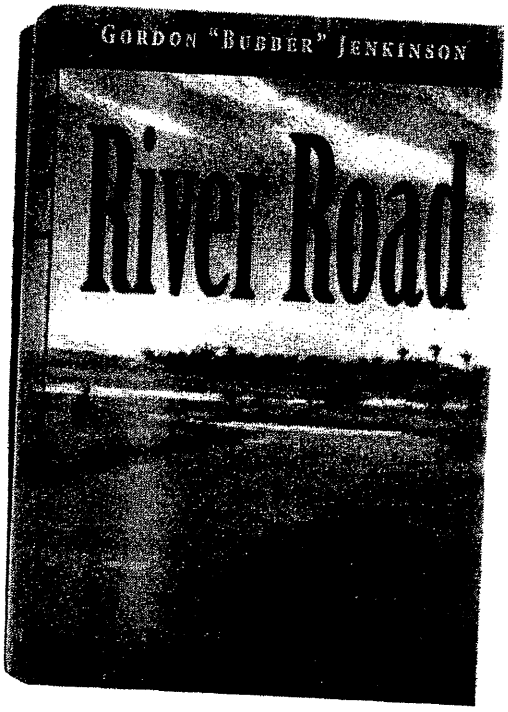

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