

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

JEREMY TRASK

Petitioner/Husband

Case No: 2019-DR-007837-O

Division: 38 – Heather L. Higbee

vs.

KEARIE TRASK

Respondent/Wife

**ORDER ON EXCEPTIONS FILED TO THE REPORT AND RECOMMENDATION
OF THE GENERAL MAGISTRATE, 7/30/2020**

THIS MATTER came before the Court on 10/7/2020 and continued for additional time to 11/17/2020, during a return hearing to address the Petitioner/Husband's Exceptions to the Report and Recommendation of the General Magistrate (filed 7/30/2020), which was conducted virtually via Microsoft Teams. The Petitioner/Husband was present and appeared alongside counsel, Nicole Benjamin, Esq. The Respondent/Wife was present and appeared alongside counsel, Michele M. Bernard, Esq. The Court, having reviewed the file, the Report and Recommendation of the General Magistrate, the Transcript of the Proceedings, argument of counsels, and being otherwise fully advised in the premises, finds as follows:

1. This Honorable Court has jurisdiction over the parties and the subject matter herein.
2. The Petitioner/Husband's Exceptions was filed timely.
3. The parties and counsels agree that the Husband did pay the Wife an amount of \$600.00 per month from January 2020 through July 30, 2020 for the purposes of child support, which were not previously included in the Report and Recommendation and Husband shall receive a credit of \$3,600.00.
4. Counsel for the parties agreed the General Magistrate erred in her calculation of the division of the 401K.
5. Counsel for the parties agreed that Husband had a pre-marital portion of his 401K (of

approximately \$12,500) per Joint Exhibit 4 introduced at trial, and that the valuation dates for the equal distribution of the funds shall be the date of the marriage (6/6/2008) until the separation date (7/15/2017) as the parties' had previously stipulated for trial in order to Wife to have the appropriate amount disbursed.

6. Per Joint Exhibit 4 introduced at trial, the approximate market value of the 401K at the time of the separation was \$123,530.04.
7. The Court finds that the Wife's student loan debt is a marital debt.
8. Wife's student loan debt is currently in forbearance.
9. The parties agree to have a QDRO entered to split the 401K and that they will share the costs of the QDRO.
10. The General Magistrate erred in the calculation of the child support guidelines, insofar that she included a credit for the Wife's health insurance costs to include an extra \$24.00 for dental insurance.

The Court therefore does hereby **ORDER, AND ADJUDGE** as follows:

- A. Husband's Exceptions to the Report and Recommendation of the General Magistrate is hereby **GRANTED in Part and DENIED in Part**, as follows.
- B. Husband shall pay one half of the Wife's monthly student loan debt payments until his outstanding half is paid in full. No monthly payments shall be owed by Husband, however, for as long as the loans remain in forbearance. Husband's payments shall start at the end of the Respondent's forbearance.
- C. The Court reserves jurisdiction to evaluate repayment terms in the future.
- D. Wife is entitled to one half of the Husband's 401K for which the valuation dates shall be the date of the marriage (6/6/2008) until the separation date (7/15/2017).
- E. A QDRO will be entered to effectuate the transfer of the 401K funds, and the parties shall bear the costs of the QDRO preparation equally and each shall bear his or her own tax consequences of same.
- F. The Husband is to use any balance of the 401K left to pay a lump sum towards the owed student loan debt of the Wife, which is one half of \$60,701.00, per the trial stipulations of the parties. Husband's share of the student loan debt is \$30,350.50. Any outstanding amounts shall be paid in accordance with the terms of paragraph 2, *supra*. Husband is to pull out the maximum amount allowable from the 401K in order to offset his

obligation of the student loan debt as a “lump payment.”

- G. The Court denies the Husband’s request to alter the Alimony awarded to the Wife.
- H. The parties and their counsels agreed to strike the portions of the Report and Recommendation which relate to the assumed mental state of the children.
- I. Any of the General Magistrate’s findings or commentary regarding the mental state of the children are hereby stricken from the Report and Recommendation and shall not be considered for the purposes of establishing a timesharing schedule. The Court believes there are sufficient findings based on the rest of the statutory factors set forth in the Report and Recommendation to support the General Magistrate’s ultimate ruling.
- J. The Court denies the Husband’s request to alter the terms of equitable distribution.
- K. The Court denies the Husband’s request to alter the terms of the timesharing schedule.
- L. The Court denies the Husband’s request to have half of the 2017 IRS Tax Refund that the Wife received as a result of claiming both children.
- M. Counsel for Husband shall recalculate the sets of Child Support Guidelines Worksheets, and will adjust the credits for Wife’s health insurance from \$124.00 per month to \$100.00 per month. An adjustment to take into account the payment of \$450 per month for Alimony for the 2019 calendar year and \$600 per month in Alimony for the 2020 calendar year shall also be included, with ongoing duration alimony to continue until August 1, 2023 in the amount of \$600 per month.
- N. Husband’s outstanding child support arrears as of August 1, 2020 is reduced by a sum of \$3,600.00, for a balance owed of \$767.79.
- O. This Honorable Court retains jurisdiction over the parties and the subject matter herein.

DONE AND ORDERED in Chambers, Orange County Courthouse, Orlando, Florida on this 31st day of December, 2020, *nunc pro tunc* November 17, 2020.



HONORABLE HEATHER L. HIGBEE
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to the following: Counsel for Respondent/Wife, Michele M. Bernard, Esq., Holistic Legal, P.A., 390 N. Orange Ave. #2300, Orlando, FL 32801, email: mbernard@holistic-legal.com, and to the Petitioner/Husband, Nicole Benjamin, Esq., 300 E. Robinson St., Ste. 1150, Orlando, FL 32801, attorneybenjamin@benjaminlawpa.com on this 31st day of ~~October~~, 2020.

 December

Judicial assistant/Attorney