

JUDICIAL MERIT SELECTION COMMISSION)

In the Matter of: HONORABLE BRYAN MOBLEY)
Candidate for RETIRED JUDGE on the)
FAMILY COURT)

WITNESS AFFIDAVIT)
FORM)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

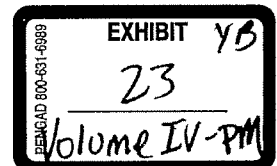
I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least two weeks prior to the date and time set for the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is

In regard to my intended testimony, I will offer information as to the following:

- (1) Set forth your full name, age, address, and both home and work telephone numbers.

LYNN MARIE BOLAND
AGE 63
1102 SWEETWATER BLVD, MURRELLS INLET, SC 29576
hm - 843 6507134
cell 843 318 1144

- (2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.



(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

Comments ARE IN ATTACHED LETTER.

(b) specific dates, places, and times at which or during which such allegations took place;

MARCH 20, 2003 TRIAL
MARCH 30, 2003 signed order.
Fam. Ly Court, State of South Carolina
County of Horry

(c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

PATRICIA FERGUSON - MAJORS - MY ATTORNEY
JOHN SHERRILL - ATTORNEY for JOHN M. BOLAND
JOHN M. BOLAND.
LYNN M. BOLAND

(d) how this information relates to the qualifications of the judicial candidate.

Comments in enclosed & attached letter

- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

Enclosed are the appeal documents which include Court Transcripts of both the Trial + Reconsideration, all evidence produced at trial is included. List is on pg 0001 of document.

- (5) State any other facts you feel are pertinent to the screening of this judicial candidate.

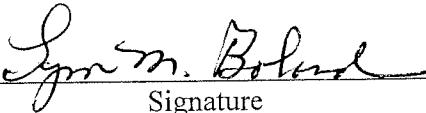
(Pg. 0128) At the end of the reconsideration hearing, Judge Mobley stated that he would review all of the materials presented to him, the file and the order. I checked with evidence and according to them, the record and evidence exhibits were never requested by Judge Mobley.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

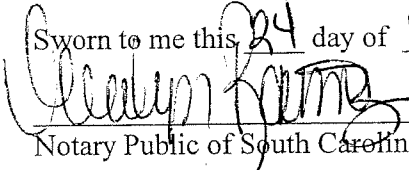
WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.



Signature

Sworn to me this 24 day of October, 2008


Notary Public of South Carolina L.S.

My commission expires: 5-14-17

Lynn M. Boland
1102 Sweetwater Blvd.
Murrells Inlet, S.C.
October 22, 2008

Judicial Merit Selection Commission
Post Office Box 142
Columbia, S.C. 29202

Dear Commissioner,

I am deeply disappointed in the Family Court of Horry Co. South Carolina. I feel that my rights as a citizen and taxpayer have been ignored. I ask the Commission to review the conduct and the capacity of Judge Berry Mobley.

I separated from John Michael Boland in October, 2001 after 32 years of marriage. My attorney was Patricia Ferguson-Majors. Mr. Boland's attorney was John Sherrill. The case number was 01-DR-26-2874 Horry Co., S.C. We first appeared before Judge Lisa Kinon in November, 2001. On March 20th 2003, we appeared before Judge Berry Mobley, A retired judge from Lancaster Co., who heard the case for property settlement only. Judge H.F. Abbott granted the divorce February 19th, 2004. I appealed the decision made by Judge Berry Mobley. My attorney on appeal was John Ferguson of Laurens Co. S.C. The judges deciding the appeal were Stilwell, Beatty, and Short. Their decision was made on October 16th, 2004.

At the hearing for division of marital assets, I presented 15 exhibits marked in evidence, to Judge Mobley. He accepted them but did not look at them during the trial. Mr. Boland presented an accounting of the escrow account holding the proceeds from the sale of a yacht and his settlement exhibit only. In this exhibit, Mr. Boland and his attorney altered the figures we had been using for over two years of negotiations. They used the filing date for my accounts and date of trial for Mr. Boland's accounts. They included my 2002 salary, earned after separation. They did not include Mr. Boland's gambling winnings nor the proceeds from bonds that were redeemed from one of his accounts during this period. My attorney and I believed that the trial was to determine ownership of a farm held in The Boland Family Trust, two investment accounts not in the Trust, one joint titled, and the status of my health insurance which Mr. Boland had prematurely cancelled. We were assured by Mr. Sherrill that we were in agreement on the division of all other assets. We did not become aware of the altered figures until we were in the courtroom. After hearing testimony, Judge Mobley ordered both attorneys to write an order. At Ms. Ferguson-Majors' request, he allowed two weeks to present [pg. 0121 tr. trans.] Mr. Sherrill sent his order to Judge Mobley in eight days without notifying Ms. Ferguson-Majors. Judge Mobley signed it on the tenth day, Sunday March 30th. He did not wait the fourteen days he ordered in court. He never reviewed Ms. Ferguson-Majors' proposed order. This benefited Mr. Boland at the expense of my financial security.

Ms. Ferguson-Majors requested a reconsideration. Judge Mobley told her he was retired and would no longer be available. In May, 2002, he was sent back to Horry Co. Ms. Ferguson-Majors was out of state and Court protected at that time. Her associate, who was not as familiar with the case, represented me. During the hearing, Judge Mobley, himself, stated that the date for valuation was the date of filing, but he wasn't sure. Shouldn't a judge be sure of what the law is? [pg. 0124] Mr. Boland had admitted during trial that he had changed his values a few days before the hearing. The ownership of the farm was also discussed. During a prior separation in 1987, I had given Mr. Boland a quick claim deed to the farm. In return, he gave me the deed to our family home in Florida. This was not the result of a Court ruling. It was our own agreement. I sold the home and bought a townhouse in Virginia for myself and my children. In 1992 we reconciled and I joined Mr. Boland in Kentucky. The following year we formed The Boland Family Trust. The farm was in the Trust, the townhouse was not. At the original trial, I gave Judge Mobley a copy of the Trust. In that copy was a deed, signed by Mr. Boland and myself, conveying the farm to the Trust. I also presented proof from the county where the farm was that I had been the owner before it went into the Trust. Kentucky still recognized my Dower rights since we had never been divorced. Mr. Boland did not present

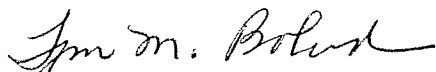
evidence to contradict this. Judge Mobley upheld his original ruling in spite of his acknowledgment of which date was the correct one to use for valuation.

Judge Mobley never wrote his own order, based on his findings, explaining why he found Mr. Boland's testimony so convincing as to contradict my testimony and all my evidence. He allowed Mr. Sherrill's order to decide all issues without waiting for an equal consideration of Ms. Ferguson-Majors' order. She was not even given the courtesy of knowing the order was before him until after it was signed.

There are statues and ethics to guide attorneys in advising a client and in preparing a case. If judges can disregard these in their rulings, how can anyone depend on the law to protect their rights and property? I ask the Commission to review the actions of Judge Mobley during this case and determine whether he ruled giving both parties fair and equal consideration. I also request that the Commission investigate how many cases Judge Mobly actually tries as opposed to accepting consent agreements. I personally spent a day examining the files of the cases he handled during the six weeks that he was assigned to Horry Co. when my case was heard. I could not find other cases he tried during that time, only settlement agreements. While interviewing attorneys for my appeal, I learned why. Judge Mobley's reputation is such that attorneys are afraid to try cases in front of him. They do not trust him as a trial judge. Judge Mobley's demeanor during my trial was not what I would have expected from a judge. He acted annoyed and irritated as if it was an inconvenience to be there.

Enclosed: The record on Appeal, including all documents and evidence from original trial. I thank the Commission for your attention.

Sincerely,



Lynn M. Boland

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Berry L. Mobley, Family Court Judge
2001-DR-26-2874

Lynn Marie Boland,

Appellant,

v.

John Michael Boland,

Respondent.

RECORD ON APPEAL

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Attorney for the Respondent
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Fax (843) 238-3371

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Lynn Marie Boland,
SSN: 277-42-9748

Plaintiff,

vs.

John Michael Boland,
SSN: 406-58-5760

Defendant.

) IN THE FAMILY COURT OF THE
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2001-DR-26-494

TEMPORARY ORDER
(Not Ending Action)

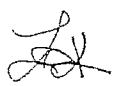
FILED
HORRY COUNTY
01 DEC 20 PM 3:18
JEANNE J ROBERTS
CLERK OF COURT

**PRESIDING JUDGE
DATE OF HEARING
TIME OF HEARING
PLACE OF HEARING
ATTORNEY FOR THE PLAINTIFF
ATTORNEY FOR THE DEFENDANT
GUARDIAN AD LITEM
COURT REPORTER**

Lisa A. Kinon
November 16, 2001
10:30 AM
Family Courtroom #1
Patricia M. Ferguson-Majors, Esquire
John M. Sherrill, Esquire
None
Wanda H. Hughes

THIS MATTER CAME BEFORE me pursuant to a Summons, Complaint and Motion for Temporary Relief filed by the Plaintiff-Wife on October 19, 2001 within the Office of the Clerk of Court for Horry County. These pleadings were later personally served upon the Defendant on October 29, 2001. The Plaintiff then filed a Summons and Amended Complaint on November 9, 2001, and served such upon the Defendant on November 12, 2001. As of the date of the Temporary Hearing, the Defendant had not filed or served any Answer or Counterclaims.

Both parties were present at the hearing along with their respective attorneys. Prior to reviewing Financial Declarations and affidavits, I was advised that a temporary settlement had been reached as concerns certain issues. The terms of the partial settlement were voiced into the record, and I then reviewed the affidavits and Financial

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0003

any drug or condition which would limit his or her ability to make an intelligent, informed decision. The parties understand their agreement, although only temporary in nature, if accepted by this Court, will be enforceable by the contempt powers of the Court. Furthermore, I find that the parties are represented by competent counsel and that neither had any questions for their attorney or this Court. Accordingly, I find that the agreement should be accepted by this Court as the Temporary Order.

6. With reference to the contested issues, I find as follows:

a. The Plaintiff shall not be named as the sole or Co-Trustee of the Boland Living Trust, for the Defendant has always been the sole Trustee. Nevertheless, the marital assets of this Trust are subject to the Restraining Order set forth hereinafter.

b. Without the written consent of both parties, or subsequent Order of this Court, both parties shall be restrained and prohibited from incurring any debt in the name of the other or their joint names, and are each also prevented from selling, destroying, transferring, or dissipating any assets, unless according to the terms herein.

c. As concerns the possible sale of the Kentucky farm and a Hatteras boat, these assets may be sold at the present listing price (Two Thousand Dollars per acre and Two Hundred Fifty Thousand Dollars respectively), and if sold, the net sales proceeds shall be deposited in an interest bearing account to be held in trust by Defendant's counsel.

d. The issue of alimony and attorney's fees shall be held in abeyance and decided by the Court at the Final Hearing.

e. The Defendant shall be entitled to the sole and exclusive possession of the marital home, (a condominium located at 1102 Sweetwater) and all contents therein. However, the Plaintiff will deliver a written list to the Defendant's attorney which identifies in particular the items in the marital home which she believes are antiques. These antiques shall be subject to the Restraining Order set forth herein.

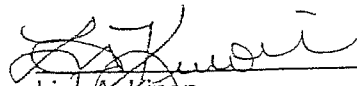
f. The Plaintiff may have the contents of the lock box appraised at her

on page 2 of this Order is hereby accepted as a part of the Temporary Order of the Court as if reiterated verbatim herein.

2. The Findings of Fact as concerns the contested issues, as set forth within paragraphs 6(a) through 6(h) on pages 3 to 5 of this Order are accepted as a part of the Temporary Order of the Court as if reiterated verbatim herein.

3. Both parties are hereby notified that should either violate any term of this Order, a contempt citation may be issued. Should either party be found to have engaged in willful contempt of any term of any Order of this Court, he or she will be subject to the contempt powers of this Court, these powers to include the ability to Order imprisonment for a period of one (1) year, a fine in the amount of \$1,500.00, 300 hours of community service and with the possibility of being held responsible for all costs and attorney's fees incurred by the aggrieved party.

AND IT IS SO ORDERED.



Lisa A. King
Resident Judge of the Family Court
Fifteenth Judicial Circuit

Conway, SC
December 20 2001

4. I find that after reflecting upon all the factors set forth within Section 20-7-472, Code of Laws of the State of South Carolina, that the intention, and thus agreement, of both parties to divide all marital property on a 50/50 basis should be accepted. Accordingly, the distribution of the marital assets shall be that as set forth within the Exhibit attached to this Order, which with minor adjustments is substantially similar to the Defendant's Exhibit #2. This distribution not only parallels the testimony of both parties, but is fair, equitable, and in the best interest of both parties.

(Nonmarital Property)

5. As concerns nonmarital property, the Wife testified that her Northwest Mutual Life Insurance policy was nonmarital in nature and had a present cash value of \$5,800.00. Furthermore, the sales proceeds from a sale of her former nonmarital real estate were now in an account at Charles Schwab, although such was titled in joint names with her Husband. The Husband testified that his Kentucky farm was nonmarital in nature and had a value of \$197,000.00.

6. The testimony of both parties is identical in that a Separation Agreement was executed in Florida during the year of 1987. According to the terms of this agreement, the Husband received a 100% interest in a farm located in Kentucky, and the Wife signed a Quit Claim deed transferring to the Husband any interest she may have had therein. In exchange for her interest in this farm, the Wife received the Florida marital home and contents therein. The Husband also signed a deed conveying his interest in this Florida home to the Wife. The Husband then began to reside in Kentucky while the Wife remained in Florida.

7. The Wife eventually sold her Florida home and used some or all of the sales proceeds to purchase a residence in Virginia. She eventually sold this town home, and these funds were deposited into her accounts at Charles Schwab and Company, and

After completing the equitable distribution, both parties will have assets in excess of \$500,000.00, and most of same are income producing. Such being the case, after reviewing all of the factors of Section 20-3-130, I find that an award of alimony is not justified.

(Health Insurance and Medical Expenses)

11. With reference to the issue of health insurance, the request of the Plaintiff that the Defendant immediately reinstitute her health insurance is denied. The Pendente Lite Order did not require the Defendant to provide such coverage. Although the Defendant has hospitalization insurance through his former employer, he cannot force his former employer or the health insurance carrier to offer coverage for the Plaintiff. Furthermore, this Court cannot order the Defendant's former employer to cause the health insurance carrier to provide such coverage to the Plaintiff.

12. This Court also denies the Plaintiff's request that the Defendant be responsible for all of her medical expenses. Even if she was insured by a health insurance carrier, this Court could not order the health insurance carrier to pay for all of her health care expenses. Such being the case, the request by the Plaintiff that the Defendant be responsible for all of her medical expenses is denied. Such a demand would provide an inequitable result, for no hospitalization insurance coverage would provide for all of her health care expenses. Finally, as a result of this equitable distribution, the Plaintiff has an identical amount of marital assets and income to purchase her own separate hospitalization and/or medical insurance.

13. An additional reason for not requiring the Husband to be responsible for such insurance and medical expenses is based upon the rationale that these would be nonmarital debts of the Wife, for the obligation for health insurance would have incurred after the date of filing. It is well settled in South Carolina that the Family Court cannot

A handwritten signature in black ink, appearing to be a stylized name or set of initials, located at the bottom right of the page.

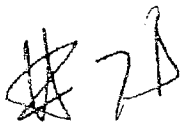
CONCLUSIONS OF LAW

This Court concludes, as a matter of law, that it has jurisdiction of the parties hereto as well as the subject matter herein; See Section 20-7-420(2), Code of Laws of the State of South Carolina. In addition, this Court concludes, as a matter of law, that it has the authority to issue this Final Order as concerns equitable distribution, alimony, attorney's fees, and other related relief.

Based upon the findings of facts and conclusions of law set forth hereinabove,

IT IS ORDERED THAT:

1. The marital property shall be equitably divided as set forth within the attached exhibit. Each party will execute any documents necessary to effectuate the terms of this Order within fifteen (15) days of the request of the other. Furthermore, a Qualified Domestic Relations Order shall be issued so as to effect the equitable distribution without unnecessary tax consequences.
2. The Wife's request for alimony shall be denied.
3. The Wife's request for her Husband to provide for her hospitalization insurance or pay all of her medical expenses is denied.
4. Both parties are granted an Order of Separate Support and Maintenance.
5. The Wife's request for attorney's fees is denied.
6. Both parties are hereby notified that should either violate any term of this Order, a contempt citation may be issued. Should either party be found to have engaged in willful contempt of any term of any Order of this Court, he or she will be subject to the contempt powers of this Court, these powers to include the ability to Order imprisonment for a period of one (1) year, a fine in the amount of \$1,500.00, 300 hours of community service and with the possibility of being held responsible for all costs and attorney's fees incurred by the aggrieved party.

7


EXHIBIT

| Distribution of Marital Assets | | Lynn Boland | John Boland |
|---|--|---------------------|---------------------|
| 1 | Delta Pilot Retirement (a percentage of the monthly check) | 50% | 50% |
| 2 | Delta Stock Options | 50% | 50% |
| 3 | 6 Oppenheimer IRA's | \$181,816.50 | \$181,816.50 |
| 4 | Fidelity 401K (Delta 401K Family Savings Plan) | \$102,005.91 | \$102,005.91 |
| 5 | Vanguard IRA | \$55,592.84 | |
| 6 | Panorama Premier IRA | | \$28,564.62 |
| 7 | USAA Life Insurance Policy | | \$23,508.00 |
| 8 | Chevrolet truck | | \$6,500.00 |
| 9 | Hyundai Sonata automobile | \$12,500.00 | |
| 10 | 1102 Sweetwater Condominium | \$86,000.00 | |
| 11 | Cash received from Sherill & Janes escrow to purchase 4201condo | | \$55,000.00 |
| 12 | Cash received from Sherill & Janes escrow account | \$54,000.00 | |
| 13 | Cash received from Husband | \$5,000.00 | |
| 14 | Other cash received from Husband | \$3,400.00 | |
| 15 | Husband's Schwab account | | \$27,956.37 |
| 16 | Household furniture, including Virginia items | \$7,500.00 | \$1,000.00 |
| 17 | Safe and contents | | \$5,000.00 |
| 18 | Sauna | | \$1,500.00 |
| 19 | Delta savings account | \$635.00 | |
| 20 | Wife's clothing and jewelry | \$5,000.00 | |
| 21 | Income of Wife (2002) | \$11,385.22 | |
| 22 | Husband's income from 11/02 - 3/03 | | \$25,264.00 |
| 23 | Husband's income minus expenses | | \$39,823.00 |
| 24 | Future Disbursement of funds still in Sherill & Janes escrow account | \$23,773.47 | \$50,670.55 |
| | TOTAL: | \$548,608.94 | \$548,608.95 |
| Distribution of Non-Marital Assets | | | |
| | Assets | Lynn Boland | John Boland |
| 1 | Wife's Schwab account | \$36,837.89 | \$0 |
| 2 | Wife's Eisner-Brookstreet account | \$2,508.79 | \$0 |
| 3 | Northwest Mutual Life Insurance Policy | \$5,800.00 | |
| 4 | Husband's Kentucky farm | \$0 | \$197,000.00 |
| | TOTAL: | \$45,146.68 | \$197,000.00 |

(Findings of Salient Facts)

The Court listened to arguments of counsel and reviewed affidavits and briefs as concerns the issues raised in both Motions. After reflecting upon same, along with the Final Order of Separate Support and Maintenance signed on March 30, 2003, this Court finds that it has not overlooked any principle of law or any facts in the case that were not set forth within the Final Order. Accordingly, the Motion to Reconsider is denied.

Furthermore, the Court finds that although the Trial Judge was not personally served with a copy of the Motion to Reconsider, the Defendant's Motion to Dismiss the Plaintiff's Motion to Reconsider for lack of jurisdiction is denied.


CONCLUSIONS OF LAW

This Court concludes, as a matter of law, that it has jurisdiction of the parties hereto as well as the subject matter herein. Furthermore, this Court concludes that, as a matter of law, it has the authority to rule upon both Motions; see Rules 59 and 60, South Carolina Rules of Civil Procedure.


Based upon the Findings of Fact and Conclusions of Law set forth hereinabove,

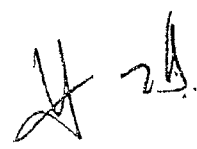
IT IS ORDERED that the Plaintiff's Motion to Reconsider shall be denied, as shall the Defendant's Motion to Dismiss.

IT IS SO ORDERED.



Berry L. Mobley
Presiding Judge of the Family Court
Fifteenth Judicial Circuit


Conway, South Carolina
June 16, 2003

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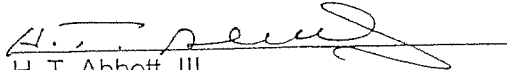
1. Should the Plaintiff decide to appeal, she will not take any exception to the distributions of the following matters as set forth within the exhibit attached to this Order and the Final Order of Separate Support and Maintenance as signed by Berry L. Mobley on March 30, 2003; such item numbers being 1 through 5, 7 through 14, and 16 through 19. Accordingly, the only items on this exhibit that might be subject to appeal are items 6 (Panorama Premier IRA), item 15 (value of the husband's Schwab Account), item 20 (wife's clothing and jewelry), item 21 (income of the wife for the year 2002), item 22 (husband's income from November 2, 2002 to March, 2003), item 23 (husband's income minus expenses), and item 24 (concerning funds held in the Sherrill & Janes escrow account). In addition, the designation and valuation of non-marital assets as set forth within the exhibit attached to the aforescribed Order of the Honorable Berry L. Mobley might also be subject to appeal.

2. The funds still being held in the Sherrill & Janes escrow account shall be disbursed so that the Plaintiff shall receive \$23,773.47, and the Defendant shall receive \$50,670.55.

3. The husband will provide \$12,035.00 to the wife, such representing one-half of the net receipts, after taxes, (for the months of April through August of 2003) from item 1 (Delta Pilot retirement) and item 3 (Oppenheimer IRA) as set forth on the exhibit attached to the Order of Judge Mobley. He will also provide some proof indicating that the net amount, after taxes, was indeed \$2,407.00 per month.

4. The attorney for the Defendant shall prepare a Qualified Domestic Relations Order as concerns the Delta Pilot retirement (item 1), six Oppenheimer IRAs (item 3) and the Fidelity 401k (item4). Should the Defendant receive additional payments

AND IT IS SO ORDERED.


H. T. Abbott, III
Resident Judge of the Family Court
Fifteenth Judicial Circuit

Conway, South Carolina
August ~~26~~ 2003

HTA

Sandy

assets are in a living trust called the Boland Farm Trust which needs to be dissolved by the Court to effectuate the division. Including but not limited to a condo, farm, living trust, 1976 Hatteras boat, 1987 Chevy one ton expanded pickup truck, 1999 Hyundai Sonata, retirement accounts and pension plans.

5. The Plaintiff is informed and believes that she is entitled to an order of separate support and maintenance.

6. The Plaintiff is requesting reasonable discovery.

7. The Plaintiff requests that this Court issue an Order restraining the parties from selling, transferring, hypothecating or in any manner disposing of any marital property.

8. The Plaintiff requests that this Court issue an Order restraining the parties from incurring any debts jointly or in the other parties name, changing or cancelling life or health and dental insurance.

9. Plaintiff is informed and believes that she is entitled to an order requiring that the Defendant pay temporary and permanent Plaintiff attorney fees, and any fees and costs necessitated by this action.

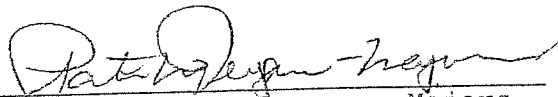
10. The Plaintiff is requesting that Defendant be ordered to account for all bank retirement accounts including joint accounts held and to provide the location of assets removed and require such assets to be insured and in a secure place.

11. Plaintiff is requesting that the items in the safe in the marital home be appraised.

12. Requesting the parties be required to contribute to Dianna Marie Boland's college education and five hundred dollars per month for living expenses paid by Defendant to be continued.

THE FERGUSON LAW FIRM, P.C.

By:



Patricia M. Ferguson-Majors
4502 Hwy 17 Bypass South
Myrtle Beach, SC 29577
(843)293-6884
Counsel for Plaintiff

November 8, 2001

denies same and demands strict proof thereof, for: (a) the assets referred to within paragraph 4 of the Amended Complaint are incorrectly described; (b) some of such assets are believed to be non-marital in nature; (c) none of the assets referred to are in a trust called "The Boland Farm Trust", and (d) the Court does not have jurisdiction to dissolve any Trust of the parties nor is there any need in order to make an equitable distribution.

5. The Defendant admits to much of the truth of the allegations of paragraph (5) which allege that the Plaintiff desires an Order of Separate Support and Maintenance, but the Defendant believes that he is entitled to such an Order as a result of the actions of the Plaintiff.

6. The Defendant admits the allegations of paragraph (6) of the amended Complaint which indicate that the Plaintiff requests reasonable discovery. The Defendant is agreeable to same, as long as such is mutual and is governed by the South Carolina Rules of Civil Procedure.

7. The Defendant admits that due to the actions of the Plaintiff in previously disposing or secreting marital property, a mutual Restraining Order similar to that referred to within paragraph (7) should be issued. Furthermore, the Plaintiff should be ordered to immediately return the Separation Agreement previously signed by the parties for such constitutes evidence relevant to this litigation.

8. The Defendant denies the necessity for the Restraining Order referred to in paragraph (8), for during the pendency of this action, he does not intend to change or cancel any health, life, or dental insurance, nor does he intend to incur any joint debts or debts in the name of the Plaintiff, unless with her consent or pursuant to the Order of this Court. However, the Defendant denies he is obligated to provide any insurance for the benefit of the Plaintiff once a Final Order is issued.

9. The Defendant denies the truth of the allegations contained within paragraph (9), for the Plaintiff is not entitled to any award of attorney's fees or costs, be such pendente lite or permanent in nature.

parties have been living separate and apart since October 29, 2001.

16. Of this marriage, three (3) children have been born, Diana Marie Boland (DOB: 09/28/80; age 21), Michael Graham Boland (DOB: 05/07/71; age 30), and Julie Lynn Boland (DOB: 01/24/74; age 27). Except for Diana Marie Boland who is still attending college, all children are emancipated.

17. Considering that the Plaintiff has decided to live separate and apart, the Defendant now requests an Order of Separate Support and Maintenance be granted to him.

18. There has been no collusion between the parties for the bringing of this action.

FOR A SECOND COUNTERCLAIM

(Equitable Division of Marital Property and Debts)

19. The Defendant hereby reaffirms and reiterates each and every allegation contained within all prior defenses and Counterclaims as if same were set forth verbatim herein.

20. Throughout the marriage, the parties acquired interests in personal and real property as well as some indebtedness. Furthermore, the Defendant has made substantial direct and indirect contributions toward the marriage and the accumulation of assets including acting as a father, wage earner, and caretaker. Accordingly, the Defendant also claims a special equity in all marital assets acquired. Finally, the Defendant is informed and believes that he is entitled to an Order equitably dividing all marital property and debts, both pendente lite and permanently.

FOR A THIRD COUNTERCLAIM

(Discovery)

21. The Defendant hereby reaffirms and reiterates each and every allegation contained within all prior defenses and Counterclaims as if same were set forth verbatim herein.

28. Due to the nature of the investments of the parties and prior covert acts of the Plaintiff, the Defendant is further informed that a restraining order is necessary restraining the Plaintiff from transferring, dissipating, encumbering, hiding or destroying any marital property during the pendency of this action without his written consent or an Order of the Family Court.

WHEREFORE, having set forth his Answer and Counterclaims to the Amended Complaint, the Defendant prays that the Court inquire into the matters set forth herein, that it dismiss the Amended Complaint of the Plaintiff and issue to him an Order granting the relief he has requested, both pendente lite and permanently, such relief to include:

a. An Order of Separate Support and Maintenance being granted to the Defendant.

b. An equitable division of all marital property and debts acquired during the marriage, both pendente lite and permanently;

c. An Order allowing the Defendant to pursue this action pursuant to the liberal discovery rules granted by the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure, as amended, 1976;

d. An award of attorney's fees and costs to be incurred in this action, both pendente lite and permanently;

e. A restraining order preventing the Plaintiff from incurring any indebtedness either in the Defendant's name or their joint names;

f. A restraining order preventing the Plaintiff from dissipating, encumbering, transferring, hiding, or destroying any marital property, and to immediately return certain property removed by the Plaintiff;

g. A restraining order which will prohibit the Plaintiff from bothering or harassing the Defendant at any location;

h. An Order requiring the Plaintiff to produce the prior Separation Agreement she removed from the marital home;

*Can He do this since Judge Keenan
told him to produce when I
produced debts & bank acct*

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 01-DR-26-2874

LYNN MARIE BOLAND,
SS NO. 277-42-9748
Plaintiff.

vs

JOHN MICHAEL BOLAND,
SS NO. 406-58-5760
Defendant.

PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTERCLAIM

The Plaintiff, replying to the Answer and Counterclaim of the Defendant, would respectfully show unto the Court:

1. Plaintiff specifically denies each and every allegation not admitted herein.
2. Paragraphs 1 - 6, 9, 13, 19, 21, 23, and 25 do not require an answer.
3. Plaintiff denies the allegations in paragraph 7 and would further state no such separation agreement existed at the time of the separation of the parties or the filing of the action and any such prior agreement was voided by the parties reconciling and combing their assets.
4. Plaintiff denies the claim of lack of necessity of restraining order in paragraph 8, but agrees with Defendant that he is obligated to provide health insurance up until a Final Order in this action.
5. Plaintiff denies the allegations in paragraphs 10, 11, 12, 24, and 28.
6. Plaintiff admits the allegations in paragraph 14, 15, 16, 17, 18, 22, 26, and 27.

STATE OF SOUTH CAROLINA)

COURT OF FAMILY COURT

COUNTY OF HORRY)

LYNN BOLAND)

VS.)

TRANSCRIPT OF RECORD
01-DR-26-2874

JOHN BOLAND)

March 20, 2003
Conway, South Carolina

B E F O R E :

THE HONORABLE BERRY L. MOBLEY, JUDGE

A P P E A R A N C E S :

Patricia Ferguson-Majors, ESQ.
Attorney for the Plaintiff

JOHN L. SHERRILL, ESQ.
Attorney for the Defendant

FRANCES A. BAKIS, RPR
Circuit Court Reporter

FRANCES A. BAKIS, RPR

1 THE COURT: Plaintiff ready to proceed?

2 MS. MAJORS: Yes, sir.

3 THE COURT: Defendant ready to proceed?

4 MR. SHERRILL: Yes, sir, Your Honor.

5 THE COURT: All right, ma'am, you know of
6 anything I might do such as require both you and your
7 husband to attend marriage counseling or such other
8 counseling that might be appropriate that might
9 resolve your differences and allow you to resume your
10 marriage?

11 PLAINTIFF BOLAND: Do I agree?

12 THE COURT: No, ma'am. Do you know of
13 anything I can do to get you and your husband back
14 together?

15 PLAINTIFF BOLAND: I would be perfectly
16 willing to go to counseling.

17 THE COURT: Sir, would you be willing to go
18 to counseling to attempt to reconcile your marriage?

19 DEFENDANT BOLAND: Your Honor, we've been
20 to counselling a number of times. I would go of
21 course, but I don't anticipate it would be of any --
22 I don't anticipate it would be successful.

23 THE COURT: All right. What do you want to
24 do today?

25 DEFENDANT BOLAND: Resolve the ---

FRANCES A. BAKIS, RPR

0039

1 if they want to go to counseling they can go and hope
2 they get their problems reconciled so they can resume
3 their relationship.

4 MS. MAJORS: Your Honor, at this time I
5 would call my client.

6 THE COURT: Come around please. Right over
7 here please. Raise your right hand. Do you swear
8 the testimony you're about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth so help you God?

11 PLAINTIFF BOLAND: I do.

12 THE COURT: Have a seat please. Get right
13 up to the microphone and say your answers in a loud
14 voice.

15 D I R E C T E X A M I N A T I O N

16 BY MS. MAJORS:

17 Q. Can you please state your name for the
18 record, your address?

19 A. Lynn Marie Boland, 1102 Sweetwater
20 Boulevard ---

21 Q. Are you presently ---

22 A. Murrells Inlet, South Carolina.

23 Q. Are you presently living in the marital
24 residence?

25 A. Yes.

FRANCES A. BAKIS, RPR

1 Q. And were -- did you stop working at his
2 request?

3 A. I stopped working at his request in 1992
4 when we reconciled after first separation. I only
5 worked part-time subbing.

6 Q. And let's go back and talk a little bit
7 about the separation. What year did you separate
8 initially?

9 A. Initially? 1987.

10 Q. And how long did you stay separated?

11 A. Till 1992.

12 Q. Okay. Did you get together on occasion
13 during that time?

14 A. Yes, often. We were only really not seeing
15 each other for about the first eight months. After
16 that we saw each other probably at least on an
17 average once a month.

18 Q. So why did you not physically get together
19 sooner then?

20 A. Because I had moved to Virginia. Michael
21 had moved to Kentucky. I had two girls in -- still
22 in school, one in elementary one in high school. My
23 son went with Michael. During that period five times
24 he came back and forth attending school in either
25 place.

FRANCES A. BAKIS, RPR

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1 so most of our assets went into the trust and my
2 husband became the sole trustee of the trust because
3 he requested that in order to be able to control of
4 the assets by himself.

5 (Plaintiff's Exhibit Number 1 was marked
6 for identification only.)

7 MS. MAJORS: Your Honor, I'd offer in
8 evidence my first exhibit, the Boland trust.

9 MR. SHERRILL: None at all, Your Honor.

10 THE COURT: Without objection. In
11 evidence.

12 (Plaintiff's Exhibit Number 1, having been
13 marked for identification, was entered into evidence.)

14 BY MS. MAJORS:

15 Q. Now the Boland family trust was set up in
16 1993. Did it include your marital home and all your
17 vehicles?

18 A. Yes.

19 Q. And when you traded in vehicles did the new
20 vehicles go into the family trust?

21 A. Yes.

22 Q. As far as you know what vehicles are still
23 in family trust right now?

24 A. My husband's '88 Chevy truck, my Hyundai
25 Sonata, and my daughter's Toyota Corolla.

FRANCES A. BAKIS, RPR

1 And Your Honor, a copy of that trust is at the
2 back of our pretrial brief.

3 A. To my knowledge the Delta Pilot Retirement
4 is, the Oppenheimer IRA.

5 Q. Okay. Let me just stop and ask you about
6 those two documents. Are those the two accounts
7 along with Fidelity that you and he have used for
8 your retirement income?

9 A. Yes.

10 Q. Okay. And those are titled in the name as
11 far as you know of the Boland Family Trust?

12 A. As far as I know.

13 Q. Are there -- okay. And please go forward
14 on any other accounts that you believe are titled in
15 the name of the Boland Family Trust?

16 MR. SHERRILL: Objection, Your Honor. If
17 she knows what's in the trust that's one question.
18 What she believes is in the trust I think is
19 irrelevant.

20 THE COURT: She's entitled to testify
21 because this is marital property so I'm going to
22 allow her to go ahead.

23 THE WITNESS: The Chevy truck, the Sonata,
24 the Sweetwater condo, the household furniture are
25 items, safe, contents, and sauna, the Kentucky farm,

FRANCES A. BAKIS, RPR

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1 give it back to my husband by putting it in a Schwab
2 account and making him a joint tenant of the account.

3 Q. So that Schwab account that's referenced on
4 this chart for wife's Schwab account is actually a
5 joint account titled in the name of you and your
6 husband?

7 A. It's my account with him as joint tenant.

8 Q. Okay. The next question I have for you is
9 have there been any substantial withdrawals from that
10 account?

11 A. The most substantial was a \$10,000
12 withdrawal that I made in the Spring of 2000 to lend
13 to his brother.

14 Q. And has any of that money been returned?

15 A. \$2500.

16 Q. You expect the balance to be paid?

17 A. Not really.

18 Q. At the time of separation what was your
19 understanding with respect to your health insurance?

20 A. That Michael would continue paying for it
21 and continue it with the Delta Plan until final
22 divorce.

23 Q. In fact, in his answer did he not state
24 that that's what he would do?

25 A. Yes.

1 representing payments for your daughter's college and
2 for health insurance? That your husband pay your
3 health insurance?

4 A. Since he only paid it through till
5 December 31st I would have no objection for it be
6 deducted for November and December but since he
7 didn't pay it for January, February, and March then I
8 would not expect the deduction.

9 Q. Okay. On your chart have you indicated
10 what you think would be a fair division of the
11 pension and annuities since November 2002? I direct
12 your attention to near the bottom.

13 A. Yes.

14 Q. And what would be your -- the amount that
15 should be awarded to you of the amounts he's already
16 received? You can publish that.

17 A. \$19,297.50.

18 Q. Now looking down the chart let's -- or
19 let's start at the top. You're asking for half of
20 the retirement?

21 A. Yes.

22 Q. Okay. Did your husband make any elections
23 which dramatically affect you when he retired?

24 A. Did he make any elections? I don't know if
25 I understand the question.

1 A. Oh, exactly, yes.

2 Q. Now the Oppenheimer IRA, where did you get
3 these numbers from? Oppenheimer, Fidelity, Vanguard,
4 Panorama, where did you get the values for this
5 chart?

6 A. On a statement from Oppenheimer.

7 Q. And you're asking for half of that amount?

8 A. Yes.

9 Q. Is that paid out on a monthly basis?

10 A. Yes.

11 Q. Likewise, the retirement's pay paid out on
12 a monthly basis?

13 A. Yes.

14 Q. And were those the two sums together that
15 your husband got twice, \$19,000 for last year?

16 A. Yes.

17 Q. I'm going to show you your 2002 tax
18 return -- I mean, 2001.

19 MR. SHERRILL: No objection.

20 (Plaintiff's Exhibit Number 3 was
21 marked for identification only.)

22 MS. MAJORS: I'd offer this as Plaintiff's
23 Exhibit 3.

24 THE COURT: Without objection.

25 (Plaintiff's Exhibit Number 3, having been

FRANCES A. BAKIS, RPR

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1 parcel?

2 A. Yes.

3 Q. And as far as you know, does -- it the
4 larger parcel that has the tobacco allotment on it?

5 A. Yes.

6 Q. Does the other parcel have a tobacco
7 allotment?

8 A. Not to my knowledge.

9 (Plaintiff's Exhibit Number 4 was marked
10 for identification only.)

11 MS. MAJORS: I offer I believe without
12 objection Plaintiff's Exhibit 4.

13 THE COURT: Yes. Without objection.

14 (Plaintiff's Exhibit Number 4, having been
15 previously marked for identification, was entered
16 into evidence.)

17 BY MS. MAJORS:

18 Q. Showing you Plaintiff's Exhibit 4 can you
19 identify it?

20 A. Yes. This is a W-2 and a 1099 for me in
21 the year of 2002. It's what I've earned this year.

22 (Plaintiff's Exhibit Number 5 was marked
23 for identification only.)

24 MS. MAJORS: I'd offer I believe without
25 objection Plaintiff's Exhibit 3 (sic), the stock

1 MR. SHERRILL: No objection.

2 (Plaintiff's Exhibit Number 7, having been
3 previously marked for identification, was entered
4 into evidence.)

5 MS. MAJORS: I offer Plaintiff's ---

6 THE COURT: Yes, ma'am. He said no
7 objection.

8 BY MS. MAJORS:

9 Q. Okay. Can you identify it?

10 A. The Delta Family Care Savings plan at
11 Fidelity Investment until my husband's -- all of his
12 retirement.

13 Q. And these are the items that you're asking
14 to be divided 50/50?

15 A. Yes.

16 Q. In the Plaintiff's 8 marked and in
17 evidence --

18 I'd offer Plaintiff's Exhibit 8 without
19 objection.

20 MR. SHERRILL: If you'd just identify it,
21 yes, without objections.

22 MS. MAJORS: The USSA -- no USAA Life
23 Insurance.

24 MR. SHERRILL: Cash value. No objections.

25 (Plaintiff's Exhibit Number 8 was

FRANCES A. BAKIS, RPR

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1 your marital assets addendum for the items you didn't
2 know the values for?

3 A. Yes.

4 Q. And which items were they?

5 A. The condo, the autos.

6 Q. The condo at 80-- at how much?

7 A. At 86,000. The truck at 6500. The car --
8 Sonata at 1250, his Schwab account at 3700, his
9 Panorama Premiere at 3300. That's probably all that
10 I needed this for. *left over 9/8*

11 Q. Now did you pursuant to a temporary order
12 have the safe and contents appraised?

13 A. Yes, I did.

14 MS. MAJORS: Do you have any objections to
15 this?

16 MR. SHERRILL: No objection.

17 (Plaintiff's Exhibit Number 10 was marked
18 for identification only.)

19 MS. MAJORS: I'd offer Plaintiff's 10 in
20 evidence.

21 THE COURT: Yes, ma'am. He said no
22 objection.

23 MS. MAJORS: Okay.

24 (Plaintiff's Exhibit Number 10, having been
25 previously marked for identification, was entered

1 Plaintiff's Exhibits 7, 11, and ask you if you can
2 identify it.

3 A. It's the Schwab account, Lynn Boland and
4 John L. Boland joint tenant, the 2001 I believe, and
5 account plus a small investment account with
6 Brookstreet that I had and this is the 2001 also.

7 Q. Did Brookstreet previously operate under
8 another name?

9 A. Yes, Eisner.

10 Q. Okay. Now of the documents that we've
11 submitted, does that cover the values and everything
12 in your marital asset chart except for the farm?

13 A. Yes.

14 MR. SHERRILL: No objection.

15 (Plaintiff's Exhibit Number 12 was
16 marked for identification and entered into evidence.)

17 BY MS. MAJORS:

18 Q. Can you identify this document?

19 A. This is the appraisal of the family farm in
20 Kentucky that I had done by Mr. Paul Gaines.

21 Q. Okay. What did you pay for that appraisal?

22 A. \$350.

23 MS. MAJORS: Your Honor, I'd offer ---

24 THE COURT: Yeah, without objection.

25 MS. MAJORS: Plaintiff's 12, okay. I would

1 (Plaintiff's Exhibit Number 14 was marked
2 for identification and entered into evidence.)

3 BY MS. MAJORS:

4 Q. I ask you if you can identify Plaintiff's
5 Exhibit 14.

6 A. Yes. It's the deed by which my husband and
7 John Michael Boland and myself sold the farm to the
8 family trust.

9 Q. And can you tell us in what year -- the
10 year it was published, the year it was dated?

11 A. 9/18/93.

12 Q. And at the back of the deed was there a
13 consideration listed at that time, a certificate of
14 consideration, and if so, can you publish that?

15 A. "Grantors and guarantees both certify under
16 oath that the consideration reflected in this deed is
17 the full consideration paid for the property --"

18 Q. No, just the amount. Just the amount,
19 ma'am.

20 A. Oh, certified of consideration \$65,000.

21 Q. So from -- from September 1993 to the
22 present time has there been a considerable change in
23 the value of the property?

24 A. Yes.

25 Q. In your opinion what advantage would there

FRANCES A. BAKIS, RPR

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1 without objection.

2 THE COURT: 15?

3 MR. SHERRILL: No objection.

4 (Plaintiff's Exhibit Number 15 was marked
5 for identification and entered into evidence.)

6 BY MS. MAJORS:

7 Q. Okay. Calling your attention to page 15 at
8 that transcript at line 23, what if any, value did
9 your husband place on the acreage?

10 A. \$2,000 an acre.

11 Q. Tell me about the farm. What was done with
12 that farm?

13 A. We purchased the farm in 1985 while we were
14 still living in Florida and we were still together.
15 There was a manager that lived nearby next door. He
16 managed the farm. It was used in the sublet it was
17 part of, it was leased for hay. The tobacco use --
18 the tobacco bases was used and there was some beef
19 cattle raised on the farm at that time basically
20 that's what it was used for.

21 Q. Did you and your husband receive income
22 from the farm?

23 A. There was income from the tobacco crop and
24 from the beef that was sold.

25 Q. Even on the 2001 return does it reflect the

1 farm, and I believe another farmer was raising hay in
2 Alfalfa.

3 Q. So it's being used as rental income?
4 Rental income?

5 A. Yes, there was rental income in the
6 beginning. There was a farmhouse there in the
7 beginning, and it was rented for many years and then
8 that few acres was sold.

9 Q. During the course of the marriage how would
10 you describe what contributions you made to the
11 marital property?

12 A. To the marital property I worked as a
13 dental hygienist part-time two or three days a week
14 on commission. My salary was used to feed and clothe
15 my family of their miscellaneous needs. I never took
16 a salary or allowance from my husband for the first
17 22 years of my marriage because it was understood
18 that I would pay these things out of my salary while
19 he saved for the pension and paid the mortgage
20 payment and took care of the expenses on the farm. I
21 took care of my everyday family needs.

22 Q. Were you able to save during the marriage?

23 A. I do have my IRA. That was saved during
24 the marriage, but it was pretty hard for me to save
25 considerable amounts of money at that time since what

1 Carolina, residence ourselves, develop our own
2 residency, which we did so for the first time.

3 Q. When the first child went to college I
4 believe you stated you developed a residency in
5 Virginia ---

6 A. In Virginia.

7 Q. ---for her college and for the second child
8 that went to college you developed a residency in
9 South Carolina?

10 A. Yes.

11 Q. Was that the 19 -- was that the \$86,000
12 dollar condo that's listed on your sheet that you
13 bought.

14 A. Yes.

15 Q. And what year did you buy it?

16 A. August of '99.

17 Q. And was that the marital home at the time
18 of the separation?

19 A. Yes.

20 Q. Okay. And are you presently living in that
21 home?

22 A. Yes.

23 Q. When were you able to move back into that
24 home?

25 A. I'm not sure ---

1 Q. And as far as you know how much was
2 received from the yacht sell?

3 A. I believe it was \$196,000.

4 Q. And that money went into Mr. Sherrill's
5 trust account?

6 A. Yes.

7 Q. Are you asking the Court to allocate the
8 remaining sums in the trust account as you reflected
9 on your Plaintiff's Exhibit 2?

10 A. Yes.

11 Q. And that would be a distribution to you of
12 58,000 and change and to him 16,000 and change?

13 A. Yes.

14 Q. How did you come up with that allocation?
15 Because there are other payouts of the 119 -- 190 --
16 was it 197,000 for the boat sale?

17 A. 196 I believe.

18 Q. Okay. Did you and your husband both take
19 distributions pursuant to the temporary order
20 from ---

21 A. Yes.

22 Q. ---that escrow?

23 A. Yes.

24 Q. And how much have you taken as a
25 distribution so far?

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1 Q. Why?

2 A. Because I was agreeing to go to 50/50
3 settlement from the very beginning, and I think it's
4 been prolonged because of his refusal to do so.

5 Q. And was there also a fault in the breakup
6 of the marriage? I believe you testified to why you
7 left.

8 A. I was frightened because of my husband's
9 excessive gambling.

10 Q. And are you aware of any or has your
11 husband made you aware -- has he told you about the
12 recent gamblings?

13 A. I know that he won some cruises just
14 recently.

15 Q. And do you know the amount of money he's
16 either won or lost?

17 A. That would be hearsay but I heard they were
18 around ---

19 MR. SHERRILL: Objection, Your Honor ---

20 THE WITNESS: They were ---

21 MR. SHERRILL: ---if it's Hearsay.

22 THE COURT: Ma'am, if you know from him you
23 may state it. If it's anyone else you may not state
24 it.

25 THE WITNESS: I do not know it directly

FRANCES A. BAKIS, RPR

1 A. She's been in -- I'm willing to pay up to
2 four years, yes, but she's going past that soon. Her
3 next year will be up and beyond the four years.

4 Q. Okay. Do you have any requirements of what
5 kind of average she should maintain, what percentage
6 of her classes she could go into?

7 MR. SHERRILL: Objection to relevancy, Your
8 Honor.

9 THE COURT: I'm just asking if she
10 wants ---

11 THE COURT: Ma'am, ma'am, ma'am, when you
12 talk you talk to me. This is not a conversation
13 between the two lawyers please.

14 MS. MAJORS: I got you.

15 THE COURT: Thank you. What is --
16 relevance? What is the relevancy of this?

17 MS. MAJORS: Because we had requested in
18 our pleadings that a college education be provided
19 for, and I'm asking her if she has any stipulations
20 as to that would limit that amount of education such
21 as grades.

22 THE COURT: Well, doesn't Risinger do that?

23 MS. MAJORS: Sir?

24 THE COURT: Risinger versus Risinger.

25 MS. MAJORS: That's why.

1 A. I do not want to have to. I do not want to
2 be required to pay for it.

3 THE COURT: Has the husband asked for that,
4 ma'am?

5 MS. MAJORS: May I make an offer of proof?

6 THE COURT: No, ma'am. Has the husband
7 asked for that in his pleadings?

8 MS. MAJORS: No, sir, it was our ---

9 THE COURT: Thank you. Let's move on.

10 MS. MAJORS: Our pleadings.

11 THE COURT: Okay.

12 MS. MAJORS: Your Honor, I have a sealed
13 copy of my attorney fee affidavit I'd like to offer
14 as my next exhibit.

15 THE COURT: Why are you sealing it up?

16 MS. MAJORS: Because it was my
17 understanding the Court only opens it after they
18 rule.

19 THE COURT: Attorney fee affidavit?

20 MS. MAJORS: Yes, sir.

21 THE COURT: I've never heard ---

22 MS. MAJORS: Oh, I'm sorry, I apologize. I
23 agree. I was -- okay.

24 THE COURT: Any objection to the exhibit?

25 MR. SHERRILL: No objection to the exhibit.

1 agreement you were to receive a marital house and
2 contents in Florida; is that correct?

3 A. Yes.

4 Q. And Mike was to receive the farm in
5 Kentucky, correct?

6 A. Correct.

7 Q. All right. And you were also to receive
8 two \$2,000 per month?

9 A. Yes.

10 Q. And primary custody of the children?

11 A. Of my daughters.

12 Q. Daughters. Of the children?

13 A. Two of them. My son went with my husband.

14 Q. And this agreement was reduced to writing
15 and signed by you and signed by Mike?

16 A. Yes.

17 Q. And this agreement existed until at or near
18 the date you filed for this marital litigation in
19 South Carolina; is that correct?

20 A. It existed until sometime during the
21 summer, summer of 2001.

22 Q. Before you filed this litigation?

23 A. Before.

24 Q. And you destroyed that agreement; did you
25 not?

FRANCES A. BAKIS, RPR

1 A. A townhouse, yes.

2 Q. And you later sold that; is that correct?

3 A. Yes.

4 Q. And Mike was not necessary to help you
5 purchase nor sell that residence; is that also
6 correct?

7 A. That's correct.

8 Q. And those funds you put in an account that
9 was in your name first but joint tenants with your
10 husband; is that correct?

11 A. I think at the time that I put his name
12 into the account I had changed -- it was a new
13 account. I had an existing Schwab account. I then
14 transferred it into the new account and put his name
15 on it as joint tenant in an attempt to give him back
16 that money.

17 Q. But he didn't accept it?

18 A. He didn't.

19 Q. So you had your money separate apart
20 tracing it all the way back to the Florida home just
21 like Mike has still continued to have his Kentucky
22 farm?

23 A. But I gave it back to him when I sold the
24 house.

25 Q. And I think you said you were concerned

FRANCES A. BAKIS, RPR

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1 Q. And by working on commission you get a
2 percentage of whatever the dentist charges for your
3 services?

4 A. Yes.

5 Q. Is that often 60 to \$80 per client?

6 A. My part? No.

7 Q. How much is your part?

8 A. It would depend on -- it would depend on
9 what the dentist charged. I mean, I can't remember
10 exact fees that we charged.

11 Q. In South Carolina dental hygienist in
12 Horry/Georgetown County ---

13 A. I've never worked in South Carolina as a
14 dental hygienist.

15 Q. Are you licensed to work still?

16 A. Not in South Carolina.

17 Q. Are you licensed to work in Virginia?

18 A. Yes.

19 Q. And you have worked in Virginia, correct?

20 A. Yes.

21 Q. And you have also worked for another
22 business of South Carolina known as Tax Lien Agents,
23 Inc.?

24 A. Yes.

25 Q. And I believe this indicates you made

1 dies?

2 A. But I do not know how long I'm going to
3 live, and I expect to live a long time so I need to
4 have it in the future for investments.

5 Q. Okay. You want one half of Mike's 401K?

6 A. Yes.

7 Q. You want one half of Mike's pension income?

8 A. Yes.

9 Q. You want one half of all the IRA's that
10 were acquired ---

11 A. Yes.

12 Q. ---during the marriage. Do you think that
13 will give you a sufficient income of approximately
14 \$4500 per month?

15 A. I cannot be assured of it.

16 Q. Well historically, has it been about \$4500
17 per month, one half of that amount, of the pension of
18 the IRA's?

19 A. I don't think it's as high as \$4500.

20 Q. How much is it?

21 A. I think it's half of \$7700.

22 Q. Would you be able to live off of half of
23 \$7700?

24 A. Now?

25 Q. Yes, ma'am.

FRANCES A. BAKIS, RPR

0085

1 help my daughter, but based on her grades and
2 attendance I think it should be my choice whether or
3 not I help my daughter.

4 MR. SHERRILL: Nothing further, your honor.

5 THE COURT: Thank you. Any further
6 questions?

7 MS. MAJORS: No, sir.

8 THE COURT: You may step down.

9 Call your next witness.

10 MS. MAJORS: Your Honor, I have no other
11 witnesses.

12 THE COURT: Thank you. Call your witness
13 please.

14 MS. MAJORS: I've not yet been supplied
15 with current financial declaration. Did you just
16 give me one this morning?

17 MR. SHERRILL: I'll give you another one.

18 We call Mr. Mike -- John Michael Boland.
19 Michael, please step forward and place your left hand
20 on the Bible.

21 THE COURT: Raise your right hand please.
22 You swear the testimony you're about to give in this
23 case to be the truth, the whole truth, nothing but
24 the truth so help you God?

25 THE WITNESS: Yep.

FRANCES A. BAKIS, RPR

0087

1 Q. All right. Do you still have control of
2 that Kentucky farm?

3 A. Yes.

4 Q. Are you asking the Court to consider that
5 Kentucky farm as non-marital property?

6 A. Yes.

7 Q. With reference to the Florida house that
8 she received and the contents therein she eventually
9 sold that house?

10 A. Correct.

11 Q. And she eventually used proceeds to
12 purchase a residence in Virginia?

13 A. Yes.

14 Q. And she eventually sold that residence too?

15 A. That's correct.

16 Q. And those funds were deposited into a
17 Schwab account as well as into an Eisner account,
18 correct?

19 A. That is correct.

20 Q. And are you asking the Court to consider
21 that as your wife's non-marital property?

22 A. Yes.

23 Q. Now Mike, I'd like to hand you an exhibit
24 entitled funds held in escrow by Sherrill & Janes,
25 P.A. from the sale of the boat. Is that a correct

1 A. Yes.

2 Q. And is that approximately a 50/50
3 distribution of the marital property?

4 A. Yes.

5 MR. SHERRILL: All right. We move this to
6 be admitted as Defendant's Number 2, Your Honor.

7 THE COURT: Any objection?

8 MS. MAJORS: I have no objection. I just
9 want to know is it values current values or date of
10 separation values?

11 MR. SHERRILL: We used current values just
12 as we were discussing beforehand.

13 This will be Number 2.

14 (Defendant's Exhibit Number 2 was marked
15 for identification and entered into evidence.)

16 BY MR. SHERRILL:

17 Q. Mike, if the Court distributes the marital
18 funds as you have requested, what would the
19 approximate income be for you as we -- and compared
20 to your wife the following year? Will it be
21 approximately equal?

22 A. It would be exactly equal, yes.

23 Q. And what would that approximate income be?

24 A. The approximate total income would be about
25 7500 prior to taxes. So divide that in half it comes

1 Q. Are you familiar with the funds she was
2 able to earn prior to the separation as a dental
3 hygienist?

4 A. Vaguely.

5 Q. Roughly what did she tell you she made and
6 how she was to be compensated?

7 A. 30 or \$30 an hour. It depended on how many
8 patients she took, how difficult they were, but my
9 understanding approximately what the dentists in
10 Virginia charged was about between 60 and \$80 per

11 Q. What would ---

12 A. ---cleaning.

13 Q. ---her percent be?

14 A. 50 percent.

15 Q. Of 60 to \$80?

16 A. Yes.

17 Q. All right. And how many patients would she
18 be expected to see a day?

19 A. Like I say, it would vary depending on how
20 difficult the patients were but she's -- was pretty
21 quick. She could do sometimes two an hour.

22 Q. Mike, have you also incurred attorney fees
23 and costs for the bringing of this action?

24 A. Yes.

25 Q. And you feel your wife should be

1 Q. Now, sir, looking at your Exhibit Number 2,
2 Settlement Proposal, can you go through each of the
3 25 items and tell me which ones are titled in the
4 Boland Family Trust?

5 A. Yes. The Chevrolet pickup truck, the
6 Hyundai Sonata automobile, the 1102 Sweetwater
7 condominium. That's number 9, 10 and 11.

8 Q. Okay. What about 18, safe and contents?

9 A. No, they're not in the trust.

10 Q. Were they ever listed in the trust?

11 A. No.

12 Q. How about the farm, number 3 at the bottom?

13 A. I'm sorry, yes, absolutely. The farm is
14 also in there. I didn't add in that. The farm is in
15 the trust.

16 Q. Okay. Was it your idea to set up the
17 Boland Family Trust?

18 A. Yes.

19 Q. Why?

20 A. To avoid probate.

21 Q. And your wife has testified that you like
22 to control the assets. Would that be an ---

23 A. I believe I was ---

24 Q. ---accurate statement?

25 A. I was most affective in handling our

1 give it back to your wife?

2 A. Well, going back ---

3 MR. SHERRILL: Objection to the form of the
4 question, Your Honor.

5 THE WITNESS: Excuse me.

6 THE COURT: That's one question. Go ahead.

7 THE WITNESS: It would really only give it
8 back to Lynn in the event of my death. The -- as the
9 trustee I was responsible for managing all the assets
10 in the trust.

11 BY MS. MAJORS:

12 Q. At the time you set up the trust, what
13 other assets did you put in the trust other than the
14 farm?

15 A. At the time it was set up the house in
16 Kentucky. That has since been sold. The vehicles
17 that we had at that time and the farm.

18 Q. Do you agree with your wife's
19 characterization of her residency in Virginia to
20 allow your oldest daughter to have a residency for
21 college as to why she stayed over in Virginia?

22 A. I don't think it was necessary but she did
23 so I didn't argue with it.

24 Q. After you'd been separated about eight
25 months she testified that you saw each other

FRANCES A. BAKIS, RPR

0097

1 was only a small amount of money that she received in
2 that year as a dental hygienist; is that correct?

3 A. She would go up and sub for her sister was
4 about the only time she worked in Virginia, yeah.

5 Q. So she really doesn't have a job to go back
6 to, is that correct, in Virginia?

7 A. I don't know what the situation there is.
8 I imagine that the dentist that she worked for would
9 be happy to have her back, but I don't know that.

10 Q. Is -- your daughter Diana's car is also
11 titled in the trust. What are you asking the Court
12 to do with that vehicle?

13 A. I'll do whatever the Court or even whatever
14 Lynn wants done. I can title it in Diana's name. I
15 can leave it in the trust with no concern.

16 Q. What is your intention with respect to the
17 trust?

18 A. Because of this action I will have to
19 either eliminate the trust. It is a revocable trust,
20 revoke it, or do major work to make it correct.

21 Q. Does the revocation of the trust require
22 Lynn Boland's consent?

23 A. No.

24 Q. So basically once you and she put these
25 assets into the trust it was -- it was totally at

1 A. That's correct.

2 Q. And you would get 90?

3 A. Correct.

4 Q. Do you believe that other parcel is worth
5 \$2,000 an acre?

6 A. No.

7 Q. Do you have an opinion as to what it's
8 worth now?

9 A. Like I say, I tried numerous times to sell
10 what I believe to be the more valuable parcel of
11 \$2,000 an acre and was unable to do it because the
12 access to the other side, even though it's larger, is
13 only 20 feet wide, and the bottom tends to flood
14 about every three years. I don't really know what
15 either side is worth.

16 Q. The two parcels, one would you describe is
17 high property and the other as low property?

18 A. Well, the 47 acreage is mostly hillside.
19 It's above the -- above the creek, above the road.
20 It's not going to flood so if you're talking about
21 height as in elevation then that would be accurate.
22 On the other side there's about 21 acres that is low
23 lying, and the rest of it is hillside pasture as
24 well.

25 Q. Is your mother's ashes buried on the larger

1 higher, 200 and -- \$223,800?

2 A. I didn't see that paper and I didn't
3 understand those numbers that were on it. I saw it
4 briefly. The \$33,000 was an appraisal that I got
5 from the County Assessor in 2002, I believe, early in
6 2002.

7 Q. Excuse me? Did you say 33,000?

8 A. Yes.

9 Q. How would you account for the fact that the
10 assessor now has it on the books for 223,000?

11 A. Like I say, I didn't see the paper and the
12 223,000 was handwritten. I don't know what -- where
13 that came from.

14 MS. MAJORS: Your Honor, may I ...

15 THE WITNESS: There it is.

16 BY MS. MAJORS:

17 Q. Referring you to Plaintiff's Exhibit 13,
18 which is the farm property card from Carroll
19 County ---

20 A. Yes.

21 Q. ---Kentucky?

22 A. This is the ---

23 THE COURT: Sir, you need to say whatever
24 you say so my court reporter may pick up your voice
25 please.

FRANCES A. BAKIS, RPR

0103

1 A. The total is 138 acres, yes.

2 Q. Your wife indicated that her -- that the
3 retirement benefits would terminate upon your death.
4 Was that your understanding as well?

5 A. Yes. The Delta Pilots Retirement Fund.

6 Q. And so would the benefits -- so only the
7 IRA and 401K would exist say you should ---

8 A. Well, the stock options will exist. Her
9 Vanguard IRA would continue. The Panorama Premiere
10 IRA will continue. Her life insurance policy, my
11 life insurance policy would all continue, yes.

12 Q. Sir, when did you prepare your current
13 financial declaration?

14 A. In the last couple of days, updated the
15 figures.

16 Q. And when did you prepare the asset chart
17 for distribution?

18 A. I'm sorry?

19 Q. When did you prepare the asset chart for
20 distribution, the Settlement Proposal, the Number 2
21 exhibit which you've offered today?

22 A. Which one is ...

23 Q. I show you a copy.

24 A. Oh, yes, that's Number 2? Okay. I've got
25 that here also. When did we prepare this? The

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0105

1 them and moved them into the condo when I moved to
2 4201.

3 Q. What income have you had last year, within
4 the last years? Or actually, what income have you
5 had in 2003?

6 A. I've gotten the checks from Oppenheimer and
7 Delta Pilot's Retirement Plan.

8 Q. And the sum of \$7739.38 represents those
9 two checks? That's on your -- I'm not -- it's not a
10 trick question. That's what ---

11 A. The 7700 sounds right for the two checks,
12 yes. Well, not the checks but the gross amount prior
13 to taxes, yes.

14 Q. And how much money have you received from
15 gambling?

16 A. I won a couple of tournaments online, one
17 of which provided an entry into a tournament and a
18 cruise for two, which I took my daughter on. The
19 other one I sold for \$6,000.

20 Q. Have you reflected that that income on your
21 financial declaration?

22 A. No, I haven't.

23 Q. At the time -- or just shortly prior to the
24 separation of you and your wife, were you doing a lot
25 of gambling on the computer?

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0107

1 A. Two or three times a year.

2 Q. And that was throughout the marriage or
3 only toward the end?

4 A. Oh, no, just the last -- well, since
5 retirement I have taken three or four times a year.
6 Prior to that I would play on layovers when I was
7 working.

8 Q. Did you encourage your wife to get her
9 full-time employment as a dental hygienist?

10 A. At the time of our reconciliation from the
11 first separation I asked that her primary job be to
12 be homemaker, yeah.

13 Q. And did she ever get a dental hygienist
14 license in the State of Kentucky?

15 A. Yes.

16 Q. And did she work as a dental hygienist in
17 Kentucky?

18 A. A couple of times.

19 Q. It was never regular employment?

20 A. No. She actually during those years would
21 go back to Virginia and work more often than she did
22 in Kentucky.

23 Q. Would it be fair to say that she was
24 primarily the stay-at-home mother to take care of the
25 children and you provided the income for the family?

FRANCES A. BAKIS, RPR

1 BY MS. MAJORS:

2 Q. Was your wife's characterization of what
3 happened with her earnings versus what happened to
4 your earnings an accurate characterization? Do you
5 agree with that?

6 A. If I could elaborate I could say more; but
7 basically no, I can't. I don't agree with that
8 characterization.

9 Q. Okay. Who paid for the day-to-day bills
10 such as groceries and clothes for your children?

11 A. She -- now when are we talking about?
12 Let's -- what period of time are we discussing?

13 Q. During the period -- during the period she
14 was working.

15 A. Well, I mean, from the first 17 years that
16 we were together or after the -- after the
17 separation? Which period are you talking about?

18 Q. You can separate them if you'd like.

19 A. Okay. I'll give you the whole rundown of
20 the 33 years. The first couple of years when I went
21 to school she actually provided as much income as I
22 did through working as a -- in the reserves while I
23 went to college. After I went to work for Delta
24 Airlines I paid most of the bills for the first 17
25 years. And then when we were separated she got a

FRANCES A. BAKIS, RPR

0111

1 as joint account for the two of you?

2 A. Yeah. When she sold the townhouse in
3 Virginia to her sister she put the money in, most of
4 the money, into the Schwab Account and made it a
5 joint account. I didn't ask her to do that. I never
6 managed or fooled with that account at all. She
7 pretty much did what she wished with it. She moved
8 it around and put it in different places. The
9 Vanguard IRA had gone through several changes, most
10 of which I had put into the -- into that account.
11 And she decided before we sep-- well before we
12 separated this last time to move it to a Vanguard so
13 she pretty much did with her money what she chose.

14 Q. The Northwest Mutual Life Insurance Policy
15 line 7 on yours?

16 A. Yes.

17 Q. That was a premarital insurance policy?

18 A. Yes.

19 Q. Do you have any idea of what the value was
20 at the time of the marriage?

21 A. No, I don't.

22 Q. Was the 5800 just a proximate current value
23 on that?

24 A. Yes. We talked about it last year and it
25 was a guesstimate.

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1 instructions page under Article 7? There's something
2 handwritten and dated 9/11/98. You made changes to
3 that?

4 A. Yes, I made those changes.

5 Q. Now according to the terms of the trust is
6 that all you had to do was just scratch it out and
7 change it?

8 A. Yes. If you read the trustee directions
9 the trustee has almost unlimited choice on how to
10 manage the trust.

11 Q. And I show you Article 10. You've got
12 scratched out for the trustee. Lynn Armstrong Boland
13 and you've handwritten in someone else.

14 A. Yes.

15 Q. When did you do that?

16 A. It's dated 28 September of '01 and
17 initialled.

18 Q. Did you discuss any of these changes with
19 your wife?

20 A. No.

21 Q. Why did you put your daughter in as trustee
22 rather than your wife, since it was set up for her to
23 be the successor trustee?

24 A. As the primary trustee I could change the
25 backup trustees, successor trustees, I could buy and

1 THE COURT: Anything by way of reply?

2 MS. MAJORS: No, no, sir.

3 THE COURT: Brief arguments?

4 MS. MAJORS: Excuse me, oh, oh, arguments,
5 yes, sir. Your Honor, this is an action for legal
6 separation, equitable division of property and debts,
7 college expenses for the child, health insurance, and
8 attorney fees. We feel the major contested issues
9 are health insurance for the wife and the Kentucky
10 farm although my client has tried to get this early
11 and separated with a 50/50 spit even up to today. We
12 weren't able to accomplish that. My client is
13 requesting that Your Honor use her proposed
14 separation. We used the assets at the time of the
15 separation for that division. She's testified as to
16 the reason she would like to receive the farm in lieu
17 of money for the farm because of in her opinion she
18 believes that she and her husband were conveying that
19 farm back to the parties in setting up the family
20 trust. I realize that document speaks for itself.

21 Her reason for leaving her husband as has been
22 testified to was her concern over the excessive
23 gambling and what that would do to the party's
24 property. It appears that the gambling was a major
25 part of her husband's interest both before he retired

FRANCES A. BAKIS, RPR

1 cancelled which she can now not get additional
2 insurance. So we would ask the Court to order Mr.
3 Boland to be ordered to reinstate the insurance and
4 to the extent permitted by Delta Airline Pilot's
5 Insurance, order that she be allowed to continue the
6 insurance provided she pays for the policy. We
7 believe that this was an egregious thing done to her
8 at a time the parties had reached a deadlock in terms
9 of settling the property. And if she had been
10 notified during the first termination letter in
11 December of 2000, then at that point she would have
12 been able to perhaps get the insurance put back in
13 her name. It's our understanding that there is a
14 policy period when that can be done. In the event
15 he's truly not able to reinstate the policy in spite
16 of the Court order, we would ask in the alternative
17 that he pay for her medical and dental bills that
18 will accrue as a result of not having the insurance
19 to pay for those items.

20 One of the exhibits that we have offered is the
21 letter from Blue Cross Blue Shield saying because of
22 pre-existing condition she is not eligible to have
23 Blue Cross and Blue Shield, and she would have to go
24 into a statewide higher risk pool in order to try to
25 get insurance. So we contend that was a very serious

FRANCES A. BAKIS, RPR

1 for. We think that is the type of equitable
2 distribution that the Court should offer.

3 THE COURT: Thank you. I want both of you
4 to present me an order. How long will it take you to
5 do it?

6 MS. MAJORS: I prefer to have at least
7 until Monday.

8 THE COURT: I wouldn't want it before
9 Monday.

10 MS. MAJORS: What kind of time frame would
11 you like?

12 THE COURT: You tell me.

13 MS. MAJORS: Two weeks?

14 THE COURT: Two weeks is fine.

15

16 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

17

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FRANCES A. BAKIS, RPR

0121

1 THE COURT: Okay. I'm ready.

2 MRS. JONES: Okay. Your honor, this is a motion to
3 reconsider. The final hearing on the merits was held on this
4 case on March 20th, 2003 in front of your honor, and they we're
5 given two weeks to prepare an order. The date of that would
6 have been April 5th, that orders from counsel should have been
7 submitted to you. And let me just identify that I'm appearing
8 on behalf of Mrs. Ferguson who was the trial attorney at that
9 particular time. However, Mr. Sherrill submitted an order to
10 you prior to the two-week deadline that was signed on March
11 30th, that is one of the grounds that we're asking the court to
12 reconsider. The court never got the opportunity to review our
13 proposed order as we thought was to be the case. Furthermore,
14 with regards to the order that was signed we feel as though
15 equitable -- the equitable -- that the court erred in it's
16 equitable distribution and valuation of the assets. As you
17 well know most of the matter assets were placed into the Boland
18 family trust, which included a farm. However, that was not
19 included in the equitable distribution of the court. We would
20 like to cite the Bowen case it was a South Carolina Supreme
21 Court case that recently addressed the issue of resulting
22 trust. The issue before the court was property excluded by
23 antenuptial agreement and later jointly titled, in which the
24 wife lost in the Family Court when it was determined the
25 property to be non-marital. However, she wants to have
26 interest in the marital property and a separate declaratory

1 is substantially higher than Mrs. Boland's income and we feel
2 as though it wasn't a fair order you honor.

3 THE COURT: Thank you.

4 MRS. JONES: Thank you.

5 MR. SHERRILL: Your honor, after the motion to reconsider
6 was filed I then filed a notice of motion and motion to dismiss
7 this motion to reconsider. Quite simply our motion to dismiss
8 is based upon the fact that the Final Order was served upon
9 Patricia Ferguson's office on April 3rd, 2003 they then within
10 10 days filed a motion to reconsider on April 11th. However, I
11 see nothing in the courthouse file indicating that Patricia
12 Ferguson's office served a copy of the motion upon your honor.
13 And according to my rule book, Rule 59(g) and Rule 60(a) that a
14 party filing a motion under either of those rules must provide
15 a copy to your honor within 10 days from the date of filing.
16 Which means they had until April 21 to serve a copy upon you.
17 My review of the records of the Horry county courthouse
18 indicated no affidavit of personal service or service by mail
19 upon you and therefore, we would respectfully submit that this
20 court does not have jurisdiction to entertain a motion to
21 reconsider without proper service. And that the motion ---

22 THE COURT: I have a package of stuff that was
23 delivered to me by fax and presume you got a copy of it. You
24 should have, yeah, here's a letter, and I am going to on that
25 particular issue deny your motion. I'm going to rule even if
26 that she had not served or given me notice of the motion to

1 THE COURT: Reply?

2 MRS. JONES: Just very briefly your honor. While a
3 fifty/fifty split is just and equitable it did not include
4 certain other marital property. All the property owned between
5 Mr. and Mrs. Boland was put into the Boland family trust. It
6 chose to exclude two stock accounts and the farm. Mrs. Boland
7 has no problem with those two stock market accounts being
8 included but feels as though the farm should also be included.
9 There was some issue with regards to a separation some time
10 back in which that farm was deeded to him. But, we feel as
11 though it turned into a marital gift by being placed into the
12 family trust, in which both parties were beneficiaries of that
13 trust. And would ask the court to consider that and perhaps
14 allow the farm to be also included in the equitable division.

15 THE COURT: Thank you. Do you wish to submit an
16 additional memorandum ---

17 MRS. JONES: Yes. Your honor. I do have ---

18 THE COURT: --- or anything else to me?

19 MRS. JONES: --- I do have a brief in support of the
20 reconsideration and if appropriate your honor, I have her 2002
21 tax returns which shows the substantial disparity in the
22 incomes.

23 THE COURT: Well, I don't think it would be appropriate
24 at this particular time to receive that because the evidentiary
25 part of the hearing is over.

26 MRS. JONES: Okay. I do have ---

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 01-DR-26-2874

LYNN MARIE BOLAND,
SS NO. 277-42-9748
Plaintiff.

vs

JOHN MICHAEL BOLAND,
SS NO. 406-58-5760
Defendant.

BRIEF IN SUPPORT OF
RECONSIDERATION OF
THE FINAL ORDER

Plaintiff moves the Court to amend its ruling to correct factual and legal errors in determining marital and non-marital assets, the valuation of assets, the determination that her income after the *pendente lite* Order was marital property subject of division and denial of attorney fees. The issue of reinstated health insurance is moot and has been granted by subsequent Order of the Court filed May 7, 2003.

LEGAL ISSUES

1. The Trust assets are marital property.

A review of the Trust documents, Plaintiff's Exhibits 1 and 14 (the deed) reveal the intent of the parties with respect to all of their known assets in 1993 when the Trust was created up to the filing of the action for separate support and maintenance.

The parties executed a trust document called the Revocable Living Trust of John Michael Boland and Lynn Armstrong Boland, (hereinafter referred to Boland Family Trust), on September 18, 1993 and until the present proceeding, indicated their intent to combine all marital properties for their mutual benefit. Defendant has declared all property in the Trust to be marital except the farm, and the Brookstreet Eisner and Schwab accounts. This agreement is binding on Defendant. The Trust document declares all property of the parties be held by the Trustee (Defendant) for the benefit of both beneficiaries.

The farm previously titled to Husband in the separation agreement was deeded by the parties

The Court no longer, after the Bowen case, need consider the Florida Separation Agreement because the parties voluntarily deeded the farm to the Trust, thus the resulting gift or Trust of the farm. Likewise, the wife recovers one half of the Trust property by transmutation.

Every asset in the Boland Trust and by its terms every asset of the parties according to the terms of the Trust is marital. Husband cannot pick and chose which items are marital and non-marital. By the terms of the Trust all items are gifts to the other.

The Trust executed a number of years after the separation agreement was clearly a gift to the beneficiaries which overrides South Carolina Code of Laws section 20-7-473(4).

2. Error to conclude Wife's testimony Husband liked to control or was controlling to equate to Husband wanted to keep his assets separate by terms of Trust they were gifts.
3. Error to conclude South Carolina Code of Laws section 20-7-473(1)and(5) not applicable. As Trust property was gift to the other spouse through the Trust.
4. Trustee according to the Trust is a "mere fiduciary". According to the terms of the Trust, Trustors Husband and Wife, reserved the right to amend, revise or revoke items in the Trust. Trustee had no authority to retitle Trust property to himself or to name a successor co-trustee. Those actions were reserved to the Trustors.
5. The trust requires Kentucky law to be applied to the trust and is marital property under Kentucky law 403.19, Kentucky Revised Statutes.
6. South Carolina Code of Laws Section 20-7-473 denies jurisdiction by the Family Court for non-marital property. All of the parties property in the Trust is either marital or non-marital except Husband's pension. When the Court took jurisdiction of Trust property for division, all property in the Trust must be divided. The Court divided personal property, vehicles, the boat proceeds and the Sweetwater condo which Husband agreed was marital property in his exhibit. All of
7. The Brookstreet-Eisner and Schwab accounts should have been included as marital property. Reference is made to the argument and legal reasons in supra because these

CONCLUSIONS

The property list should be recalculated eliminating wife's income, using valuations from time of separation, granting wife one-half interest in the farm and reasonable attorney fees.

THE FERGUSON LAW FIRM, P.C.

By: _____
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were nonmarital. The farm represented nonmarital property as provided to the Husband in a prior Separation Agreement executed in Florida. The Charles Schwab and Brookstreet-Eisner accounts were the nonmarital property of the Wife, for such represented proceeds from the sale of her nonmarital property she received from the Florida agreement. This Florida agreement was admittedly destroyed by the Wife prior to her filing this action seeking an equitable distribution of property. She should not benefit by her deceitful actions in destroying evidence.

7. With reference to paragraph 7, the Wife admits that the Kentucky farm and the Charles Schwab and Brookstreet-Eisner accounts "were proceeds of a prior separation of the parties". The Wife signed a Quit Claim Deed conveying any interest she had in the Kentucky farm to the Husband in order to comply with the terms of the Florida Agreement. Pursuant to their Florida agreement, the Wife received a Florida residence, which she later sold and used some of the proceeds to purchase a condominium in Virginia. When she sold the condominium in Virginia, a portion of the net sales proceeds became her Charles Schwab and Brookstreet-Eisner accounts.

Although the Wife later titled her Charles Schwab and Brookstreet-Eisner accounts as joint tenants with the Husband, he still did not exercise any control over these accounts. In a similar fashion, although the Husband later conveyed the Kentucky farm to the Boland Family Trust, he was the sole trustee of the trust. For that matter, the secondary trustee was not the Wife, but a daughter of the parties. Thus, without being a co-trustee or a successor trustee of the trust, the Wife had no control over the trust assets which included the Kentucky farm. This conveyance to a trust was not a present gift to the Wife and therefore Section 20-7-473(1) is not applicable.

indeed applicable.

10. The innuendo in paragraph 10 of the Wife's Petition is erroneous in that no testimony was necessary that the Wife had separate counsel or that there was full financial disclosure prior to the signing of the Florida Separation Agreement. Both parties testified as to the terms of the agreement, and Section 20-7-473 (2)(b) indicates that nonmarital property is "property acquired after the formal signing of a written property or marital settlement agreement". This Section 20-7-473 (2)(b) does not mandate that the parties have separate counsel as does 20-7-473 (4).

11. There was no testimony at the Trial as referred to in paragraph 11. Even assuming such testimony existed, it is not relevant that the Husband may have elected to receive a higher pension which would terminate upon his death in lieu of any widow's benefits to the Wife. Regardless of the election made by the Husband, such cannot be relevant to whether a Kentucky farm was marital or nonmarital property. The Wife cannot now complain in Family Court that she objects to the election made by her Husband (long before she filed this marital litigation) as concerns his retirement income. She also cannot, by her Motion to Reconsider, seek to supplant the testimony offered at Trial.

12. The Husband does not remember any testimony of the Wife to the effect that she had \$3,600.00 of expenses as she earned \$9,185.00 in income for the year 2002. *W transcript* In any event, the Wife continues to be a licensed dental hygienist. Furthermore, the equitable distribution award in the Final Order would generate the same monthly income of approximately \$3,869.69 per month for both Husband and Wife from the marital assets so divided. The Husband may have earned some additional funds from gambling, and the Wife was able to earn additional funds as a dental hygienist and with

former employer reinstate Wife's health insurance.

15. Even if the Wife's application for individual health insurance was denied, the Husband has no further obligation to provide any form of health insurance to the Wife. The allegation in paragraph 15 that the continuance of the health insurance would not cost the Husband "anything" is erroneous, but the Husband is still attempting to cause his former employer to reinstate the health insurance for the Wife, as long as such is of no cost to him.


16. As concerns paragraph 16 of the Petition, the Wife did request alimony in both her Complaint and Motion for Temporary Relief. Furthermore, in an attempt to be fair, the Husband included the income of the parties for 2002 and 2003 in his proposed distribution of all assets, which was to his detriment, for the income he received (all of such as retirement income) was treated as an advance to him by way of equitable distribution. Finally, the statement of the Wife that the Husband failed to settle for a 50/50 distribution of marital assets is an error, to the contrary, the Husband's Trial Exhibit was a 50/50 distribution of marital assets. Furthermore, with the equitable distribution award, the Wife's income from the marital assets should be the same as the Husband's. Thus, the Court properly did not award attorney fees to the Wife.

17. As concerns paragraph 17, the Husband provided present day values of the marital assets knowing that the Wife presented values as of the date of filing. It is always important for the Court to be aware of the values of the assets as of the date of distribution. However, if the Court distributed the assets according to the date of filing, such would be erroneous, for certain assets (the parties' boat) had been sold during the litigation and distributions from the net sales proceeds of this asset had been made to

19. (c) Kenton County Kentucky bonds were not "sold" by the Husband in violation of any restraining order. These bonds simply matured in January of 2002, and were redeemed for cash. The bonds were held in his Charles Schwab account and the cash went into his Charles Schwab account. This was merely an exchange of bonds for cash and did not result in any change to the value of the Schwab account. A redemption of bonds is not a violation of the Restraining Order.

19. (d) The Husband testified that he did receive gross income from the farm in the amount of \$2,400.00. Unfortunately, the 2002 joint income tax return for the parties had not been prepared as of the date of trial. A review of such indicates farm expenses of \$2,222.00, resulting in a net farm income of only \$178.00.

Respectfully Submitted by:



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