TERMINATION
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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

ALICIA M. KUPER, Plaintiff, vs. KEVIN P. HALBACH, Defendant.	:	Case No.: 07DR-05-1923 JUDGE KIM A. BROWNE Magistrate Nancy A. Novack

JUDGMENT ENTRY-DECREE OF DIVORCE

This matter comes before the Court on December 5 and 8, 9, 10, 11, 12, 2008 and April 6 and 7, 2009 upon the Complaint filed by Plaintiff on May 10, 2007 and upon the Answer filed by Defendant on June 13, 2007. Plaintiff appeared duly represented by Beverly J. Farlow and Ross A. Gillespie, and Defendant appears duly represented by James B. Harris.

JURISDICTION

The Court finds that the parties were married on September 5, 1998, in Knotts Island, North Carolina and have 2 children born as issue of the marriage, namely Zachary R. Halbach, born February 27, 2000, and Trevor M. Halbach, born November 1, 2002.

At the time of filing, Plaintiff has been a resident of the State of Ohio for at least 6 months and a resident of Franklin County for at least 90 days prior to the filing of the Complaint. Further, the parties have lived separate and apart for a period in excess of 30 days. Therefore, the Court has jurisdiction over the subject matter and over the parties to the action.

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GROUNDS

The parties stipulate that they have lived separate and apart for more than one year without cohabitation. It is therefore **ORDERED** that Plaintiff is granted an absolute divorce from Defendant, and Defendant is granted an absolute divorce from Plaintiff.

The marriage contract heretofore existing between Plaintiff and Defendant is hereby terminated, and both parties are released from the obligations of the same.

DURATION

The Court finds that the duration of the marriage is from the date of the marriage, September 5, 1998, to the last date of trial, April 6, 2009. Pursuant to ORC §3105.171, the termination date of the marriage is the final hearing date. Accordingly, the duration of the parties' marriage is 10 years and 7 months.

BACKGROUND

The parties were married on September 5, 1998. Defendant testifies that the couple began dating while he still resided in Virginia Beach, VA. He indicates that he sold his residence there before the actual date of marriage and received $30,000 of which he applied $15,000 to the down payment for a prior home owned by the parties' in Galloway, OH.

In 2004, the parties purchased real estate at 6580 Sherry Lane, Hilliard, Ohio for approximately $450,000. RT TR December 5, 2008, p. 60, line 11 – p. 62, line 03. The parties separated in February of 2006 when Defendant moved to Louisiana to find work, and they have been living separate and apart since that time. RT TR December 5, 2008, p. 16, line 23 – p.17, line 7. Plaintiff's current address is the marital residence at 6580 Sherry Lane, Hilliard OH 43026 which has 5 bedrooms, 3 fireplaces, a 1-acre lot, and a 3-car garage. Defendant's address is 101 Commercial Drive, Pearl River, LA 70452, a trailer park housing approximately 100 FEMA trailers.

Plaintiff's employer is Kiddie West Pediatrics, Inc. since 1998, currently at the base rate of $161,684 per year. Defendant has been self-employed as a dump truck owner/operator since 2006. His rate of pay is the subject of voluminous testimony.

The Magistrate issued her Order on July 10, 2007, whereupon Plaintiff is designated temporary residential parent and legal custodian of the two minor children. Defendant is granted as parenting time (1) 3-day weekend each month, i.e., the 1st full weekend of each month or any other pre-designated weekend each month upon which both parties can agree in advance.

Additionally, Defendant was granted all other times, upon 48 hours advance notice, when Defendant will be in the Central Ohio area. All other provisions of Long Distance Local Rule 27 shall apply unless otherwise modified. During his parenting time, Defendant is to be responsible for taking the children to any scheduled appointments and/or extracurricular activities, and he is to administer any medications to the children as prescribed by the children's pediatricians. Defendant is also ordered to refrain from using corporal punishment during his parenting time.

The Magistrate ordered each party to provide the other with free access to the marital residence, including providing the keys to the door locks and the current security system password(s). In addition, Defendant is currently granted a downward deviation (to $0) from the guideline child support figure, as the Magistrate found that the guideline amount was unjust, unreasonable and not in the best interests of the children given the costs for transportation for parenting time and the gross disparity in income between the respective households.

Plaintiff is also ordered to maintain current levels of medical and hospitalization insurance for the benefit of the children, Defendant and herself. With respect to the extraordinary uncovered medical, dental and other health care expenses of the minor children, Plaintiff is currently ordered to pay 80% and Defendant is currently ordered to pay the remaining 20%. The Court acknowledges that both parties have already attended the parenting seminar. Additionally, Plaintiff is ordered to pay $500 per month directly to Defendant as/for temporary spousal support and $1,500 within 60 days of the Order toward Defendant's attorney fees and expenses.

Finally, Plaintiff is to pay and save Defendant harmless on the following debts and obligations: the first and second mortgages, taxes and insurance for marital residence located at 6580 Sherry Lane, Hilliard, Ohio, the debt associated with her purchase of Kiddie West shares, the debt associated with the loan against her 401k, her GM Mastercard, her AOA Mastercard and any other debt in her name individually.

Defendant is likewise under a current order to pay and save Plaintiff harmless on the following debts and obligations: his dump truck loan, his motor home loan and lot rental, his Discover card, his Navy Federal VISA card and any other debt in his name individually.

On September 18, 2007, Defendant filed a Motion for Return of his Personal Property (i.e., his firearms). Plaintiff filed a motion to compel discovery on September 25, 2007. On November 7, 2007, Plaintiff filed a Request for a Modification of Temporary Orders Pursuant to Local Rule 75(N), arguing that the previous order does not equitably allocate financial responsibilities of the parties in relation to their children or in relation to each other for temporary support purposes and fails to consider the economic circumstances of the parties. On November 26, 2007, Defendant filed an affidavit in support of his Motion for Attorney Fees and Expert Witness Fees and in relation to Plaintiff's Rule 75 Motion. On that same day, Plaintiff filed an affidavit in response to Defendant's motion for return of the firearms, as well as notice of filing of a tape recording of messages made on November 13, 2007. On November 29, 2007, counsel for the parties filed an Agreed Magistrate's Order stating that the Defendant's Motion for Attorney and Expert Witness Fees and for Return of Property and Plaintiff's Motions to Compel and Rule 75 hearing will be heard on affidavit only with replies due by December 3, 2007.

Accordingly, on March 10, 2008, the Magistrate issued her Order on the above motions. Defendant's Motion for Return of Personal Property, filed September 18, 2007, was denied, and he was ordered to pay costs associated with the Motion. Plaintiff's Motion to Compel filed September 25, 2007 was granted to the extent that Defendant remains under a continuing order to produce documents which are responsive to Plaintiff's request for such. Plaintiff was ordered to pay costs associated with her motion. The Magistrate found Plaintiff's Motion to Modify Temporary Orders filed November 7, 2007 unpersuasive, so all orders remained as filed July 10, 2007. Plaintiff was ordered to pay costs associated with her motion.

Lastly, Defendant's Motion for Attorney Fees and Expenses filed September 18, 2007 was granted in the amount of $4,500, and Defendant was directed to allocate said amounts to his attorney and to an evaluator of Plaintiff's business interest in Kiddie West Pediatrics.

On June 30, 2008, Plaintiff filed a request for Defendant to be evaluated by a vocational expert. On September 25, 2008, Plaintiff gave notice of substitution of counsel, retaining Beverly J. Farlow and Megan C. Kelley in place of William L. Geary and the Law Offices of William L. Geary, Co. Attorney Ross Gillespie later was added to represent Plaintiff in this action.

Thereafter, in December 5, 2008, the trial began with Defendant filing his Motion and Plan for Shared Parenting and Plaintiff filing her Proposed Stipulations of Fact and Law. The parties agreed to a Shared Parenting Plan which was filed with the Court on December 5, 2008.

MARITAL PROPERTY

The marital residence is located at 6580 Sherry Lane, Hilliard OH 43026 and is held in the names of both Plaintiff and Defendant. The parties stipulate that the property should be immediately listed for sale and have agreed to sign the listing agreement no later than Friday, December 12, 2008; the parties actually executed their listing agreement out-of-court on Tuesday, December 9, 2008. Therefore, the actual value of the property shall be determined by market forces. There exist 2 mortgages associated with this property: a $417,696 first mortgage and a $16,638 second mortgage both held by Fifth Third Bank as of December 1, 2008. PL EX 27. Due to her financial concerns, Plaintiff indicates that she has requested and received forbearance agreements. PL EX 34, 28. Whether the sale results in a profit or a loss, both Plaintiff and Defendant agree that said profit or loss should be borne equally.

This notwithstanding, on December 9, 2008, Plaintiff proffered the testimony of John W. Peck, Certified General Appraiser and Licensed Real Estate Broker, member of American Society of Appraisers as her expert witness for the valuation of the marital residence.

Mr. Peck testifies that he primarily uses the market ("sales comparison") approach for residential real estate. Mr. Peck testifies that he prepared an evaluation of the marital property dated March 4, 2008 based upon an investigation he conducted in February 2008. PL EX 26. Based upon his analysis, Mr. Peck values the residence at $455,000. PL EX 26, p. 2. Based upon research gathered from March 2008 until December 2008, Mr. Peck opines that property values have decreased by approximately 5%. He further opined that 6% (i.e., a range of 5-7%) is the going rate in the Central Ohio region for sales commissions.

However, during the course of his cross-examination, Plaintiff's expert admits that he based his figures solely upon comparables, tax records, and other documents he obtained in February of 2008, more than 9 months before the commencement of the trial. He further concedes that he did not inspect the marital residence or any of the comparable properties. He testifies, "I just looked at current market data." While the Court surely finds Mr. Peck to be very seasoned real estate professional, it cannot conclude that his testimony added greatly to the issues *sub justice*.

Still, even though Plaintiff concedes that her selected realtor suggests the home be listed at $462,900, she makes unfounded contentions that Defendant's delay in agreeing to sell the marital house has cost her financially as she missed the "sales" season and that Defendant never contributed to the home's upkeep. In truth, neither party has contributed toward the payments and maintenance on the residence of the other. Defendant testifies that he prefers the Court to make the decision at trial as opposed to the parties agreeing between themselves to sell the home. He concedes that he refused when Plaintiff requested his assistance in selling the home over the past 7-8 months. While Plaintiff claims that maintaining the marital residence presents a hardship for her, Defendant feels that Plaintiff fails to emphasize with the hardships that he, himself, has suffered since relocating to Louisiana. RT TR December 5, 2008, p. 63, lines 15-25 – p. 64, lines 1-7.

Plaintiff desires this Court to find that Defendant's actions in withholding his agreement to sell the marital residence until the final trial constitutes some sort of financial misconduct worthy of an unequal distribution of the proceeds of the marital residence. However, such action requires more substantive proof than a mere supposition that, because the Central Ohio real estate market overall, has diminished in value that this particular parcel of real estate has also suffered the same diminution and to the same degree. Based upon the above-cited testimony of Plaintiff's expert, the Court finds that Plaintiff has failed to prove her entitlement to a distributive award pursuant to ORC §3105.171(E)(3) or any other equity-based theory.

The parties also own a 2005 WindSport Motor Home. Both parties have offered valuations of the vehicle for the Court's consideration. PL EX 11; DEF EX 64. The parties agree that this vehicle was purchased with Plaintiff's knowledge and consent for the sum of $99,940.80 through First Merit Bank (the monthly cost is $828.92 for 20 years including the value of Defendant's traded-in[1] plus an additional $5,867 on his VISA credit card. DEF EX 59.

Defendant believes that the present value of the 2005 WindSport Motor Home is roughly $70-75,000. Defendant testifies that he is paid $867 per month in military (Navy) disability pay, and he contends that those funds are used to pay for the motor home in which he presently resides. DEF EX 61. Plaintiff testifies that she was angry at Defendant's calling her at the last possible moment to inform her of his intention to trade the 2006 Greyhawk Motor Home for the larger 2005 WindSport Motor Home. Upon questioning, Plaintiff indicates that she knew how to quell Defendant's financing deal (i.e., simply refuse to sign the agreement at the dealership). Plaintiff implausibly testifies that she consented to the arrangement to preserve the peace between the couple, thinking her refusal would cause a major rift in the relationship. The bottom line is Plaintiff *mutually* consented to the purchase of the 2005 WindSport Motor Home and now *unilaterally* expresses buyer's remorse over the same.

[1] Defendant testified that he traded a 2006 Grayhawk Motor Home which Defendant alone purchased for the sum of $66,239.17 in Louisiana. PL EX 10.

In any event, the Court hereby ORDERS that Defendant shall retain the 2005 WindSport Motor Home, free and clear of any claim of the Plaintiff. Moreover, Defendant shall hold Plaintiff harmless with respect to any expense or obligation relating to said vehicle. Likewise, the Defendant is hereby ORDERED to remove the name of Plaintiff from any title and/or financial obligation related thereto within 60 days of journalization of this Decree of Divorce.

MOTOR VEHICLES

Plaintiff principally owns/operates a 1999 GMC Yukon with a value of $7,345. Defendant asserts no interest in Plaintiff's vehicle. Defendant, on the other hand, principally owns and operates a 2001 Dodge .75 ton 4X4 pickup truck with about 117,000 miles. Defendant testifies that he is the original owner of this vehicle which he uses primarily to pick up parts for his dump truck. Defendant owns it free and clear of any lien and believes its value is about $9,000. PL EX 47. Defendant also owns/operates a 1971 Chevrolet Nova purchased for $1,500 in 1995 which he maintains at a $200 per month storage facility on W. Broad Street in Galloway, OH. PL EX 6. Defendant testifies that the Nova is currently disassembled and stored in various boxes. Defendant argues, and the Court agrees, that the 1971 Chevrolet Nova is Defendant's separate property. Plaintiff does not disagree; however, she contends that Defendant spent more than $11,000 in marital funds obtaining parts for the Nova since the date of their marriage. Defendant desires to retain the 2001 Dodge pickup truck, the 1971 Chevrolet Nova and its associated parts.

Defendant also owns a 2007 Yamaha 125 ATV that he purchased in Louisiana for the benefit of the minor children on June 27, 2008 for $4,116 from The Cycle Shop. DEF EX 62. The 2007 Yamaha (along with $175.96 worth of helmets and an aluminum ramp) is housed at Plaintiff's home. Defendant explains that, amid all of his financial woes, he purchased the vehicle and accessories utilizing a "6 months same as cash" financing arrangement whereby he deposited $800 and financed the remaining $3,316 through HSBC Bank, N.A. He testifies that he currently owes only $200 towards the price of the vehicle.

Understandably, Plaintiff takes great umbrage with Defendant's purchase of the ATV – he failed to consult with her regarding its appropriateness, safety, cost, insurance or upkeep. As such, she insists that Defendant to take the ATV back to Louisiana for use there, particularly since the marital home is listed for sale.

Defendant concedes that he probably should have consulted with his wife prior to purchasing the ATV – he simply wanted to impress the children upon their visit to Louisiana. While the Court understands and appreciates Defendant's mindset, it certainly cannot disagree with Plaintiff. It was inconsiderate of Defendant to unilaterally purchase such a high-end, high-maintenance, financially-intensive toy and essentially deposit the ATV on Plaintiff's doorstep for *her* to worry about where, when and how the boys would safely utilize it. Consequently, the Court hereby awards the ATV to Defendant to hold the vehicle as his own, free and clear of any claim of Plaintiff. Defendant shall transport the ATV from Plaintiff's residence within 30 days of the journalization of this Judgment Entry – Decree of Divorce.

As to the other motor vehicles owned by the parties, the Court hereby ORDERS that each party shall retain the vehicle, vehicles, or parts thereof, in his or her current possession, free and clear of any claim of the other. Moreover, each party shall hold the other harmless with respect to any expense or obligation relating to said vehicle(s). Likewise, the retaining party is hereby ORDERED to remove the name of the other party from any title and/or financial obligation related thereto within 30 days of journalization of this Decree of Divorce.

PERSONALTY AND HOUSEHOLD GOODS/FURNISHINGS

Each party shall retain those items of personalty that are currently in their respective possessions, except as noted below. Each party shall hold those items free and clear from any claims of the other. The parties waive specific valuation. Plaintiff and Defendant are in agreement about which furniture Defendant shall remove from the marital residence.

In addition, Defendant owns 5 firearms for which he testifies he paid: $700 for a Sig Sauer 9 mm pistol, $750 for a Sig Sauer 45 caliber pistol, $1,000 for a Winchester Super X2 12 gauge semiautomatic shotgun, $350 for a Remington 870 Express Magnum 12 gauge pump shotgun, and $750 for a Bushmaster Car-15.

Plaintiff insists that Defendant's firearms should be sold because she claims that on one instance in April of 2007, Defendant handled a weapon in an "unsafe" manner. Defendant clarifies that he loaded a firearm in April 2007 because the alarm on the marital residence was triggered in the middle of the night; his intention was merely to secure the safety of his family and residence. Given Defendant's acknowledged love of military history and historic weaponry, the Court views Plaintiff's as request based wholly in spite. Defendant wants his firearms returned immediately. Aside from purchase prices, he indicates that he does not know the current market value of the firearms.

The Court hereby ORDERS that Defendant shall be awarded the firearms as his own property, and, as Plaintiff has expressed distaste for handling weapons, he shall be permitted to enter the marital residence to retrieve personally the same at a mutually agreeable time within 30 days of the journalization of this Decree of Divorce.

FISCAL/RETIREMENT ACCOUNTS

Collectively, the parties own numerous bank accounts. These shall be awarded in accordance with the Chart on page 21 of this Decree.

- Plaintiff's Fifth Third Bank personal check account (#8019) with approximately a $3,179 balance. PL EX 51.
- Joint Fifth Third Bank personal check account (#2268) with approximately a $10.24 balance. PL EX 52.
- Joint Fifth Third Bank personal check account (#7429) with approximately a $10.09 balance. PL EX 53.
- Joint Fifth Third Bank personal check account (#8310) with approximately a $10 balance. PL EX 53.
- Defendant's Central Progressive Bank checking account (#9278). PL EX 3.
- Defendant's Fifth Third Bank personal check account (#9199). PL EX 2.
- Navy Federal Savings Account (#5918) with approximately a $1,000 balance. PL EX 4.

Defendant owns no retirement account titled in his individual name. Plaintiff holds a 401k account with a $57,565 value and an outstanding $14,000 loan against said value. She also owns a life insurance policy with a cash ("surrender") value of $13,037 and approximately $18,000 savings bonds purchased for the benefit of the minor children.

PLAINTIFF'S BUSINESS (KIDDIE WEST PEDIATRICS, INC)

Much of the instant trial surrounded the proper valuation of Plaintiff's shares of her medical practice. Essentially, Plaintiff argues that the Court should rely upon the artificially established value set forth in her organization's Closed Corporation Agreement for Kiddie West, effective November 18, 2002, that Plaintiff and her peers established, in lieu of arriving at a fair market value for this indisputably marital asset.

In support of her position, Plaintiff provided the testimony of CPA Gail Lynn Jamison whose firm has personally prepared the Kiddie West Pediatrics corporate income taxes since 2001. Ms. Jamison testifies that she has personally prepared the financial statements for Kiddie West since 2002. According to the Closed Corporation Agreement, after 8 years Plaintiff's base salary of $161,684.38 is frozen per agreement. PL EX 20, pp. 45-47. Ms. Jamison represents that this salary "freeze" requirement has been in effect for the past 3-4 years. RT TR 12/9/08, p. 30, lines 11-17. This is all well and good.

The problem the Court sees in Ms. Jamison testimony is her tremendous waffling regarding the number and value of the shares that Plaintiff owns. Initially, Jamison indicates that Plaintiff owns 24 shares for which she fully-paid according to the Stock Purchase Agreement between herself and Dr. Backes. PL EX 20, p. 47, paragraph 4e; PL EX 3; PL EX 23, p. 53, 2c. Ms. Jamison explains that while Plaintiff has, in fact, defaulted and the corporation intends to repurchase from Plaintiff 4 of her most recently purchased 10 shares, she concedes that Plaintiff has received her annual distributions based upon ownership of 34 shares, not 24.

Moreover, Jamison verifies Defendant's allegation that Plaintiff was given an opportunity to extent the time within which to fully pay this stock subscription[2]. RT TR p. 101, lines 21-24.

In reviewing a number of financial documents all prepared by Ms. Jamison in the normal course of her business and signed by Dr. Backes, it becomes crystal clear that Plaintiff owns 34% of the 100 shares in Kiddie West Pediatrics[3] and that the firm has enjoyed a positive net income in all relevant years. DEF EX 5, 19, 22, 69-75. Incredibly, Ms. Jamison testifies that she has experience in performing business evaluations; however, when asked if the best possible method to perform a valuation of a personal service company would be the capitalization of income method, she responded that she, personally, would rely solely upon the Closed Corporation Agreement.

Obviously, the Court disagrees and finds that Jamison greatly hedges her responses and is neither certain nor credible in her valuation methodologies. This is markedly pronounced by Plaintiff's counsel's repeated attempts to unduly influence her witness' answers via frivolous objections. RT TR December 9, 2008, p. 69, line 11 – p. 74, line 22. Moreover, according to Jamison's May 30, 2007 fax to Attorney William Geary, Plaintiff's 34 shares has a value of $34,627.03 meaning that each share is worth approximately $1,018 per share – a far cry from the $386.80 per share value she espouses in court on December 9, 2008. DEF EX 76. RT TR December 9, 2008, p. 91, line 18- p. 93, line 8. To further confound matters, Jamison certifies that Plaintiff paid $3,000 per share for each of her shares. She has subscribed to pay a total of $102,000 for the 34 shares; she has actually paid $86,000 and she still owes $16,000. Yet again, Jamison confirms that Plaintiff receives her distributions based upon her ownership of all 34 shares. Dr. Backes agrees.

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[2] There was a great deal of trial time spent discussing this notion of Plaintiff's "lost dream" to assume the practice and/or become majority shareholder upon the wholly speculative retirement of Dr. Backes and what impact, if any, that retirement may have upon the future value of Kiddie West Pediatrics. Defendant aptly points out that (1) it was not until Plaintiff wrote her letter saying that she could no longer pay for the shares that Dr. Backes responded with his "default" letter and (2) Plaintiff could have utilized other financial means available to her to maintain her payments or to pay for the shares outright including the 3-month forbearance she obtained regarding the mortgage on the marital residence.

To recap, first Jamison testifies (during her direct-examination) that Plaintiff only owns 24 shares of Kiddie West Pediatrics and that each share is valued at $386.80 each pursuant to Kiddie West's Closed Corporation Agreement. Then later on cross-examination, she conceded that she prepared a May 30, 2007 letter confirming Plaintiff's ownership of 34 shares valued at $1,018 per share. Then, upon *further* cross-examination, CPA Jamison admits that Plaintiff actually *paid* (or agreed to pay) $3,000 for each of her 34 shares[4] and that all 34 shares are currently held in Plaintiff's name.

In addition, to the value of Plaintiff's 34 shares, Jamison concedes that Kiddie West's accounts receivable and positive good will are both assets of the business which should be valued with furniture, fixtures, medical equipment. She agrees that such items were not included in her valuation of Plaintiff's shares. PL EX 20. On the other hand, she rightly points out that one cannot consider the value of accounts receivable, positive good will, furniture, fixtures and medical equipment without also considering the value of accounts payables such as $70,000 owed to Children's Hospital[5] and a $30,000 credit card balance against which Kiddie West generally charges its office expenses. However, as neither party offered meaningful testimony or evidence regarding the value of such items, the Court is left with the valuation of Plaintiff's shares of stock. In the end, the Court cannot escape the conclusion that Ms. Jamison's desperate attempts to protect Plaintiff (her employer) negatively impact her credibility.

Plaintiff also unsuccessfully proffers the testimony of Dr. Carl R. Backes (Pediatrician and Doctor of Neonatology) in support of the "book value" method of valuation of her shares of stock. Dr. Backes clarifies that Dr. Kuper owns 34 shares of stock, Dr. White owns 10 shares of stock and he owns the rest as president of the corporation. PL EX 20, p. 45.

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[3] Even the spreadsheet of stock ownership created by CPA Jamison in advance of trial reflects that Plaintiff owns 34 shares.

[4] On December 10, 2008, Jamison endeavors to correct her testimony of the day prior by pointing out that, in fact, Plaintiff purchased 30 shares at $3,000 and 4 shares at $1 per share.

[5] Since Dr. Backes is an employee of Nationwide Children's Hospital (NCH), the practice must reimburse NCH for his time spent at there.

Dr. Backes indicates that only he, Plaintiff and Dr. White may purchase shares as a matter of right – other doctors may only do so with the agreement of the Board after 1 year of satisfactory practice. According to Dr. Backes, all returns/forfeitures of shared are deemed sales back to the Corporation.

Not that it has much relevance in light of Jamison's testimony, but Plaintiff still expended a great deal of her presentation trying to convince the Court that she only owned 24 shares of stock outright. To this end, she advances a very self-serving stock purchase agreement signed January 13, 2005 between Plaintiff and Dr. Backes. PL EX 21. Backes testifies that Plaintiff has not strictly complied with the stock purchase agreement which led to his issuance of a "default letter" to Plaintiff. PL EX 23. Dr. Backes opined that he would have certainly moved to reclaim the shares for which Plaintiff did not fully pay but for Defendant's temporary restraining order which pended the entire reclamation process.

Both Plaintiff and Backes lean heavily on their assertion that, according to their *own* stock purchase agreement, Plaintiff will only be reimbursed "net book value" for the remaining unpaid for shares and the same will be returned to the corporation. However, even Dr. Backes acknowledges that, at the time of his testimony, Plaintiff has yet to actually default on their agreement. PL EX 23.

While Plaintiff and Dr. Backes maintain that the January 13, 2005 purchase agreement the two signed controls the value of the corporation's shares, the Court disagrees. Kiddie West Pediatrics' "net book value" is an accounting fiction established to assist the corporation/shareholders in calculating a favorable tax basis. Kiddie West Pediatrics is a close corporation amongst peers and friends,[6] and none of these dealings are "arm's-length" transactions.

[6] Dr. Backes readily admits that he placed Plaintiff's share purchase price obligation (PL EX 21) on hold so she could instead focus on repaying the $30,000 interest-free loan. PL EX 39-40. He explained that he did this because "she is my friend." RT TR of December 10, 2008 at p. 64, line 24 through p. 65, line 4.

In fact, Plaintiff very reluctantly admits that the purchase price of shares in the corporation or the sale of shares to the corporation from individuals is *guided solely and completely by the shareholders of the corporation* and the guidelines contained in the closed corporation agreement. PL EX 19 (p. 3-6), 21, 59: Neither of the testifying doctors could explain to the Court the logic in paying $3,000 each for shares that they vehemently argue are worth only $386 each.

Furthermore, *none* of Plaintiff's witnesses can sufficiently explain any mathematical or accounting-based methodology for the determination of the "net book value" at the time Plaintiff purchased her shares. RT TR of December 12, 2008, p. 6, line 3 – p. 10, line 10. Therefore, business common sense must prevail. The best indicator of true value is fair market value, i.e., the price at which a willing buyer will buy and at which a willing seller will sell. In this instance, that price is, *at the very least*, $3,000 per share.

In further contemplation of the Court's valuation of Kidde West pediatrics, Defendant proffers the testimony of William Ditty. His curriculum vita is offered for the Court's review having been previously qualified to testify in this Court by Judges Mason and Geer. RT TR of April 6, 2009, p. 70, line 21-p. 72, line 8; DEF EX 10. Mr. Ditty testifies that he has previously performed valuations of closely held corporations in the past.

Mr. Ditty testifies that he has reviewed the financial documents for Kiddie West from 2004 through October 2008 utilizing the income approach – he very credibly testifies that this is the preferred method because it uses the actual financials of the firm. Ditty specifically rejects the asset approach because the business is not liquidating and/or ceasing its operations. Likewise, Mr. Ditty eschews the market approach, which examines the sales of similar area businesses, because there exists no comparable data relating to any private data transactions in Ohio associated with the sale of a medical practice. RT TR of April 6, 2009, p. 75, line 2 – p. 77, line 15; p. 93, line 21 – p. 95, line 1.

According to Ditty's valuation report, the economic value associated with Plaintiff's 34 shares of Kiddie West is $268,300 (or $7,890 per share). DEF EX 12. Mr. Ditty opines that valuing the shares of Kiddie West Pediatrics is somewhat difficult because there is no "open market" for the entity *per se*. Mr. Ditty specifically rejects the value as set forth in the Closed Corporation Agreement as it ignores significant assets of the entity, such as accounts receivable and goodwill, yet included the entity's debts.

On cross-examination, Plaintiff criticizes Defendant's expert's disregard of Kiddie West Pediatrics' financial documents from October of 2008. PL EX 63. Essentially, Ditty very intelligently and articulately explains that he pored over Kiddie West Pediatrics' financial documents, not only for just year's end, but month-to-month as well. As such, he continues, he was able to ascertain the "ebb and flow in terms of revenues and profitables within the practice". Ditty testifies that he noted "that while there seemed to be an arguably somewhat depressed profitability with the firm throughout the year ... the year end typically was better than the running numbers that were showing up throughout the year." Hence, Mr. Ditty indicates that he saw no pattern in that limited time period, including the disputed October 2008 documents, that distracted him from the previous 4 years of analysis that he performed. Mr. Ditty reasonably concludes that *nothing* in the year-end figures for 2008 affected the established pattern as revealed in his analysis of the previous 4 years' worth of data. RT TR of April 6, 2009, p. 83, lines 10- 24; p. 85, line 25 – p. 90, line 9. Likewise, Mr. Ditty concedes that he did not physically visit the site of Kiddie West. He does, however, clarify that Defendant *requested* permission for the expert to conduct a site visit but the same was denied.

Finally, Mr. Ditty vehemently disputes Plaintiff's assessment that Kiddie West Pediatrics had a negative growth rate. He seems particularly unconcerned that Plaintiff experienced variations in her salary between the years 2005-2007 because, at all relevant times, her salary was significantly above the industry average of $147,410. RT TR of April 6, 2009, p. 101, lines 6 – p. 103, line 12.

As previously indicated, the Court declines to utilize Plaintiff's proffered value of Kiddie West Pediatrics because (1) transactions that define share value are the inborn and self-serving creations of the physicians themselves[7], (2) the overall value of the practice did not take into consideration key variables, and (3) Plaintiff's expert witness proved herself to be incompetent and severely lacking in credibility – *with respect to share value*. While Defendant's expert's valuation is not "perfect", at least Mr. Ditty's figure is based upon established economic criteria and fiscal expertise rather than the interests of self-preservation. As such, the Court hereby finds that Plaintiff's marital interest in the medical practice known as Kiddie West Pediatrics, Inc. is $268,300.

DEFENDANT'S BUSINESS

Defendant indisputably contends that he and Plaintiff always filed their tax returns jointly during the course of their marriage. Defendant concedes that his 2007 1099/2007 federal income tax return indicates that he received $108,985 in non-employee compensation. PL EX 1. Regarding his 2007 Schedule C, Defendant claims $23,816 in depreciation related to his dump truck (line 13), $5,680 in mortgage interest related to his motor home (line 16), $18,234 in, repairs and maintenance related to his dump truck (line 21), $7,720 respect to travel, deductible meals and entertainment specifically related to travel back/forth to Ohio to confer with his lawyer in anticipation of trial (line 24).

Furthermore, Defendant claimed $44,558 in "uniforms" to cover the expense of work clothes. While Defendant concedes that the clothing is not a "uniform" *per se*, he argues that the clothes he wears to work are purchased for work only and are unsuitable for any other purpose after he works in them (i.e., working on the truck, laying in dirt and gravel, etc.).

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[7] Mr. Ditty testifies and the Court agrees that in order to ascertain the actual "*economic value*" of Plaintiff's interest in the practice as it "pertains to the statement of standards of valuation services promulgated by the American Association of CPA's", one must consider "fair market [value] or the representation of an economic arm's-length transaction." RT TR of April 6, 2009, p. 97, lines 17 – 25.

With respect to other business/personal expenses, Defendant claims $35,600 in fuel costs and $4,800 in lodging related to his $400 per month lot rental. As a result, Defendant's claims an adjusted gross income for 2007 as *negative* $2,798 (line 37).

In Plaintiff's pointing out that Defendant failed to claim any of the support or alimony he received in 2007 (line 11), he rather unpersuasively argues that he "don't know nothing about taxes." Plaintiff further takes issue with the fact that Defendant filed under a "single" status as opposed to "married filed separately" and used an Ohio mailing address unknown to her. Again, Defendant cites his failure to read/comprehend his reading of the return as justification for the errors; he denies intentionally using a false Ohio address to claim more business expenses than he was entitled.

According to the Financial Affidavit Defendant filed with the Court, reflects income of $84,000 to $95,000 in income. Page 4, paragraph 15. Plaintiff emphasizes that Exhibit 3 attached to said Affidavit reveals that the difference between the $95,000 and $84,000 figures represents Defendant's actual 2007 fuel expense of $11,553.61 affirming her contention that his January - September 2007 income is, at least, $85,280 *before* the deduction of legitimate business expenses. Again, Defendant maintains that the IFTA Forms he submits to the Public Utilities Commission of Ohio (PUCO) on a quarterly basis, which specify the number of gallons of fuel he purchases in each state, corroborate his position that he spends in excess of $11,000 in fuel annually. RT TR December 8, 2008 p. 80, line 6 – p. 97, line 22; p. 99, lines 2-24.

Defendant principally owns and operates a 2006 Ford Sterling LT9500 Dump truck with about 199,000 miles, which he acquired in February 2006 for approximately $148,000. Per a written contract employment, Defendant was to receive $150 per hour for working 12-hour days, 7 days per week working to rebuild a levee in Louisiana. Defendant admits that the contract fell through; however, instead of attempting to secure work with the dump truck in the state of Ohio, he continues to struggle financially at this fledgling venture in Louisiana. Defendant testifies that the promissory note costs approximately $1,660 per month with $39,819.74 in related indebtedness. DEF EX 49.

For the second time, Plaintiff futilely argues that Defendant never discussed with her his plans to purchase the dump truck *prior* to entering into the sales contract; she recalls Defendant taking her to see the truck in its *construction phase* in January 2006. More credibly, Defendant denies that Plaintiff was caught unawares regarding the dump truck purchase. He contends that he even had Plaintiff *review* the contract with the Wilsons in advance to their executing it. Unfortunately, Defendant cannot establish the exact timeframe of Plaintiff's knowledge/consent to co-finance the dump truck because his document is missing the actual signature page.

This notwithstanding, Plaintiff readily concedes that no one at the factory forced her into a sales contract, nor did anyone claim she was legally obligated to pay for the dump truck simply because the vehicle was in the process of being built. She implausibly claims, "I assume that if it is being built for you, need to pay for it." RT TR of December 11, 2008, p. 120, lines 2-4. Further discrediting Plaintiff is the fact that *she* secured the $60,000 down payment for the vehicle in the form of a $30,000 loan from her business partner, Dr. Backes, and a $30,000 loan from her own 401k account. Finally, the parties conceded that Plaintiff alone has been repaying the loan to her retirement account while Defendant contributed $11,000 towards the repayment of Dr. Backes' loan by Plaintiff's writing of a check against Defendant's business account.

Therefore, despite Plaintiff's assertions to the contrary, the Court finds that the purchase of the dump truck business was a mutually contemplated and entirely marital transaction. The Court finds that Plaintiff not only consented to, but also *facilitated* the purchase of the dump truck. As to its marital value, Plaintiff asserts that the vehicle is worth $115,915 retail as of June 13, 2007. PL EX 8. On the other hand, Defendant cites vendor Mike Thompson's appraisal as the basis for his opinion that the "current actual value" of the dump truck is between $60-65,000 as of November 7, 2008 and the retail value of the dump truck (in Central Ohio) is approximately $100,000 given the current market conditions the additional mileage on the vehicle. DEF EX 57. After thorough consideration of all proffered testimony and evidence, the Court finds that Defendant's dump truck has a marital value of $65,000.

MARITAL DEBTS

PLAINTIFF'S LIABILITIES

Plaintiff has an American Osteopathic Association MasterCard account; a GM MasterCard account; a $30,000 loan from Dr. Backes; a $10,000 loan from Dr. Backes; and a $5,150 loan from her parents. As Plaintiff has provided insufficient evidence and/or documentation to support the notion that Defendant was somehow consulted, involved or even benefited from these debts she unilaterally incurred, the Court hereby ORDERS that said debts, *excepting the $30,000 loan from Dr. Backes*[8], are Plaintiff's separate obligations and not marital debts to be divided by this Court.

Therefore, Plaintiff shall pay and hold Defendant harmless on the American Osteopathic Association MasterCard account, the GM MasterCard account, the $10,000 loan to Dr. Backes and the $5,150 loan from her parents.

DEFENDANT'S LIABILITIES

Defendant set forth all of the liabilities bearing his individual name. Interestingly enough, Defendant seeks contribution from Plaintiff toward his credit card debt only up to the first $20,000. Defendant explains that, when he first relocated to Louisiana, he was sent his entire pay check to Plaintiff to paying his bills – but she did not do so. Therefore, he reasons, the first $20,000 of his $24,151 in credit card debt[9] should be divided equally between them. Above that initial $20,000, Defendant testifies that he accepts full responsibility. PL EX 4; DEF EX 48-52. Lastly, Defendant proposes a final distribution of marital assets and liabilities for the Court's consideration. DEF EX 65.

[8] It is undisputed that this loan represents the down payment for Defendant's dump truck.
[9] Defendant testifies that he owes approximately $11,803 on his Discover More card as of November 24, 2008 and approximately $12,348 on his N Rewards VISA card as of November 21, 2008. DEF EX 50, 51.

ALLOCATION OF MARITAL ASSETS			
Asset	**Value**	**Plaintiff**	**Defendant**
6580 Sherry Lane, Hilliard OH	$462,900[10]	$231,450	$231,450
2005 WindSport Motor Home	$75,000	$0	$75,000
Plaintiff's 401(k)	$57,565	$28,782.50[11]	$28,782.50
Plaintiff's 1999 GMC Yukon	$7,345	$0	$7,345
Defendant's 2006 Ford Sterling LT9500 Dump truck	$65,000	$0	$65,000
Defendant's 2001 Dodge 4X4 pickup truck[12]	$9,895	$0	$9,895
Defendant's 2007 Yamaha 125 ATV	$3,940[13]	$0	$3,940
1971 Chevrolet Nova parts[14]	$11,000	$0	$11,000
Plaintiff's Fifth Third checking account (#8019)	$3,179	$1,589.50[15]	$1,589.50
Joint Fifth Third checking account (#2268)	$10	$0	$10
Joint Fifth Third checking account (#7429)	$10	$0	$10
Joint Fifth Third checking account (#8310)	$10	$0	$10
Defendant's Central Progressive checking account (#9278)	$3,341	$0	$3,341
Defendant's Fifth Third checking account (#9199)	$7,826	$0	$7,826
Navy Federal savings account (#5918)	$1,000	$0	$1,000
SIG Sauer P226 9 MM Pistol	$700	$0	$700
SIG Sauer P220 45 Caliber Pistol	$700	$0	$700
Winchester Super X2 12-Gauge Semiautomatic Shotgun	$1,000	$0	$1,000
Remington 870 Express Magnum 12-Gauge Pump Shotgun	$350	$0	$350
Bushmaster CAR-15 Model XM15-E2S Rifle	$750	$0	$750
34 shares of Kiddie West Pediatrics	$268,300	$268,300	$0
GRAND TOTAL	**$979,821**	**$530,122**	**$449,699**

MARITAL LIABILITIES			
Debt	**Amount**	**Plaintiff**	**Defendant**
1st Mortgage with Fifth Third Bank	$417,696[16]	$276,848	$140,848
2nd Mortgage with Fifth Third Bank	$16,638	$16,638	$0
Defendant's 2006 Ford Sterling LT9500 Dump Truck	$39,820	$0	$39,820
401k loan (Dump Truck)	$14,447	$14,447	$0
Dr. Backes Loan (Dump Truck)	$30,000	$15,000	$15,000[17]
KWP share purchase	$16,000	$16,000	$0
2005 WindSport Motor Home (First Merit)	$95,151	$0	$95,151

[10] The actual value of this property shall be determined by its sales price pursuant to the parties' agreement.

[11] Both parties shall equally share in this account as valued on the last date of trial.

[12] Defendant owns this vehicle free and clear.

[13] $4,116 less the value of the helmets and ramp is $3,940.04.

[14] The 1971 Chevrolet Nova was purchased by Defendant prior to the marriage; however, he acknowledges spending approximately $11,000 in marital funds for parts to restore the vehicle.

[15] Both parties shall equally share in this account as valued on the last date of trial.

[16] In order to achieve an equitable division of the parties' assets and liabilities, the Court orders that Plaintiff shall bear 66% of the actual liability associated with this debt as determined as of the date of sale, and Defendant shall bear 34% of the actual liability associated with this debt as determined as of the date of sale.

[17] Defendant shall tender his payments towards this obligation directly to Plaintiff; Defendant shall pay Plaintiff the sum of $250 per month until this court-ordered mandate is satisfied in full.

Defendant's 2007 Yamaha 125 ATV (HSBC Bank, N.A.)	$200	$0	$200
Plaintiff's credit card (#0086)	$11,184	$11,184	$0
Plaintiff's credit card GM Mastercard	$10	$10	$0
Defendant's Discover credit card (#9681)	$11,802	$11,802	$0
Defendant's Navy Federal credit card (#1948)	$12,348	$12,348	$0
GRAND TOTAL	$665,286	$374,267	$291,019

FINAL ACCOUNTING			
Plaintiff		Defendant	
Total Assets	$530,122	Total Assets	$449,699
Total Liabilities	$374,267	Total Liabilities	$291,019
TOTAL NET DISTRIBUTION	$155,855	TOTAL NET DISTRIBUTION	$158,680

In addition to the obligations set forth above, each party shall assume, pay and hold the other party harmless on any personal obligations incurred by the party not herein specifically addressed.

PARENTING ISSUES

ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBLITIES

The parties have two children: Zachary R. Halbach, born February 27, 2000 (presently in 3rd grade) and Trevor M. Halbach, born November 1, 2002 (presently in kindergarten). That the parties shall enter into a Shared Parenting Plan setting forth the parental rights and responsibilities as to their minor children has already been stipulated by the parties. Said Plan was filed on December 5, 2008, and the parties waived the 30-day timeline pursuant to §3109.04(G). Additionally, Plaintiff indicated that she wants Defendant to refrain from using alcohol and/or corporal punishment during his parenting time (which Defendant indicated he would).

Lastly, while Plaintiff demands that Defendant share equally in the cost of the in the children's extracurricular activities, given the level of communication and the geographic distance between the parties, the Court is not convinced that such an arrangement would yield equitable results. Therefore, unless the parties agree otherwise, the party enrolling the children in a particular activity shall bear the cost of said activity.

CHILD SUPPORT

At the time trial commenced, Plaintiff's average annual income over the past 3 years was $244,278:

- 2005: $264,108 (including $212,108 in gross income and $52,000 in Schedule K-1 distribution(s)). DEF EX 78, 79.
- 2006: $241,076 (including $206,305 in gross income and $15,000 in Schedule K-1 distribution(s)). DEF EX 18, 19.
- 2007: $227,650 (including $189,920 in gross income and $17,468 on Schedule K-1 distribution(s)). DEF EX 21, 22[18].

Additionally, Plaintiff receives health insurance benefits at an annual cost of $20,000 per year. Ms. Jamison clarifies that Plaintiff is not scheduled to receive any reimbursements or bonuses this coming year.

Moreover, Jamison strains herself to clarify that the $22,000 Plaintiff received for her administrative duties in 2005-2006 is non-recurring as Dr. Backes has reassumed these responsibilities. Jamison further opines that, because the overwhelming much (80%) of Kiddie West's clientele is covered by Medicaid, the doctors have very little control over what they are actually paid. PL EX 19, 31. Lastly, Ms. Jamison testifies that, pursuant to a letter dated July 10, 2007, Dr. Backes announced his effectuation of a cap on physicians' salaries similar to other senior employees with 8 years of service. While Plaintiff's eighth year of service was 2006, Dr. Backes testified that Plaintiff was not subject to the salary cap until July 10, 2007[19]. PL EX 27; DEF EX 77.

Defendant's income is bit more complicated to ascertain. His gross income was $108,985 in 2007 offset, he argues, by approximately 2" of allegedly business-related expenses and receipts, which totaled $88,111, for an adjusted income of $20,874. DEF EX 43, 44, 45, 46. Additionally, Defendant receives approximately $867 per month (or an additional $10,404 annually) from his US Navy disability benefit. DEF EX 61.

[18] CPA Jamison opines that Plaintiff's stated 2007 salary of $227,650 is $1,800 too high; she cites a number of other benefits that she does not believe are "fair" to include in Plaintiff's income – all totaling approximately $10,000 per annum.

[19] Ironically, Plaintiff filed her Complaint on May 10, 2007, and Defendant filed his Answer on June 13, 2007.

Ohio Revised Code §3119.01 "Calculation of child support obligation definitions", provides the Court with clear definition of which items can and cannot be included for the purposes of determining Defendant's income. Specifically, the Code reads, in pertinent part, as follows:

(C)(1) "Combined gross income" means the combined gross income of both parents.

(7) "Gross income" means, except as excluded in division (C)(7) of this section, the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes income from salaries, wages, overtime pay, and bonuses to the extent described in division (D) of section 3119.05 of the Revised Code; commissions; royalties; tips; rents; dividends; severance pay; pensions; interest; trust income; annuities; social security benefits, including retirement, disability, and survivor benefits that are not means-tested; workers' compensation benefits; unemployment insurance benefits; disability insurance benefits; benefits that are not means-tested and that are received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration; spousal support actually received; and all other sources of income....

(8) "Nonrecurring or unsustainable income or cash flow item" means an income or cash flow item the parent receives in any year or for any number of years not to exceed three years that the parent does not expect to continue to receive on a regular basis....

(9)(a) "Ordinary and necessary expenses incurred in generating gross receipts" means actual cash items expended by the parent or the parent's business and includes depreciation expenses of business equipment as shown on the books of a business entity.

(b) Except as specifically included in "ordinary and necessary expenses incurred in generating gross receipts" by division (C)(9)(a) of this section, "ordinary and necessary expenses incurred in generating gross receipts" does not include depreciation expenses and other noncash items that are allowed as deductions on any federal tax return of the parent or the parent's business.

(10) "Personal earnings" means compensation paid or payable for personal services, however denominated, and includes wages, salary, commissions, bonuses, draws against commissions, profit sharing, vacation pay, or any other compensation.

(13) "Self-generated income" means gross receipts received by a parent from self-employment, proprietorship of a business, joint ownership of a partnership or closely held corporation, and rents minus ordinary and necessary expenses incurred by the parent in generating the gross receipts. "Self-generated income" includes expense reimbursements or in-kind payments received by a parent from self-employment, the operation of a business, or rents, including company cars, free housing, reimbursed meals, and other benefits, if the reimbursements are significant and reduce personal living expenses. Emphasis added.

It would seem that CPA Jamison (in reflecting upon PL EX 1) has done a thoughtful and detailed analysis of the Internal Revenue Code, ORC §3119.01 and Defendant's most recent federal income tax return and has insightfully noted many errors in his professed "income" for 2007:

- Defendant claims a "single" status to obtain the lower rate of taxation
- At line 11, Defendant failed to claim the $3,500 in spousal support he received
- Defendant's Schedule C reflects a loss of $2,798 because he illegally deducted meals and entertainment expenses related to exercising his parenting time in Ohio
- Defendant did not claim $11,215.83 in income
- Defendant improperly created an amortization schedule to break down the non-deductible principal and deductible interest portions for the dump truck
- Defendant improperly created an amortization schedule for the mobile home to enlarge his deduction
- Defendant illegally claimed as a "lodging" expense his $400 per month lot rent
- Defendant improperly claimed street clothing as "uniforms"

In all, Ms. Jameson concludes that Defendant *earned* $25,291 for 2007, and accordingly, she prepared an amended tax return for him. PL EX 18.[20] Not far from this figure, Defendant submitted a child support computation for the Court's consideration setting forth the income figures that he believes are fair for each party, i.e., $206,720 per annum for Plaintiff and $23,000 per annum for himself. DEF EX 42, 67.

Imputed Income

Pursuant to the authority set forth in ORC §3119.01(C)(11)(a), Plaintiff seeks the Court to impute income Defendant additional income as "voluntarily underemployed" when computing child support. To this end, she retained the services of Dr. Richard Oestreich PhD, CRC to provide an expert opinion regarding the appropriateness of Defendant's present level of employment.[21] Dr. Oestreich testifies that he conducted a telephone interview with Defendant, during which Defendant conceded that his *gross* income is more than $103,000 per annum.

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[20] Ms. Jamison confirms that Defendant's gross income as reflected on his 2007 W2 reflects $108,984.94 in income. PL EX 1. She further confirms that Defendant's 1099 was not given to her for her preparation of PL EX 18 and admits that all of Defendant's income and expense information was derived from *Plaintiff alone*. Based upon this, $25,291 is her calculation of Defendant's income after his business expenses/deductions but before his personal expenses and deductions.

[21] The Court deemed Dr. Oestreich qualified to testify as an expert witness based upon Defendant's stipulation, this Court's prior qualification to so testify and the Doctor's qualifications which include, a Bachelor's degree from St. Frances University in Milwaukee, Master's degrees from the Catholic University of America in Washington, DC and the University of Wisconsin in Madison and a Ph.D. from The Ohio State University.

Based upon Defendant's responses, Dr. Oestreich determined that Defendant's net income is $57,144 to $82,944 per year for would he might be able to secure in the state of Ohio. PL EX 16, p. 6. Dr. Oestreich feels that Defendant may be able to earn 10% more income in Ohio, but those higher earnings are likely nullified by the fact that Ohio's weather thwarts construction activity for a substantial period of time each winter.

On cross, Dr. Oestreich concedes that he did not review any actual documentation associated with Defendant's income. He concedes that such a review would have been more helpful and would have yielded better results than simple reliance upon Defendant's self-reporting. Dr. Oestreich, for example, inexplicably used Defendant's 2 years of experience for this semi-skilled job (and his enthusiasm for working) to place Defendant in the 90th percentile for earnings potential for this particular vocation. RT TR December 8, 2008, p. 15, line 4 – p. 16, line 24.

In considering Plaintiff's request to determine Defendant "underemployed" or not presently working to his fullest capacity, the Court must apply the following criteria Defendant's particular circumstance(s):

(i) Prior employment experience. Defendant testifies that he was discharged from the Navy in 1998. Post-service, Defendant explains that he worked various construction positions earning about $10,500 per year in 1998. From 1998 to 2006, Defendant indicates that he was able to increase his earnings to $25,000-30,000 per year. In 2006, Defendant testifies that he was intrigued with business opportunities post-Hurricane Katrina and decided to start his dump truck business in the state of Louisiana – he has so worked for the past 2 years.

(ii) Education. Defendant indicates that he completed high school and a mechanics school in the Navy.

(iii) Physical and mental disabilities. Defendant testifies that he was awarded a partial disability benefit resulting from unspecified injuries he suffered to his knees, back, neck and wrist during his naval career.

(iv) Availability of employment in his geographic area. According to the report and testimony of Dr. Oestreich, there exists plenty of available work for over-the-road (OTR) drivers in the state of Ohio. Dr. Oestreich failed to offer any opinion regarding the availability of work in Defendant's line within the state of Louisiana. RT TR December 8, 2008, p. 10, line 2 – p. 11, line 3. PL EX 16

(v) Prevailing wage and salary levels in his geographic area. Again, According to the report and testimony of Dr. Oestreich, an average driver (i.e., one with less than 2 year's experience) can earn $37,000 in Ohio even given the scarcity of work during the winter months.

(vi) Special skills and training. Regarding this factor, Dr. Oestreich cites the fact that Defendant completed mechanic's school in the US Navy.

(vii) Evidenced ability to earn the imputed income. Dr. Oestreich acknowledges that Defendant has no work history as an OTR driver/dump truck operator in the state of Ohio.

(viii) Child's age and special needs. The Court received no testimony or evidence regarding this factor and, as such, finds this factor inapplicable.

(ix) Increased earning capacity because of experience. The Court received no testimony or evidence regarding this factor and, as such, finds this factor inapplicable.

(x) Any other relevant factor. The Court received no testimony or evidence regarding this factor and, as such, finds this factor inapplicable.

Overall, the Court finds that Dr. Oestreich's report is lacking in depth and reliability. This being said, the Court needs to be clear that the lack of a reliable basis upon which many of Dr. Oestreich's findings rests is *not Dr. Oestreich's fault*. The Court takes issue with Defendant's (admitted) answering of Dr. Oestreich's questions "from the hip" without resort to actual records and documentation. In good faith, Dr. Oestreich specifically inquired of Defendant regarding his work and work expenses – Defendant provided "guestimates" and ballpark figures, and then, at the time of the trial, prepared far more detailed and evidenced-based responses for these very same questions, for example, Defendant's ability to cite to the IFTA Forms he is required to quarterly file with the Public Utilities Commission of Ohio, which specify the actual number of gallons of fuel he purchases in each state. Given the existence of this documentation, *which Defendant failed to produce at trial because it was never requested,* there would have been no need to *guess* at his annual fuel expenditures – but Dr. Oestreich was never even advised that the documents existed. RT TR December 8, 2008 p. 99, lines 2 – 24.

To be clear, this Court is not attempting to shift the burden of proof from Plaintiff to Defendant. It is absolutely *Plaintiff's* responsibility to request the necessary documentation and alert the Court of Defendant's failure to produce the same. The Court just cannot help but ponder the necessity of 2-3 days of trial and an expert witness to ascertain Defendant's actual earning capacity. The bottom line remains that, *through no fault of his own,* the cross-examination of Dr. Oestreich exposed errors in the reporting and assessment of Defendant's income and earning potential to the extent that the Court cannot rely upon Plaintiff's Exhibit 16, Defendant's vocational evaluation. RT TR December 9, 2008, p. 7, line 11 – p. 12, line 3. As such, the Court finds that the document has little probative value and that Plaintiff has failed to provide the Court with a basis upon which to impute additional income to Defendant pursuant to ORC §3119.01(C)(11)(a).

Deviation

Pursuant to the authority set forth in ORC §3119.23, Defendant seeks a deviation of any court-ordered computing child support obligation imposed upon him. In making its determination, the Court is instructed to consider the following factors:

(A) *Special and unusual needs of the children* and (B) *Extraordinary obligations for minor/handicapped children.* The parties' children do not have any special needs and are not handicapped in any way. Therefore, these factors are not applicable.

(D) *Extended parenting time/extraordinary costs associated with parenting time.* Defendant testifies that in 2008 he visited the children 3 times. In 2007, testifies that he visited the children in Ohio 7 times. In 2006, he maintains that he visited with the children in Ohio 10 times. He claims that a one-way airline ticket for the final divorce proceeding cost $100. Defendant indicates that he typically drives back and forth between Ohio and Louisiana, but does not track his actual travel expenses for the 960-mile one way drive. He does recall that the cost of gas has historically been approximately $350 to $400 one way.

Plaintiff complains that although Defendant was awarded a deviation in his child support obligation (to zero) due to his alleged travel expenses, he did not avail himself of all of the parenting time awarded him. PL EX 37. Plaintiff estimates that Defendant's 7 trips to Ohio in 2007 cost him only $631 per trip. She also asserts that most of his 2007 visits were made in conjunction with court-related appearances.

Lastly, while Plaintiff complains that Defendant did more sending of extravagant gifts in 2008, (e.g., the ATV, a Nintendo DS, a portable keyboard and various DVD's) than actual visiting, she concedes that *(unlike her professional situation)* Defendant's business consists of him alone and that Defendant earns no leave time – therefore, any time spent away from work directly results in lost income.

(G) *Disparity in income between parties or households* and (L) *Standard of living/circumstances of each parent and the child* are similar. Plaintiff, as a physician and salaried shareholder in medical practice, has a great income advantage over Defendant, a self-employed, dump truck owner-operator.

(J) *Significant in-kind contributions from a parent.* Plaintiff acknowledges that Defendant sends the children wonderful gifts (see Factor D), and she provides their health insurance at a marginal cost of $6,566.28 per annum and their dental costs at a marginal cost of $63.90 per annum. PL EX 35.

(K) *Financial resources and needs of each parent.* See the Standard of Living analysis in the Spousal Support section of this Decree.

(P) Any other relevant factor. Plaintiff provides childcare – both before and after school plus for her third weekend every month that she works. She testifies that these expenses total $9,951.65 per annum.

Finally, the Court would not that no specific testimony was received regarding statutory factors (C), (E), (F), (H), (I), (M), (N) or (O).

Conclusion

Both parties submitted proposed Child Support Computation Summary Worksheets for the Court's consideration. PL EX 54; DEF EX 67. The Court finds neither proposal particularly compelling. For that reason, the Court prepared its own Worksheet. For the purposes calculating child support and spousal support, the Court finds that Plaintiff's annual income averages $244,278 per year. Interpreting ORC §3113.215(B)(5)(h), Ohio courts have expressly held that "it is appropriate to average an obligor's income for the purpose of calculating the obligor's child support obligation where the obligor's income is unpredictable or inconsistent." Marquard v. Marquard, No. 00AP-1345, 2001 Ohio App. LEXIS 3495, *4 (10th Dist. August 9, 2001) discussing Ferrero v. Ferrero, No. 98-CA-00095, 1999 Ohio App. LEXIS 2848 (5th Dist. June 8, 1999); Towne v. Towne, No. 17772, 1996 Ohio App. LEXIS 5395 (9th Dist. Nov. 27,

1996); Cook v. Cook, No. 95-L-115, 1996 Ohio App. LEXIS 414 (11th Dist. Feb. 9, 1996). More importantly, the above-referenced courts have held that the decision to employ income averaging pursuant to ORC §3113.215(B)(5)(h) is within the sound discretion of the trial court.

Accordingly, for the purposes calculating child support and spousal support, the Court finds that ***Plaintiff's annual average income is $244,278 per year***, and ***Defendant's annual net income is $35,695[22] per year***. As such the Court finds that Defendant's monthly guideline child support obligation totals $346.14 plus a two percent (2%) processing charge for a total monthly obligation of $353.06. See the attached Child Support Computation Summary Worksheet.

Previously, the Magistrate deviated from Defendant's guideline child support obligation finding that that the calculated amount would be unjust and/or inappropriate and would not be in the best interest of the parties' children pursuant to ORC §§3119.22-.23. The Court now finds that ORC §3119.23 statutory factors (D), (G), (J) and (K) serve as a viable basis for a deviation from Defendant's guideline child support obligation.

The Court continues to find that Defendant needs his limited resources to enable him to periodically *visit Ohio* to interact with the children, their schools and their peers outside of the parenting time specifically ordered by this Court pursuant to Long Distance Rule 27 *and* outside of court appearances. However, the Court remains concerned that, even with the deviation, Defendant is not sufficiently visiting the children in Ohio. Accordingly, Defendant is hereby placed upon notice that should he continue to neglect his responsibilities to these children, upon motion of Plaintiff, the Court will certainly consider vacating its deviation and instead ordering full guideline support.

[22] This figure amounts to the combination of Defendant's net wages of $25,291 per year and his naval disability pay of $10,404 per year.

Therefore, the Court reiterates it position that the calculated guideline child support figure of $353.06 per month would be unjust, inappropriate and/or not be in the best interest of the parties' children pursuant to ORC §§3119.22-.23 for the reasons set forth above. Hence, the Court finds that a monthly child support obligation in the amount of ***$0 per month would be more appropriate***.

CHILD SUPPORT, CASH MEDICAL SUPPORT/PRIVATE HEALTH INSURANCE
Required Notices

Pursuant to ORC §3119.30(A), both parents are liable for the health care of the children who are not covered by private health insurance or cash medical support as calculated in accordance with ORC §3119.022 or §3119.023, as applicable.

The effective date of the support order is: **April 1, 2009.** During anytime on or after the effective date of this order that private health insurance is in effect, the following orders shall apply:

1. Father shall pay child support of **$0 per month**, plus processing charge, or **$0 per month total**, pursuant to the DEVIATION from the child support worksheet.
2. Father shall pay **20%** and Mother shall pay **80%** of all extraordinary medical and other health care expenses for the children, which are defined as uncovered medical and other health care expenses exceeding $100.00 per child per calendar year.

During any time on or after the effective date of this order that private health insurance is not in effect, the following orders shall apply:

1. Father shall pay child support of **$0 per month**, plus processing charge, or **$0 per month total**, pursuant to the DEVIATION from the child support worksheet **PLUS $146.62 per month**, in cash medical support, plus processing charge, **or $149.55 total**, pursuant to the child support worksheet.
2. Father shall pay **20%** and Mother shall pay **80%** of all extraordinary medical and other health care expenses for the children, which are defined as uncovered medical and other health care expenses exceeding $100.00 per child per calendar year.

It is further ordered: If the obligor is ordered to pay cash medical support under this support order, the obligor shall begin payment of any cash medical support on the first day of the month immediately following the month in which private health insurance coverage is unavailable or terminates and shall cease payment on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. During the period when cash medical support is required to be paid, the obligor or oblige must immediately inform the child support enforcement agency that health insurance coverage for the children has become available.

The amount of cash medical support paid by the obligor shall be paid during any period after the court or child support enforcement agency issues or modifies the order in which the children are not covered by private health insurance.

Any cash medical support paid pursuant to ORC §3119.30 (C) shall be paid by the obligor to either the obligee if the children are not Medicaid recipients, or to the office of child support to defray the cost of Medicaid expenditures if the children are Medicaid recipients. The child support enforcement agency administering the court or administrative order shall amend the amount of monthly child support obligation to reflect the amount paid when private health insurance is not provided, as calculated in the current order pursuant to ORC §3119.022 or 3119.023, as applicable.

The child support enforcement agency shall give the obligor notice in accordance with Chapter 3121 of the Revised Code and provide the obligor an opportunity to be heard if the obligor believes there is a mistake of fact regarding the availability of private health insurance at a reasonable cost as determined under division (B) of this section.

The following notices regarding child support also apply:

EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER. IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS, YOU MAY BE FINED UP TO $50 FOR A FIRST OFFENSE, $100 FOR A SECOND OFFENSE, AND $500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILLFULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO $1000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR AND YOU FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

The residential parent or the person who otherwise has custody of a child for whom a support order is issued is also ordered to immediately notify, and the obligor under a support order may notify, the Franklin County Child Support Enforcement Agency of any reason for which the support order should terminate, including but not limited to, the child's attainment of the age of majority if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age; the child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age; or the death, marriage, emancipation, enlistment in the armed services, deportation, or change of legal custody of the child.

All support under this order shall be withheld or deducted from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with chapters 3119, 3121, 3123, and 3125 of the Revised Code or a withdrawal directive issued pursuant to sections 3123.24 to 3123.38 of the Revised Code and shall be forwarded to the obligee in accordance with chapters 3119, 3121, 3123, and 3125 of the Revised Code.

Regardless of the frequency or amount of support payments to be made under the order, the Franklin County Child Support Enforcement Agency shall administer it on a monthly basis in accordance with sections 3121.51 to 3121.54 of the Revised Code.

Payments under the order are to be made in a manner ordered by the court or agency, and if the payments are to be made other than on a monthly basis, the required monthly administration by the agency does not affect the frequency or the amount of the support payments to be made under the order.

Payments of child support, plus processing charges, are to be timely made to:
Ohio Child Support Payment Central
P.O. Box 182373
Columbus, Ohio 43218-2372

HEALTH INSURANCE

Plaintiff shall maintain health insurance coverage for the minor children. Pursuant to §3119.01, the parties shall equally pay the first $100.00 of the reasonable and ordinary uninsured and unreimbursed medical expenses for the minor children. Any extraordinary medical expenses (defined as those exceeding the first $100.00) including co-payments and/or deductibles shall be divided between the parties with Plaintiff paying eighty percent (80%) of such expenses and Defendant paying twenty percent (20%) of such expenses.

INCOME TAX DEDUCTIONS

Plaintiff shall claim Zachary R. Halbach, born February 27, 2000, in all tax years, and Defendant shall claim Trevor M. Halbach, born November 1, 2002, in all tax years. Once only Trevor remains as a minor, Plaintiff shall claim the child in all even-numbered years, and Defendant shall claim the child in all odd-numbered years. Defendant's failure to remain substantially current in child support obligation shall constitute a forfeiture of his ability to utilize his court-ordered deduction(s) for the children.

SPOUSAL SUPPORT

Plaintiff has been paying temporary spousal support to Defendant via the Magistrate's Order for since July 2007. She explains that she has paid on Defendant's behalf: $9,000 in spousal support; $6,000 in legal fees; $3,172.15 in health insurance premiums from May through December 2007 and $4,688.10 in health insurance premiums from January through November 2008; $185.95 in dental insurance premiums from May through December of 2007 and $241.26 in dental insurance premiums so far for 2008 – for a total of $23,287.46 paid on Defendant's behalf. Payment of these sums, she claims, has caused her financial hardship. She suggests the Court decline to award any further spousal support.

Conversely, Defendant is seeking spousal support from Plaintiff in the amount of $1,200 per month for a period of *at least* 2 years. His express theory is based upon his contribution to her student loan repayment and the fact that he turned over to her sole discretion every check he ever earned and allowed her to manage the family finances without interference, due to his trust and faith in her, until he was served with Plaintiff's Complaint for Divorce. He argues that he is now struggling and forced to work 12-15 hours per day in this new business to earn roughly 15% of Plaintiff's salary. Simply put, he needs Plaintiff's assistance. RT TR April 6, 2009, p. 58, line 24-25; p. 59, lines 1-17.

Pursuant to ORC §3105.18(C)(1), in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of spousal support, which is payable either in gross or in installments, the Court shall consider all 14 of the following statutory factors:

Incomes and Earning Abilities

The parties agree that, at the time they married in 1998, Plaintiff earned a resident salary of $30,000 in addition to some "moonlighting" income. Plaintiff began working at Kiddie West Pediatrics, Inc. as an attending physician earning at $120,000 in 1999 and signed her first share purchase agreement in 2001. PL EX 41.

Defendant served in the US Navy from August 1, 1984 until October 17, 1997 where he worked as "boat coxswain" and a mechanic. He testifies that he suffered several injuries during the course of his service, and as a result, he presently receives 50% disability pay in the amount of $867 per month. When the parties were first married, Defendant worked a construction position earning approximately $10,500 in 1998. According to Defendant, his salary increased to between $25,000-32,000 in 1999. As has been already established, the Court finds that Plaintiff's average annual income is $244,278 per year, and Defendant's annual income is $25,291 per year in addition to his $10,404 per year in naval disability benefits.

The Court finds that both parties are working to their full capabilities. As outlined at pages 25-28 of this Decree, the Court finds no reason or basis to impute additional income to Defendant, who presently works 10-15 hours per day operating his dump truck business and has no paid leave available to him.

Ages, Physical/Mental/Emotional Conditions

Plaintiff testifies that she is 40 years old and is in good mental and physical health. She testifies that she does take Prozac for depression but that she considers herself to be emotionally stable, just under a great deal of stress.

Defendant testifies that he is 43 years old and that his health is "fair to average". He does not currently does not take any medications, but has suffered injuries to his knees, back, neck and wrist during the course of his Naval career. As previously mentioned, Defendant receives an ongoing disability pension from the US Navy.

Retirement Benefits

Plaintiff owns a 401(k) through Mutual of Omaha with a value of $57,565. There is a loan against this asset for $14,000 for the purchase of Defendant's dump truck. Defendant has no retirement savings of his own. However, the Court does effect an equal division of this modest fund at page 21 of this Decree of Divorce.

Duration of the Marriage

The Court finds that the duration of the marriage is from the date of the marriage, September 5, 1998, to the last date of trial, April 6, 2009. Pursuant to ORC §3105.171, the termination date of the marriage is the final hearing date. Accordingly, the duration of the parties' marriage is 10 years and 7 months. The Court considers this a marriage of intermediate duration.

Propriety of Seeking Outside Employment

Both parties are currently working to their fullest capacities, and have historically worked outside the home. Therefore, this factor is more of a *non-factor* with respect to the facts at hand.

Standard of Living During the Marriage

For the first 5 years of their marriage, the parties agree that they enjoyed a relatively conservative lifestyle. They lived in a small house in a modest Central Ohio neighborhood. They testify that they jointly worked towards the repayment Plaintiff's student loans in the amount of $200-250,000, and their first child was born.

In 2004, they purchased the current marital residence at 6580 Sherry Lane in Hilliard Ohio. The home boasts many upscale amenities, such as 5 bedrooms, 3 fireplaces, a 1-acre lot and a 3-car garage. Even though the parties have agreed to allow the actual market force to dictate the home's value, the Court will take judicial notice of the fact that the Franklin County Auditor's Office presently values the marital residence at $460,000. Plaintiff currently resides at the marital residence with the parties 2 minor children, Zachary (age 9) and Trevor (age 6).

It is undisputed that the parties amicably separated in February of 2006 when Defendant moved to Louisiana to start his dump truck venture and they have been living separate and apart since that time. Essentially since the time he vacated the marital residence, Defendant has resided at 101 Commercial Drive, Pearl River, LA 70452, a 100-trailer FEMA trailer park.

Regarding his budget and spending, Defendant testifies that pays approximately $880 per month for the recreational vehicle in which he lives in addition to his $400 per month lot rent. He testifies that, at present, this is the most convenient and economical living arrangement he can muster. RT TR December 5, 2008, p. 75, lines 12-25 – p. 76, lines1-12. While Defendant credibly explains that he spends about $550 a month on meals out as his driving routine (i.e., 2 AM – 5 PM work days) generally forces him to eat virtually every on the go, there were a number of inexplicable expenses, such as "visitation expenses" of $975 per month. He also defends his clothing allocation as entirely necessary because he "lives in the gravel and dirt, with the flies and everything else, being on the bottom of a dump truck every day in grease" and frequently having his clothes torn. RT TR December 8, 2008, p. 99, lines 5-9. He concedes, however, that after the divorce is over, he will probably not need the $200 per month storage unit. Defendant argues that his limited income and having no access to Plaintiff's considerable salary has unfairly forced him to cover his living expenses with his credit cards. RT TR December 8, 2008 p. 97, line 23 – p. 101, line 1. To further exacerbate matters, Plaintiff concedes that even after Defendant moved to Louisiana, all marital monies were deposited into one joint account from which *she determined* which bills were paid and to what extent – and oftentimes Defendant's bills and expenses were unpaid.

Plaintiff emphasizes that, despite the parties' upgrade in lifestyle post-medical school, the parties never belonged to posh country clubs and usually took only one modest vacation each year, i.e., Christmas in Iowa with her family. She relates that they seldom ate at expensive restaurants, but concedes that Defendant normally gave her jewelry for every major holiday, spending roughly $300-500 per gift.

Taken collectively, the Court considers these parties' standard of living to be fairly middle class for the Central Ohio area. However, there is no overlooking the extreme disparity in the present standards of living of these individual households – Defendant survives at a lower standard while Plaintiff and the children enjoy a markedly upper middle class standard.

Parties' Education

Again, the parties were married September 5, 1998. While Plaintiff certainly earned her Bachelor of Arts degree and Doctorate of Osteopathic Medicine from Kirksville College in 1996 prior to the date of marriage – Defendant unequivocally and indisputably assisted Plaintiff greatly in the retirement of the debt related to her attaining her post-secondary education. Meanwhile, Defendant has only a 12th grade education and Naval Special Warfare Development Group (SEAL Team 6) schooling – for which there exists no great *civilian* demand. Clearly, Plaintiff attained a higher level of formal education, and her prestigious position and present salary/income-earning potential reflect the same.

Assets and Liabilities

The Court has achieved a nearly equal (and certainly equitable) distribution of the parties' assets and liabilities. See the Marital Assets and Liabilities Chart set forth at pages 21-22 of this Decree of Divorce.

Contributions to Education, Training, or Earning Ability

Plaintiff concedes that Defendant contributed to the household and the children's care which enabled her to build her career as a physician. Defendant concedes that, Plaintiff had started repaying student loans she incurred in her undergraduate and medical school years in 1996, prior to the date of their marriage on September 5, 1998. Still, this $200-250,000 in medical and undergraduate student loans were not completely repaid until well after the date of marriage, on May 27, 2005. RT TR December 12, 2008, p. 33 – p. 34, line 6.

Time/Expense Necessary to Acquire Education, Training, or Job Experience

Neither party testifies as to the need, desire or intent to acquire any additional education, training, and/or job experience. The Court does not find this factor relevant to the facts at hand.

Tax Consequences

All court-ordered payments made in spousal support will be taxed as income to Defendant and shall be deductible for Plaintiff. For tax year 2007, Plaintiff deducted $3,500 from her income for payment of spousal support, but the same amount was not added to Defendant's income. In addition, the Court takes judicial notice of the applicable federal, state, local and school district taxation statutes.

Lost Income Capacity Resulting from Marital Responsibilities

Neither party testifies as to any lost income capacity he/she *suffered* as a result of his/her marital responsibilities. Again, the Court does not find this factor relevant to the facts at hand.

Any Other Relevant and Equitable Factors

Defendant is self-employed and, post-decree, he will be forced to secure and pay for his own health (including dental) insurance benefits. Plaintiff presently receives health (including vision and dental) insurance at no out-of-pocket cost to her. She, herself, testifies that Defendant's health, vision and dental benefits "cost" her through her medical practice $4,929.36 so far for 2008. Defendant testifies that he has contacted various Ohio carriers and obtained rates for basic health insurance coverage costing $200-420 per month with $1,000 deductibles.

Conclusion

The Court finds that there exists ample support in the record for an award of spousal support. The parties have a marriage of intermediate duration, and Plaintiff's income/earning capacity is ***more than 6 times*** Defendant's. Although Plaintiff contends that she has also struggled financially since the initiation of this divorce, the Court finds her situation is both normal and temporary. Each party is just recently creating and/or maintaining his/her separate household, all the while paying attorneys and/or experts for assistance through this type of contested litigation.

Having thoughtfully weighed the testimony and evidence presented in this case regarding the statutory factors set forth in ORC §3105.18(C)(1), the Court finds Defendant's request for spousal support to be meritorious. Therefore, the Court hereby ORDERS Plaintiff to pay Defendant the amount of ***$1,200 per month, plus 2% processing charge, for a period of 42 months.*** Plaintiff's spousal support obligation shall commence immediately upon the journalization of this Judgment Entry Decree of Divorce. This Court shall not retain jurisdiction to further modify its award of spousal support in this matter.

ATTORNEY'S FEES AND COURT COSTS

Plaintiff and Defendant each concede that they should each be responsible to pay his or her own legal fees. For these reasons, the Court hereby ORDERS both Plaintiff and Defendant to pay her or his own attorney fees.

GENERAL

The parties shall execute all documents, writings and instruments and do all other things necessary to carry this Judgment Entry – Decree of Divorce into full force and effect. In the event such documents are not duly executed, the Court authorizes any public official to accept a certified copy of this Decree in lieu of the actual document necessary or required to carry this Decree into full force and effect.

IT IS SO ORDERED!

JUDGE KIM A. BROWNE

Copies to:

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Counsel for Plaintiff

James B. Harris (#0025636)
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37 W. Broad Street, Suite 950
Columbus, OH 43215-4159
Counsel for Defendant

PRAECIPE: TO THE CLERK OF COURTS: Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

THE STATE OF OHIO, Franklin County, ss. I, MARYELLEN O'SHAUGHNESSY, Clerk OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY, HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL NOW ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COUNTY THIS 13 DAY OF Sept A.D. 20 09
MARYELLEN O'SHAUGHNESSY, Clerk
By _____ Deputy

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DOMESTIC RELATIONS COURT AND JUVENILE COURT

CHILD SUPPORT COMPUTATION SUMMARY WORKSHEET - SHARED PARENTING ORDER

Case No: 07DR-05-1923 Judge: Kim A. Browne

Names of Parties: Alicia Kuper / Kevin Halbach

Number of Children of of Marriage Residing With Each Party	Number of "Other" Children of the Party Residing with Party	SETS No:	
2	0	Worksheet Created:	09/14/2009
0	0	Calc Effective Date:	09/14/2009

[A] 00-00-01-11-01-1	FATHER	MOTHER
1a. Gross Income From Emp.	$ 0.00	$ 244,278.00
1b. Overtime and Bonuses	$ 0.00	$ 0.00
2. Self-Employment Income	$ 25,291.00	$ 0.00
3. Interest and Dividends	$ 0.00	$ 0.00
4. Unemployment Comp.	$ 0.00	$ 0.00
5. Workers' Comp./Dis. Ins.	$ 10,404.00	$ 0.00
6. Other Income (taxable)	$ 0.00	$ 0.00
6. Other Income (non-taxable)	$ 0.00	$ 0.00
7a. Total Annual Gross Income	$ 35,695.00	$ 244,278.00
7b. Health Insurance Maximum	$ 1,784.75	$ 12,213.90
8. Resident Children Adj.	$ 0.00	$ 0.00
9. Other Child Support Paid	$ 0.00	$ 0.00
10. Spousal Support Paid	$ 0.00	$ 14,400.00
11. Local Taxes Payable	$ 505.82	$ 4,885.56
12. Work-related Deductions	$ 0.00	$ 0.00
13. Total Income Adjustments	$ 505.82	$ 19,285.56
14a. Adjusted Gross Income	$ 35,189.18	$ 224,992.40
14b. Cash Medical Support Max.	$ 1,759.46	$ 11,249.62
15. Combined Annual Income	$ 260,181.60	
16. Ratio Party's Inc to Total Inc.	13.52 %	86.48 %
17. Basic C/S Obligation	21,971.00	
18. Annual Support per parent	$ 2,970.48	$ 19,000.52
19. Net Child Care Exp. Paid	$ 0.00	$ 8,751.65
20a. Health Insurance Expense	$ 0.00	$ 0.00
20b. Cash medical support obl.	$ 1,759.46	$ 0.00

OBLIGATION WHEN HEALTH INSURANCE IS PROVIDED

21. Adjustment Additions	$ 1,183.22	$ 0.00
21. Adjustment Subtractions	$ 0.00	$ 1,183.22
22. Obl. after Adjustments	$ 4,153.70	$ 17,817.30
23a. Obligor's Obligation	$ 4,153.70	
23b. Benefits Received for Child	$ 0.00	
23c. Actual Annual Obligation	$ 4,153.70	
27. Deviation Adjustment	$ 0.00	
27. Support Figure w/Health Ins.	$ 4,153.70	

OBLIGATION WHEN HEALTH INSURANCE IS NOT PROVIDED

24. Adjustment Additions	$ 1,183.22	$ 1,521.58
24. Adjustment Subtractions	$ 1,521.58	$ 1,188.22
25. Obl. after Adjustments	$ 2,632.12	$ 19,338.88
26a. Obligor's Obligation	$ 2,632.12	
26b. Benefits Received for Child	$ 0.00	
26c. Actual Annual Obligation	$ 2,632.12	
27. Deviation Adjustment	$ 0.00	
28. Support Figure w/o Health Ins.	$ 2,632.12	
Household Inc. After Child Support	$ 31,035.48	$ 229,146.10

Bonus & Overtime

	FATHER	MOTHER
3 Years ago Amount:	$ 0.00	$ 52,000.00
2 Years ago Amount:	$ 0.00	$ 18,000.00
1 (Last Year's Amount)	$ 0.00	$ 15,300.00
Average of 3 Years:	$ 0.00	$ 28,433.33

Self-Employment Income

Gross Receipts	$ 0.00	$ 0.00
Expenses	$ 0.00	$ 0.00
5.6% or F.I.C.A. Diff	$ 0.00	$ 0.00
Adj. SE Income	$ 25,291.00	$ 0.00

Resident Children Exemptions Adjustment

No. of "other" Children:	0	0
Amt. Fed Exemptions:	$ 0.00	$ 0.00
Amt. State Exemptions:	$ 0.00	$ 0.00
Child Support Rec'd	$ 0.00	$ 0.00
Net Other Children Adj.	$ 0.00	$ 0.00

Local Tax Rate

	2.000 %	2.000 %

Child Care Credit

Actual Exp.	$ 0.00	$ 9,951.65
Fed.Tax Credit	$ 0.00	$ 1,200.00
State Tax Credit	$ 0.00	$ 0.00
Net Exp. After Credit	$ 0.00	$ 8,751.65

Health Insurance Expense

150% Poverty Level	$ 16,245.00	
Health Ins. Maximum	$ 1,759.46	$ 11,249.62
USDA Cash Med. Fig.	$ 1,954.00	$ 1,954.00
Family Coverage Exp.	$ 0.00	$ 0.00
Individual Exp.	$ 0.00	$ 0.00
Net Expense	$ 0.00	$ 0.00
Actual Health Exp. Adj	$ 0.00	$ 0.00

Support Table

	INCOME	SUPPORT
Higher Figure	$ 0.00	$ 21,971.00
Actual Figure	$ 260,181.60	$ 21,971.00
Lower Figure	$ 150,000.00	$ 21,971.00

FINAL CHILD SUPPORT FIGURE

With Health Ins. $ 4,153.70
Without Health Ins. $ 2,632.12

Obligor: *Father*

FINAL CASH MEDICAL FIGURE

Actual Cash Medical obl. $ 1,759.46
Deviation Adjustment $ 0.00
Final Cash Medical obl. $ 1,759.46

C/S Per Mo. With Health Ins. Per Child	Children	C/S Per Mo. Without Health Ins. Per Child	Children	Cash Medical
$ 173.07	$ 346.14	$ 109.67	$ 219.34	$ 146.62
$ 3.46	$ 6.92	$ 2.19	$ 4.39	$ 2.93
$ 176.53	$ 353.06*	$ 111.86	$ 223.73	$ 149.55

Supportworks
Child Support Guideline Worksheet Program
Version 6.0.05 (c) 2008
Piper Software Productions, Inc.
WWW.SUPPORTWORKS.NET

Prepared by: Other Person
Susan Burnside-Kelly
Preparer's Firm or Organization
Preparer's Address Data
Preparer's Address Data
Preparer's Address Data
Preparer's Address Data

FATHER: Kevin Halbach Date

MOTHER: Alicia Kuper Date

*guideline amount is unjust, inappropriate & not in children's best interest ∴ Ct. deviates to $0. KHB