

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA** **CIVIL ACTION**

C G,
Petitioner & wife,

vs.
C G,

Case No. XXX N

Respondent & husband,

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

This matter having come before the court at trial on 9/20/2012, it is ordered:

1. Jurisdiction The court has jurisdiction of this matter and the parties. The petitioner has been a resident of Florida for more than six months before the date of the filing of the petition.

2. Irretrievably Broken The marriage of the parties is irretrievably broken. Therefore, the marriage of the parties is dissolved.

The parties were married on 9/23/1984 and the wife filed the initial petition on 8/2/2011. They have no minor children.

All temporary orders entered in this matter before this date are now canceled and of no force or effect. Any temporary agreement is not canceled if the parties agreed that it was to be permanent and incorporated in this judgment.

3. Equitable distribution

The parties have divided their marital assets and liabilities, pursuant to their mediated agreement filed 4/16/2012 which is hereby incorporated by reference and made the order of the court. They sold the former marital home in 7/2012 and they divided the net sales proceeds, \$55,500, evenly.

4. Alimony The wife has made a claim for alimony.

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational, or permanent in nature or any combination of these forms of alimony. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.

Regarding adultery, this factor does not apply because there is no competent, substantial evidence of adultery by either party or that marital income or assets were depleted or spent on adulterous relationships by either party. *See, e.g., Baxter v. Baxter*, 720 So.2d 624 (Fla. 5th DCA 1998).

(2) In determining whether to award alimony or maintenance, the court shall first make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance.

The court finds that the wife has an actual need for alimony and the husband has the ability to pay alimony, considering the factors below and all of the statutory factors.

If the court finds that a party has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(8), the court shall consider all relevant factors, including, but not limited to:

(a) The standard of living established during the marriage.

The parties had a moderate standard of living or lifestyle during the marriage. At the end of the marriage the parties' were living on the husband's income, \$85,000 gross per year, plus what the wife earned as an unlicensed hairdresser or at low-paying jobs in school cafeterias.

The wife worked for 15 years as a licensed hairdresser in New York, from 1980 to 1995. She worked in school cafeterias or as a teacher's aid for a few years between 1995 to 2004 when the parties moved to Florida. After moving to Florida from 2004 to 2007 the wife worked part time in school cafeterias. She has not held a regular job since 2007, but she has continuously cut hair for friends, family and clients, for which she is paid in cash, from at least 2004 to date.

The husband now works as a computer board designer, earning a salary of \$85,000 gross per year. Over the last 20 years he has developed a career as a computer board designer. He has worked full time outside of the home throughout the marriage.

The marital lifestyle, however, is not very relevant to the court's decision. As the second district said in *Jones v. Jones*, 28 So.3d 229 (Fla. 2d DCA 2010):

“... [T]he Joneses, as a single family unit, lived a modest, middle-class lifestyle. No matter what judgment a trial judge fashions in this case, the two family units created by the divorce cannot maintain the same lifestyle. Like many Floridians in these difficult economic times, the Joneses almost cannot afford to divorce.”

The parties here spent the family income each year. They do not have significant savings or equity in their home. The house has been sold, the equity divided, and it has been spent by the husband for the cost of this lawsuit and by the wife for a new car and non-essential surgery. The parties do not have significant debts.

Under the facts of this case, the wife's need for alimony cannot be determined by making "marital lifestyle" a "super factor" trumping all other factors in awarding alimony." *Jaffy v. Jaffy*, 965 So.2d 825 at 828 (Fla. 4th DCA 2007) citing *Nichols v. Nichols*, 907 So.2d 620 at 623 (Fla. 4th DCA 2005). In *Jaffy*, the court held: "[T]he basic purpose of alimony [is to] provid[e] assistance for those who are unable to support themselves." *Id.* at 828.

Here, the wife can work to support herself. The question is how much can she earn by her own efforts and whether that is enough to provide for her financial support.

Cf. Kahn v. Kahn, 78 So.2d 367, 368 (Fla.1955): "We do not construe the marriage status, once achieved, as conferring on the former wife of a ship-wrecked marriage the right to live a life of veritable ease with no effort and little incentive on her part to apply such talent as she may possess to making her own way."

So, both spouses are required by law to "apply such talent as [he or she] may possess to mak[e] [his or her own way]" and "[T]he basic purpose of alimony [is to] provid[e] assistance for those who are unable to support themselves."

There is no question that the husband must continue working to the best of his efforts. So must the wife.

The wife is able to work and provide something for herself but even if she uses her best efforts she cannot duplicate the modest standard of living that the parties' enjoyed. She never developed a career that pays what the husband can earn, but if she used her best efforts she could support herself at least in part and perhaps in whole. By his best efforts the husband could duplicate the modest standard of living that the parties had while living together if he had his entire income at his disposal.

This is what this lawsuit is about. The wife does not want to work and support herself, even though she is able to do so to some degree, and the husband believes she should work just as hard as he does.

(b) *The duration of the marriage.*

The parties were married on 9/23/1984 and the wife filed the initial petition on 8/2/2011. They have no minor children. They have three adult children.

This is a long term marriage.

(c) *The age and the physical and emotional condition of each party.*

The wife is 54 years old. She is a very attractive, fit person. She is emotionally and physically healthy. She is articulate and well-spoken. She is intelligent. She has excellent social skills. She is in excellent physical condition. She works out at a gym for 1 or 2 hours a day, 4 or 5 days each week. She is a ballroom dancer. There are no material restrictions on her ability to work and support herself. She can work at least 35 hours a week.

The husband is 55 years old. He also goes to a gym 4 or 5 days a week. He is emotionally and physically healthy. He is in excellent physical condition. He is not as animated and spirited as the wife. He is a designer of computer boards, for about the last 15 years, with a break for some

years working for a manufacturing firm in Sarasota. He commuted to that job from Cape Coral. There are no material restrictions on his ability to work and support himself. He can and does work at least 40 hours a week. He has done this for his entire career.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

The husband and the wife each received \$27,750 from the sale of the marital home in 7/2012. With her money, the wife put \$10,000 down on a new car, financing the balance of the purchase price, and she paid for two non-essential surgeries, \$9,000. With his money the husband has paid his legal fees and expert witness fees, about \$22,000 to date.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

The husband is paid an annual gross salary of \$85,000. He has 30 hours of college work. He has a draftsman's certificate. He has developed a skill and considerable work history as a computer circuit board designer. He is now working for a firm that manufactures products for farming and mining.

The wife's last salaried job was some years ago when she worked 25 - 30 hours a week at minimum wage in a local school cafeteria. She worked for 15 years, from 1980 to 1995, as a hairdresser in New York, where she still has a license for this work. She does not have a Florida license for this work. She has worked in a bank. She is licensed as an aesthetician in Florida, which allows her to do facials, waxing, and body wraps. However, she has not worked at this trade in a salon.

The wife now has all of the equipment and tools necessary for the trade of hair dressing or cosmetology. These were in the former marital home and she received them in the parties' settlement agreement. She had a salon set up in the parties' garage at the former marital home where she met her customers. She also cut hair, etc., in her customers' homes. She had a price sheet for her services posted on the wall. She kept a calendar showing her appointments with customers. Her calendar is full of appointments that she made each month for customers of her hairdressing business. (H Ex 8)

The husband is an honest witness. He did not exaggerate the cash that the wife earned typically doing hair cuts, "perms," "blow-outs," hair dying, etc. He estimated that in 2010 she earned a maximum of \$800 a month and for some months less. She spent the cash for support of the family and her personal expenses. The husband did not control the wife's cash from her salon in the garage. She knows how much she earned and how she spent the money.

The parties separated in 1/2011 when the wife moved out of the marital home. The wife returned at will to the marital home after 1/2011. She continued to work in the garage salon until 8/2011. After that date the husband has no knowledge of the wife's work and income.

The wife is a capable hairdresser and aesthetician, even if she does not have a Florida

license for the former occupation. Mr. Nieves, the husband's occupational expert, explained that she needs 200 class hours to get licensed in Florida as a hairdresser and that it would cost her about \$2,800 to complete the course and take the test to be licensed. .

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

During the minority of the children, the wife was primarily responsible for the parties' three children, the first two being twins. She also worked throughout the marriage. She developed and maintained her skill as a cosmetologist throughout the marriage. She enjoyed the work and the money she made doing it. She held other jobs during the marriage, in a bank and in school cafeterias.

The husband worked full time and developed a career as a computer circuit board designer during the marriage. He was also involved with the children, with whom he has a good relationship.

(g) The responsibilities each party will have with regard to any minor children they have in common.

There are no minor children.

(h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.

Considered.

(i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.

The husband's salary is \$85,000 a year. The wife has considerable work history but she did not develop a skill or career as remunerative as the husband's.

(j) Any other factor necessary to do equity and justice between the parties.

Considered. The wife has no desire to work and support herself, even though she is able to do so, in whole or in part. She is very determined to remain dependent on the husband for her support rather than rely on her own abilities to the extent she can. Making herself dependent on the husband leaves her vulnerable to his death, disability, lay-offs, reduction in his income or retirement. His death ends her alimony altogether and the other events might form the basis for a supplemental petition to modify to reduce or eliminate any alimony amount completely. There is no such thing as "permanent" alimony, even if that term is used in the law. The term is a misnomer. It is only a matter of time before an alimony order terminates upon the death of the payor, and many alimony orders are reduced because of a substantial change in circumstances after a final judgment. Here, the husband is nearing the end of his working career. The handwriting is on the wall.

Since the parties separated the wife has not made any effort to apply her talents to support herself, as the law requires. There is no explanation for her failure to do so. She gave some testimony of physical ailments but she is very healthy and able to work. She can work at least 35 hours a week.

Pursuant to §61.30(2)(b), the court finds the wife is now voluntarily unemployed and that based on the wife's entire work history, most recent work history, jobs available to her in this community and the testimony of the husband's occupational expert regarding prevailing earnings in this community, the wife's imputed income is \$16,000 per year, or \$308 gross per week, for \$8.80 an hour for 35 hours a week. She can find work at that wage in this community at this time given her work history and ability. That is the least that she is presently capable of earning for her own support. The court finds from all of the evidence that the wife can work at least 35 hours a week. She has no material physical or mental limitations to working at least that many hours each week.

The court finds the wife's actual support need is \$28,000 per year, so she needs \$12,000 a year from the husband or \$1,000 per month in alimony.

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

There is no evidence that (1) the husband's life is insurable and (2) the cost of the insurance is reasonable and affordable to the parties. *Rashid v. Rashid*, 35 So.3d 992 (Fla. 5th DCA 2010). Further, the court cannot award relief that is not stated in a pleading. There was no request for security for alimony in the wife's petition.

(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

This is a long term marriage.

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony shall not be modifiable in amount or duration.

The evidence does not support an award of bridge-the-gap alimony.

(6)(a) *Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:*

1. *The redevelopment of previous skills or credentials; or*
2. *The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.*

(b) *In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.*

(c) *An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.*

The wife asked for all types of alimony, including rehabilitative alimony, but she did not present any evidence of a rehabilitative plan. Rather, the husband presented a rehabilitative plan for the wife that was supported by substantial, competent evidence, that she can obtain a cosmetology license in Florida and work in a salon. This would cost her \$2,800. She has the funds with which to pay this cost. If she was working full time in a salon she could support herself in part and maybe in full. She could earn between \$8.14 to \$24.50 per hour as a licensed cosmetologist in a commercial salon.

However, the husband's evidence of this plan did not give a monthly amount of alimony that the wife would require while she was in school, how long the school would reasonably take and how much time would reasonably be required to pass the licensing exam.

Also, the wife is determined that she will not work, in a salon or anywhere else. She is determined not to get her license. She has not worked in a licensed salon since 1995. In her part time, unlicensed work in her garage salon the wife set her own hours, working when she wanted to and taking off when she wanted to. She believes she is entitled to continue that lifestyle, even though the former marital lifestyle is impossible to maintain, as explained above.

Ordering the wife to comply with the husband's rehabilitative plan will likely result in extended enforcement proceedings to force the wife to do what she is determined not to do. A goal of all legal proceedings is to end the dispute, not extend it and drag it out. An alimony order must be realistic.

So, the court finds that rehabilitative alimony is not appropriate in this case and imputing income to the wife is appropriate.

(7) *Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony.*

The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.

This is a long term marriage and durational alimony is not appropriate in this case.

(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.

An award of permanent alimony is appropriate in this long term marriage after considering the foregoing factors in the statute, to allow the wife to meet her needs and necessities of life.

(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

4.1 After considering the factors, **the court grants the wife's claim for permanent periodic alimony.** The court finds that the wife needs \$1,000 per month for financial support from the husband and that the husband has the ability to pay this amount and still meet the his own financial needs. The court has considered all of the factors in §61.08 in deciding upon an alimony award.

Therefore, the husband is ordered to pay to the wife \$1,000 per month in permanent periodic alimony.

4.2 Temporary alimony The temporary order ordered temporary alimony. That amount was payable beginning 11/1/2011. The temporary order is now canceled.

This alimony order in this judgment is effective 10/1/2012. This order supersedes and cancels the temporary alimony order.

4.3 First Payment Due Date The first monthly payment is due 10/1/2012 and on a like day of each month thereafter.

4.4 Income Deduction Order As required by F.S. §61.1301, a separate Income Deduction Order ("IDO") shall be signed by the judge assigned to this case that directs the payor's employer and any future employer to deduct the child support due under this order from any income due to the payor and to forward it to the depository, the "Florida Support Disbursement Unit." The form of the IDO must comply with the form required by the United States Office of Management and Budget. That agency calls an "Income Deduction Order" an "Income Withholding Order" or IWO, but either name refers to the same thing: an order to take the child support out of the payor's pay to the extent allowed by law. The IDO or IWO form shall be prepared by the payee or the payor and sent to the undersigned judge for signing and filing. *The undersigned judge will not prepare the form of IDO or IWO.* Delivering a copy of the IDO or IWO to the payor's employer is the responsibility of the payee and the payor. The court hereby orders the payor to give a copy of the IDO or IWO to his or her employer immediately upon receiving a copy of it, and if the payor does not do so then the payee must give a copy of it to the payor's employer. *It is not the responsibility of the undersigned judge to find the payor's employer from time to time and deliver a copy of the IDO or IWO to that employer.*

4.5 **Place of Payment** Alimony shall be paid by check or money order payable to and sent to the "Florida Support Disbursement Unit", P.O. Box 8500, Tallahassee, FL 32314-8500. **The payor must write on each check (1) this case number and also the words (2) "Lee County case".**

4.6 Addresses and Social Security numbers Within 30 days of this order both parties are ordered to write to the "State Case Registry", P.O. Box 8500, Tallahassee, FL 32314-8500 and advise that agency of this Case Number in Lee County, Florida, and their current names, addresses, social security numbers, telephone numbers, driver's license numbers, and their employer's name, address, and telephone number, as these presently exist and as they change in the future. A copy of any letter with that information sent to the "State Case Registry" must also be delivered or mailed to the Clerk of the Court, Lee County, Florida, 1700 Monroe Street, Fort Myers, FL 33901.

5. Attorney's Fees, Costs, and Suit Money The court reserves jurisdiction over the issue of attorney's fees, costs, and suit money, both entitlement and amount, for further hearings. Any further hearing on these issues must be preceded by a motion by either party asking for fees, costs or suit money, and a notice of hearing on the motion.

6. Reservation of Jurisdiction The court reserves jurisdiction of this action to enforce this final judgment and for all purposes specifically reserved.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
_____, Esq., and _____, Esq.