

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE MARRIAGE OF

[REDACTED]

CASE NO. [REDACTED]

Petitioner/Wife,

FAMILY DIVISION: FI

And

[REDACTED]

Respondent/Wife.

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FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE came to be heard on May 22, 2017 and May 23, 2017 the Petitioner's Petition for Dissolution of Marriage (the "Petition") and the Respondent's Answer and Counter-Petition for Dissolution of Marriage and Other Relief (the "Counter-Petition") and Amendments to Counter-petition (the "Amendments"). The parties were present with counsel and presented their testimony and evidence. The Court had the opportunity to evaluate the testimony presented, based on the Court's consideration of the intelligence, frankness, credibility, plausibility, character, and competence of the witnesses, cognizant of the interests of the parties in the outcome of the case. The Court had the opportunity to consider the reasonableness of the testimony of the witnesses in light of all the evidence. The Court has listened carefully to best ascertain motives, biases, interests, and also attempt to penetrate through the surface of remarks to the real purposes and motives. The Court has carefully considered and reviewed the Court file, all of the evidence, the testimony, the arguments presented, and the applicable case law. Giving

the evidence and testimony the weight it deserves, the Court has resolved any conflicts and makes the following findings of fact and conclusions of law:

1. **MARRIAGE**. This is a same sex marriage where the parties were married to each other on 8 [REDACTED], 2012. The Petitioner filed her Petition on [REDACTED], 2016.
2. **RESIDENCE**. The Court has jurisdiction of the parties and the subject matter herein. The parties have been residents of the State of Florida for at least six (6) months prior to the filing of the Petition.
3. **GROUND**S. The marriage is irretrievably broken and is hereby dissolved.
4. **CHILD**. There are no children of this marriage. Neither party is pregnant.
5. **JURISDICTION**. Both the Petitioner and Respondent have been residents of the State of Florida for at least six months prior to the filing of this action.
6. **RESPONDENT'S CLAIMS**. The marital equitable distribution was not disputed at trial. The difference between the parties' claims is that the Respondent sought entitlement to the Petitioner's retirement for the period of cohabitation, which exceeded the parties' marriage, and to have the Petitioner be equally responsible for the debt the Respondent incurred before the marriage based upon an "oral cohabitation agreement."

In addition to the Respondent's claim that she is entitled to the Petitioner's pre-marital assets, she asked the Court to make the Petitioner responsible for the Respondent's pre-marital debt. The Respondent's claims are not supported by Florida law and caused the Petitioner to incur attorneys' fees to defend this vexatious, unnecessary position.

Further, the Respondent contradicted her claim by requesting this Court invalidate the Deed where she transferred half of the marital residence to the Petitioner because the Petitioner did not "contribute" to the acquisition. Even though when you title property in the name of your spouse it is presumed that the property is marital pursuant to Lakin v. Lakin, 901 So.2d 186 (Fla. 4th DCA 2005), the Petitioner never made claim to the Respondent's property and has consistently taken the position that the Respondent should receive her portion of the marital property. The parties agree the marital residence is worth \$435,000. The marital loan has a balance of \$275,606. The second loan on the property is non-marital as the Respondent incurred it before the marriage. Accordingly, the Respondent is receiving \$159,394 in what is presumed a marital asset. The Petitioner's position is more than reasonable and it is evident that the cost of this litigation was not because of the Petitioner's actions.

The Petitioner disputes that there was a cohabitation agreement, but as a matter of law, even if the Respondent's allegations were truthful, which the Court finds they were not, the Respondent would not be legally entitled to the relief she requested.

In Armao v. McKenney, -- So.3d --, 2017 WL 1718827, the Court recently upheld an oral cohabitation agreement; however, it was applied to unmarried cohabitants. In the present case, once the parties were married, Chapter 61, Florida Statutes applies. Section 61.079, Florida Statutes clearly provides that any premarital agreement must be in writing. In addition, any agreement to pay the debt of another must be in writing or it is barred by the Statute of Frauds. In this case, the Respondent seeks to make the Petitioner responsible for her pre-existing marital debts. This is not a viable claim because a promise to pay the debt of another is barred by the Statute of Frauds unless it is in writing. Riba v. Pila, 5 42 So.2d 249 (Fla. 2nd DCA 429).

In addition, the Respondent sought an award of alimony. The Court notes this is a short term marriage (approximately four years) and she is currently being fully supported by her new fiancé to whom she became engaged a month after the divorce was filed. Despite the fact, according to her own testimony, the Respondent is being fully supported by her fiancé, she filed an Amended Financial Affidavit on March 28, 2017 claiming a monthly deficit of \$8,577. According to the Respondent's testimony, her fiancé was paying all of the expenses detailed on her financial affidavit. Based on all facts and circumstances, including but not limited to the Respondent's own testimony, the Court finds her financial affidavit not only inaccurate, but also fraudulent.

The Respondent filed her Answer and Counter Petition on September 8, 2016 and her Amended Petition on December 2, 2016. Two weeks before trial, on May 4, 2017, the Respondent withdrew her claim for alimony; however, in the interim, the parties litigated the issue for approximately eight months and as a result, the Petitioner incurred substantial and unnecessary legal fees.

7. **EQUITABLE DISTRIBUTION.** The Court makes the following distributions in accordance with the factors enumerated in Section 61.075(1), Florida Statutes. The parties shall distribute all assets and liabilities in conjunction with the Equitable Distribution attached hereto as Exhibit 'A'. The Respondent is awarded the marital residence, and as stated the Petitioner waives any rights to any of the equity. However, because the Petitioner is on the principal mortgage, the Respondent shall take whatever action necessary to remove the Petitioner from the liability. In addition, it appears the Respondent's attorney has created a cloud on the title by executing a mortgage against the Respondent that was never signed by the Petitioner. If

the Petitioner is not removed from all liabilities associated with this property within one hundred twenty days (120) of this judgment, the property will be sold at public auction. The Respondent shall be entitled to any net proceeds from the sale; the Respondent shall also be responsible for any deficiencies, if any exist.

The Respondent shall execute and deliver the title to the 2014 BMW 328i Sports Wagon within ten days of judgment.

After the distribution of marital assets and liabilities the Petitioner owes the Respondent an equalizing payment in the amount of \$2,638.00.

The Petitioner is awarded a credit in the amount of \$8,058.65 for paying expenses on the marital residence during the pendency of this action.

Accordingly, the Respondent shall pay to the Petitioner, \$5,420.65 within thirty days.

8. **ATTORNEYS' FEES.** According to Eddie Stephens's testimony, he has been Board Certified in Family and Marital law since 2004. Mr. Stevens charged the Petitioner at a reduced rate of \$360.00 per hour. The Court finds that the fees and costs charged by Eddie Stephens are within the range of hourly rates charged in the legal community for like services. His paralegal charges \$140 per hour which this Court finds reasonable.

Disturbingly, the attorney for the Respondent, George Gelb, Esquire, admitted his refusal to provide Mr. Stephens with his purported legal authority as part of his "strategy". As a result of Mr. Gelb's failure to make a good faith effort to resolve the case, both parties incurred significant and unnecessary legal costs and expenses. According to Mr. Stephens, this case would have been settled but for the unreasonable, unnecessary and vexatious litigation strategy utilized by Respondent.

The Court finds that Mr. Stephens, counsel for the Petitioner, reasonably incurred 75.7 hours defending vexations claims for a total amount of \$27,252. The Court finds the Mr. Stephens's paralegal reasonably incurred 65.5 hours defending vexations claims for a total amount of \$9,170. In addition, the Petitioner incurred \$7,338.26 in costs. Accordingly, this Court finds the Petitioner is entitled to an award of Rosen fees and costs in the amount of \$43,796.26.

Accordingly, the Respondent shall pay the Petitioner \$43,796.26 within thirty days. If the Respondent fails to make this payment or the payment provided under Equitable Distribution, the Court will reserve jurisdiction to credit the amount the Petitioner owes the Respondent in retirement dollars, taking into consideration any penalties for the early withdrawals.

9. **COURT RETAINS JURISDICTION.** The Court expressly retains jurisdiction of this cause for the purpose of enforcing, construing, interpreting, or modifying the terms of this Final Judgment. This Court reserves jurisdiction to enforce George Gelb's charging lien. The Court reserves jurisdiction to partition the property as described in this judgment and to make adjustments should the Respondent not pay her attorneys' fees and costs as prescribed in this judgment. The Court reserves jurisdiction to enter any Qualified Domestic Relations Orders necessary to effectuate the Court's Equitable Distribution.

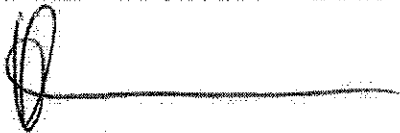
Based on the foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

1. The This Court has jurisdiction of the parties and the subject matter hereof.
2. That the bonds of marriage between the parties, [REDACTED] and [REDACTED] are hereby forever dissolved as the marriage is irretrievably broken and the parties are returned to the status of being single.

3. The parties shall comply with the terms all of the terms and conditions as outline in this Final Judgment.
4. The Court reserves jurisdiction over the parties and subject matter for purpose of enforcing, construing, interpreting, or modifying the terms of this Final Judgment. The Court specifically reserves jurisdiction on all issues regarding any charging liens, partition of the property, to enter any Qualified Relations Orders and Petitioner's attorney fees.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida,
this 6th day of June, 2016.



Karen M. Miller
Circuit Judge

Copies Furnished:

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