IN THE SUPREME COURT OF OHIO

DOUGLAS J. WILSON	:	**CASE NO. 06-1814**
Appellant	:	
vs.	:	**On Appeal from the Wayne County Court of Appeals, Ninth Appellate District**
JENNIFER R. WILSON	:	
Appellee	:	

MERIT BRIEF OF APPELLANT DOUGLAS J. WILSON

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STATEMENT OF FACTS

Douglas J. Wilson (Appellant) filed his complaint for divorce on July 20, 2004. His wife, Jennifer R. Wilson (Appellee), filed a timely answer and counterclaim for divorce.

The court below succinctly summarized the undisputed facts pertinent to this appeal by stating:

> The trial court's judgment entry purported to address all issues relevant to the parties' divorce. Specifically, the judgment entry purported to divide all marital assets, including appellant's unvested Teamsters pension. During the course of the marriage, appellant was a member of a Teamsters union and he participated in the union's pension plan for three years prior to being permanently laid off from work. Appellant must have participated in the union pension plan for a minimum of five years, before his pension would vest. Notwithstanding the unvested nature of appellant's pension, the trial court ordered the following:
>
> > "[Appellee] shall receive one-half of the coverture value of the [appellant's] unvested Teamsters pension if and when it becomes vested. This division shall be through a qualified domestic relations order (QDRO) prepared and signed at the time of the vesting. The cost of the preparation of the QDRO shall be equally shared between the parties."
>
> The trial court made no express reservation of jurisdiction to address matters involving the division of appellant's unvested pension.

Wilson v. Wilson (Aug. 14, 2006), Wayne App. No. 05CA0078, 2006-Ohio-4151.

The appeal was dismissed by the appellate court since the QDRO had not yet issued. This Court allowed this appeal under its discretionary jurisdiction.

ARGUMENT

PROPOSITION OF LAW:

A DIVORCE DECREE WHICH PROVIDES FOR THE ISSUANCE OF A QUALIFIED DOMESTIC RELATIONS ORDER IS A FINAL APPEALABLE ORDER EVEN IF THE QUALIFIED DOMESTIC RELATIONS ORDER HAS NOT YET ISSUED.

A. An appealable final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution.

Section 3(B)(2), Article IV of the Ohio Constitution provides that "[c]ourts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals." It is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final, then an appellate court has no jurisdiction. *General Acc. Ins. Co. v. Insurance Co. of North America* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266.

R.C. 2505.02(B) defines a 'final order' as "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.[1]

Civ.R. 54(A) defines a "judgment" as "any order from which an appeal lies as provided in Section 2505.02 of the Revised Code." Therefore, a "judgment" and a "final order" are seemingly the same.

This Court has elaborated upon the statutory definition of 'final order': "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 153, 545 N.E.2d 1260, 1267. "A judgment is the final determination of a court of competent jurisdiction upon matters submitted to it." *State ex rel. Curran v. Brookes* (1943), 142 Ohio St. 107, 26 O.O. 287, 50 N.E.2d 995, paragraph two of the syllabus. "A final judgment is one which determines the merits of the case and makes an end to it." *Id.* at 110, 26 O.O. at 288, 50 N.E.2d at 998.

The foregoing definitions stress that the primary function of a final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution.

Those courts that have attempted to apply these principals to domestic relations cases involving a QDRO have arrived at divergent results.

The reasoning of some courts seems to be based on the approach taken in *Procuniar v. Procuniar* (Sept. 8, 1995), Greene App. No. 95-CA-19, unreported. Therein

[1] The other subsections of R.C. 2505.02 are not applicable herein. In any appeal, however, an appellate court must determine, that the order is "final" under one of the subsections of that statute before it exercises jurisdiction.

the court ruled that an appeal was timely even though taken more than thirty days after the final divorce decree but within thirty days of the QDRO that was issued pursuant to the decree.

The Second District Court of Appeals in *Procuniar* concluded that "divorce and ancillary" issues were "special statutory proceedings" relying on dicta found in a shareholder's derivative suit decided by this Court[2] and *State ex el. Papp v. James* (1994), 69 Ohio St.3d 373, 1994-Ohio-86. The *Papp* decision was a writ of mandamus and prohibition case wherein the petitioner sought to vacate a custody decree and compel the appointment of a guardian ad litem.

Interestingly, in *Wright v. Wright* (Nov. 10, 1994), Hocking App. No. 94CA02, unreported the Fourth District Court of Appeals also cited *Papp v. James, supra,* and arrived at the opposite result. The court acknowledged that a divorce was a "special statutory proceeding" to which division of property was an ancillary issue. The court concluded:

> In that the division of marital property is clearly an ancillary issue in a divorce proceeding, then the judgment of the court below must be considered final and appealable so long as it can be said to affect a "substantial right." A substantial right involves the idea of a legal right which is enforced and protected by law. Clearly, an individual's ownership interest in certain marital property upon divorce constitutes a "substantial right." This court, accordingly, rules that the judgment entered below is final and appealable (even in the absence of a QDRO) and that we have jurisdiction to review the matter on its merits.
> (Citations omitted)

Wright, supra, unreported at p. 2.

Wright was subsequently overruled to the extent it was inconsistent with Ohio Civil Rule 75(F) by *Liming v. Liming* (May 2, 2005), Athens App. No. 05CA3, 2005-

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[2] *Polikoff v. Adam* (1993), 67 Ohio St. 3d 100, 616 N.E.2d 213.

Ohio-2228 based on still another theory. Therein the court noted that Civ.R. 75(F), which was adopted in 1998 after the *Wright* decision, requires a final judgment of divorce to divide the property of the parties. The court reasoned that the property of the parties was not divided since the trial court had expressly reserved jurisdiction to distribute the marital property (and establish a child support obligation) until after certain bankruptcy proceedings which had been initiated by one of the spouses had been concluded.

Other courts have found that it is the divorce decree and not the QDRO that creates a final appealable order. Recognizing that a QDRO merely is an aid in execution of the trial court's previous decision in dividing the property of the parties, the Third District Court of Appeals held in *Lamb v. Lamb* (Dec. 4, 1998), Paulding App. No. 11-98-09, unreported, at p. 2 that

> "***the QDRO in this case does not affect a substantial right of the parties in that it merely mimics the order of the original divorce decree. The original divorce decree was the order which established the parties property distribution and provided for an equitable pension division. This is the order which determined the rights of the parties. The QDRO in this case differs in no way from the divorce decree and is itself a ministerial tool used by the trial court in order to aid the relief that the court had previously granted. *See Tarbert v. Tarbert* (Sept. 27, 1996), Clark App. No. 96-CA-0036, unreported. Indeed a QDRO may not vary from, enlarge, or diminish the relief that the court granted in the divorce decree, since that order which provided for the QDRO has since become final. *Id.*"

Other appellate courts have also entertained appeals from a divorce decree prior to issuance of a QDRO. *See Tarbert v. Tarbert* (Sept. 27, 1996), Clark App. No. 96-CA-0036, unreported, and *Bakota v. Bakota* (May 23, 2001), Summit App. No. 99-06-1301, unreported.

Finally, the Eleventh District Court of Appeals has also concluded that a final divorce decision is a final appealable judgment even though the QDRO has not been issued. That court, in support of this conclusion, has stated, "[W]e feel that it is impractical to withhold a party's right to appeal while the party is awaiting the actions of nonparties to divide retirement benefits and to draft a proper QDRO. It is inherent that the court, so long as it had directed in its judgment entry and finding of facts how the pension/retirement assets are to be divided, may sign and execute the QDRO. Furthermore, in the event that the retirement assets cannot be divided consistently with the judgment entry, the court, pursuant to a properly filed Civ.R. 60(B) motion, may subsequently correct the entry consistent with the plan requirements or applicable law." *Derrit v. Derrit* (2005), 163 Ohio App.3d 52, 57, 836 N.E.2d 39, 43, 2005-Ohio-4777.

B. <u>A QDRO merely implements the final decision of the trial court.</u>

A QDRO is an order authorized by federal law to implement the state trial court's decision of how a pension is to be divided incident to divorce or dissolution.

R.C. 3105.171(A)(3)(a) includes in the definition of "marital property" all real and personal property that currently is owned by either or both of the spouses, or in which either or both spouses have an interest, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage. "The general rule is that pension or retirement benefits earned during the course of a marriage are marital assets and a factor to be considered not only in the division of property, but also in relationship to an award of alimony." *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 178-179, 559 N.E.2d 1292. The spouse who gains an interest in a pension plan is termed the "participant" in the plan. The term "alternate payee"

means any current spouse, former spouse, child, or other dependent of the participant who is recognized as having a right to receive all, or a portion of, the benefits payable under the participant's pension plan. 26 U.S.C. §414(p)(8).

Many private pension plans are controlled by federal law, the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, a QDRO allows the transfer of retirement benefits to an alternate payee (generally the former spouse) without triggering the anti-assignment or alienation provision of a retirement plan. *Hoyt, supra.* Specifically, Section 206(d)(1) of ERISA generally requires pension plans covered by Title I to provide that plan benefits may not be assigned or alienated. As an exception to section 206(d)(1), Section 206(d)(3)(A) of ERISA allows the assignment or alienation of benefits pursuant to a qualified domestic relations order ("QDRO") and further provides that pension plans must provide for payment of benefits in accordance with the applicable requirements of any QDRO.

Section 206(d)(3)(B) of ERISA specifically defines the term QDRO as follows:

(B) For purposes of [Section 206(d)(3)]—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under the plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met.

Section 206(d)(3)(C) requires that in order for a domestic relations order to be qualified such order must clearly specify (i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee

covered by the order; (ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined; (iii) the number of payments or period to which such order applies; and (iv) each plan to which the order applies.

Section 206(d)(3)(D) specifies that a domestic relations order is qualified only if such order does not require (i) the plan to provide any type of benefit, or any option, not otherwise provided by the plan; (ii) the plan to provide increased benefits (determined on the basis of actuarial value); and (iii) the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order. The Internal Revenue Code sets forth parallel provisions. *See* 26 U.S.C. §414(p).

The Internal Revenue Code also sets forth specific procedures to be implemented by pension plan administrators upon receipt of a QDRO. 26 U.S.C. §414(p)(6)(A)(i) requires the plan administrator to promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and (ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

As the Court will note, the technical requirements of a QDRO are strict. In fact, a plan administrator can reject a state court's QDRO if the administrator makes a determination that the order is not "qualified" as described above.

In practical application, the only substantive determination the trial court has to make is the "amount or percentage" of the participant's benefits which are to be awarded to the alternate payee spouse in the court's division of property award.

C. Why a QDRO should not be required to be filed prior to permitting an appeal of the decree of divorce.

The statutory and case law definitions of "final order" stress that the primary function of a final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution. This Court must look to the language employed by domestic relations courts in order to ascertain whether the filing of the decree of divorce or the filing of the QDRO accomplishes that result.

It is in a court's decree of divorce that each spouse's interest in any pensions earned during the marriage is determined. The court may grant a pension entirely to one spouse, or divide it between the spouses. If the court divides the pension between the spouses, it may specify a specific dollar amount to be granted to the alternate payee or simply grant the alternate payee a percentage of the pension. However, due to various provisions of federal law (discussed above), the actual division of a pension cannot be accomplished simply by the terms of the divorce decree. Thus, subsequently or in conjunction with the issuance of a decree of divorce, the divorcing spouses must submit a QDRO to the court for approval and then to the pension plan administrator for approval and processing.

As referenced above, the QDRO contains certain recitals about the parties, the pension plan itself, and the purpose of the QDRO. In addition, it specifies the amount or percentage of the participant's benefits to be paid by the plan to the alternate payee, or the

manner in which such amount or percentage is to be determined. The amount or percentage provision duplicates the terms of the decree of divorce. In doing so, the QDRO only confirms the division of the pension as provided in the decree of divorce and in no way supplants or otherwise varies the terms of the decree of divorce.

In fact, as observed in *Tarbet*, *supra*, unreported at p. 2, "Indeed a QDRO may not vary from, enlarge, or diminish the relief that the court granted in the divorce decree, since that order which provided for the QDRO has since become final."

A QDRO does not in any way constitute a further adjudication on the merits of the pension division as its sole purpose is to implement the terms of the decree of divorce. Thus, it is the decree of divorce that constitutes the final determination of the court and determines the merits of the case. After a domestic relations court files a decree of divorce, there is nothing further for the court to determine. The divorce decree "is the final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution." *Harkai v. Sherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215, 736 N.E.2d 101.

There are many issues decided by a domestic relations court in its decree of divorce that require implementation by various means. The decree of divorce may, for example, provide which of the divorcing spouses will retain the marital residence. If the spouses hold joint title to the residence, the court will often require one spouse to execute a Quitclaim Deed in favor of the spouse who will retain the residence. A Quitclaim Deed is a separate document required by the county recorder or fiscal officer to accomplish the transfer of title. The filing of a Quitclaim Deed only accomplishes that transfer, as

ordered by the court. There has never been a suggestion that a party must await the filing of the deed in order to appeal the decree of divorce.

By way of further example, the decree of divorce may also require a spouse to pay child support and/or spousal support via wage withholding order. Upon receipt of the decree of divorce containing such an order, the local Child Support Enforcement Agency (CSEA) issues a notice to the obligor's employer requiring the withholding of wages in satisfaction of the court's order for payment of support. There has never been a suggestion that a party must await the implementation of the wage withholding notice in order to appeal the decree of divorce.

In both of these examples, there is clearly finality to the court's decree of divorce even though the terms are yet to be implemented. The filing of a deed or the issuance of a wage withholding order merely implements the court's decision and in no way constitutes a further adjudication on the merits.

Similarly, the issuance of a QDRO merely implements the court's pension division. A court's decree of divorce is final and complete and is legally binding upon filing. A QDRO is merely a tool used to facilitate the implementation of the decree of divorce and serves no purpose other than to distribute to the parties the pension benefits granted to them in the decree.

A trial court's final decree of divorce is final in all respects in regards to the merits of the case itself. The decree of divorce disposes of all of the issues in the parties' divorce case. It determines the whole case and reserves nothing for future determination.

D. <u>Problems created by requiring a QDRO to be filed prior to permitting appeal of the divorce decree.</u>

1. A party may be denied an appeal *ad infinitum* on all issues whether or not related to pension issues.

The trial court in this matter issued a Judgment Decree of Divorce on July 19, 2005. In the decree of divorce, the court provided that Appellee was to receive one-half of the coverture value of Appellant's unvested Teamsters pension "if and when it becomes vested." The court further provided that said division was to be accomplished by the preparation of a QDRO at the time of vesting, with the cost of the preparation of the QDRO divided equally between the parties.

As recognized by the court, Appellant's interest in the Teamster's pension was not yet vested at the time of the divorce. The uncontroverted evidence before the court demonstrated that Appellant was laid off and was no longer a member of the Teamster's union. The evidence further demonstrated that Appellant would not, in fact, be able to become vested in the pension until he works for two more qualifying years as a member of the Teamster's union. Because he was not vested in the Teamster's pension, it was not possible for the parties to prepare and submit a QDRO regarding the unvested pension. In fact, as recognized by the appellate court, it is merely speculative whether a QDRO may ever be properly journalized, because its filing is contingent on whether Appellant's Teamster's pension vests at some time in the future.

As a result, until Appellant works for two more qualifying years as a member of the Teamster's union and becomes vested in the Teamster's pension plan, there will be no closure to this issue.

Meanwhile, the Appellant attempted to appeal seven assignments of error regarding the divorce decree, including whether the unvested pension was even a marital asset upon which a QDRO could be issued. His appeal on this, and the unrelated six other assignments, was dismissed for lack of a final appealable order.

By denying Appellant's appeal until a QDRO is issued, the appellate court has effectively denied him, *ad infinitum*, from appealing the trial court's final divorce decision since a QDRO may never issue. The effect of this denial is that Appellant cannot appeal the underlying decision to grant Appellee an interest in this unvested pension or any other unrelated issues. Appellant is caught in a catch-22—he cannot appeal the decree of divorce until a QDRO is issued, but a QDRO cannot be issued under the present terms of the decree of divorce. In this case, it is a very real possibility that Appellant will never be able to appeal the decree of divorce because he is no longer a member of the Teamster's union.

2. The financial affairs of the divorced parties remain entangled.

In developing guidelines for trial courts to follow when exercising discretion in considering pension or retirement benefits in a divorce, this Court has expressly stated that "we recommend that trial courts, when circumstances permit, should strive to resolve the issues between the parties so as to disassociate the parties from one another or at least minimize their economic partnership." *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 182, 559 N.E.2d 1292, 1298. This Court has further stated that "***some effort should be made to disentangle the parties' economic affairs." *Id.*

As demonstrated by the facts of the instant case, the parties will continue to be financially entangled. Appellee will have the need for information about Appellant's

employment in order to ascertain whether he has returned to work as a member of the Teamster's union. And if he does, she will want to know whether he is participating in the Teamster's pension and at what point he becomes vested in it. At some undetermined future point in time, she will need to seek the preparation of the QDRO and the parties will need to divide the cost of the QDRO preparation. The holding of the trial court accomplishes exactly the opposite of the *Hoyt* directive. It creates a scenario under which the economic affairs of the parties are entangled, potentially, forever.

3. When party wishes to appeal the trial court's decision as to the division of pension itself.

Requiring the filing of a QDRO prior to the filing of an appeal produces other undesirable results. First, it can lead to waste. In order to follow the directives of a decree of divorce that requires the filing of a QDRO to divide a pension, one or both spouses will ordinarily require the assistance of an attorney or professional QDRO preparer due to the highly-technical and complex requirements of the Internal Revenue Code and ERISA, as cited above. The assistance of an attorney or professional QDRO preparer ordinarily comes at a cost to the divorcing spouses. In addition, there are often charges associated with the filing and administration of the QDRO. If one or both spouses were permitted to appeal the trial court's decree of divorce and obtained a reversal on the pension division, the additional time and expense associated with the QDRO could be avoided.

Second, it can lead to irreversible damage. If either party was permitted to appeal the trial court's decree of divorce and obtained a reversal on the pension division, it would make the QDRO incorrect at best and moot at worst. Unless the appealing party

obtains a stay of the trial court's order, by the time the appellate decision is issued, the QDRO may have been administered. With certain types of defined contribution plans, such as 401(k) plans, it is entirely likely that the alternate payee will have received his/her funds. If alternate payee is later determined to be not entitled to those funds, the funds will have to be repaid. The damage to the participant would be irreversible if alternate payee had spent the funds, absconded with the funds, or is otherwise uncollectible.

With certain types of defined benefit plans, it is entirely possible that the pension will be in pay-out status by the time the appellate decision is issued. Before the pension goes into pay-out status, the participant will have the option of selecting from numerous options that will vary the amount he/she will receive as well as the amount and length of time the alternate payee will receive benefits from the pension plan. Once the participant elects a form of pension under an ERISA-governed plan, that election is irrevocable. Qualified Domestic Relations Order Handbook, Third Edition, 2006, Gary A. Shulman, p.10-3. Thus, if the participant elects the form that he/she is required to elect pursuant to the terms of the decree of divorce and QDRO and said form is later rejected by the appellate court, irreversible damage may result.

4. When delays inherent in QDRO process affect the ability to appeal other issues.

The effect of the appellate's court position requiring a QDRO to be filed before a final divorce decision is appealable has other, unreasonable consequences. First, it can delay a party's appeal on non-pension issues. In *Sabo v. Sabo* (Dec. 10, 2003), Lorain App. No. 03CA008245, 2003-Ohio-6586, the parties were granted a divorce on February

28, 2002. Wife's initial appeal was dismissed since a QDRO had not yet been filed. A QDRO was subsequently filed and wife re-filed her appeal. The appellate decision was issued on December 10, 2003. None of the issues wife raised on appeal were related in any way to the division of the pension or the terms of the QDRO. Due to the delay in the filing of the QDRO, wife was prevented from appealing the trial court's underlying decision for over one year. Wife's life was effectively "on-hold" during that period of time.

Similarly, in *Bucalo v. Bucalo* (Nov. 30, 2005), Medina App. No. 05CA0011-M, 2005-Ohio-6319, none of Appellant's five assignments of error related to the pension or its division and yet he had to wait until the issuance of the QDRO in order to obtain a partial reversal of the trial court's underlying decision on unrelated financial issues.

In *Vujovic v. Vujovic* (Aug. 3, 2005), Medina App. No. 04CA0083-M, 2005-Ohio-3942, the parties were divorced on November 17, 2003 and husband appealed the trial court's denial of shared parenting. The parties each filed post-decree motions relating to child support and spousal support, contempt, and parenting issues. During the pendency of those matters, husband's initial appeal was dismissed because a QDRO dividing a 401(k) account had never been filed. The QDRO was ultimately filed and husband re-filed his appeal. The trial court then stayed any action on the litany of post-decree motions filed by the parties. Again, his initial appeal and subsequent post-decree motions were in no way related to pension issues but were delayed simply by the lack of the filing of a QDRO. It is impractical to withhold a party's right to appeal a final divorce decision while he/she awaits the actions of nonparties to divide retirement benefits and to draft a proper QDRO.

E. Unvested pensions do not require a QDRO for the divorce decree to be appealable.

In determining whether to grant parties the right of appeal prior to the issuance of a QDRO, this Court may be inclined to address the rights of alternate payees in unvested pensions, the circumstance that arose in this particular case. There are two possible approaches.

First, a court must determine whether an unvested pension is a marital asset. Although it is not the central issue in this appeal, it is the Appellant's belief that an unvested pension in which the spouse is no longer an eligible participant is not a marital asset that is subject to division. If the court determines that an unvested pension is not a marital asset there is obviously not a need for a QDRO.

The Appellant recognizes that *Lemon v. Lemon* (1998), 42 Ohio App. 3d 142, 537 N.E.2d 246 is routinely cited for the proposition that an unvested pension may be considered a marital asset for purposes of R.C. 3105.18 taking into consideration " *** the time left before the pension becomes vested, the length of the marriage between the parties, and the contributions of the parties both primarily and secondarily to the pension plan." *Lemon, supra,* at p. 144. However, it is important to note that this holding was in consideration of factors relevant to *spousal support* under R.C. 3105.18. The *Lemon* case does not hold that unvested pensions are to be divided now or at any time in the future.

However, if the trial court determines that there is a value to the unvested pension that is divisible between the parties and, thus, must divide the asset in its decree of

divorce, the court has two options. The court could off-set the value of the pension against assets and liabilities and in doing so, circumvent the future need for the issuance of a QDRO.

Alternatively, the Court could reserve jurisdiction solely to implement its decision with a QDRO when the benefits become vested.

This Court considered a similar circumstance in *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 559 N.E.2d 1292 where the pension benefits were vested but not yet mature. "In a situation involving vested but unmatured retirement benefits, the trial court may reserve jurisdiction and either determine the parties' proportionate shares at the time of the divorce or determine proportionality when the benefits become vested and matured. In determining the proportionality of the pension or retirement benefits, the non-employed spouse, in most instances, is only entitled to share in the actual marital asset. The value of this asset would be determined by computing the ratio of the number of years of employment of the employed spouse during the marriage to the total years of his or her employment." *Id.* at 182.

A trial court reserving jurisdiction only to implement its decision does not run afoul of Civ.R. 75(F) so long as this court recognizes the distinction between the scenarios where the trial court reserves jurisdiction to *divide* the pension benefits until they vest/mature/go into pay-out status, and where the trial court decides now what the division should be and simply waits to *implement* the division via QDRO until they vest/mature/go into pay-out status.

Civ.R. 75(F) provides, in relevant part:

> * * * For purposes of Civ.R. 54(B), the court shall not enter final judgment as to a claim for divorce, dissolution of marriage, annulment, or legal separation unless one of the following applies:
>
> (1) The judgment also divides the property of the parties, determines the appropriateness of an order of spousal support, and, where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children;
>
> (2) Issues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment;
>
> (3) The court includes in the judgment the express determination required by Civ.R. 54(B) and a final determination that either of the following applies:
>
> (a) The court lacks jurisdiction to determine such issues;
>
> (b) In a legal separation action, the division of the property of the parties would be inappropriate at that time.

R.C. 3105.171(I) provides, in its entirety, "A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court."

Neither the statutory provision or the procedural rule is offended by a trial court reserving jurisdiction solely to implement its decision with a QDRO. The trial court's decision on the substantive issue set forth in the divorce decree is final in all respects.

The trial court in the instant case attempted to solve the problem with the unvested pension in exactly this manner-- by determining the percent interest of the Appellee in the Appellant's pension by the coverture formula and providing that a QDRO would issue in the future if/when those pension benefits vested. In this manner, the court has divided the property of the parties (satisfying Civ.R. 75(F)) and has reserved

jurisdiction only to implement that decision, which in no way constitutes a modification of that division (satisfying R.C. 3105.171(I)).

The Ninth District Court of Appeals did exactly this in *Bakota v. Bakota* (May 23, 2001), Summit App. No. 99-06-1301, unreported. In that case, Mrs. Bakota's STRS pension was divided awarding Mr. Bakota forty-one percent and Mrs. Bakota fifty-nine percent. The trial court ordered Mrs. Bakota to purchase a $75,000 life insurance policy to protect Mr. Bakota's interest in her retirement and retained jurisdiction to "interpret, modify, amend or enforce the division of [the] STRS pension benefits and insurance order." Mr. Bakota appealed, asserting that the trial court erred in failing to ascertain the present value of Mrs. Bakota's pension. In its decision on the merits, the appellate court stated:

> " * * * John argues that the trial court abused its discretion by failing to determine the present day value of Lori's STRS pension in its division of the marital property and by failing to disentangle the parties. This Court disagrees. * * * Pension benefits accumulated during the marriage are assets subject to property division in a divorce action. * * * However, government retirement systems, such as the STRS, are not subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), * * *. The terms and conditions of the STRS do not recognize a qualified domestic relations order ("QDRO") to divide the retirement fund. * * * As such, a trial court's options in dividing unvested or unmatured public pension benefits are limited. * * * When dealing with unmatured benefits which are not subject to a QDRO, the only means to disentangle the parties financially is 1) to order a distributive award from current income or separate property, or 2) to offset the pension benefits with other marital assets. * * * In the present case, the trial court did not determine a present day valuation of Lori's STRS pension. At the divorce hearing, the experts were unable to agree on a valuation. Lori's expert stated the value at $131,559 and John's expert stated the value at $295,640. Given the disparity of these two figures, the trial court could not determine an accurate valuation of her pension. Without a present day valuation of Lori's STRS pension the trial court was unable to disentangle the parties. * * * This Court finds that the trial court's means of division was reasonable and equitable and does not demonstrate an abuse of discretion. While this alternative will not disentangle the parties

> financially and will *require continued jurisdiction by the trial court, it is an acceptable alternative* that falls within the guidelines established by the Supreme Court of Ohio. See *Hoyt [v. Hoyt],* 53 Ohio St.3d at second paragraph of the syllabus * * *." (Emphasis added and footnotes omitted.)

The courts that have used Civ.R. 75(F) as a basis to require a QDRO before permitting an appeal have failed to recognize the distinction between a decree of divorce that decides all the issues and an order that merely implements the decree.

Civ.R. 75(F) has been properly invoked to dismiss appeals in such cases as *Atkinson v. Atkinson* (2006), 167 Ohio App.3d 704, 2006-Ohio-3676 (trial court granted custody to the father but failed to order mother to pay child support); *Harris v. Harris* (Nov. 16, 2001), Lucas App. No. L-01-1224, unreported (trial court failed to consider the husband's request for spousal support); *Hirt v. Hirt* (Aug. 1, 2003), Fulton App. No. F-02-032, 2003-Ohio-4094 (decree fails to award the marital residence to either of the parties); and *Barefoot v. Barefoot* (Jan. 28, 2002), Wood App. No. WD-01-064, 2002-Ohio-380 (appeal rejected because Husband's business had not yet been valued and final division of property not yet been accomplished).

In these decisions, the trial court clearly failed to make a decision on a substantive aspect of the case relating to the division of property, spousal support, and/or allocation of parental rights, thus running afoul of Civ.R. 75(F). In the instant case the trial court made a decision about the division of the pension, as well as all other substantive aspects of the case. In ordering the issuance of a QDRO if/when Appellant's pension vests, the court simply provided for the implementation of its pension division. The filing of a QDRO at some point in the future would not, in any way, constitute a further adjudication on the merits of the pension division.

CONCLUSION

So long as a divorce decree makes a decision on the division of a pension of the divorcing spouses by deciding the percent or amount that the alternate payee spouse is to receive, the divorce decree is appealable whether or not a QDRO has issued. A QDRO is merely a tool to implement the decree of divorce.

Accordingly, this Court is requested to vacate the decision of the court below and reinstitute the Appellant's appeal.

Respectfully submitted,

JOHNSON & HELMUTH

By: _____

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Co-Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellant was sent to James Richard, 127 E. Liberty Street, Suite 100, P.O. Box 1207, Attorney for Appellee, by regular U.S. Mail on this 2nd day of March, 2007.

JOHNSON & HELMUTH

By: _____
R.J. Helmuth
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

DOUGLAS J. WILSON	:	
Appellant	:	On Appeal from the Wayne County Court of Appeals, Ninth Appellate District 06-1814
vs.	:	
JENNIFER R. WILSON	:	Court of Appeals Case No. 05-CA-0078
Appellee	:	

NOTICE OF APPEAL OF APPELLANT DOUGLAS J. WILSON

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COUNSEL FOR APPELLEE, JENNIFER R. WILSON

FILED
SEP 27 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT DOUGLAS J. WILSON

Appellant Douglas J. Wilson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Wayne County Court of Appeals, Ninth Appellate District, entered in Court of Appeals Case No. 05-CA-0078 on August 14, 2006.

This case is one of public or great general interest.

Respectfully submitted,

JOHNSON & HELMUTH

By _____

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Fax: 330-682-4925

COUNSEL FOR APPELLANT,
DOUGLAS J. WILSON

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was sent to John M. Richard, 127 East Liberty Street, Suite 100, P.O. Box 1207, Wooster, Ohio, 44691, Counsel for Jennifer R. Wilson (Appellee), by regular U. S. Mail on this 27th day of September, 2006.

JOHNSON & HELMUTH

By _____

R.J. Helmuth, #0005624

COUNSEL FOR APPELLANT,
DOUGLAS J. WILSON

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

FILED
9TH DISTRICT
COURT OF APPEALS
2006 AUG 14 AM 10 09
SUZANNE M. VALDRON
CLERK OF COURTS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

DOUGLAS J. WILSON

Appellant

v.

JENNIFER R. WILSON

Appellee

C. A. No. 05CA0078

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 04-DR-0338

DECISION AND JOURNAL ENTRY

Dated: August 14, 2006

This cause was heard upon the record in the trial court and the following disposition is made:

CARR, Judge.

{¶1} Appellant, Douglas Wilson, appeals the judgment of the Wayne County Court of Common Pleas, which overruled appellant's objections to the magistrate's report and proposed decision. This Court dismisses for lack of a final, appealable order.

{¶2} R.C. 2505.02(B)(1) states that an order is a final order which may be reviewed on appeal when that order "affects a substantial right in an action that in effect determines the action and prevents a judgment[.]" Upon review of the record in this appeal, it does not appear that the trial court entered such an order.

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If the decision is not final and appealable, this Court does not have jurisdiction to hear the appeal.

{¶3} On July 19, 2005, the magistrate issued a decision out of a final divorce hearing involving appellant and appellee, Jennifer Wilson. On the same date at the same time, the trial court issued a judgment decree of divorce, wherein the court issued orders mirroring the recommendations of the magistrate. Appellant filed objections to the magistrate's decision, and the trial court issued a judgment entry on November 1, 2005, overruling appellant's objections and ordering that the trial court adheres to its July 19, 2005 decision. Appellant appeals from the November 1, 2005 judgment entry, assigning seven errors for review.

{¶4} The trial court's judgment entry purported to address all issues relevant to the parties' divorce. Specifically, the judgment entry purported to divide all marital assets, including appellant's unvested Teamsters pension. During the course of the marriage, appellant was a member of a Teamsters union and he participated in the union's pension plan for three years prior to being permanently laid off from work. Appellant must have participated in the union pension plan for a minimum of five years, before his pension would vest. Notwithstanding the unvested nature of appellant's pension, the trial court ordered the following:

> "[Appellee] shall receive one-half of the coverture value of the [appellant's] unvested Teamsters pension if and when it becomes

> vested. This division shall be through a qualified domestic relations order (QDRO) prepared and signed at the time of the vesting. The cost of the preparation of the QDRO shall be equally shared between the parties."

The trial court made no express reservation of jurisdiction to address matters involving the division of appellant's unvested pension.

{¶5} This Court has recognized that "[i]t is well settled that trial courts in divorce matters should strive to disentangle the parties' economic partnership whenever circumstances permit." *Bakota v. Bakota* (May 23, 2001), 9th Dist. No. 20339, citing *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 182. This Court has further recognized that this Court lacks jurisdiction to review a division of marital assets, where the trial court has yet to journalize a Qualified Domestic Relations Order ("QDRO") ordered by the court to be filed. *Sabo v. Sabo*, 9th Dist. No. 03CA008245, 2003-Ohio-6586, at ¶4. Only after the QDRO is journalized does the divorce decree become a final, appealable order. Id. A QDRO has been defined as "a current distribution of the rights in a retirement account that is payable in the future, when the payee retires." *McKinney v. McKinney* (2001), 142 Ohio App.3d 604, 608. Accordingly, if the QDRO has not been filed, the parties' rights have necessarily not been fully adjudicated.

{¶6} In this case, no QDRO has been journalized. In fact, it is merely speculative whether a QDRO may ever be properly journalized, because its filing is contingent on whether appellant's Teamsters pension vests at some time in the future. Nevertheless, it is clear that the trial court considered the unvested pension

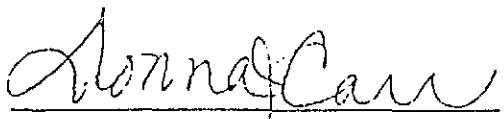
to be a marital asset subject to division. By contingently ordering the preparation and signing, and presumably the filing and journalization, of the QDRO only upon the speculative happening of an uncertain future event, the trial court has failed to dispose of all issues regarding the division of the parties' marital assets.

{¶7} In *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215, this Court explained that "the primary function of a final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution." Because no QDRO has been filed, thereby distributing the parties' current rights in the pension, and because the judgment entry disposes of fewer than all the issues in the parties' divorce, this Court does not have jurisdiction to hear the appeal. Accordingly, this Court dismisses the appeal for lack of a final, appealable order.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.



DONNA J. CARR
FOR THE COURT

SLABY, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

R. J. HELMUTH, Attorney at Law, 343 S. Crownhill Rd., P. O. Box 149, Orrville, Ohio 44667, for appellant.

JAMES M. RICHARD, Attorney at Law, 127 East Liberty Street, Suite 100, P. O. Box 1207, Wooster, Ohio 44691, for appellee.

FILED
COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

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CAROL WHITE MILLHOAN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

DOUGLAS J. WILSON,		
Plaintiff	:	CASE NO. 04-DR-0338
vs.	:	JUDGMENT ENTRY
JENNIFER R. WILSON,	:	
Defendant	:	

The Plaintiff has filed objections to the Magistrate's Report and Proposed Decision filed July 19, 2005. Having reviewed the Plaintiff's objections the Court finds that they are not well-taken and are hereby overruled.

It is ORDERED, ADJUDGED AND DECREED that the Plaintiff's objections to the Magistrate's Report and Proposed Decision are overruled.

It is further ORDERED, ADJUDGED AND DECREED that the Court adheres to its decision dated July 19, 2005.

Hon. Robert J. Brown, Judge

JOURNALIZED

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CAROL W. MILLHOAN, CLERK
WAYNE COUNTY, OHIO

COPY TO ALL COUNSEL

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By 11-1-05
Dep. Clerk

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Directions Due 8-2-05

FILED

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO

Douglas J. Wilson

Plaintiff

Case No. 04-DR-0338

Robert B. Hines, Magistrate

vs.

MAGISTRATE'S DECISION

Jennifer R. Wilson

Defendant

This matter came on for hearing before the Magistrate on the 28th day of June, 2005. The matter is before the court for a final divorce hearing. The plaintiff appeared with his Attorney R.J. Helmuth. The defendant appeared with her Attorney James Richard. Guardian ad litem Denise Estill was also present. The matter went forward on a contested basis.

DECISION

I. General Matters & Uncontested Issues

Based upon the evidence adduced the court finds that jurisdiction and venue are proper. The plaintiff and defendant were residents of the State of Ohio for six months and Wayne County for ninety days immediately preceding the filing of the divorce complaint and counterclaim herein.

The parties were married on October 9, 1993. There are two children born issue of said marriage, to-wit: Dominic J. Wilson, d.o.b. 6/1/95 and Shelby L. Wilson, d.o.b. 2/13/98. The defendant is not currently pregnant.

Both parties testified that they are incompatible as marriage partners. The court finds that the plaintiff and defendant are entitled to a divorce from each other on that ground.

The court received a psychological evaluation from Dr. Marianne

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Bowden and also a guardian ad litem report from Denise Estill.

Based upon those recommendations and the testimony given, the court finds that the best interests of the children would be served by making the defendant the residential parent of the children. The plaintiff did not contest this determination by the court.

II. Contested Issues Re Allocation of Parental Rights & Responsibilities

The following issues regarding parental rights and responsibilities were contested: The plaintiff asked for extended visitation every Thursday. At the defendant's present job she works late every Thursday night. The plaintiff argues that he should be entitled to parenting time with the children on Thursday evenings instead of the children spending time with a substitute care-giver. He also asks for an order that he take care of the children on Fridays. The plaintiff also argues that the defendant should be required to enroll the children in their present school in Creston, Ohio. This is the St. Peters and Paul Elementary school. The defendant would like to keep the children in private school. However she says that because of financial considerations, she simply cannot afford it. The defendant wants to move immediately from the marital home and in with her parents. This presents a host of issues as far as the plaintiff is concerned. All these issues are discussed below.

Based upon the best interests of the children, the court hereby decides the plaintiff should have extended visitation with the children on Thursdays from after school during the school year or 4:30 p.m. when school is out of session until Friday morning. This is preferable to the children being with a substitute care-giver. When school is in session the plaintiff shall have the responsibility of getting the children to school on Friday mornings. When school is not in session he shall be responsible for

seeing that the children get to proper daycare on Friday mornings.

If for some reason the plaintiff is not working on a Friday when the children are not scheduled to be in school, the plaintiff shall be entitled to care for the children during the day.

In all other respects, the plaintiff's visitation shall be consistent with Rule 14 Title 18 attached hereto as Appendix 1. The Thursday visitation as indicated above shall be in lieu of the midweek visitation found in Rule 14 Title 18.

Based upon the income information given to the court, the plaintiff shall pay to the defendant child support in the amount of $453.92 per month plus a 2% processing fee for a total of $463 per month. This child support amount shall become effective as of July 15, 2005. See child support worksheet attached as Appendix 2.

Pursuant to the criteria found in Section 3119.82 ORC the defendant shall be entitled to the dependency exemptions for both children.

The defendant has health insurance through her place of employment. The plaintiff is eligible to obtain health insurance on the children after he serves his probationary period. For the time-being the defendant shall be responsible for providing health insurance for children. The parties should endeavor to compare the health plans available to both parties through their places of employment and chose the best policy. The parties might also consider having the children covered under both insurance policies. For the time being, the standard order attached hereto shall apply.

In the temporary order the Magistrate ordered the parties to "birdnest", leaving both parties in the home with the children, but neither in the home at the same time.

The defendant believes that she should move out of the marital home

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with the children and move in with her parents. The plaintiff believes that the bird-nesting should continue until the house is sold. He also argues that regardless if the defendant moves from the home, the children should remain in the same school[1]. The defendant would like for the children to remain in the same school. However there is an issue about whether the parties can afford the tuition ($170 per month) and if the defendant moves to her parents home there is an issue of transportation. The plaintiff also says that the defendant's parent's home is not a fit place for the children to live. There is also an issue about who pays the expenses relating to the marital home until the house sells.

The Magistrate decides that the equitable decision would be as follows: The Magistrate believes that because of the dire financial straights of the parties, the defendant should move into free housing available at her parents. The plaintiff was not able to convince the Magistrate that the defendant's parents' home is unfit. Moreover the parents can provide free childcare when the defendant is at work. The parents' home is within a 15-20 minute drive of the marital home. Furthermore, when the marital home sells, the plaintiff may move in with his grandfather or his parents. They all live in close proximity to the defendant's parents. Unfortunately this means the children will not be able to attend the private school in Creston. The defendant agrees that her parents' school district (Akron City) is not preferable. Therefore she will attempt to open enroll the children in Copley Schools.

III. Social Security Benefits

The Neville evaluation shows that the projected social security benefits are relatively equal and are not a consideration in the property division in this case.

---

[1]The children do well there and are well-adjusted.

IV. Property Division

A. Issue re Equity in Grand Am

The plaintiff argues that the defendant should be charged with $2,000 on her side of the ledger for equity that existed in the Grand Am the defendant traded during the pendency of the case. The appraisal made by Jake Gasser as part of the litigation showed $2,000 in equity. The Gasser appraisal occurred sometime before 11/23/04. Around that time the Pontiac Grand Am malfunctioned such that the defendant was forced to get rid of it. When traded it brought approximately $4,000. The debt owed was also approximately $4,000. Therefore the court concludes the value of the vehicle was actually $4,000, not $6,000 that the Gasser appraisal showed. Therefore, there is no marital equity.

B. Issue re New Debt

The last temporary order is dated 4/29/05. At that time the plaintiff had just recently lost his job and was due to receive unemployment compensation. The court knew at that time there was not enough combined income between the parties to meet all of their obligations. Therefore deficit spending was inevitable. The question before the court now is how the court should handle this deficiency in the final division of property.

The plaintiff was to pay the mortgage indebtedness on the first and second mortgage to National City and Fifth Third Bank respectively. He failed to do so. The mortgage payments are behind by a total that was not covered in the evidence. This amount plus any interest and penalties as a result of the plaintiff's failure shall hereafter be referred to as the "Temporary Orders Amount".

The defendant was able to keep up with obligations the court required of her by the temporary orders. However she was not able to do so without incurring

additional debt by charging credit cards.

The court decides that the most equitable remedy would be to require each party to be responsible for the deficits that each has accumulated. Therefore the defendant will be responsible for $500 of the Providian Visa xxx4347 credit card as a separate non-marital debt. The plaintiff shall be responsible for all of the mortgage indebtedness, including interest and penalties attributable to his nonpayment of the first and second mortgage (the Temporary Orders Amount), as his separate non-marital debt.

C. Sale of Home

The parties are already in the process of selling the marital real estate. The plaintiff and defendant shall cooperate in this sale. After all the expenses of sale are paid, the proceeds shall be paid as indicated below. If the home is not sold within 9 months, the house shall be sold at auction. The court should reserve jurisdiction to interpret and enforce this provision of the divorce.

The Magistrate decides the financial liability regarding the home during the pendency of the sale as follows: From the date of the finalization of this order until the home sells, the defendant shall be responsible for 25% of some of the monthly expenses related to the home; to-wit: the first and second mortgage, the utilities, house insurance and real estate taxes. The plaintiff shall then be responsible for all other expenses related to the home.

Upon sale, the balance on the mortgage shall be similarly shared: If there is any surplus from the sale of the real estate, the Temporary Orders Amount shall go to the defendant and the balance equally divided between the parties. If there is a deficiency, the plaintiff shall be responsible for the Temporary Orders

Amount and the parties shall be equally responsible for any remaining deficiency[2].

D. Vehicles

Each party shall keep the vehicle in his or her possession and assume the debt thereon. There is no marital equity in either vehicle. The plaintiff has a 1997 Chevy Blazer (value of $5250 & debt of $4481) and the defendant has a 2002 Dodge Stratus (value of $12,368 & debt to Huntington Bank of $12,798).

E. Other Property Issues

All items that are not separate property as determined below shall be divided between them through the alternate selection method (lottery system). The first selection shall be determined by the flip of a coin.

The defendant testified as to certain items that were her separate property through gifts. Except as indicated otherwise below, the Magistrate finds that the property on Appendix 3 that is circled with the initials "SJ" is the separate property of the defendant. The 12 ga. single shot shotgun and the Emerson stereo are the separate property of the plaintiff. The parties shall equally divide the baby boxes and the photo items. The plaintiff testified the Honda 3-wheeler and engine stand found in the Gasser appraisal are the property of the plaintiff's brother. The defendant disputes this. The Magistrate believes the plaintiff on this issue. These items will be removed from the property list. The balance shall be divided as provided above.

The plaintiff would like to have the parties' boat and motor that was valued at $1825. The defendant would like for it to be sold and the proceeds of the sale applied to the balance due on the Target Visa card. The Magistrate decides that considering the financial situation of the parties, the boat shall be sold and the

[2]If either party fails to make his/her share of future mortgage payments, he/she shall be responsible for any decrease in equity as a result of his/her nonpayment.

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proceeds used to pay down the Target Visa balance. The defendant shall make the minimum payment on that card until the boat is sold. At that time the balance due will be divided as follows: The defendant shall be responsible for the first $500 of the balance due. The proceeds of the boat sale shall be used to pay down the balance. The remaining amount shall be evenly divided between the parties.

F. Teamsters Retirement Plan

The plaintiff has a retirement account through his previous job when he was a member of the teamsters. The plaintiff believes the pension is worthless because it is not yet vested. The Magistrate decides that the defendant shall be entitled to one-half of the coverture value of the pension if and when it becomes vested. This shall be through a QDRO prepared and signed at the time of vesting. The cost of the preparation of the QDRO shall be equally shared by the parties.

V. Other Debt

The parties have a Providian Visa acct # xxx4347 with a balance of $1890. The parties shall each be responsible for one-half of this debt.

The defendant shall be responsible for the two credit cards she opened after the divorce was filed. These are Providian xxx5465 and Old Navy xxx1912.

IV. Other Miscellaneous Assets

Both parties have bank accounts in his/her name with nominal values. Each shall be entitled to the balances in those accounts without any claim from the other.

VII. Spousal Support

The defendant admits that there are not sufficient grounds to award spousal support. The plaintiff's and defendant's incomes are almost identical. The defendant took some time off work to raise the children. However her earning

potential was not substantially compromised. Neither party has any health concerns. The parties are relatively young. The term of the marriage is 11 ½ years. The defendant has a good job in middle management at Target. However the defendant argues that in the past the plaintiff has made more in his jobs than the defendant. She argues that the plaintiff has not attempted to obtain a job commensurate with his previous employment. She claims the plaintiff is merely "sandbagging" until this case is over. According to the defendant after the trial he will obtain a good job and then escape spousal support. The defendant therefore argues the court should retain jurisdiction over spousal support. The defendant's proof fell short in this regard. There was no evidence whatsoever that the plaintiff has any prospects of obtaining a higher paying job than he has now. The defendant's claim for spousal support and request to reserve jurisdiction over spousal support is therefore considered and denied.

VIII. Litigation Expenses

Each party shall be responsible for his/her attorney fees.

The parties shall equally divide the litigation expenses.

IX. Bankruptcy Discharge

The defendant argued that this court should put in a provision in the decree that would make the debts assigned to each party non-dischargable in bankruptcy. She fears that the plaintiff will try to discharge some of the parties' joint debts through bankruptcy and leave her solely liable.

The Magistrate understands the defendant's argument and agrees that an inequitable result will occur if the plaintiff decides to declare bankruptcy on their joint debts. The Magistrate therefore will recommend the court adopt the following language as part of the final Divorce Decree:

With regard to the joint indebtedness on the first and second mortgage

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and the Target Visa, the court orders that each party shall hold the other harmless on the balance that each is to assume hereunder. The court further orders that the balance assumed is in the nature of support or maintenance but is not modifiable absent the agreement of the parties. The marital obligations to pay the balances is an integral part of the support obligations imposed hereunder and therefore these debts are not dischargable in bankruptcy under sections 523(a)(5) and 523(a)(15) of the U.S. Bankruptcy Code.

X. GAL Fees

The Clerk shall immediately release the Guardian ad litem deposit directly to Denise Estill.

XI. Court Costs

Court costs shall be applied to the deposits.

A party shall not assign as error on appeal the court's adoption of any findings of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by [Civ. R. 53(E)(3)]. The parties have fourteen days from the date of the filing of this Decision to file written objections with the Clerk of Court's Office. Any such objections must be served upon all parties to this action, and a copy must be provided to the Domestic Relations Court.

Robert B. Hines, Magistrate

Dated: 7/18/05

JOURNALIZED
JUL 18 2005
CAROL W. MILLHOAN, CLERK
WAYNE COUNTY, OHIO

FILED

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO

Douglas J. Wilson

Case No. 04-DR-0338

Plaintiff

CLERK OF COURTS

Robert J. Brown, Judge

vs.

JUDGMENT
DECREE OF DIVORCE

Jennifer R. Wilson

Defendant

This matter comes on for the court on the Magistrate's Decision dated JUL 1 9 2005. Upon consideration thereof it is ordered:

The Court having reviewed the Magistrate's Decision, finds that there are no errors of law or other defect on the face of the decision and hereby adopts the same as an Order of this Court.

The plaintiff and defendant are hereby granted a divorce from each other on the grounds of incompatibility.

The defendant is hereby named the residential parent of the two minor children born issue of the marriage, to-wit: Dominic J. Wilson, d.o.b. 6/1/95 and Shelby L. Wilson, d.o.b. 2/13/98.

The plaintiff shall have companionship with the children according Rule 14 Title 18, attached as Appendix 1, except that his midweek visitation shall be from Thursday after school during the school year or 4:30 p.m. when school is out of session until Friday morning. When school is in session the plaintiff shall have the responsibility of transporting the children to school on Friday mornings. When school is not in session he shall be responsible for seeing that the children get to proper daycare on Friday mornings. If for some reason the plaintiff is not working on a Friday when the children are not scheduled to be in school, the plaintiff shall be entitled to

JDR 95B
pg5. 977-995

care for the children during the day.

The plaintiff shall pay child support to the defendant in the amount of $453.92 plus a 2% processing for a total of $463 per month. This child support amount shall become effective July 15, 2005. See child support worksheet attached as Appendix 2.

Pursuant to the criteria found in Section 3119.82 ORC the defendant shall be entitled to the dependency exemptions for both children.

For the time being, the defendant shall be responsible for providing health insurance for the children. The parties should endeavor to compare the health plans available to both parties through their places of employment and chose the best policy. The parties might also consider having the children covered under both insurance policies. See standard order attached as Appendix 3.

The defendant shall immediately move to her parents' home. The children shall be enrolled in the Copley School District if at all possible.

The plaintiff shall be responsible for the Temporary Orders Amount as indicated in Section IV.B of the Magistrate's Decision herein as a separate non-marital debt. The defendant shall be responsible for $500 for the Providian visa xxx4347 credit card as a separate non-marital debt.

The parties shall sell the marital residence. From the date of the finalization of this order until the home sells, the defendant shall be responsible for 25% of the first and second mortgage, the utilities, the house insurance and real estate taxes. The plaintiff shall be responsible for all other expenses related to the home.

Upon sale, if there is any surplus from the sale of the real estate, the Temporary Orders Amount shall go to the defendant and the balance equally divided

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between the parties. If there is a deficiency, the plaintiff shall be responsible for the Temporary Orders Amount and the parties shall be equally responsible for any remaining deficiency. If either party fails to make his/her share of the future mortgage payments, he/she shall be responsible for any decrease in equity as a result of his/her nonpayment.

Each party shall keep the vehicle in his or her possession and assume the debt thereon.

The property found in Appendix 4 which is circled with the initials "SJ" is the separate property of the defendant. The 12 ga. single shot shotgun and the Emerson stereo are the separate property of the plaintiff. The parties shall equally divide the baby boxes and the photo albums.

All items that are not separate property as indicated above shall be divided between the parties through the alternate selection method (lottery system). The first selection shall be determined by the flip of a coin.

The parties boat and motor shall be sold and the proceeds applied to the Target Visa credit card. The defendant shall make the minimum payment on that card until the boat sells. At that time the defendant shall be responsible for the first $500 of the balance due. The proceeds of the boat sale shall be used to pay down the balance on the Target Visa account. The remaining balance shall be evenly divided between the parties.

The defendant shall receive one-half of the coverture value of the plaintiff's unvested Teamsters pension if and when it becomes vested. This division shall be through a qualified domestic relations order (QDRO) prepared and signed at the time of the vesting. The cost of the preparation of the QDRO shall be equally shared between the parties.

Each party shall be responsible for one-half of the balance of the Providian Visa account xxx4347.

The defendant shall be responsible for the two credit cards she opened after the divorce was filed as her separate non-marital debt, to-wit: Providian xxx5465 and Old Navy xxx1912.

Each party shall be entitled to the balances in the bank accounts in his or her name without any claim from the other.

The defendant's claim for spousal support is considered and denied.

Each party shall be responsible for his/her attorney's fees.

The parties shall equally divide the litigation expenses, including the cost of the Neville report.

With regard to the joint indebtedness on the first and second mortgage and the Target Visa, the court orders that each party shall hold the other harmless on the balance that each is to assume hereunder. The court further orders that the balance assumed is in the nature of support or maintenance but is not modifiable absent the agreement of the parties. The marital obligations to pay the balances is an integral part of the support obligations imposed hereunder and therefore these debts are not dischargable in bankruptcy under sections 523(a)(5) and 523(a)(15) of the U.S. Bankruptcy Code.

The Clerk shall immediately release the Guardian ad Litem deposit directly to Denise Estill.

Court costs shall be applied to the deposit. Any balance shall be evenly divided between the parties.

Robert J. Brown, Judge

COPY TO ALL COUNSEL
MAILED
Regular
Certified
Placed In box
By
Dep. Clerk

I hereby certify that this is a true copy of the original on file.
WITNESS my hand and seal of the Common Pleas Court This 20 day of July 20 05 -20-
CAROL WHITE MILLHOAN
Clerk of Courts, Wayne County, Ohio
By: -20-

JOURNALIZED
JUL 18 2005
CAROL W. MILLHOAN, CLERK
WAYNE COUNTY, OHIO

980

WAYNE COUNTY LOCAL RULE 14

TITLE 18

(Effective 03/01/02)

PARENTING TIME/COMPANIONSHIP/VISITATION SCHEDULES

18.01 PARENTING TIME/COMPANIONSHIP/VISITATION SCHEDULES

Liberal visitation is encouraged by the court, taking into account the number of children, their ages, and the geographic proximity of the parties. The visitation schedule, to the extend possible, should encourage periods of visitation of significant duration and minimize frequent shifting of the children back and forth between their parents.

The parties are encouraged to agree upon a schedule of visitation. If they cannot agree, the court will normally order visitation as set forth in the schedule attached to this Rule unless the particular circumstances indicate that such visitation would not be in the best interests of the children.

In split custody situations, this Rule shall not apply. When split custody is involved, visitation shall be as ordered by the court, consistent with the philosophy of this Rule and provide, to the extent possible, that siblings shall be together during periods of visitation.

1) Flexibility and cooperation by the parents in handling all aspects of visitation is in the best interests of the children. The parties shall make reasonable efforts to accommodate each other's needs, as well as the needs of the children, in implementing the ordered schedule of visitation. The parties may, from time to time, mutually agree to visitation that varies from the ordered schedule of visitation to accommodate their needs and the needs of the children.

2) Basic Visitation Schedule:

(a) Alternate weekends from Friday to Sunday for a period of forty-eight (48) consecutive hours. If the parties are unable to agree otherwise, said visitation shall commence at 6:00 P.M. on Fridays and end at 6:00 P.M. on Sundays;

(b) The nonresidential parent shall have one midweek visitation per week. If the parties are unable to agree, then this midweek visitation shall be every Wednesday evening from 4:30 P.M. (or as soon thereafter as the nonresidential parent is available) until 8:00 P.M.

(c) For the purpose of visitation, there are seven (7) holidays as follows:

(1) Martin Luther King Day

(2) President's Day

(3) Easter

(4) Memorial Day

(5) Fourth of July

(6) Labor Day

(7) Thanksgiving

In the odd-numbered years, the Mother shall have the children on the odd-numbered holidays; and the Father shall have visitation on the even-numbered holidays In the even-numbered years, the Father shall have the odd-numbered holidays; and the Mother shall have the even-numbered holidays.

Any holiday falling on Monday or Friday shall be deemed as including the immediately preceding or immediately subsequent weekend, commencing at 10:00 a.m. (on Fridays) and ending at 8:00 P.M. on Mondays.

Thanksgiving shall always be deemed as commencing on the Wednesday before Thanksgiving (after school) until the subsequent Sunday at 6:00 P.M.

All other holiday visitation shall be from 10:00 a.m. until 8:00 P.M. on the day of the holiday.

(d) The non residential parent shall have the children for one-half of the Christmas break. "Christmas break" shall be deemed as commencing the day after the last day of school at 10:00 a.m. until the day before school reconvenes at 6:00 p.m. (including weekends) but not including December 24 and December 25. In the event there is an odd number of days during Christmas break, the nonresidential parent shall have the children for the extra day. The nonresidential parent's choice of dates during Christmas break has priority over the residential parent's Christmas break schedule if the nonresidential parent notifies the residential parent of the dates not later than October 1st. of the applicable year. Absent timely notification by the nonresidential parent, the residential parent's Christmas break schedule shall have priority. For purposes of this paragraph a "day" is all or any portion of one calendar day.

(e) In even-numbered years, the nonresidential parent shall have the children from 9:00 p.m. on December 24 until 6:00 p.m. on December 25. In odd-numbered years, the nonresidential parent shall have the children from 10:00 a.m. until 9:00 p.m. on

December 24 and from 6:00 p.m. to 11:00 p.m. on December 25. The children shall be with the residential parent on December 24 and December 25 at all other times not otherwise specified on these dates.

(f) On Mother's Day and Father's Day, no matter whose turn for visitation, the children will be with the appropriate parent. Visitation shall begin at 10:00 A.M. and continue until 6:00 P.M.

(g) Five (5) weeks, consecutively or separately (for the nonresidential parent), during the school summer recess to be scheduled as early in the calendar year as possible, subject to the following:

(i) The non-residential parent's choice of the duration and dates of summer visitation has priority over the residential parent's summer vacation schedule if the nonresidential parent notifies the residential parent of the duration and dates of summer visitation not later than April 1 of the applicable year. Absent timely notification by the nonresidential parent, the residential parent's vacation schedule shall have priority.

(ii) Each parent shall be entitled to take the children on vacation away from that parent's residence for a period of up to fourteen (14) consecutive days upon advanced written notice to the other parent, accompanied by written agenda indicating the vacation destination, phone numbers where he or she can be reached, times of arrival and departure and method of travel. A complete itinerary with contact telephone numbers must be given to the other parent no later than ten (10) days prior to departure.

(iii) During the extended summer visitation (except the fourteen (14) day away-from-home vacations) children should continue to spend alternate weekends with each parent on the same schedule as the rest of the year. In addition, the residential parent shall enjoy companionship time with the children on the same midweek visitation schedule granted to the nonresidential parent during the balance of the year.

(iv) Child support payable by the nonresidential parent shall abate by fifty (50%) percent during summer visitation of one week (7 consecutive days) or longer. The visitations of the residential parent during the nonresidential parent's summer visitation do not interrupt the nonresidential parent's consecutive visitation days for purposes of calculating this abatement. The nonresidential parent shall apply to the Wayne County Child Support Enforcement Agency for abatement of child support within sixty days of the ending date of the extended visitation for which abatement is requested. Child support abatement does not apply to any visitation other than extended summer visitation.

(v) "School summer recess" is defined as beginning the day after the last day the children attend school and ending the day before school reconvenes.

(h) The child shall celebrate his/her birthday in the home of the residential parent unless it falls on a visitation day. The other parent can make up for the birthday with a separate birthday party, if desired.

(i) When conflicts arise under this Basic Visitation Schedule, the following priority schedule shall apply (in descending order) with lowered-numbered items taking priority over high-numbered items:

(i) Visitation at Christmas time;

(ii) Thanksgiving visitation;

(iii) Extended summer visitation;

(iv) Mother's Day and Father's Day

(v) Other holiday visitation;

(vi) Weekend visitation;

(vii) Midweek visitation;

(j) The continued participation in extracurricular activities (school related or otherwise) shall continue uninterrupted regardless of this visitation schedule. It shall be the responsibility of the parent with whom the children are with at the time of the activity to provide physical and reasonable economic costs of transportation to these activities. Each parent shall provide the other parent with notice of all extra-curricular activities (school related or otherwise) in which the children participate. Schedules of extracurricular activities (handwritten by the parent if no formal schedule is provided by the activity) and the name of the activity leader (including address and telephone number if reasonably available) shall also be provided to the other parent. Extracurricular activities of the children shall not be scheduled by the residential parent so as to unreasonably interfere with visitation.

(k) Absent agreement otherwise, the nonresidential parent shall pick up the children at the beginning of each visitation and the residential parent shall pick up the children at the end of each visitation for return to their residence.

(l) If a nonresidential parent is unable to exercise visitation, 24 hours' notice must be provided to the residential parent, absent exigent circumstances. A nonresidential parent more than thirty (30) minutes late for visitation forfeits that visitation. The court may consider frequently missed visitation, with or without notice, as grounds for modification of the visitation schedule and/or contempt.

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A residential parent may cancel scheduled visitation due to a child's illness and should give 24-hours' notice, if possible. Any visitation canceled due to illness shall be made up as soon as is practicable.

(m) Visitation is a time for the children to be and do things with the parent with whom they do not live. During visitation, the children should not be left with babysitters, except for short durations or to facilitate work schedules.

(n) Open and free communication by telephone and otherwise shall be permitted between the children and the parent with whom they are not then residing. If long distance telephone charges are involved, calls should be generally limited to not more than 15 minutes.

(o) Upon either parent learning or determining, whichever occurs first, that he/she will be moving, he/she shall immediately notify the other parent except in those circumstances wherein notice is not required by Ohio Revised Code 3109.051(G) and provide the other parent with the moving date, new residence address and telephone number, and such other pertinent information that is necessary to effectuate a smooth transition for the children.

(3) When the Oldest Child Is less than Eighteen Months. The Basic Visitation Schedule shall not apply when the oldest child of the parents is less than eighteen months of age. When the oldest child of the parents is less than eighteen months of age the nonresidential parent shall have two (2) weekly visits with the child(ren).

If the parents cannot agree, these visits shall be every Wednesday from 5:30 p.m. to 8:30 p.m. and every Sunday from 12:00 p.m. to 6:00 p.m.

The general rules of visitation set forth in subparagraphs (i) through (n) of the Basic Visitation Schedule shall apply.

When the oldest child of the parents has attained the age of eighteen months, the visitation schedule shall be pursuant to paragraph (4) of this rule.

(4) When the Oldest Child is Eighteen Months to Three Years. When the oldest child of the parents is age eighteen months to three years, the basic visitation shall not apply. When the oldest child of the parents is age eighteen months to three years, the nonresidential parent shall have two (2) weekly visits, with one (1) being an overnight visit with the child(ren).

If the parents cannot agree, these visits shall be every Wednesday from 5:30 p.m. to 8:30 p.m. and every Saturday from 12:00 noon to Sunday at 6:00 p.m.

The general rules of visitation set forth in subparagraphs (i) through (n) of the Basic Visitation Schedule shall apply.

When the oldest child of the parents has attained the age of three years, visitation shall be pursuant to the basic visitation schedule as to all children of the parents.

(5) Travel Distance of 100 Miles or More. If the parents reside 100 miles or more from each other, the Basic Visitation Schedule shall not apply. If the parties cannot agree on a visitation schedule (unless the court otherwise orders), the following will normally be ordered as the visitation schedule by the court:

(a) Five (5) consecutive weeks for the nonresidential parent, commencing the first Sunday of the summer school vacation.

The residential parent shall be permitted to have the children, overnight, one (1) weekend from Saturday at 9:00 a.m. until Sunday at 6:00 p.m. during the five (5) weeks of visitation. This weekend of visitation for the residential parent shall be exercised in the geographic area of the nonresidential parent's residence, unless the parents otherwise agree. The parents shall agree upon the designated weekend with priority given to the nonresidential parent's vacation plans.

Child support payable by the nonresidential parent shall abate 50% during the five (5) weeks of visitation.

(b) Each year at Christmas, the nonresidential parent shall have the children not less than seven (7) consecutive days over the Christmas school vacation. In odd-numbered years, the nonresidential parent shall have the children on Christmas Day in addition to the seven (7) consecutive days provided for herein.

(c) In even-numbered years, the nonresidential parent shall have the children from the Wednesday preceding Thanksgiving (after school) until the Sunday subsequent to Thanksgiving at 8:00 p.m.

(d) The nonresidential parent shall have the children every spring school break from the last day of school (after school) until the day before school reconvenes at 8:00 p.m.

(e) If travel time, by car, is less than three (3) hours one way, the nonresidential parent shall have the children from Friday at 8:00 p.m. until Sunday at 8:00 p.m. the last weekend of each month during the school year. If said weekend is preceded on Friday by a holiday or followed on Monday by a holiday, said weekend shall be deemed as including the holiday and shall commence at 10:00 a.m. (on Fridays) and end at 8:30 p.m. (on Mondays).

(f) Open and free communication by telephone and otherwise shall be permitted between the children and the parent with whom they are not then residing. Long distance telephone calls should be generally limited to not more than 15

minutes. To the extent possible, the parties should arrange to place or receive said calls in a manner that will result in each party bearing approximately equal telephone charges.

(g) Responsibility for transportation costs shall be included in the court's order. If the parents cannot agree on costs of transportation, costs shall be ordered by the court. The court may consider the costs of transportation to effectuate visitation as a factor in deviating from child support calculations.

(h) When a child or children of parents residing more than 100 miles from each other has not yet attained the age of five (5) years, visitation shall be as ordered by the court, consistent with the philosophy of visitation set forth by this Rule.

(i) When a child or children of parents residing more than 100 miles apart from each other has attained the age of fourteen (14) years, the visitation schedule shall be as set forth in this Rule unless the court otherwise orders.

(j) Upon either parent learning or determining, whichever first occurs, that he/she will be moving, he/she shall immediately notify the other parent except in those circumstances wherein notice is not required by Ohio Revised Code 3109.051(G) and provide the other parent with the moving date, new residence address and telephone number, and such other pertinent information that is necessary to effectuate a smooth transition for the children.

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Wayne County Common Pleas Court
Domestic Relations

FILED
COM PLEAS COURT

CHILD SUPPORT COMPUTATION WORKSHEET
SOLE RESIDENTIAL PARENT OR SHARED PARENTING ORDER

Names of Parties: Case No.: 04-DR-0338
Jennifer Wilson Judge: Brown
Douglas Wilson

CLERK OF COURTS

The following parent was designated as
the residential parent and legal custodian: X Mother ____ Father ____ Shared
No. of Minor Children 2

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1a. Annual gross income from employment or, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (Exclude overtime, bonuses, self-employment income, or commissions)	27,040	25,314	
b. Amount of overtime, bonuses and commissions	0	0	

	FATHER	MOTHER
Year 3 (Three years ago)	0	0
Year 2 (Two years ago)	0	0
Year 1 (Last calendar year)	0	0
AVERAGE	0	0

(Include in Col. I and/or Col. II the average of the three years or the year 1 amount, whichever is less, if there exists a reasonable expectation that the total earnings from overtime and/or bonuses during the current calendar year will meet or exceed the amount that is the lower of the average of the three years or the year 1 amount. If, however, there exists a reasonable expectation that the total earnings from overtime/bonuses during the calendar year will be less than the lower of the average of the three years or the year 1 amount, include the amount reasonably expected to be earned this year.)

2. For Self-Employment Income:		
a. Gross receipts from business	0	0
b. Ordinary and necessary business expenses	0	0
c. 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the FICA rate	0	0
d. Adjusted gross income from self-employment (Subtract the sum of 2b and 2c from 2a)	0	0
3. Annual income from interest and dividends (whether or not taxable)	0	0
4. Annual income from unemployment compensation	0	0
5. Annual income from workers' compensation, disability insurance benefits, or Social Security Disability/Retirement benefits	0	0

Case No.: 04-DR-0338

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
6. Other annual income			
a. Other Taxable Inc	0	0	
b. Cash Perks	0	0	
c. Spousal support received	0	0	
7. Total annual gross income (add lines 1a, 1b, 2d & 3-6)	27,040	25,314	
ADJUSTMENTS TO INCOME			
8. Adjustment for minor children born to or adopted by either parent and another parent who are living with this parent; adjustment does not apply to stepchildren (number of children times federal income tax exemption less child support received, not to exceed the federal tax exemption)	0	0	
9. Annual court-ordered support paid for other children	0	0	
10. Annual court-ordered spousal support paid to any spouse or former spouse	0	0	
11 Amount of local income taxes actually paid or estimated to be paid	270	253	
12. Mandatory work-related deductions such as union dues, uniform fees, etc (Not including taxes, Social Security or retirement)			
a. Mandatory Work Related/Other Deduction	0	0	
b. Mandatory Work Related/Other Deduction	0	0	
13. Total gross income adjustments (add lines 8 through 12)	270	253	
14. Adjusted annual gross income (subtract line 13 from line 7)	26,770	25,061	
15. Combined annual income that is basis for child support order (Add line 14, Col. I and Col. II)			51,831
16. Percentage of parent's income to total income:			
a. Father (divide line 14, Col.I, by line 15, Col.III)	51.65%		
b. Mother (divide line 14, Col.II, by line 15, Col.III)		48.35%	
17a. Basic combined child support obligation (From schedule on income up to $150,000 - Amounts between schedule values are calculated)			10,546
17b. Support on Income over $150,000			0
Income for which support is to be applied	0		
Percent to be used on income over $150,000	0.00%		
17c. Total child support obligation			10,546

989

Case No.: 04-DR-0338

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
18. Annual support obligation per parent			
a. Father-Multiply line 17c, Col.III by line 16a	5,447		
b. Mother-Multiply line 17c, Col.III by line 16b		5,099	
19. Annual child care expenses for the children who are the subject of this order that are work, employment training, or education related, as approved by the court or agency (deduct tax credit from annual costs, whether or not claimed)	0	0	
a. Less federal child care tax credit	0	0	
b. Less OH child care tax credit	0	0	
c. Net child care costs	0	0	
20. Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order	0	0	
21. ADJUSTMENTS TO CHILD SUPPORT			
Father (Only if obligor or shared parenting)			
a. Additions: Line 16a times the sum of amounts shown on line 19c, Col II and line 20, Col II	0		
c. Subtractions: Line 16b times sum of amounts shown on line 19c, Col. I and line 20, Col I	0		
Mother (Only if obligor or shared parenting)			
b. Additions: Line 16b times the sum of amounts shown on line 19c, Col I and line 20, Col I)		0	
d. Subtractions: Line 16a times sum of amounts shown on line 19c, Col. II and line 20, Col II		0	
22. OBLIGATION AFTER ADJUSTMENTS TO CHILD SUPPORT			
a. Father: Line 18a plus or minus the difference between line 21a minus line 21c	5,447		
b. Mother: Line 18b plus or minus the difference between line 21b minus line 21d		5,099	
23. ACTUAL ANNUAL OBLIGATION			
a. Line 22 for the obligor parent	5,447		
b. Any non-means-tested benefits, including Social Security and Veterans' benefits, paid to and received by a child or a person on behalf of the child due to death, disability, or retirement of the parent	0		
c. Actual annual obligation (subtract line 23b from 23a)	5,447		

Case No.: 04-DR-0338

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
24a. Deviation from sole residential parent support amount shown on line 23c if amount would be unjust or inappropriate: (See section 3119.23 of the Revised Code.) (Specific facts and monetary values must be stated.)	0		
Reason:			
24b. Deviation from shared parenting order: (See section 3119.23 and 3119.24 of the Revised Code.) (Specific facts including amount of time children spend with each parent , ability of each parent to maintain adequate housing for children, and each parent's expenses for children must be stated to justify deviation.)	0		
Reason:			
25 FINAL FIGURE: (This amount reflects final annual child support obligation; line 23c plus or minus any amounts indicated in line 24a or 24b.) Father Obligor	5,447	0	
26 FOR DECREE: Child support per month (divide obligor's annual share by 12) plus any processing charge.	453.92		
Including 2% processing charge	463.00		
Comments:			

PREPARED BY:
COUNSEL: _____ PRO SE: _____
Representing
CSEA: _____ OTHER: _____

WORKSHEET HAS BEEN REVIEWED AND AGREED TO:

_____ _____
MOTHER DATE

_____ _____
FATHER DATE

FILED
CLERK OF COURT

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO

ORDER FOR HEALTH INSURANCE FOR MINOR CHILDREN

CLERK OF COURTS

Douglas J. Wilson	Jennifer R. Wilson
OBLIGOR	OBLIGEE

Case No. 04-DR-0338

CHILDREN		Judgment Entry Requiring Obligee to Provide Health Insurance Coverage for Children Primarily and and Obligor Alternatively.
Dominic J. Wilson	d.o.b. 06/01/95	
Shelby L. Wilson	d.o.b. 02/13/98	

This Court orders as follows:

(1) Obligee shall provide health insurance coverage for the minor children if that insurance is available through a group health insurance plan offered by any of Obligee's employers or through any other group health insurance plan available to Obligee and if that insurance is available at a more reasonable cost than insurance for the children through a group health insurance plan available to Obligor.

(2) Obligee shall designate the minor children as covered dependents on any health insurance plan for which they contract.

(3) If health insurance coverage for the children who are subject to this Order is not available at a reasonable cost through a group health insurance plan offered by any of Obligee's employers or through any other group health insurance plan available to Obligee, Obligor shall provide health insurance coverage for the minor children if that insurance is available at a reasonable cost through a group health insurance plan offered by any of Obligor's employers or any other group health insurance plan available to Obligor and if health insurance coverage for the minor children is not available at a more reasonable cost through a group health insurance plan available to Obligee.

(4) Obligor shall provide health insurance coverage for the minor children if that insurance is available at a reasonable cost through a group health insurance plan offered by any of Obligor's employers or any other group health insurance plan available to Obligor and if health insurance coverage for the minor children is not available at a more reasonable cost through a group health insurance plan available to Obligee.

(5) If Obligor provides insurance under this order, Obligor shall supply Obligee with copies of the insurance forms necessary to receive reimbursement, payment or other benefits under the health insurance plan and with

a copy of any necessary insurance cards. Obligor shall notify the insurance company that provides the health insurance coverage for the minor children that any payments for reimbursement of medical, optical, hospital, dental or prescription expenses paid by Obligee are to be paid to Obligee upon the filing of any necessary insurance claim forms.

(6) If health insurance coverage for the children who are the subject of this order is not available at a reasonable cost through a group health insurance plan offered by any of Obligee's employers or through any other group health insurance plan and is not available at a reasonable cost through a group health insurance plan offered by any of Obligor's employers or through any other group insurance plan available to Obligor, the Obligor or Obligee to whom coverage becomes available shall immediately inform the Court of that fact.

(7) Obligee is required to provide health insurance coverage for the minor children; and if Obligee fails to comply with these requirements, the employer of Obligee, upon written Order from this Court, is hereby required to take whatever action necessary to enroll Obligee in any available group health insurance policy with coverage for the minor children and shall deduct any additional amount from Obligee's earnings necessary to pay the cost for that health insurance coverage.

(8) During the time that this Order is in effect, the employer of Obligee is required to release to the Child Support Enforcement Agency, upon written request, any necessary information on health insurance coverage of Obligee, including but not limited to, the name and address of the insurance company and the policy number, and to otherwise comply with Ohio Revised Code Section 3119.30 et seq. and any court orders issued pursuant to the aforementioned statutes.

(9) Any insurance company from whom the Obligor or the Obligee is required to obtain medical insurance is required to comply with any orders issued pursuant to Ohio Revised Code Section 3119.30 et seq.

(10) Obligor and Obligee are required to comply with Ohio Revised Code Section 3119.31 no later than thirty (30) days after the issuance of this Order.

(11) Obligee shall pay the ordinary medical, hospital, prescription, and dental expenses incurred by the minor children. All extraordinary medical, hospital, prescription, dental, and orthodontia expenses incurred by the minor children shall be divided between Obligor and Obligee equally. Current Ohio Revised Code Section 3119.01(C)(4) defines extraordinary expenses as any uninsured expenses over $100 per child per calendar year.

Robert B. Hines, Magistrate

JOURNALIZED 35

JUL 19 2005

CAROL W. MILLHOAN, CLERK
WAYNE COUNTY, OHIO

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SJ	Entrance table (drop leaf)		$225.00
	gun cabinet		$125.00
SP	12 gauge single shot (shotgun) Brazil		$110.00
	Remington Fieldmaster Model 572, 22 w/scope		$135.00
	Evolution cross bow		$125.00
	cross bow		$100.00
	Misc ammo in gun cabinet		$15.00
	rocker recliner		$125.00
SJ	lighted glass cabinet		$135.00
SJ	dolls	3 X 60	$180.00
SJ	Gateway computer & desk		$95.00
	white chest of drawers		$35.00
	newer day bed		$65.00
	balance of bedroom--Toys/pictures/knic knacks		$35.00
	single bed		$110.00
	chest of drawers		$35.00
	balance of bedroom--telescope/guitar/pictures/knick knacks		$65.00
SJ	king size bed		$165.00
	night stand		$55.00
	balance of bedroom--pictures/knic knack shelf		$20.00
	kitchen table & chairs		$85.00
	microwave		$15.00
	balance of kitchen--electric appliances /knic knacks/pictures		$105.00
	sofa		$65.00
	coffee table storage chest		$75.00
	love seat		$65.00
	floor lamps	2 X 15	$30.00
	end table		$5.00

Appendix 4

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