

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE FAMILY COURT

EDWIN EUGENE MOORE,

Plaintiff,

-vs-

EMILY ELAINE MOORE,

Defendant.

DIVORCE DECREE

92-DR-04-1587

TRIAL DATE: SEPTEMBER 1, 1993
TRIAL JUDGE: THE HONORABLE J. FRANKLIN MCCLAIN
PLAINTIFF'S ATTORNEY: MICHAEL D. GLENN
DEFENDANT'S ATTORNEY: WILLIAM N. EPPS, JR.
COURT REPORTER: JANE BARNETTE

The Plaintiff commenced an action for separate support and maintenance by the filing of a Summons and Complaint on August 5, 1992 in the office of the Clerk of Court for Anderson County. Service was thereafter accomplished on the Defendant as evidence by an Affidavit of Service made part of the record.

The Defendant duly retained counsel and submitted an Answer and Counterclaim seeking a divorce a vinculo matrimonii from the Plaintiff on the grounds of physical cruelty and other affirmative relief as set forth in the Counterclaim.

A final hearing was held on Monday, August 9, 1993, in the Anderson County Family Court, attended by the Plaintiff and his attorney, Michael D. Glenn of the firm of Glenn, Haigler, and Maddox of Anderson, South Carolina. The Defendant was also present and represented by William N. Epps, Jr. of the law firm of Epps, Krause, Nicholson & Stathakis of Anderson, South Carolina. The

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presentation of testimony and evidence was concluded on September 1, 1993.

The Financial Declarations of the parties were before this Court as required by Rule 20 of the Rules of Practice for Family Courts.

Prior to the institution of testimony on August 9, 1993, the parties announced to the Court that they had agreed that the Defendant would have possession and title to all accounts which were presently in her name including any retirement account or pension and profit sharing plan with the State of South Carolina, as well as any other savings accounts or any accounts in her name. The Plaintiff would also have possession and title to his retirement plan with Fluor Corporation and/or any pension and profit sharing plans he had with Fluor Corporation as well as his pension fund with the Greenville Plumbers Local 391 and any other accounts which are presently in his name.

The Plaintiff and Defendant also stipulated that Angela Moore would have possession and title to the 1957 Chevrolet, regardless of the value and it would not be credited or debited to either side in making equitable distribution.

The Court then proceeded to take testimony and receive evidence on the case.

The Court considered the pleadings, the testimony of the parties and their respective witnesses, all documents introduced into evidence, the financial declarations of the parties, and all evidence in accordance with the Family Court Rules of Practice.

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FINDINGS OF SALIENT FACTS

The Court, considering the pleadings, the testimony of the parties and their various witnesses, the financial declarations of the parties, all documents introduced into evidence, and statements of attorneys, finds from a clear preponderance of the evidence the following salient facts:

1. I find that the Plaintiff and Defendant are citizens and residents of Anderson County, State of South Carolina, and have been for more than three months prior to the institution of this action, and that all parties are within the jurisdiction of this Court.

2. I find that the Plaintiff and Defendant were married on April 13, 1977 and from said union one child has been born, namely Angela Marie Moore, who is 21 years of age, and is presently attending Anderson College.

3. I find, after holding a reconciliation conference, that reconciliation is impossible.

4. I find that the Defendant left the marital home on July 24, 1992 as a result of physical cruelty inflicted upon her by the Plaintiff; and more particularly I find that the Plaintiff did hit the Defendant in the nose, causing her nose to break and causing her to seek medical attention. I find that the testimony of the Defendant was duly corroborated by her sister as well as the doctor who set the fracture in the nose. I further find that this is not the first time that there has been physical abuse inflicted upon the Defendant by the Plaintiff, but this physical abuse has

happened on numerous occasions prior to July 24, 1992. I find that there is no collusion between the parties, and accordingly, I find that the Defendant is entitled to a divorce a vinculo matrimonii from the Plaintiff on the grounds of physical cruelty as provided by law.

5. I find that the daughter, Angela Marie Moore, is presently 21 years of age, and even though she is in her senior year of college at Anderson College, she is almost emancipated, and it further appears that she has sufficient funds through loans and grants to complete her senior year at Anderson College. This Court will deal with the college debt later on in this Decree.

6. I find that the Defendant Emily Moore is gainfully employed as a teacher in Anderson School District Number Three and has an approximately monthly income of Three Thousand Dollars (\$3,000.00). I further find that she shows reasonable living expenses for herself in the approximate amount of Two Thousand Five Hundred Dollars (\$2,500.00) per month, which includes certain debts. I find that the Plaintiff, Mr. Moore, is an engineer with Fluor Daniel and has an approximate monthly income of Four Thousand Dollars (\$4,000.00) and shows reasonable living expenses for himself in the amount of One Thousand Eight Hundred Fifty-Seven Dollars (\$1,857.00).

7. Although this has been a long marriage, some sixteen (16) years, I find that no alimony should be granted. I find that both of these parties are fairly young and healthy. I find that both have stable employment and good incomes, and even though Mr. Moore

does have a better income than Mrs. Moore, I find that the difference is not so great as to require Mr. Moore to pay her alimony.

8. As to the issue of equitable distribution, I find that the marital estate consists of a home located at 1311 Agnew Road in Starr, South Carolina, and I find that that home has a value of Seventy Thousand Dollars (\$70,000.00). I find that both parties have certain accounts, with the Plaintiff having an annuity at Mileco, a pension fund with Greenville Plumbers Local 391, a retirement plan with Fluor Corporation, and a savings investment plan with Fluor Corporation, and some funds in the Houston Federal Credit Union. These funds have the approximate value of Twenty-Six Thousand Dollars (\$26,000.00). The Defendant has a retirement fund with the State of South Carolina and it has an approximate value of Twenty-Four Thousand Dollars (\$24,000.00). I find that the parties have agreed and stipulated to a division of these funds. In addition, I find that the parties have certain personal property that has been identified and valued on Exhibit "A" that is attached to this Decree. Items which this Court has omitted from this list, I find to be insignificant in value or non-marital property in possession of the proper party. Items marked "W", I find to be in the possession of Mrs. Moore. All others items I find to be in the possession of Mr. Moore.

9. I find that the Plaintiff and Defendant have contributed equally to the acquisition of the marital property as well as

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contributing to the marriage. Therefore, I find that the marital property and the marital debts should be divided equally.

10. As to the division of the home located at 1311 Agnew Road in Starr, South Carolina, I find that the Plaintiff, Mr. Moore, should have the option of buying Mrs. Moore's interest in the home because of the fact that the marital home is located in the midst of his family and that property had been in his family for some time. I find that there is a mortgage balance of Forty-Five Thousand Nine Hundred (\$45,900.00) and after deducting that mortgage balance and a real estate commission of seven percent (7%) it would leave a net equity of Nineteen Thousand Two Hundred Dollars (\$19,200.00). I find that the Defendant Mrs. Moore is entitled to Nine Thousand Six Hundred Dollars (\$9,600.00) for her interest in the marital property and I find that the Plaintiff should pay her that amount within sixty (60) days from the date of this Decree. In the event that the Plaintiff, Mr. Moore, does not exercise this option, then the Defendant, Mrs. Moore, shall have the right to purchase Mr. Moore's interest on the same basis. If neither party desires to purchase the other's interest, then the home shall be placed on the market and sold, and after the cost of the sale, payment of mortgage, and any real estate commissions, the net proceeds shall be equally divided between the Plaintiff and Defendant.

11. From the list of personal property, I have equally divided the following:

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To the Plaintiff Mr. Moore:

(a)	1985 Jeep	\$2,500
(b)	Long Bed Trailer	500
(c)	Storage Building	750
(d)	Motor	500
	TOTAL	\$4,250

To the Defendant Mrs. Moore:

(a)	GEO	\$ 0
(b)	Mustang	600
(c)	Travel Trailer	750
(d)	Iron bed	200
(e)	Silver	2,000
(f)	Bell collection	100
(g)	China	600
	TOTAL	\$4,250

12. As to the remaining personal property, I find that Mr. Moore shall make two lists, using Exhibit "A", and equally dividing the remaining personal property. After equally dividing the remaining property, the Plaintiff Mr. Moore shall present the two list to the Defendant Mrs. Moore through her attorney, and Mrs. Moore shall have her choice of the property on either list. I further find that the party who is found to be in possession of the property shall give that property or its value to the other party. Once this division has been accomplished, any monies due shall be calculated with the monies due on the home.

13. I find that the Plaintiff and Defendant shall also be equally responsible for the marital debts including any debts owed for Angela Moore's college education. In relation to this, I find that the debts should be divided as follows:

Mr. Moore

(a) Citi-Bank	\$ 913.19
(b) Belk	1,607.34
(c) Penney's	2,438.73
(d) Chase	1,664.74
(e) First Citizen's	541.89
(f) Sears	1,011.38
(g) First Card Visa	1,580.17
(h) American Express	<u>427.43</u>
TOTAL	<u>\$ 10,184.87</u>

Mrs. Moore

(a) Cato	\$ 372.82
(b) Rich's	1,803.81
(c) MBNB Mastercard	3,626.42
(d) Sears	2,678.07
(e) Republic	<u>2,286.74</u>
TOTAL	<u>\$ 10,767.86</u>

I further find that the Plaintiff and the Defendant shall equally divide the future college loan payments. I find that since Mr. Moore was solely responsible for the college loan payments during the litigation, then Mrs. Moore's larger debt should

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approximately offset Mr. Moore's payments under the Temporary Order.

14. I find that the Defendant had to retain an attorney to represent her in this matter, and that he has obtained beneficial results in this matter and that he has a high professional standing. I further find the fee charged for this action is reasonable with the fee customarily charged for similar legal services and that he had to spend some thirty-five (35) hours in preparation of the case and representing the Defendant. I find that the Plaintiff should be required to pay a portion of Mrs. Moore's attorneys fees and I feel that the sum of Two Thousand Five Hundred Dollars (\$2,500.00) is a reasonable portion for the Plaintiff Mr. Moore to pay to Mrs. Moore's attorneys. I find that this should be paid at the closing of the home.

15. I further find that both parties should be restrained and enjoined from bothering, harming, molesting, or interfering with each other in any manner whatsoever.

CONCLUSIONS OF LAW

This Court concludes as a matter of law that it has jurisdiction to hear and determine all issues in this action and of the parties. That this Court has the authority to issue a Decree of Divorce, provide for alimony, attorneys' fees, for a division of real and personal property as prayed for in the pleadings, and also issue appropriate restraining orders. South Carolina Code of Laws, 1976, as amended, Sections 20-3-10, et seq., and 20-7-420.

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The Court further concludes that in determining whether or not a party is entitled to an award of alimony or separate maintenance and support, the Court must consider and give weight in such proportion as it finds appropriate to the factors as set forth in Section 20-3-130(c) of the South Carolina Code of Laws, 1976, as amended.

The Court further concludes that in making equitable division, it should identify the marital estate. The Court should find the "fair market value" of each piece of real or personal property; and the Court should make a fair division of the property after due consideration of the factors that are set forth in 20-7-472 of the South Carolina Code of Laws, 1976, as amended.

The Court further concludes that in determining the amount of attorneys' fees, the Court shall consider:

1. The nature, extent, and difficulty of the legal services rendered;
2. The time and labor necessarily devoted to the case;
3. The professional standing of counsel;
4. The contingency of compensation;
5. The beneficial results accomplished; and
6. The fee customarily charged and the locality for similar legal services. Darden v. Witham, 263 SC 183, 209 SE2d at 42.

Therefore, based upon the Findings of Fact and Conclusions of Law under the law of the State of South Carolina, it is
ORDERED, ADJUDGED, AND DECREED

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1. That the Defendant is granted a divorce a vinculo matrimonii from the Plaintiff on the grounds of physical cruelty as provided by law.

2. That the Defendant's claim for alimony is denied.

3. That the Plaintiff is granted possession and title to his retirement plan and/or pension and profit sharing plans with Fluor Corporation as well as his pension fund with the Greenville Plumbers Local 391 and any other retirement or savings accounts which are presently in his name.

4. That the Defendant is granted possession and title to all retirement accounts and/or pension and profit sharing plans with the State of South Carolina as well as possession and title to any other savings accounts or any accounts which are presently in her name.

5. That Angela Marie Moore is granted possession and title to the 1957 Chevrolet automobile.

6. It is ordered that the Plaintiff Mr. Moore shall have the option of purchasing the Defendant Mrs. Moore's interest in the marital home at 1311 Agnew Road in Starr, South Carolina, and he shall exercise that option by paying to Mrs. Moore the sum of Nine Thousand Six Hundred Dollars (\$9,600.00) within sixty (60) days from the date of this Decree and upon payment of said sum, the Defendant shall convey any and all of her right title and interest to the Plaintiff by general warranty deed. It is further ordered that in the event the Plaintiff does not exercise this option, then the Defendant shall have the right to purchase the Plaintiff's

interest on the same basis. If neither party desires to purchase to other's interest, then the home and real property shall be placed on the market and sold, and after the cost of the sale, the payment of any mortgages or liens, and any real estate commissions, the net proceeds shall be equally divided between the Plaintiff and Defendant.

7. That the Plaintiff will have possession and title to the following items of personal property:

(a) 1985 Jeep	\$2,500
(b) Long Bed Trailer	500
(c) Storage Building	750
(d) Motor	500
TOTAL	\$4,250

That the Defendant will have possession and title to the following items of personal property:

(a) GEO	\$ 0
(b) Mustang	600
(c) Travel Trailer	750
(d) Iron bed	200
(e) Silver	2,000
(f) Bell collection	100
(g) China	600
TOTAL	\$4,250

8. It is further ordered that the Plaintiff shall make two lists, using Exhibit "A", which is attached to this Decree, and he shall equally divide the remaining personal property on Exhibit

"A". After equally dividing the remaining personal property on the two lists, the Plaintiff shall present the two lists to the Defendant, through her attorney, and the Defendant shall have the first choice of the property on either list. It is further ordered that the party who is found to be in possession of the property, on either list, shall give that property or its value to the other party. Once this division has been accomplished, any monies due shall be calculated with the monies due on the home.

9. It is further ordered that the Plaintiff and Defendant shall also be equally responsible for the marital debts including any debts owed for Angela Moore's college education. In relation to this, it is ordered that the debts should be divided as follows:

Mr. Moore

(a) Citi-Bank	\$ 913.19
(b) Belk	1,607.34
(c) Penney's	2,438.73
(d) Chase	1,664.74
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(f) Sears	1,011.38
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TOTAL	<u>\$ 10,184.87</u>

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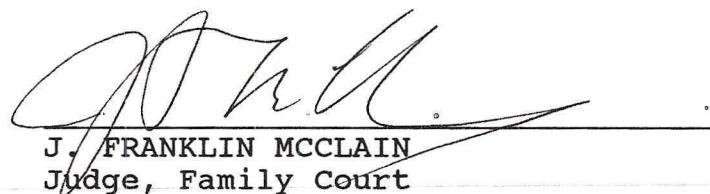
(d) Sears	2,678.07
(e) Republic	<u>2,286.74</u>
TOTAL	<u>\$ 10,767.86</u>

It is further ordered that the Plaintiff and the Defendant shall equally divide the future college loan payments.

10. That the Plaintiff is ordered to pay to the Defendant's attorney the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a portion of the Defendant's attorneys fees and this fee should be paid at the closing of the home.

11. That the Plaintiff and Defendant are restrained and enjoined from bothering, harming, molesting, or interfering with each other in any manner whatsoever.

IT IS SO ORDERED.



J. FRANKLIN MCCLAIN
Judge, Family Court

Anderson, South Carolina

December 16, 1993