

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

CASE NO: 2022 DR 4005 MB FC

IN RE: The Marriage of

SHELDON GRAVES,

Petitioner/Husband

and

VIVIENNE GRAVES,

Respondent

_____ /

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE having come on for consideration by this Court on August 14, 2023 on the Husband's Petition for Dissolution of Marriage and the Wife's Answer and Counter Petition, and the parties having been represented by counsel, and no Court reporter was present. The Court has carefully considered the credibility of each witness, all the while being apprised of the interests of the parties. In summarizing any evidence or the substance of any witness's testimony, the Court has not included every detail, nor attempted to state non-essential facts; because the Court has not done so, however, does not mean it has failed to consider the same. Further, in its findings, the Court has not considered any inadmissible evidence, nor any evidence not relevant to any of the matters at issue, and is only considering evidence for the purposes for which it was admitted. *See J.G. v. State*, 213 So. 3d 936, 937 (Fla. 4th DCA 2017) (A judge may hear information that a jury would not be permitted to hear because a "judge as finder of fact is presumed to have disregarded

any inadmissible evidence or improper argument.”). After hearing the testimony of the parties, case law and argument of counsel, giving full consideration to all of the evidence, and the Court being otherwise fully advised in the premises, the Court makes the following:

I. **FINDINGS OF FACT:**

1. The Court has jurisdiction of the parties and the subject matter herein. The Petitioner has been a resident of the State of Florida for at least six (6) months prior to the filing of the Petition for Dissolution of Marriage.
2. Irreconcilable differences exist and have caused the irretrievable breakdown of the marriage, and all efforts and hope of reconciliation would be impracticable and not in the best interests of the parties.
3. The parties were married on December 30, 2011.
4. The parties have no minor children, and none are contemplated.
5. This court finds that there is substantial competent evidence to support that the parties split up in September 1, 2019. The Husband testified that he attempted to work it out one week in 2020. Husband testified that after that week he did not reside with the Wife thereafter. The Wife testified that they maintained contact until the filing of the Petition in May of 2022. However, Wife’s testimony indicated that she was aware the Husband was seeing other people during the time.

II. **ALIMONY**

6. The Court has considered all of the following factors in determining the Wife's request for alimony:
 - (a) The standard of living established during the marriage.

The parties had a moderate standard of living. They were both employed during the intact marriage and made sufficient income to warrant the ownership of a residence and occasional vacations. The Wife made more money in 2022 than the Husband as she had two jobs.

(b) The duration of the marriage.

The length of the marriage is from the date of the marriage, December 30, 2011, until the parties' separation September 1, 2019. Subsequently, the Petition for Dissolution of Marriage was filed on May 5, 2022.

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

The Husband is 60 years old. The Wife is 58 years old. The Wife is complaining of a series of physical ailments for which she is presently receiving treatment for, including but not limited to back, neck and lower extremity problems. She is not presently on active duty in her role as a nurse but is receiving her full pay. The Husband was recently hospitalized for high blood pressure, but with medication, his testimony was that his condition is under control.

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

The Husband's income as a public defender is approximately \$90,000 per year. The Wife's net income is listed as \$6,266 per month, which is less than her 2022 income when she was still working two jobs, one with the VA and one in her role with the military.

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

The Husband has been employed as an attorney for an extended period of time with the Public Defender's Office. The Wife has been employed as a nurse with both the military and the VA Hospital. She testified that she is dealing with a myriad of health issues, but that there has been no determination as to how these injuries will impact her future employment. She did testify that she is not presently working, although she is receiving her pay and that her employer has not made an ultimate determination as to her future employability and/or the income, which she may receive in the future if she is unable to work. There was no testimony made by any physician or expert as to this issue. The Wife testified that she did not want to have any more surgeries even if recommended. Wife did not indicate that she would be unable to work in other capacities and is currently carrying for her young grandchild.

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

Both parties worked during the marriage and assisted each other in providing for their needs during their intact marriage.

(g) The responsibilities each party will have with regard to any minor child they have in common. N/A

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

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

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

The Wife, through her testimony and counsel's argument, is requesting an award of alimony based upon the speculative nature of her future employment and current health situation. Her employer has not resolved her status nor had her medical providers determined what the ultimate course of treatment and prognosis and/or diagnosis of her conditions would ultimately be. There was no testimony as to other jobs that the Wife could do instead. The Wife expects to be discharged from the military sometime after her Right Hip Replacement Surgery, which she does not want to proceed with. The Wife believes that she will receive monthly disability payments after she is discharged from the military, even if she receives disability for 100% impairment, she claims that it is still insufficient amount to meet the Wife's needs. The same is speculative and no current need was established. **The Court DENIES an award of alimony.**

III. EQUITABLE DISTRIBUTION:

7. The parties have each stipulated in open Court that they have divided their personal belongings, vehicles, and bank accounts. The parties further stipulated that they would split the marital portions of their retirement accounts equally, i.e., the Husband's FRS Account, the Husband's VOYA Account, and the Wife's TSP Account. The Wife alleged that the credit card debt in the sole name of the Wife should be divided as it was marital debt, but Husband disputed that the credit cards.
8. The Court makes the following findings of fact relative to the equitable distribution of marital assets and liabilities through all of the factors articulated below.
 - (a) *The relative contribution to the marriage by each spouse* - Both parties were gainfully employed during the marriage with the Husband employed by the Public

Defender's Office in Palm Beach County and the Wife as a nurse and Army reservist. Wife alleged that the Husband did not contribute to the credit card bills, which paid for food, vacations, household items, the mortgage payments, taxes, homeowner's insurance and upkeep of the parties' former marital home. Wife testified that the Husband took other women to dinner and gave money to them, rather than assisting with the payment of bills, credit cards and the mortgage on the parties' former marital residence. Wife when their former marital home was about to be foreclosed on and the property had to be sold; the Wife felt that she was forced to pay Husband \$20,000 from their remaining equity. Wife testified that she then took the other \$20,000 for a down payment on her current home. The Husband acknowledges receipt of the payment for \$20,000, but he testified that the payment was because his Mother loaned them money, which needed to be repaid. Husband testified that he did not seek a split of the remaining proceeds from the home. Husband indicated that he wanted a divorce and kept waiting for the Wife to initiate the same. Husband testified that they each paid for different things.

(b) ***The relative contribution of each spouse to the care and education of the children*** - During the marriage, the Wife obtained custody of her granddaughter and she alleged that Husband promised to assist her with the care and financial upbringing of the child. However, the Husband did not testify to the same. The parties did not have children together.

(c) ***The contribution of each spouse for services as homemaker*** - Despite the fact that the Wife worked full-time during the marriage, held extra part-time jobs and even

volunteered in Palm Beach County to help open free medical clinics, she testified that she was the homemaker which included cleaning, laundry, cooking, handiwork/fixing items in house, taking out the garbage and even the caregiving for the Husband's Mother. The Wife took her vacation time and sick leave from work for two months to care for the Husband's Mother while the Husband's Mother lived in their home. The Wife bathed the Husband's Mother and took care of all her personal health, toilet, and hygiene needs. Additionally, the Former Husband allowed one of his "friends" to move into the parties' home and the Husband collected rent from his "friend" which he never used to contribute to any household expenses. Wife also testified that as part of her job she would be away from the home for extended periods of time.

(d) ***The economic circumstances of the parties*** - The Husband has been an attorney since 1997 and is gainfully employed as an attorney; the Wife is a nurse who was employed by the VA, but was activated as an Army reservist due to COVID and is still on active duty. Wife stated she is no longer able to practice nursing care as she cannot stand for any significant period. The Wife claims that she will be discharged from the military sometime after her Right Hip Replacement Surgery. Both parties reside in their own homes. Wife believes that she will receive monthly disability payments after she is discharged from the military, even if she receives disability for 100% impairment, it will still be an insufficient amount to meet the Wife's needs.

(e) ***The duration of the marriage*** - The parties have been married for almost 12 years.

(f) ***The interruption of personal careers and/or educational opportunities of each party*** – The Husband’s career has not been interrupted. The Wife claims her career in nursing was interrupted by caring for the Husband’s Mother taking two months of vacation time and leave from work and for various medical reasons of her own Hand Surgery (2013), Hand Surgery (2014), Elbow Surgery on Right Arm (2017), Shoulder Surgery on Right Shoulder (2020), Hip Surgery on Left Hip, bilateral labral tear on both hips (which are fractured), vascular necrosis in her Right Hip, hospitalized for her Thyroid in 2014 and received chemotherapy and radiation on her Thyroid, Graves Disease, and Hypertension. The Wife provided evidence in the form of documentation of her current medical conditions, which was admitted into evidence without objection from the Husband. However, the Wife was able to have two jobs in 2022 and Wife indicated that she is currently capable of taking care of her young grandchild.

(g) ***The contribution by each spouse regarding the acquisition, enhancement and production of income, or the improvement of marital assets and/or nonmarital assets of the parties*** - The Wife worked full-time during the marriage and even held extra part-time jobs. She testified that she paid nearly all the bills during the marriage, which she claimed enabled the Husband to work without interruptions to his career and for Husband to save more monies in retirement.

(h) ***The contribution by each spouse regarding the incurring of liabilities*** - The Wife worked full-time during the marriage and even held extra part-time jobs. The Husband

testified that he paid the FPL bill, the cable bill and car insurance. Wife testified that she paid the mortgages, taxes, and homeowner's insurance.

(i) ***The intentional dissipation, waste, depletion or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition*** – The Wife claims and Husband indicated that when he was separated he spent money on other women by giving them money and buying them dinners. When assets are diminished or depleted during the dissolution proceedings' the same are not included on the equitable distribution chart “*unless the depletion was the result of misconduct.*” *Tillman v. Altunay*, 44 So. 3d 1201, 1203 (Fla. 4th DCA 2010) The misconduct may serve as a “basis for assigning the dissipated asset to the spending spouse when calculating equitable distribution.” *Roth v. Roth*, 973 So. 2d 580, 584-85 (Fla. 2d DCA 2008). The analysis is based upon when “one spouse use[d] marital funds for his or her own benefit and for a purpose unrelated to the marriage.” *Romano v. Romano*, 632 So. 2d 207, 210. The misconduct must be more than mismanagement or simple squandering, but intentional dissipation. *Segall v. Segall*, 708 So. 2d 983, 986 (Fla. 4th DCA 1998). Wife testified and entered into evidence statements that indicated the Husband gave another woman monies \$2000 from the parties' joint Chase bank account and \$1700 from the parties' joint Chase bank account (which is now closed). This totals \$3,700, The Court finds that this is not intentional dissipation based upon the evidence presented.

While the Court has discretion to allocated debt the Court does not find that the parties had a separation agreement, does find the parties attempted to reconcile, and the joint pretrial stipulation indicated that date of separation was the date of the filing of the petition. The cut-

off date for determining assets and liabilities to be classified as marital or non-marital was the date of the filing of the petition for dissolution of marriage. *See* § 61.075(7), Fla. Stat.

The parties shall equally share in the following liabilities:

(i)	Navy Federal Credit Card Visa in name of Wife	\$13,281.44
(ii)	Discover Credit Card in name of Wife	\$8735.39
(iii)	AAA Credit Card in name of Wife	\$4339.07
(iv)	Care Credit Card in name of Wife	\$705.38
(v)	Citibank Platinum Advantage Card in name of Wife (xx28)	\$11,678.24
(vi)	Citi Thank You Preferred Card (xx42)	\$171.62
(vii)	Eldorado Furniture Card in name of Wife	\$4548.34
(viii)	Wells Fargo Credit Card in name of Wife	\$1838.85
(ix)	Home Depot Credit Card in name of Wife (xx39)	\$1189.10
(x)	2 nd Home Depot Card in name of Wife (xx94)	\$3251.98
(xi)	Pay Pal Credit Card in name of Wife	\$1738.72
(xii)	Amazon Synchrony Bank in name of Wife	\$28.79

The Credit card debt also includes Wife's attorney fees. The Wife alleges \$51,506.92 in marital credit card debt making Husband's share \$25,753.46 for his 50% share of the marital credit card debt in the Wife's sole name. The bills were admitted into evidence by agreement. The Court does find that Wife's credit card bills that include attorney fees will be deducted from the same. *Fiala v. Fiala*, 333 So. 3d 215, 220 (Fla. 4th DCA 2022) and FL ST 61.075(3).

Based upon all of the above, it is hereby **ORDERED AND ADJUDGED** that:

A. This Court has jurisdiction of the parties and the subject matter hereof.

- B. That the bonds of marriage between the parties, SHELDON GRAVES and VIVIENNE GRAVES, be and the same are hereby forever dissolved as the marriage is irretrievably broken.
- C. This court **DENIES** the request to award alimony as the substantial competent evidence does not support an award. The Court's determination is based upon the fact that the testimony elicited at trial was speculative as to the Wife's future medical treatment and/or employability. The testimony elicited at trial was that the Wife was still receiving her total income, even though she is not currently working. The Court does not find a need at the time of trial.
- D. As and for equitable distribution, the parties agreed and are awarded one half of the marital portion of their respective retirements. The Wife has a Thrift Savings Plan with the United States Government. The Husband has retirement through FRS as a result of his employment at the Public Defender's Office and a Valic investment. The same was stipulated by the parties.
- E. The Court finds substantial competent evidence to divide the credit card debt as the date of the date of filing. However, the Credit card debt does not include Wife's attorney fees charged by prior counsel and the award is reduced by the same.
- F. The Court finds and it is stipulated by the parties that the following asset is the real property of Petitioner/Husband, which Petitioner/Husband shall keep as his own, and Respondent/Wife shall have no rights or responsibilities whatsoever regarding the same: 252 Lake Constance Drive, Royal Palm Beach, Florida 33411, which he inherited from his mother.

- G. The Court finds and it is stipulated by the parties that the following asset is the real property of Respondent/Wife, which Respondent/Wife shall keep as her own, and Petitioner/Husband shall have no rights or responsibilities whatsoever regarding the same:
702 Windermere Way, Palm Beach Gardens, Florida 33418.
- H. Except for the items specifically conferred or otherwise expressly provided for by this Judgment, each party shall have exclusive ownership of all items of personal property, bank accounts, vehicles and clothing that are currently in his or her possession, and the other party is divested of any and all claim or interest in such items.
- J. The Court does not find depletion of the \$3,700.00 taken from the joint marital accounts.
- K. As for attorney's fees the Court **DENIES** the request to award the Wife any attorney's fees and costs. The Court finds that the Wife has a need based upon her financial affidavit with over \$5,000 a month deficit, the Court does not find the Husband has the ability to pay the same based upon Husband's last financial affidavit indicating a \$136.31 surplus and \$136,200 in debt.
- L. The Court retains jurisdiction of this cause and of the parties hereto for the purposes of enforcement and modification.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.



502022DR004005XXXXMB 09/05/2023
Caryn Siperstein
Judge

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