

STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2020-0051

In the Matter of

Wm. Michael Earley and Ryanne Earley

**RULE 7 APPEAL OF FINAL DECISION OF THE
7TH CIRCUIT COURT FAMILY DIVISION DOVER**

REPLY BRIEF OF APPELLEE, WM. MICHAEL EARLEY

**By: Wm. Michael Earley
5 Hickory Lane
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- This Pleading was prepared
With the assistance of a
New Hampshire Attorney**

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STATEMENT OF THE CASE

A contested trial occurred on July 18-19, 2019, with an additional day of trial scheduled on or about October 8, 2019. “There was a large gap of time between the first two (2) days of trial which were held in July and the last day of trial held in October. The reason for this was at the conclusion of the hearing on July 19, 2019, an issue was raised regarding the Respondent’s [Appellant] alleged interests in trusts created by her parents. Respondent’s counsel was afforded seven (7) days to produce a copy of the trust documents to Petitioner’s counsel . . . “ On August 8, 2019, the Court granted Petitioner’s Motion to Maintain Open Record and/or Other Relief . . . The Trial court permitted discovery between that time leading up to the October 8, 2019 Hearing relative to Respondent’s Trust Interest.” (Appellant’s Brief, P. 14)

By Clerk’s Notice Dated November 21, 2019, the Court issued its Decree of Divorce, which included orders as to parenting; support; alimony; division of marital assets and other standard divorce issues, as well as specifically addressing the trust and entering equitable orders relating to the Respondent’s Trust Interest. On or about December 12, 2019, Respondent filed a Motion to Reconsider relating to the Trust issues, with the Petitioner filing an Objection to Respondent’s Motion for Reconsideration/Clarification. (During this period, the Petitioner also filed a Motion for Reconsideration/Clarification on issues not subject to the appeal) By clerk’s Notice Dated January 31, 2020, the Court issued its Order. While the Court clarified its valuation of the Respondent’s interest in the Irrevocable Trust ... “to be \$61, 666 and that the Petitioner is entitled to one-half of the value, or \$30, 833. The Court clarified that the

court “. . .has awarded the Respondent [Petitioner]one-half of any monies that Petitioner [Respondent] receives via distributions of *inter vivos* transfers made by the settlors of the trust for a limited time ending five (5) years from the effective date of the Divorce Decree. Combined, these provisions represent a fair and equitable allocation between the parties of the value of the Respondent’s Interest in the Irrevocable Trust.” (Appendix to Appellant’s Brief, p. 47).

SUMMARY OF ARGUMENT

1. The Trial Court properly determined that the Appellant's beneficial interest in the O'Neil Family Irrevocable Trust Constituted a Marital Asset and properly exercised its discretion in assigning a value to same;
2. As the Court's determination that the Appellant's interest in the Irrevocable Trust is an asset was a proper exercise of discretion, the Court also properly exercised its discretion in entering an equitable division of the asset pursuant to NH RSA 458:16-a, et. seq.

ARGUMENT

The Trial Court properly determined that the Appellant’s Interest in the O’Neil Family Irrevocable Trust constituted a marital asset, and the equitable division of the asset was a proper exercise of discretion by the Trial Court

A. Respondent’s Beneficial Interest in the O’Neil Family Irrevocable Trust constitutes a marital asset pursuant to RSA 458:16-a, et. seq.

This Court has previously established the broad discretion permitted to the Trial Court when determining an equitable distribution of the marital estate. See e.g. *In re Chamberlin*, 155 NH 425, 430 (2006). “A trial court’s decision on property will not be overturned absent an unsustainable exercise of discretion.”

In determining an equitable distribution of the marital estate, this Court has determined that a two step analysis shall be employed in which the Trial Court *shall initially determine which assets constitute marital property* pursuant to NH RSA 458: 16-a, I, and subject to equitable distribution, and *then after making such determination, the Trial Court exercises its permitted discretion to make an equitable distribution of the assets*. See e.g. *In the Matter of Valence and Valence*, 147 NH 663, 668 (2002), and *In re Chamberlin*, cited *supra*, citations omitted, at 16. Italics added.

In the instant case, it was a proper exercise of the court's discretion to determine in the first part of the analysis that the Appellant . . . "has a clearly ascertainable, one-third beneficial interest in the . . . irrevocable trust, which is certain and specific." (App. P. , Petitioner Finding #104).

Although the court found that "[a]lthough the [Appellant] does not enjoy a present possessory interest in the trust, [her] interest is vested; i.e. [she] [is] an ascertained remainderman upon the creation of the trust, and [her] interest is certain to reach [her] upon the specified event of the death of the last surviving parent." Flaherty v. Flaherty, 138 NH 337, (1994) (App , Petitioner's Finding # 120].

As Appellee understands her argument, the Appellant wishes to try and persuade the Court that the Appellant's beneficial interest in the Irrevocable Trust should be excluded as an asset, arguing in essence (without any expert testimony on the issue), that the Respondent's interest should be excluded as the Irrevocable Trust contains a "spendthrift provision, subject to RSA 564-B:5-502 € (1);" that the Respondent's interest is in a "discretionary trust" is neither a property interest nor an enforceable right but mere "expectancy", pursuant to RSA 564-B:5-504, and RSA 564-B:8-814 (b) and that future five year payments is in conflict with RSA 564-B:5-502, 5-504, 8-814.

A review of the court's thoughtful processing and determination as to how the Court arrived at the inclusion of the Respondent's beneficial interest in the Irrevocable Trust as an asset reinforces that the Court properly exercised its discretion in determining that Respondent's interest in the Irrevocable Trust constitutes a marital asset, and then having

done so, making an equitable distribution pursuant to RSA 458:16-a. (See e.g. Valence and Chamberlin, citations omitted, cited supra.)

Notably, in employing the necessary two part analysis, the Court properly entered findings which include but are not limited to the following which demonstrate that Appellant's interest in the Irrevocable Trust is a marital asset and the Court's Order and findings on the issue should be affirmed:

"The O'Neil Family Irrevocable Trust of 2000" and the respondent's interest in the same, have remained in existence throughout the 16 year marriage of the parties. " (Appellee' Appendix, P. 13, Finding #106);

"Through the years, the respondent has received payments and cash distributions from the Trust totaling [in the vicinity of] \$65,000. (Id., Finding #107, as amended)

"During the marriage of the parties, the sums received by the respondent from the said trust assisted in meeting the financial needs of the family and became part of the marital estate." (Id., Finding #108)

"The Respondent concedes that all of the payments and/or gifts that she received during the marriage from her parents whether through the trusts or otherwise were marital assets and benefited the family. " (Appellant's Brief, p. 25)

Moreover, in following its necessary two step analysis, the Court applied its discretion in attentively reviewing the trust documents and determining based upon the totality of the evidence that: "It is undisputed that the O'Neil Family Irrevocable Trust of 2000 which was established by the Respondent's parents and names the Respondent and her two (2) siblings as equal one-third beneficiaries , *per stirpes*, **distributed funds to**

Respondent which benefited the family throughout the marriage. (Appellant’s Brief, p. 24). **Based upon the evidence presented, those payments have to date totaled \$65,000.”** (Appellant’s Brief, p. 24) “. . . The **trust document** provides that while the independent Trustee has the sole discretion to determine whether and in what amount any beneficiary will receive a distribution, it **also provides that the Respondent and her siblings have an “absolute right” to demand and receive promptly a payment up to a maximum of the allowable tax exclusion** from any *inter vivos* transfer made into the trust by her parents. (Id). Her parents who are still living have no right to any distributions of trust principal or income. . . .” (Id)

Accordingly, the Court reviewed and considered in total the trust document and Irrevocable Trust at issue. In contrast to Appellant’s arguments that the Court’s determination that the the Appellant’s beneficial interest constituted a marital asset within the meaning of RSA 458:16-a is proper. As such, it was a further proper exercise of discretion, based upon the weight of the credible evidence for the court also to determine the current value for division purposes of Appellant’s beneficial interest [based upon the trial value of the life insurance policy funding the trust]: “That as of the second quarter of 2019 [June 28, 2019], the said policy had a cash surrender value of \$184, 930.42.” (Appellee’s Appendix, P. 14, Finding # 117). “. . .trial courts are free to exercise their sound discretion in establishing an appropriate valuation date for the equitable distribution of marital assets.” Hillebrand v. Hillebrand, 130 N.H. 520, 524 (1988).

Also, the court also provided an equitable manner, outside of trust distribution for the Appellants’ trust disbursement to compensate the Petitioner for his 50% of Appellant’s

one-third interest in the \$184, 930.42, i.e. \$61, 666, by either paying the Petitioner his share within fourteen (14) days of the effective date of the Decree, or “at her election, it may be deducted from her share of the marital home and paid to Wm. Michael Earley at the time of the refinance or sale, as provided for in Paragraph 15.” (Appellant’s Brief, p. 48)

The Appellant’s efforts to distinguish or claim that the Court misapprehended or misapplied the Court’s holding in Flaherty v. Flaherty, 138 NH 337 (1994) are unpersuasive. The Court’s Decree and Order on Motion for Reconsideration on the Trust Issue distinguished why the court’s holding in the Flaherty case is applicable to the instant case [and clarified issues relating to the underlying fact that the application of Massachusetts’ law to the trust which governed the “construing” and “administration” of the trust: “Though Massachusetts law was found to have controlled . . . the administration of the trust, New Hampshire law was found to have applied when determining the husband’s remainder interest in the trust and whether it was a marital asset for the purposes of the property division in the parties’ divorce proceeding. . . .” (Id, p. 24)

It is evident that this Court properly compared the circumstances in this case to those in Flaherty and determined Flaherty’s precedential value was appropriate in this case for the proposition that: “although the [husband] does not enjoy a present possessory interest in the trust; his interest is vested; he was an ascertained remainderman upon the creation of the trust, and his interest is certain to reach him upon the specified death of his last surviving parent. If the [husband] should die before his last surviving parent, then his interest would pass through his estate as an owned asset.” Flaherty, citations omitted, at 339.

Indeed, the Court specifically explained how the Flaherty case is analogous to the instant case: “In this case, should Respondent die before her last surviving parent, her interest will pass *per stirpes* to the parties’ children. The Court in Flaherty found further that although the [husband’s] remainder interest would have value only in the future, “this factor does not prevent inclusion in the interest of marital assets. Id. at 340. (italics added).

The Court also properly distinguished Goodlander v. Tamposi, 161 NH 490 (2011) relied upon by the Appellant, noting that: “... unlike the trust in Goodlander, which could be diminished by distributions to the other beneficiaries including the parties’ children, here, the beneficiary-spouse’s share cannot be diminished; it still will be 1/3 of the last \$2, 000, 000. “ (Appellant’s Brief p. 27)

B. As the Court properly determined that the Respondent’s beneficial interest in the irrevocable trust constitutes a marital asset, the Court properly exercised its discretion in entering an equitable division of the asset pursuant to NH RSA 458:16-a, et seq.

Having found that the asset constitutes a marital asset, and properly assigning same a value, the Court properly exercised its discretion in determining an equitable distribution of the asset. “The respondent’s interest in said trust, as a marital asset, is subject to the presumption . . . “that an equal division is an equitable distribution of property.” RSA 458:16 (a). Therefore, having established the Respondent’s interest in the property as having a value, based upon credible evidence, of \$61, 666, the award of 50% interest to

Petitioner of \$30, 833, as well as an award of 50% of future distributions for a period of five years following is a proper exercise of discretion and should not be disturbed.

Further, the court's deliberately reasoned why Petitioner is entitled to 50% of payments for five years and why that period is limited to five years and not indefinitely: "It is inappropriate to tie the parties together for so long post divorce and find that Petitioner is entitled to 50% of any distribution that Respondent should receive indefinitely . . .and . . . has determined that a maximum of five (5) year from the effective date of the Divorce Decree is an appropriate duration of time during which Petitioner should receive any distribution Respondent should receive) . . ." the Court specifically limiting those payments to those: **"pursuant to the provision which permits [Respondent] to demand distributions from inter vivos transfers up to the maximum annual gift tax exclusion."** (bold added) (Appellant's Brief, P. 14)

Further, even assuming *arguendo*, that the Respondent's beneficial interest is not a marital asset, which Appellee does not concede, the Court's consideration of the Respondent's beneficial interest was properly considered in the court's equitable award pursuant to the application of a variety of equitable factors, in accordance with RSA 458:16-a, such as: 458:16 (n): "the value of any property acquired, by gift, devised, or descent; (o) any other factor the court deems relevant. "

Alternatively, the Court's exercise of discretion in including consideration/equitable division of the estate of Respondent's beneficial interest may be considered analogous to RSA 458:16 (a) (k) relating to prenuptial agreements: "allocation of property by valid prenuptial contract . . ." Similarly, in this case, even if the

Respondent's beneficial interest were to be separately excluded, as in a case involving a premarital agreement, the separate property may still be properly considered by the trial court in fashioning its agreement. In this case, it is apparent that the court consciously considered all relevant statutory factors as well as the benefit during the marriage of the receipt of the trust disbursements. In this case, the court also considered and included the value of Petitioner's pre marital retirement accumulation/earnings in the overall equitable distribution.

For the reasons set forth , Appellee contends that the Court's inclusion of the Respondent's beneficial interest in the irrevocable trust as described supra were properly included in the marital estate and the Court's equitable division, as described by the Court was a reasonable exercise of the Court's discretion.

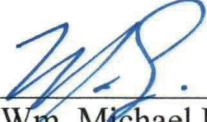
CONCLUSION

For the foregoing reasons, Appellee Wm. Michael Earley respectfully requests this Honorable Court affirm the Court's 12/31/2019 Order relating to the distributions and equitable consideration of Appellant's Trust Asset as contained in the Final Decree. Or in the alternative, remand the matter for any further analysis.

RULE 16 CERTIFICATION

I hereby certify that a copy of the Court's appealed herein is the first item in the attached Appendix, in accordance with Rule 16 of the Rules of the Supreme Court of the State of New Hampshire; additionally pursuant to Rule 16 (11), to the best of Appellee's belief, this reply brief does not exceed 3,000 words.

Wm Michael Earley



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* This Pleading was prepared with the Assistance of a New Hampshire Attorney

CERTIFICATE OF SERVICE

I, Wm. Michael Earley do hereby certify that a copy of the within Reply Brief was emailed this date through the court's e filing system to Christine M. Rockefeller, Esq., Burns, Bryant, Cox, Rockefeller, & Durkin, attorney for Appellant, at her address of record.

Dated: September 22, 2020



Wm. Michael Earley

STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2020-0051

In the Matter of

Wm. Michael Earley and Ryanne Earley

APPENDIX TO REPLY BRIEF OF APPELLEE, WM. MICHAEL EARLEY

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STATE OF NEW HAMPSHIRE

STRAFFORD, SS:

7TH CIRCUIT COURT-FAMILY DIVISION
No. 632-2017-DM-00399

IN THE MATTER OF WM. MICHAEL EARLEY AND RYANNE EARLEY

Order on:
PETITIONER'S REQUEST FOR FINDINGS AND RULINGS

Following the final hearing, the Court rules as follows on Petitioner's Requests:
NOW COMES the petitioner in the above entitled matter who respectfully requests the Court to make the following findings of fact and rulings of law:

1. The parties were married on October 5, 2002. *Granted*
2. At the time of their marriage, both parties had completed their college education and were employed. *Granted*
3. Three children were born of the marriage; *all of whom are minors;* ~~both of which have reached the age of majority.~~
 - a. Briella K. Earley
 - b. Treston D. Earley
 - c. Cade M. Earley *Granted as amended*
4. Throughout the marriage, the petitioner was greatly involved in the rearing of the children and their activities. *Neither granted nor denied.*
5. The petitioner was involved in and continues to be involved in the sporting and extracurricular activities of the children and the coaching of the children. *Granted*
6. As a result of the petitioner's coaching over the years, the parties have received ~~substantial~~ allowances and financial savings relative to the costs and expenses otherwise associated with the children's team activities, fees and expenses. *Granted as amended.*
7. The children have a warm and loving relationship with their father. *Granted.*
8. Throughout the marriage, the petitioner was fiscally responsible and worked diligently to provide financially for the family. *Granted (no evidence to the contrary).*
9. During the marriage, there was a period of time when the petitioner had been laid off. Having been unable to obtain further employment, the petitioner attempted self-employment for a brief period of time. *Granted.*

10. When the petitioner was able to find further employment, the same required a substantial and lengthy daily commute, placing the petitioner in Boston traffic for hours each day. *Granted*
11. While the petitioner did not want to such a commute to work, he endured the same for the financial good of the family and to meet the financial needs of the family. *Granted*
12. The petitioner continues to work in Massachusetts and continues to have a substantial daily lengthy commute, in Boston rush-hour traffic, with the corresponding transportation expenses associated with the same. *Granted*
13. The respondent did not want to relocate with the petitioner's new jobs in Massachusetts. *Denied*
14. To avoid the petitioner and children having to relocate, the petitioner continued and has continued to commute to Massachusetts for work. *Neither granted nor denied.*
15. As a result of the necessary commute, the petitioner would customarily leave the Dover area in the early morning hours, frequently not returning home until approximately 7:00 p.m. *Neither granted nor denied.*
16. In addition to his regular employment, the petitioner also previously served as a police officer in New Hampshire. *Granted*
17. It has only been the last two years or so that the petitioner has been the recipient of substantial earnings as a result of his taking the positions in Massachusetts. *Denied*
18. Throughout the years of the marriage, the parties lived a modest lifestyle. *Neither granted nor denied.*
19. While the petitioner was engaged in the lengthy commute for his employment, the respondent continued to work locally, generally working from 7:30 a.m. until 4:00 p.m. Mondays through Fridays. *Neither granted nor denied.*
20. The respondent does not work regular hours during the summer and follows a work contract that mirrors a school year. *Neither granted nor denied.*
21. The respondent refused and continues to refuse to change employment to obtain a more consistent year-round position and greater income. *Denied*
22. As this Court previously found, "[t]he parties remained in the home together although separated their sleeping quarters for some time beginning in about 2013". *Granted*
23. Commencing at said time in 2013, the parties had dialogue and agreed on a sharing of expenses whereby the petitioner paid the mortgage, taxes and insurance and other designated expenses and where the parties shared in various expenses for the children. *Neither granted nor denied*

24. The petitioner continued to abide by the financial agreement of the parties up to the time of the issuance of the temporary orders in the present action. *Neither granted nor denied.*

CHILD SUPPORT

25. A substantial purpose for the child support guidelines statute is to ensure that the children have the benefit of an equal standard of living with the obligor and well as the obligee. Compare RSA 458-C:1 *Neither granted nor denied. See RSA 458-C:1 for express purpose of statute.*
26. The presumption that a child support award be consistent with the guidelines, is a "rebuttable" presumption. RSA 458-C:4 [II]. *Granted*
27. The application of the child support guidelines is not appropriate if the same would be unjust or inappropriate in a particular case as determined via the criteria set forth in RSA 458-C:5. RS 458-C:4 [II] *Granted*
28. Child support serves a different public policy than alimony and other financial considerations as governed by different statutes. Compare In Re: Watterworth and Watterworth, 149 N H 422, 446 [2003] *Granted*
29. Child support is premised upon reasonable need based upon the customary lifestyle, and is not designed to be a mechanism to afford excess consideration or wealth/property distribution. *Neither granted nor denied.*
30. Pursuant to the final parenting plan as previously agreed to and approved by this Court, the parties have equal residential responsibilities with the children. *Granted*
31. The equal residential responsibilities of the parties results in the reduction of various fixed expenses incurred by the respondent including, but not limited to day care and similar-related expenses. *Denied*
32. As demonstrated by the respondent's financial affidavit, respondent's earnings enable her to meet the costs of child rearing in a similar or approximately equal style to that of the petitioner. See RSA 458-:5 [I] [C]. *Denied*
33. The financial affidavits of the respondent, and her reasonably demonstrated needs, do not substantiate a need for or warrant full child support without adjustment, especially in light of the shared residential responsibilities and the petitioner's demonstrated needs to maintain a comparable home and lifestyle for the children when in his care. *Denied*
34. In considering a downward adjustment of the child support guidelines premised upon the petitioner's current, significantly high income, "...the court shall consider whether the child support amount arrived from application of the guidelines substantially exceeds the ...

- children's reasonable needs, taking into account the style of living to which the ...children have become accustomed or will experience in either party's home". RSA 458-C:5 [I] [b] [1]. [emphasis added] *Granted*
35. A downward adjustment in the child support guidelines is further warranted by the reasonable and ongoing expenses incurred by the petitioner in exercising his parental rights and responsibilities including, but not limited to child care, especially in light of the petitioner's substantial, lengthy, and time-consuming daily work commute. *Denied*
36. Based upon respondent's adjusted gross monthly income, her earning potential, and her stated expenses, full child support guidelines is not necessary to enable her to continue to meet the cost of child rearing in a style that was approximately equal to that of petitioner. Compare In Re: Silva and Silva, 171 N H 1 [2018] *Denied*
37. In addition to the respondent's stated earnings, the ^{Family} respondent has, throughout the marriage, received substantial financial benefits from ~~her~~ ^{respondent's} parents, including, but not limited to trust distributions, automobiles and the like. *Granted as amended.*
38. While gifts are not considered part of "gross income" for child support calculations, "RSA 458-C:5 [supp. 2005] permits the trial court the discretion to deviate from the child support guidelines when a party's special circumstances make a deviation appropriate. Thus, the trial courts may consider the impact of gifts on the financial condition of the parties and determine, for example, whether including or excluding the gifts would result in an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration." In Re: Fulton and Fulton, 154 N H 264, 268 [2006] *Granted*
39. The court may appropriately consider the petitioner's substantial commuting costs as "... special circumstances under RSA 458-C:5 sufficient to adjust the petitioner's obligation downward". In Re: Fulton and Fulton, 154 N H 264, 269 [2006]. *Granted*
40. The petitioner, in order to provide the children with a comparable lifestyle that they enjoy with the respondent, has required and will continue to require ~~substantial~~ expenses for housing, clothing, food, and other related expenses while the children are with him. *Granted as amended.*
41. The Court finds that the petitioner's proposal for child support is fair and appropriate. The same would afford the respondent sufficient net funds, on a monthly basis, to meet her reasonable expenses, while affording the petitioner the opportunity of maintaining a comparable lifestyle and home for himself and the children. *Denied*
42. The Court further finds that the petitioner's child support proposal is fair and equitable in light of the substantial, timely daily commute required of the petitioner to generate income to support the family, and in light of the substantial additional re-occurring expenses incurred by the petitioner on a monthly basis, which are not incurred by the respondent, such as his cost of commute and parking, the health insurance premiums and other expenses paid

exclusively by the petitioner. *Denied*

ALIMONY

43. The present action was commenced in 2017, prior to the enactment of the present alimony provisions of RSA 458:19^a and prior to the enactment of RSA 458:19^a and is accordingly not governed by the same. *Granted, as amended.*
44. The respondent is 44 years of age and of good health. *Granted*
45. The respondent was and is fully educated, having obtained both a bachelor of science degree from the University of New Hampshire and a Master of Science in Communication Disorders from the University of Wisconsin, Madison, prior to the marriage of the parties. *Granted*
46. The respondent has, at all times, been afforded the opportunity to pursue and advance her chosen career, field and employment. *Granted*
47. The respondent has demonstrated vocational skills which she continues to utilize. *Granted*
48. The respondent has not in the past sought further full time employment, or substantial part time employment during the summers so as to increase her earning potential. *Denied (insufficient evidence to support such a finding).*
49. The respondent has no plans to change her current employment and earning capacity. *Granted as amended.*
50. The respondent does not intend to seek any further educational opportunities. *Granted as amended*
51. As reflected in the respondent's financial affidavit, with the exception of the auto loan she chose to take during the pendency of the present proceedings, she has no other consumer debt. *Granted*
52. Respondent's claimed expense for "sports and camp" in the amount of \$1,148.00 per month is not an ongoing and substantiated expense. *Granted*
53. The Court finds that the listed sports/activities expenses referenced in the respondent's financial affidavit do not represent the historic and/or ongoing expenses associated with the same, as is further reflected in the prior financial affidavits filed and/or provided by the respondent. *Granted*
54. The Court finds that the sports/activities expenses listed by the respondent include one-time expenses, expenses to which the petitioner has also contributed and excessively stated expenses, beyond the actual expenses incurred. *Granted*



55. The Court finds that the respondent's stated monthly expense for toiletries and cosmetics totaling \$163.00 is excessive. *Neither granted nor denied (insufficient evidence).*
56. The Court finds that the respondent's stated monthly expense relative to the children's clothing in the amount of \$275.00 per month is excessive and unsubstantiated. *Neither granted nor denied (insufficient evidence).*
57. The respondent's financial affidavit demonstrates that she has *since the Temporary Decree* ~~at all times~~ had the ability to ~~continue to~~ voluntarily contribute \$906.00 per month towards her 401-k plan. *Granted as amended*
58. The respondent's financial affidavit demonstrates that while not incurring any consumer debt during the pendency of the present proceedings, she has also been capable of maintaining a checking account balance in excess of \$6,000.00, which *includes a tax refund.* *Granted as amended.*
59. The Court finds that the ^{home} respondent's stated monthly expenses associated with the maintenance of the marital, totaling \$397.00 per month, are ~~excessive~~, speculative, and not supported by evidence or exhibit. *Granted*
60. The respondent's claimed monthly expenses, prior to her continued voluntary contributions to her 401-k plan, would total ~~\$9,036.00~~ ^{\$9,039.00} before any applicable adjustment relative to the unsubstantiated or excessive expenses claimed, which include the mortgage and other payments made by the petitioner, leaving at best a shortfall of ~~\$3,128.00~~ per month *before* factoring any child support awarded to the respondent and *before* ^{\$3,131.00} for the excessive claimed expenses referenced herein. *Granted as amended.*
61. Per the respondent's financial affidavit, during the pendency of the divorce proceedings, in light of the tax-free child support received in the amount of \$3,670.00 per month, the respondent was receiving ~~\$542.00~~ per month *beyond* her stated non-voluntary expenses, even before adjustment for *unsubstantiated or excessive expenses claimed.* *Granted as amended.*
*\$539.00 (\$2,815.47)**
62. The respondent, during the pendency of the present proceedings, also received 100% of the *net of* petitioner's sole bonus check received, as well as a tax refund, having filed separately. *Granted as amended.* *(* 20% was child support, the balance applied to child support arrearage.)* *(\$2,254.00)*
63. The respondent's financial affidavit, and evidence presented, demonstrate that she was able to fully meet her litigation costs without incurring any additional debt and without any reported outstanding legal bills or debts. *Denied - Respondent testified that her parents have paid her legal bills and she does not consider it a gift.*
64. The petitioner, with the temporary financial obligations which were imposed upon him, did not have funds to meet his litigation costs and, in addition to accessing his investment account as authorized by this Court in the amount of \$10,000.00, continues to have a substantial and sizable outstanding debt and balance due for litigation costs and legal fees. *Neither granted nor denied (His financial Affidavit indicates legal bill "TBD ongoing.")*
65. As is reflected on the wife's pay vouchers, she claims only one federal exemption. Additionally, she was afforded the right to claim two of the three minor children as

dependents, resulting in excess of withholdings from respondent's pay voucher and the receipt by the respondent of a tax refund, having filed separately. *Granted*

66. The petitioner, ~~with the financial obligations imposed upon him by this Court, has been unable to continue to contribute~~ ^{stopped contributing} to his retirement accounts ~~after the Temporary Decree~~ ^{after the Temporary Decree} issue. *Granted as amended.*
67. The respondent is not a "party in need of alimony" as defined or referenced in RSA 458:19 ^(eff. 10/1/0) as of the date of commencement of the present action. *Granted as amended.*
68. The Court finds that the respondent does not lack sufficient income or ability to generate income or property to provide for and/or contribute towards her own reasonable needs. *Granted*
69. The Court finds that the respondent is capable of meeting her reasonable needs, taking into account the lifestyle to which the parties had become accustomed during the marriage, and is otherwise not entitled to alimony as defined or referenced in RSA 458:19 ^(eff. 10/1/0) as of the date of commencement of the present action. *Granted as amended.*
70. The Court finds that the petitioner, Wm. Michael Earley, from whom the respondent seeks alimony, is not "able to meet (his) reasonable needs while meeting those of the party seeking alimony, taking into account the lifestyle to which the parties had become accustomed during the marriage". *Neither granted nor denied. See narrative Order.*
71. The primary purpose of alimony is to allow a financially dependent spouse to achieve financial independence by supporting herself. *Tishkevich v Tishkevich*, 131 N H 404 [1980]; *Harvey v Harvey*, 153 N H 425 [2006]; *Ames v Ames*, 177 N H 554 [1977] *Granted - all decided under prior law.*
72. The New Hampshire Supreme Court has long recognized that a party's lifestyle will undergo change after divorce. In *The Matter Of Sutton v Sutton*, 148 N H 676 [2002]. *Granted*
73. The Court must consider the property awarded to the wife in determining the amount and duration of alimony. *Rattee v Rattee*, 146 N H 44, 49 [2001]; RSA 458:19. *Granted*
74. "...[T]he purpose of alimony is not to provide a lifetime profit-sharing plan". In *The Matter of Sutton and Sutton*, 148 N H 676, 679 [2002]. See also *Caulderwood v Caulderwood*, 114 N H 651 [1974] *Granted*

RETROACTIVE TEMPORARY ORDER

75. That the temporary orders issued in the present action were ~~issued on~~ ^{dated} October 12, 2018 and forwarded to counsel by clerk's notice dated October 15, 2018.
76. This Court ~~has the inherent authority to revise its own temporary orders to prevent injustice,~~ ^{may issue a permanent order after a full hearing on the merits that differs from a} ~~temporary order.~~ See *In Re: Stapleton and Stapleton*, 159 NH 694, 696-697 [2010]. See also generally,

Douglas, Family Law, New Hampshire Practice, Vol. 3, Section 13.68. *Granted as amended.*

77. The temporary "Uniform Support Order" provided inter alia for child support in the amount of \$3670.00 per month, retroactive to June 1, 2018 with arrearages to be determined. *Granted.*
78. "The court's authority in matters of marriage and divorce is strictly statutory...Because divorce is statutory, the court has only such power in that field as is granted by statute". Daine v Daine, 157 N H 426 [2009] [citations omitted] *Granted*
79. There is no legal authority that would enable or otherwise authorize a trial court to enter an initial child support order, retroactive, creating an arrearage when no prior child support order was in effect. *Denied.* See RSA 461-A:14, I. "After the filing of a petition for divorce... the court shall make such further decree in relation to the support... of the children as shall be most conducive to their benefit..." See also RSA 461-A:2. *There is no statutory authority that empowers the court to effectively retroactively order child support in the case of modification of a prior, pre-existing, support order, pursuant to RSA 458-C:7 [III]. Granted as amended.*
80. *Divorce... the court shall make such further decree in relation to the support... of the children as shall be most conducive to their benefit... See also RSA 461-A:2. There is no statutory authority that empowers the court to effectively retroactively order child support in the case of modification of a prior, pre-existing, support order, pursuant to RSA 458-C:7 [III]. Granted as amended.*
81. The only statutory authority that empowers the Court to effectively retroactively order child support is in the case of modification of a prior support order. *Denied.*
82. In the absence of statutory and legal authority to retroactively order the child support in the present action, the said order is void *ab initio*. *Denied.*
83. This Court acknowledged in the temporary orders that the parties "remained in the home together though separated" since "about 2013". Throughout that time frame, by agreement of the parties, the petitioner maintained the mortgage, taxes, and insurance on the home, maintained the insurance for the family, maintained the uninsured medical, dental and other expenses of the children, without any shortfall over the said five year period. *Neither granted nor denied.*
84. As demonstrated in the respondent's financial affidavit at the time of the temporary hearing, as well as her subsequent financial affidavits, with the agreed-to division of expense sharing prior to the temporary hearing, the respondent did not incur any substantial debt as a result of any claimed shortfall and had but one consumer debt, a credit card with a balance of approximately \$4,000.00. *Granted*
85. By contrast, the petitioner was required to, and did, accumulate substantial consumer debt while maintaining his share of the agreed-to expenses. *Denied. This language is not supported by the evidence.*
86. The petitioner's gross monthly salary was and is \$17,500.00 and is subject to Massachusetts state taxes. The current non-voluntary withholdings from his monthly pay are as follows:

a.	federal taxes	\$3,499.00
b.	Social Security	1,317.00*

c.	Massachusetts state taxes	<u>869.00</u>
	Total.....	\$5,685.00

leaving a net monthly sum of \$11,815.00. *Denied. *This figure does not account for the maximum cap on social security withdrawn. Annualized, Petitioner's monthly SS/Medicare expense is \$940*

87. From the petitioner's ~~current~~ base net income of \$11,815.00 per month, he was ordered, pursuant to the temporary orders, to make the following monthly payments:

a.	health insurance	\$ 258.00
b.	Mortgage	1,525.00
c.	real estate taxes	684.00
d.	home insurance	167.00
e.	child support	3,670.00
f.	auto loan	325.00
g.	dental insurance	30.00
	Total.....	<u>\$6,659.00</u> 6,629.00

Granted as amended.

88. After taxes and other mandatory withholdings, and the payment of court-imposed obligations pursuant to the temporary orders, the petitioner has been left with total net funds available to him of only ~~\$5,156.00~~ per month *Granted as amended.*
\$5,563.00

89. The said remaining monthly net funds available to petitioner were and are, substantially less than the funds and benefits afforded the respondent. *Denied. The Court does not find that the child support and house-related expenses Petitioner was ordered to pay were entirely for the benefit of the Respondent.*

90. From the remaining ~~\$5,156.00~~ per month, the petitioner has attempted to maintain an appropriate home and lifestyle for the children, no greater than that enjoyed at the marital home. From the same, petitioner has incurred, amongst his other enumerated expenses, the following:

a.	Rent	\$2,550.00
b.	day care	463.00
c.	vehicle insurance	148.00
d.	commuting expenses	896.00
e.	utilities & heat, etc.	
	Relative to rental	<u>911.00</u>
	Total.....	\$4,968.00

With the foregoing, the petitioner has been left with only \$188.00 per month to meet his other necessary expenses including, but not limited to, groceries, meals eaten out, clothing and shoes, child-related expenses, uninsured medical and dental expenses, etc. *Denied.*

91. The petitioner's stated expenses do not include, nor has he been afforded regular and appropriate expenses customarily incurred such as retirement contributions, vacations,



entertainment, litigation costs, etc. *Neither granted nor denied.*

92. No offer of proof or evidence has ever been presented to establish that, as of the temporary orders dated October 12, 2018, the respondent had advanced sums or incurred debt to justify the substantial arrearages which result from the retro-active order, and which the respondent now seeks to recover in the alleged sum of \$21,155.00. *Neither granted nor denied.*
93. The evidence further demonstrated that, ~~with the sharing of expenses up to the time of the temporary hearing~~, the respondent was ~~also~~ financially capable of ~~continuing to contribute~~ \$906.00 per month to her 401-k account. *Granted as amended.*
94. In addition to the sharing of expenses up to the time of the temporary hearing, the evidence further warrants a finding that the petitioner contributed additional sums towards the activities and needs of the children and further provided a substantial financial benefit to the children by way of allowances received as a result of his sports coaching. *Neither granted nor denied.*
95. Since the time of the temporary hearing and orders, the petitioner was also required to, and did give to the respondent 100% of the net proceeds received from the only bonus he received subsequent thereto. *Granted (to be credited towards his child support arrearage).*
96. In light of the foregoing, the continued obligation placed upon the petitioner by way of the retro-active effect of the temporary orders, affords the respondent substantial sums beyond any claimed or demonstrated expenses incurred by her for the benefit of the children during said period and amounts to an impermissible "windfall" to the respondent which "...substantially exceeds the ...children's reasonable needs, taking into account the style of living to which the...children have become accustomed..." RSA 458-C:5 [I] [b] [1] *Denied.*

MARITAL HOME

97. The Court finds that the marital home located at 8 Harlans Way, Dover, New Hampshire as of the date of trial has a fair market value of \$342,000.00. *Granted*
98. "...[T]rial courts are free to exercise their sound discretion in establishing an appropriate valuation date for the equitable distribution of marital assets". In Re: Nyhan and Nyhan, 147 N H 768, 771 (2002); See also Hillebrand v Hillebrand, 130 N H 520 (1988). *Granted*
99. "In New Hampshire, by statute, 'all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is in the name of either or both parties,' is subject to equitable distribution." In Re: Heinrich and Heinrich, 164 N H 357, 39 [2012] [citation omitted]. *Granted*
100. "Property subject to equitable distribution "includes any property acquired up to the date of a decree of legal separation or divorce." In Re: Heinrich and Heinrich, 1264 N H 357, 359

[2012] [citation omitted]. *Granted*

101. New Hampshire has rejected the analytical approach in determining marital assets versus separate assets, and instead employs the mechanic approach. See, In Re: Heinrich and Heinrich, 164 NH 357 [2012]; In Re: Preston and Preston, 147 N H 481 [2001]; In Re: Sukerman and Sukerman, 159 NH 565 [2009]. *Granted*.

TRUST INTEREST

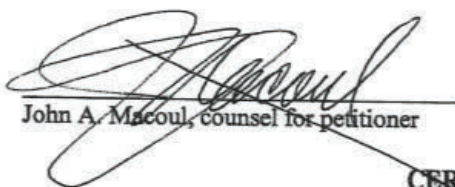
102. The respondent is a beneficiary of "The O'Neil Family Irrevocable Trust of 2000". *Granted*
103. "The O'Neil Family Irrevocable Trust of 2000" was created on October 20, 2000, less than two years prior to the marriage of the parties. *Granted*
104. The respondent has a clearly ascertainable, one-third beneficial interest in the said irrevocable trust, which is certain and specific. *Granted*
105. The trustee of the said trust is David Avery, a retired financial adviser and family friend. *Granted*
106. The "The O'Neil Family Irrevocable Trust of 2000", and the respondent's interest in the same, have remained in existence throughout the ¹⁶17 year marriage of the parties. *Granted as amended*
107. Through the years, the respondent has received payments and cash distributions from the Trust totaling \$65,000.00. *Granted as amended.*
in the vicinity of
108. During the marriage of the parties, the sums received by the respondent from the said trust assisted in meeting the financial needs of the family and became part of the marital estate. *Granted*
109. That the primary asset of the said trust is a "last survivor flexible premium variable universal life insurance policy" in the face amount of \$2,000,000.00, covering the lives of the respondent's parents. *Granted*
110. The said "last survivor flexible premium variable universal life insurance policy" bears an inception date of March 16, 2001. *Granted*
111. The said "last survivor flexible premium variable universal life insurance policy" has a cash variable to it which can be invested in numerous listed mutual funds. *Granted*
112. It is the trustee, David Avery, who has managed the said investments and insurance policy, which he has invested in four areas, to wit:

- a. Cash
 - b. Bonds
- █

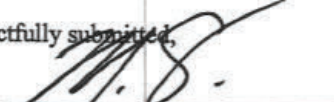
- c. stock
- d. precious metals *Granted*

- 113. Mr. Avery has invested the trust assets so as to not require substantial or regular changes in the investments and to maintain a fairly level and consistent value with growth. *Granted*
- 114. Quarterly statements are issued relative to the said "last survivor flexible premium variable universal life insurance policy" which are received by Mr. Avery. *Granted*
- 115. The said "last survivor flexible premium variable universal life insurance policy" has been essentially self-sustaining, with the investment income utilized, when necessary, to pay the ongoing premiums associated with the same. *Granted*
- 116. Prior to the policy becoming self-sustaining, respondent's parents would periodically make cash gifts to the children which were deposited to a TD AmeriTrade account, which no longer exists, to maintain the said premiums. *Granted*
- 117. That as of the end of the second quarter of 2019 [June 28, 2019], the said policy had a cash surrender value of \$184,930.42. *Granted*
- 118. Upon the demise of the respondent's last surviving parent, the beneficiaries of the said trust, of which the respondent is a one-third beneficiary, will receive their share of the assets of the trust which will be the cash surrender value of the policy or \$2,000,000.00, whichever is greater. *Granted*
- 119. The respondent's beneficial interest in the "The O'Neil Family Irrevocable Trust of 2000" is a marital asset. RSA 458:16-a [I] See also generally In Re: Brownell and Brownell, 163 NH 593 [2012]; In Re: Goodlander and Tamposi, 161 NH 490 [2011]; Flaherty v Flaherty, 138 NH 337 [1994]. *Granted*
- 120. "[A]lthough the [respondent] does not enjoy a present possessory interest in the trust, [her] interest is vested; i.e., [she] [is] an ascertained remainderman upon the creation of the trust, and [her] interest is certain to reach [her] upon the specified event of the death of the last surviving parent." Flaherty v Flaherty, 138 NH 337, 340 [1994]. *Granted*
- 121. The respondent's interest in the said trust, as a marital asset, is subject to the presumption "...that an equal division is an equitable distribution of property". RSA 458:16-a. *Granted*
- 122. The burden of proof to rebut the presumption of equal distribution rests with the respondent. See generally for example Cunningham v City of Manchester Fire Department, 129 NH 232 [1987]; In Re: H. J., 171 NH 605 [2018] *Granted*

123. The respondent ~~has failed to make an appropriate claim to rebut the said presumption, and respondent~~ has failed to provide sufficient and credible evidence to rebut the said presumption. *Granted as amended.*
124. In addition to the said irrevocable trust, the respondent has or had a similar one-third, ~~ascertainable~~ interest in the "Gerald T. O'Neil 1998 Revocable Living Trust" and a second identical trust created by the respondent's mother. *Granted as amended.*
125. As the respondent testified, throughout the years of the marriage, various sums and/or assets were received from and/or through the said revocable trusts. *Granted*
126. As recently as July 7, 2014 the respondent received a check from the "Gerald T. O'Neil 1998 Revocable Living Trust" in the sum of \$25,000.00 which she utilized to purchase the Town and Country van. *Granted*
127. The respondent has presented no evidence to demonstrate that the respondent's beneficial interests in the said revocable trusts have been terminated or the said trusts revoked. *Granted*
128. As the testimony and evidence demonstrated, throughout the course of the marriage, each and every vehicle acquired and/or utilized by the respondent was the result of gifts from her parents or distributions from the trusts *(with the exception of her current vehicle which was financed in part by proceeds from insurance related to a gifted vehicle and in part by loan)* *Granted as amended.*
129. The respondent's interest in the said revocable trust is a marital asset, and subject to the presumption of equal division for which no rebuttal evidence has been presented, and subject to the presumption of equal division, for which no rebuttal evidence has been presented. RSA 458:16-a. *Denied.*



 John A. Macoul, counsel for petitioner

Respectfully submitted,


 Wm. Michael Earley, petitioner

CERTIFICATE OF SERVICE

I, John A. Macoul, Esquire, hereby certify that I have this date delivering in hand a copy of the foregoing to counsel for the respondent Christine M. Rockefeller, Esq., Burns, Bryant, Cox, Rockefeller & Durkin, 255 Washington Street, Dover, New Hampshire 03820.


 John A. Macoul, Esquire NH Bar #1584
 373 Main Street, P O Box 673
 Salem, New Hampshire 03079
 603 893 5786

Dated: October 8, 2019

So Ordered:

11/18/19


 Jennifer A. Lemire
 Judge

STATE OF NEW HAMPSHIRE

7TH CIRCUIT - FAMILY DIVISION -DOVER

Docket #:632-2017-DM-00399

In the Matter of Wm. Michael Earley and Ryanne Earley

RESPONDENT'S SUPPLEMENTAL REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES Respondent, by and through counsel, and hereby supplements her July 18, 2019 Requests and submits the following additional requests:

FINDINGS OF FACT:

26. Respondent's parents, Gerald and Joan O'Neil, established revocable living trusts in 1998, with each parent establishing an identical revocable living trust. *Granted*
27. There are no assets held by the 1998 Revocable Trusts. *Granted, insofar as a representation has been made to this effect and no evidence to the contrary has been submitted.*
28. On October 20, 2000, Gerald and Joan O'Neil, as Grantors, established the O'Neil Family Irrevocable Trust of 2000, funding it with Ten Dollars (\$10.00). *Granted*
29. Both the revocable and irrevocable trusts name David Avery, the O'Neils' ^{then} financial advisor, as Trustee. *Granted*
30. While Ryanne Earley (formerly known as Ryanne O'Neil) received distributions from the Irrevocable Trust on five separate occasions, between 2001 and 2008, the last



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distribution she received was in the amount of \$13,000 on May 16, 2008. *Granted*

31. The only asset owned by the O'Neil Family Irrevocable Trust of 2000 is a Flexible Premium Variable life insurance policy. *Granted*
32. The life insurance policy was issued by Nationwide Life Insurance Company on March 16, 2001; it lists Gerald T. O'Neil as the first insured and Joan B. O'Neil as the second insured and is payable on the death of the second to die. *Granted*
33. While the surrender value of the Life Insurance policy varies according to the market, the June 28, 2019 statement recites a value of \$184,930.42. *Granted*
34. The Irrevocable Trust does not own any accounts or other assets and has not filed a tax return since 2015. *Granted*
35. Ryanne Earley and her two siblings, Tonya O'Neil-Baker and Todd G. O'Neil are beneficiaries of the Irrevocable Trust. (page 1 of Trust) *Granted*
36. Paragraph 1 of the Trust provides that the Trustee shall make distributions from this Trust from time to time "in its sole discretion pursuant to the terms of this Trust". (See Paragraph 1, page 1 of Trust). Emphasis supplied. *Granted*
37. Thus, Grantors may instruct the Trustee to exclude beneficiaries or treat them as unequal. *Neither granted nor denied.*



38. During the lifetimes of the grantors, Paragraph 2-A provides that "with respect to any inter-vivos gift or other transfer to the Trustee at any time hereafter, the donor or transferor may by written designation direct the trustee to apportion, equally or unequally, the said gift or transfer, among one or more said shares or parts of shares". (See page 1 of Trust) *Granted*
39. Paragraph 3, page 6 of the Irrevocable Trust contains the dispositive provisions which apply after the death of the surviving grantor. *Granted*
40. Pursuant to Paragraphs 3(A) and 13, if Ryanne Earley survives 30 days beyond the death of the second Grantor to die, then she becomes a beneficiary of said trust following her parents' deaths. If she does not survive both of her parents by 30 days, then her children become beneficiaries. *Granted*
41. Under Section 2(B)(3), if there is an inter-vivos gift or transfer to the trust, then Ryanne Earley may elect to *demand and promptly receive* ~~withdraw~~ from said transfer the maximum amount allowed by *contributed by each donor or transferor.* the annual gift tax exclusion. *Granted as amended.*
42. Except as set forth in Section 2(B)(3), Ryanne Earley has no right to demand distributions from the Irrevocable Trust. *Granted*

43. The last such inter-vivos funding and withdrawal occurred on May 16, 2008. *Granted (Exhibit V).*
44. At no point in time was the O'Neil Family Irrevocable Trust funded by any assets owned by Ryanne Earley or Michael Earley, and at no time have either served as Trustees. *Granted*
45. Neither Michael Earley nor Ryanne Earley have the right to invade the trust corpus of the O'Neil Family Irrevocable Trust. *Granted*
46. Neither Gerald O'Neil nor Joan O'Neil have the right to invade the trust corpus, or to demand or receive distributions. *Granted*
47. Pursuant to Paragraph 17(A), the Trust is irrevocable, and the Grantors severed permanently any control over the assets of the Trust. *other than to make transfers of assets into the trust. Granted as amended.*
48. Other than the limited right of beneficiaries to withdraw under 2(B)(3), (which is only triggered if the Grantors elect to make an inter-vivos transfer into the trust) the Independent Trustee, David Avery, has sole discretion to make distributions and has sole discretion to administer, invest, reinvest, retain, manage, control, and otherwise manage all assets held by the trust. (See Paragraph 4, page 7 of Trust - Trustee's Duties and Powers) *Granted*

49. The Trustee's duties and powers include the duty to sell, assign, surrender, hypothecate, borrow against, surrender values, and otherwise to manage and deal with any insurance policies owned by or payable to the Trust, in whole or in part. (See Paragraph 4(A), page 7) *Granted*
50. After the surviving Grantor's death, the Trustee also has the power to borrow or make loans to or from the surviving Grantor's estate, on such terms as the Trustee shall make proper, and all judgements, decisions, and actions so taken shall be final and binding... (See page 11, Paragraph 4(T)). *Granted*
51. Additionally, the Trustee may accept and administer hereunder any life insurance policies or other policies and has all instances of control therein: *Granted (pages 11-12, Paragraphs 5 A and B).*
52. Pursuant to Paragraph 13 (page 14) "Spendthrift Provision", the interest of any beneficiary as to income or principle shall not be anticipated, alienated, or in any other manner assigned or pledged ... and shall not be reached by or be subject to any legal, equitable, or other process, and all payments to or interest of any beneficiary shall be free from the control or claim of any spouse. (See Paragraph 13) (Emphasis supplied) *Granted*

53. Under New Hampshire law, the trial court first determines, as a matter of law, what assets are marital property under RSA 458:16-A, I, and thus subject to equitable distribution and then exercises its discretion to make an equitable distribution of those assets. Chamberlin v. Chamberlin, 155 N.H. 13, 17 (2007), and Goodlander v. Tamposi, 161 N.H. 490, 495 (2011). *Granted.*

54. Marital property shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties. RSA 458:16-a, I. (emphasis added) *Granted*

55. Ryanne Earley has a mere expectancy in receipt of any assets under the O'Neil Family Irrevocable Trust of 2000. *Denied*

56. Because the trust corpus is not an asset belonging to, or titled in, either or both parties at the time of the divorce, the trust corpus must be excluded from the marital estate Chamberlin v. Chamberlin, 155 N.H. 13, 17

(2007). *Granted* (See In re: Marriage of Podet, 996 P.2d. 230, 232 (Colo Ct App 1999) 'it is the extent of the beneficiary's right to or interest in the trust rather than the source of funding for the trust that determines whether the trust and the income from it are marital property'). Where, as here, neither the settlors nor the settlors' *creditors may invade the corpus of an Irrevocable Trust, it would be incongruous to count such a trust as a marital asset, interchangeable with other assets upon which the*



cf Abrams v. Abrams, 131 NH 520 524-525 (1989) (once husband's trust terminated, trust corpus distributed to husband was marital property).

parties freely may draw. Chamberlin v. Chamberlin, 155 N.H. 13, 17 (2007). *See Ruling on #56.*

58. Under New Hampshire law, where the Grantors have severed all control to the Trust and its assets and where the Independent Trustee maintains investment decision making and discretion, then in such cases our courts have held that since neither the Settlor nor the Settlor's creditors may invade the corpus of an irrevocable trust, then it would be incongruous to count such a trust as marital asset. Goodlander, supra, at 495. *See Ruling on #56.*
59. Pursuant to New Hampshire law, including Goodlander v. Tamposi, the O'Neil Irrevocable Trust is not a marital asset subject to division. *Denied*
60. The terms of the trust do not provide for the right to invade the corpus, demand distributions, or receive income; thus, there are no other "interests" in and to the trust which constitute marital assets. *Denied*
61. Alternatively, should the Court determine that the O'Neil Irrevocable Trust of 2000, or any interest thereunder, is a marital asset, then Respondent requests that the Court exercise its broad discretionary powers to award any and all interest in said Trust to Ryanne Earley. In making such a finding, the Court references the other marital assets, including the Ameritrade account in Ryanne



Earley's name, which account was funded solely from distributions of the Irrevocable Trust. Notwithstanding this, the Court is only segregating the remaining assets (if any) of the irrevocable Trust and awarding such assets solely to Ryanne Earley. *Neither granted nor denied, as this is not a request for finding of fact or ruling of law, but a prayer for relief.*



Respectfully submitted,

RYANNE EARLEY
By Her Attorneys

BURNS, BRYANT, COX,
ROCKEFELLER & DURKIN, P.A.

Dated: 10/8/19

By Christine Rockefeller
Christine M. Rockefeller
255 Washington Street
Dover, NH 03820
Tel: (603) 742-2332
Bar No 4046
Email:
crockefeller@burnsbryant.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was forwarded this day to, John A. Macoul, Esq., P.O. Box 673, Salem, New Hampshire, 03079.

in-hand
CMR

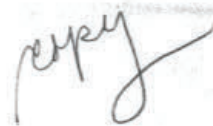
Christine Rockefeller
Christine M. Rockefeller

So Ordered:

Jennifer A. Lemire
Jennifer A. Lemire 11/18/19
Judge



STATE OF NEW HAMPSHIRE



STRAFFORD, SS:

7TH CIRCUIT COURT-FAMILY DIVISION
No. 632-2017-DM-00399

IN THE MATTER OF WM. MICHAEL EARLEY AND RYANNE EARLEY

**PETITIONER'S MOTION FOR PARTIAL CLARIFICATION; PARTIAL
RECONSIDERATION; AND/OR OTHER RELIEF**

NOW COMES the petitioner in the above-entitled matter, Wm. Michael Earley, who respectfully represents to the best of his knowledge, information and belief as follows:

1. That this Honorable Court issued a "Final Order" ; "Final Decree on Petition For Divorce" and "Uniform Support Order" in the above-entitled matter which were forwarded by clerk's notice dated November 21, 2019.
2. The petitioner maintains that this Honorable Court has overlooked or misapprehended various points of law and fact in entering its decision. Petitioner requests that the same be reconsidered relative to the matters that follow. Family Division Rule 1.26 [F].
3. Additionally, petitioner maintains that partial clarification is additionally warranted as hereinafter referenced.

CLARIFICATION RE: CREDIT DUE PETITIONER

4. This Honorable Court's final decree and orders clearly and appropriately provide that the financial obligations imposed upon the petitioner commence August 1, 2019.
5. That the petitioner is entitled to reimbursement for any sums that he has paid under the temporary orders, from August 1, 2019 until the final divorce decree. See for example RSA 458-C:7 [III].
6. During this time frame, under the temporary orders, the petitioner, from August 1, 2019 through November 30, 2019 paid a total amount of \$18,998.13.

During the same time frame, the petitioner's legal obligation was to pay child support in the total amount of \$14,040.00 [\$3,510.00 monthly X 4 months]. The petitioner has accordingly over paid and is entitled to a credit in the sum of \$4,958.13 .

7. Petitioner maintains that the credit to which he is entitled should be afforded to the petitioner by way of credit towards his ongoing child support obligation or, in the alternative, should be paid to the petitioner upon the refinancing of the marital home and other payments due to the petitioner as referenced in the divorce decree.

8. Petitioner believes it appropriate that the Court clarify the final orders in this regard as to the method and manner by which the petitioner is to receive the said credit for over payment due to him.

RECONSIDERATION RE: REVISION OF TEMPORARY ORDERS

9. That this Honorable Court issued temporary orders in the present matter premised upon limited offers of proof, without testimony.
10. That this Honorable Court's temporary orders noted that, inter alia as follows:

"Respondent's request that the child support be effective retroactively to June 1, 2018 is approved *for the reason that* she represents that despite the fact the parties were separated and despite the disparity in the parties' incomes for the last several months since the date Petitioner contributed *only* to the mortgage and did not provide her with child support or alimony in addition thereto despite her requests."
11. After having received testimony and evidence at trial, this Court's narrative decree noted, inter alia, that the parties effectively separated in 2013. From that time to the time of the temporary hearing, the parties operated under a financial agreement whereby the petitioner paid the mortgage, taxes and insurance on the home, maintained health insurance and other benefits for the family, and also contributed towards various expenses related to the children.
12. Further, the evidence and testimony, along with the Court's findings, clearly demonstrate that any alleged arrearage payment does not relate to any actual expenses incurred by the respondent during the time frame in question. Respondent has never provided any testimony, exhibits or other evidence that, during the time frame in question, and while the parties continued under their five year old agreement, that she allegedly incurred any additional debt or expenses for which the claimed arrearages was intended to reimburse the respondent.
13. That this Honorable Court's final order, recognizing the identical financial circumstances of the parties, as well as the same earnings of the parties at the time of the temporary hearing, has determined, after trial and after testimony and evidence, that the appropriate financial obligation to impose upon the petitioner is child support in the amount of \$3,510.00.
14. That the temporary orders upon which the arrearages are based, additionally exceed the final financial order by approximately \$1,240.00 per month, for which the petitioner has not been provided any credit.
15. Additionally, the temporary orders upon which the arrearages are based, do not provide an appropriate credit to the petitioner for the additional payments that he made during the applicable time frame in addition to the mortgage and house-related expenses paid by the petitioner.

17. While this Court has correctly noted that the Court may enter a final order that differs from temporary order, the same does not address circumstances, such as in the present action, where temporary orders were entered which, after full hearing and testimony, should be revised. The petitioner is not seeking "modification" for which a substantial unforeseen change of circumstances is applicable. Rather, the petitioner is seeking an appropriate revision now that the petitioner has had a due process opportunity to present testimony and evidence at trial.
17. This Court has the inherent authority to revise its own temporary orders to prevent injustice. See Supreme Court Order, in case number 2019-003, In Re: Badger and Badger [Order of October 16, 2019]; In Re: Stapleton and Stapleton, 159 NH 694, 696-697 [2010]. See also generally, Douglas, Family Law, New Hampshire Practice, Vol. 3, Section 13.68.
18. That revision of the temporary orders so as to eliminate the arrearages found by the Court was, and is, appropriate to prevent an ongoing injustice, especially in light of the Court's own findings and orders following the full evidentiary trial and hearing.
19. The Court has failed to provide an objective basis or standard upon which to sustain the Court's actions in failing to provide relief from the temporary orders and the Court's continuation of the same despite the Court's own findings.
20. Petitioner maintains that the temporary orders were otherwise confiscatory and unsustainable for which revision is necessary and appropriate.

WHEREFORE, the petitioner respectfully moves this Honorable Court as follows:

- a. To clarify this Court's orders so as to provide that the petitioner may take a credit towards his ongoing child support payments, for the over-payments from August 1, 2019 to date totalling \$4,958 until the petitioner has received the full benefit of the credit due to him, with any remaining balance that may be due as of the refinancing of the marital home, to be paid in full to the petitioner;
- b. That this Honorable Court otherwise clarify the manner, method and timing by which the petitioner shall receive an appropriate credit for the over-payments made by him since August 1, 2019;
- c. To reconsider the petitioner's request for revision of the temporary orders and to vacate and otherwise eliminate any claim of arrearages due by or from the petitioner;
- d. To otherwise revise the claimed arrearages to provide the petitioner with appropriate credit for payments made by the petitioner as referenced herein;
- e. To otherwise reconsider and address the issues presented herein;

f. For such other and further relief as may be appropriate.

Respectfully submitted,
By petitioner's counsel

John A. Macoul, Esquire

CERTIFICATE OF SERVICE

I, John A. Macoul, Esquire, hereby certify that I have this date mailed a copy of the foregoing to counsel for the respondent:

Christine M. Rockefeller, Esq.
Burns, Bryant, Cox, Rockefeller & Durkin
255 Washington Street
Dover, New Hampshire 03820

John A. Macoul, Esquire NH Bar #1584
373 Main Street, P O Box 673
Salem, New Hampshire 03079
603 893 5786

Dated: December 2, 2019

copy

STATE OF NEW HAMPSHIRE

STRAFFORD, SS:

7TH CIRCUIT COURT-FAMILY DIVISION
No. 632-2017-DM-00399

IN THE MATTER OF WM. MICHAEL EARLEY AND RYANNE EARLEY

**PETITIONER'S OBJECTION TO RESPONDENT'S MOTION FOR
RECONSIDERATION AND CLARIFICATION**

AND

REQUEST FOR FURTHER CLARIFICATION RE: ARREARAGE

NOW COMES the petitioner in the above entitled matter who respectfully objects to the respondent's "Motion For Reconsideration and Clarification". Petitioner states further to the best of her knowledge, information and belief as follows:

1. Petitioner maintains that the respondent's said motion exceeds the permitted length pursuant to Family Division Rule 1.26 [F] and that petitioner should accordingly not be required to address each and every paragraph referenced therein.
2. That the said motion fails to state a claim pursuant to Family Division Rule 1.26 [F] upon which relief may or should be granted.
3. That the said motion does not state any matter which was not or could not have been presented at the time of trial.
4. That the said decree of this Honorable Court does not require "clarification" as argued in respondent's motion.
5. And in further answer, petitioner states to the best of his knowledge, information and belief as follows:
 - a. Petitioner maintains that the Court's detailed narrative decree and orders do not require clarification or further amplification relative to alleged bonuses. The Court conducted an analysis of the revenues available to both parties and the needs of both parties going forward and further noted that the parties share equal parenting time with the children. In this regard, the following is additionally applicable:
 1. The evidence produced at trial clearly demonstrated that the bonus received in 2018 was not customary and that in virtually all other years the petitioner received either no bonus or essentially a de minimis amount by way of bonus.

Further, the fact that the same may have been considered at the time of the temporary orders, the same is irrelevant for the final decree which is not predicated upon the temporary orders, which were entered based upon a limited "offer of proof" hearing and which resulted in substantial financial obligation imposed upon the petitioner beyond that deemed appropriate after a full evidentiary trial.

2. That the respondent's own child support guideline worksheet and Uniform Support Order, as submitted to the Court, did not include calculations FOR the bonuses of either party, nor did the Uniform Support Order submitted request or address any issue of bonus income.
3. That the Court has noted the petitioner's significantly high income and any claim for additional sums, especially after the analysis provided by the Court and the parties' shared parenting time, would result in a sum which "...exceeds the child's or children's reasonable needs, taking into account the style of living to which the child or children have become accustomed or will experience in either party's home". RSA 458-C:5 [I] [b] [1]
4. The Court certainly had and has the discretion to make the child support order entered in light of all factors analyzed by the Court and the shared parenting schedule, including but not limited to the total income and child support available to the respondent "...with which to meet her expenses".
5. This Honorable Court further noted that since the temporary decree, "...and given the parties' respective financial obligations thereunder Respondent was able to pay off a personal credit card debt in the approximate amount of \$4,600 and she did not incur any additional revolving debt".
6. That this Honorable Court's decree further noted that the respondent will be receiving approximately one-half of the marital estate and "...may continue to receive distributions from the Trusts [established by her parents]."
7. Additionally, the Court utilized the respondent's base income only in the amount of \$5,908 per month and did not include any bonuses received by the respondent, such as the bonus reported in her financial affidavit dated September 18, 2018 submitted at the time of the temporary hearing.

b. With regards to the irrevocable trust referenced, this Honorable Court has provided a detailed and appropriate analysis regarding the said trust which is clearly a marital asset and does not fall into the category of a "mere expectancy", especially in light of the current cash value of the trust corpus. Petitioner states further:

1. That the Court's order and decree does not award to the petitioner an interest in the irrevocable trust. Rather, viewing all assets of the parties, the Court has made an equitable order for the payment of specific sums premised upon the respondent's rights now and in the future under the terms of the trust in question.
2. The argument presented does not warrant or merit clarification or reconsideration. Further, the same was never raised by the respondent by way of pleading, during trial, or during post-trial proceedings.

Additionally, the respondent at all times during the pendency of the present proceedings failed to properly provide the trust documentation and the information relative to the assets held by the trust and any benefits to be derived by the respondent.

3. In light of the specific limitations imposed by the Court, and in light of the length of time that the trust has been in existence and the benefits received during the marriage as a result of the same, it is clear and fair that the petitioner receive the specific amount awarded to him, as well as the limited rights over the next five years, regardless of the source, nature, or reason for any of any sums disbursed by the said trust.
4. Petitioner maintains further that the inclusion of the trust value is otherwise appropriate in determining the ultimate distribution of assets. This Court can clearly consider the value of property acquired by gift, devise or descent, as well as "[a]ny other factor that the Court deems relevant". RSA 458:16-a [II] [n] [o]

As this Court noted, the trust and the benefits benefitted the parties and were relied upon during the course of the marriage.

6. Petitioner would repeat, re-allege and incorporate by reference herein the allegations contained in his previously filed "Petitioner's Motion For Partial Clarification; Partial Reconsideration; And/or Other Relief And Request For Hearing" [dated December 2, 2019].

7. Petitioner would otherwise deny the allegations contained within the said motion.

REQUEST FOR FURTHER CLARIFICATION RELATIVE TO ARREARAGES

1. This Honorable Court's orders reference the alleged arrearages pursuant to the temporary orders.
2. That the Court's decree does not appear to afford a proper credit to the petitioner for the payment made towards arrearages by way of the bonus payment made to the respondent, all as testified to at the time of trial.
3. Consistent with the temporary decree, any and all bonuses received by the petitioner were disbursed exclusively to the respondent who, in addition to receiving her stated percentage of the same, received the balance of the said bonus to be applied towards the actual arrearages.
4. As presented at trial, the petitioner received a bonus on or about January 31, 2019 in the gross amount of \$5,000.00 with a net amount received of \$2,815.47. The entire bonus check was signed and delivered to the respondent.
5. Per the temporary decree, the respondent was entitled to 20% of the said bonus, or \$1,000.00. Accordingly, the petitioner was and is entitled to a credit in the sum of \$1,815.47 towards any claimed arrearages.

WHEREFORE, the petitioner respectfully:

- a. Objects to the said motion;
- b. Prays that the said motion be denied;
- c. Prays that this Honorable Court clarify the issue of arrearages so as to provide to the petitioner an appropriate credit in the sum of \$1,815.47 relative to the bonus proceeds referenced herein;
- d. For such other and further relief as may be appropriate.

Respectfully submitted
By petitioner's counsel

John A. Macoul, Esquire

CERTIFICATE OF SERVICE

I, John A. Macoul, Esquire, hereby certify that I have this date mailed a copy of the foregoing to counsel for the respondent:

Christine M. Rockefeller, Esq.
Burns, Bryant, Cox, Rockefeller & Durkin
255 Washington Street
Dover, New Hampshire 03820

John A. Macoul, Esquire NH Bar #1584
373 Main Street, P O Box 673
Salem, New Hampshire 03079
603 893 5786

Dated: December 11, 2019

CASE SUMMARY

CASE NO. 632-2017-DM-00399

In the Matter of WM MICHAEL EARLEY and Ryanne
Earley

0000000000

Location: 7th Circuit - Family Division -
Dover
Filed on: 12/13/2017

CASE INFORMATION

Case Type: Joint Petition for Divorce

Case Status: 01/30/2020 Appeal to
Supreme Court

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	632-2017-DM-00399
Court	7th Circuit - Family Division - Dover
Date Assigned	12/13/2017

PARTY INFORMATION

		Attorneys
Petitioner	EARLEY, WM MICHAEL 178 Silver Street Dover, NH 03820	Pro Se 178 Silver Street Dover, NH 03820
Respondent	Earley, Ryanne 8 Harlans Way Dover, NH 03820	Rockefeller, Christine Marie, ESQ Retained 000-000-0000(F) 603-742-2332(W) Burns Bryant Cox Rockefeller & Durkin P.A. 255 Washington Street Dover, NH 03820 crockefeller@burnsbryant.com Pro Se 603-964-4903(W) 8 Harlans Way Dover, NH 03820

DATE

EVENTS & ORDERS OF THE COURT

INDEX

12/13/2017	Joint Petition for Divorce	Index #1
12/14/2017	CIP Notice Sent to Petitioner	Index #2
12/14/2017	CIP Notice Sent to Respondent	Index #3
12/14/2017	Important Notice to Parties	Index #4
01/11/2018	CIP Certificate - Respondent Completed on 1-6-18	Index #5
01/24/2018	Appearance Party: Attorney Rockefeller, Christine Marie, ESQ Atty Rockefeller appears for Pet	Index #6
02/13/2018	First Appearance (Judicial Officer: Lemire, Jennifer A) 01/16/2018 Reset by Court to 02/13/2018	

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02/13/2018	Order on Appointment of Mediator (Judicial Officer: Lemire, Jennifer A) <i>Teri Maguire, WM Michael 50% PRIVATE, Ryanne 50% PRIVATE</i>	<i>Index #7</i>
02/14/2018	CIP Certificate - Petitioner	<i>Index #8</i>
03/21/2018	Mediation from First Appearance	
03/21/2018	Mediation Report Party: Mediator Maguire, Teri <i>Ongoing to 4/24/18</i>	<i>Index #9</i>
04/24/2018	CANCELED Mediation <i>OFFSITE</i>	
04/24/2018	Mediation Report Party: Mediator Maguire, Teri <i>Rescheduled to 5/31/18</i>	<i>Index #10</i>
05/04/2018	Appearance Party: Attorney Macoul, John Arthur, ESQ <i>Atty Macoul for Pet</i>	<i>Index #11</i>
05/24/2018	Mediation Report Party: Mediator Maguire, Teri <i>to 5/31/18</i>	<i>Index #12</i>
05/31/2018	Mediation	
05/31/2018	Mediation Report Party: Mediator Maguire, Teri <i>Case did not Settle Schedule for next Hearing</i>	<i>Index #13</i>
06/01/2018	Motion Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's Motion for Temporary Hearing</i>	<i>Index #14</i>
06/15/2018	Granted (Judicial Officer: Lemire, Jennifer A) <i>A Temp. Hrg. and Structuring Conf. shall be held at 9/18/18 at 10:00 AM. Notice to Issue</i>	
09/18/2018	Temporary Hrg. & Structuring Conf. (Judicial Officer: Lemire, Jennifer A)	
09/18/2018	Financial Affidavit Party: Petitioner EARLEY, WM MICHAEL <i>Pet's</i>	<i>Index #16</i>
09/18/2018	Financial Affidavit Party: Respondent Earley, Ryanne <i>Resp's</i>	<i>Index #17</i>
09/18/2018	Child Support Guidelines Worksheet Party: Attorney Macoul, John Arthur, ESQ <i>Pet's proposed</i>	<i>Index #18</i>
09/18/2018	Proposed Parenting Plan Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's (?)</i>	<i>Index #19</i>
09/18/2018	Uniform Support Order Party: Attorney Macoul, John Arthur, ESQ <i>Pet's (?) Proposed USO</i>	<i>Index #20</i>
09/18/2018	Proposed Decree Party: Attorney Macoul, John Arthur, ESQ <i>Pet's</i>	<i>Index #21</i>

CASE SUMMARY
CASE NO. 632-2017-DM-00399

09/18/2018	Child Support Guidelines Worksheet Party: Attorney Macoul, John Arthur, ESQ <i>Pet's</i>	<i>Index #22</i>
09/18/2018	Proposed Parenting Plan Party: Attorney Macoul, John Arthur, ESQ <i>Pet's</i>	<i>Index #23</i>
10/12/2018	Approved (Judicial Officer: Lemire, Jennifer A)	
09/18/2018	Proposed Decree Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's</i>	<i>Index #24</i>
10/12/2018	Approved (Judicial Officer: Lemire, Jennifer A)	
09/28/2018	Request for Certificate or Copy Party: Petitioner EARLEY, WM MICHAEL <i>Pet</i>	<i>Index #15</i>
10/12/2018	Uniform Support Order (Judicial Officer: Lemire, Jennifer A)	<i>Index #25</i>
10/12/2018	Scheduling Order (Judicial Officer: Lemire, Jennifer A)	<i>Index #26</i>
10/12/2018	Order (Judicial Officer: Lemire, Jennifer A) <i>Temporary Order</i>	<i>Index #27</i>
10/25/2018	Motion to Reconsider Party: Attorney Macoul, John Arthur, ESQ <i>Pet's Motion for Reconsideration; to Stay; for Rehearing and/or Other Relief</i>	<i>Index #28</i>
11/06/2018	Denied (Judicial Officer: Lemire, Jennifer A) <i>Having reviewed this Motion, the Court does not find that it specifies any fact or law overlooked or apprehended requiring reconsideration. R. 1.26F. Nor is there sufficient basis pled to warrant a stay, a rehearing, or the other relief requested.</i>	
11/05/2018	Objection Party: Attorney Rockefeller, Christine Marie, ESQ <i>Respondent's Objection to Petitioner's Motion for Reconsideration; To Stay; For Rehearing; and/or Other Relief.</i>	<i>Index #29</i>
01/08/2019	Motion to Excuse Party: Attorney Rockefeller, Christine Marie, ESQ <i>Personal Attendance, Resp.</i>	<i>Index #30</i>
01/23/2019	Granted (Judicial Officer: Lemire, Jennifer A)	
01/23/2019	Motion Party: Attorney Rockefeller, Christine Marie, ESQ; Attorney Macoul, John Arthur, ESQ <i>Joint Motion to Conduct Pretrial Telephonically and/or for Other Relief</i>	<i>Index #31</i>
01/23/2019	Granted (Judicial Officer: Lemire, Jennifer A) <i>The Clerk's office shall provide both attorneys with the call in information</i>	
01/24/2019	Pretrial Hearing	
01/24/2019	Pretrial Conference Report/Agreement (Judicial Officer: Lemire, Jennifer A)	<i>Index #32</i>
01/28/2019	Assignment to NCE (Judicial Officer: Lemire, Jennifer A)	<i>Index #33</i>
02/07/2019	Letter Party: Attorney Rockefeller, Christine Marie, ESQ <i>Conflict dates for NCE scheduling. Atty Rockefeller.</i>	<i>Index #34</i>

CASE SUMMARY
CASE NO. 632-2017-DM-00399

04/24/2019	Stipulation Party: Attorney Rockefeller, Christine Marie, ESQ; Attorney Macoul, John Arthur, ESQ	Index #35
04/29/2019	Approved (Judicial Officer: Lemire, Jennifer A) Stipulation	
05/10/2019	Neutral Case Evaluation	
05/10/2019	ADR Report Final Parenting Plan filed.	Index #36
05/10/2019	Parenting Plan Party: Attorney Rockefeller, Christine Marie, ESQ; Attorney Macoul, John Arthur, ESQ; Petitioner EARLEY, WM MICHAEL; Respondent Earley, Ryanne Final	Index #37
07/18/2019	Approved (Judicial Officer: Lemire, Jennifer A) Agreed upon	
07/18/2019	Final Divorce Hearing FINAL DIVORCE HEARING - DAY 1 OF 3 DAYS	
07/18/2019	Uniform Alimony Order Party: Attorney Rockefeller, Christine Marie, ESQ Proposed, Resp.	Index #38
07/18/2019	Child Support Guidelines Worksheet Party: Attorney Rockefeller, Christine Marie, ESQ Two Children, Monthly. Exclude Petr's Bonuses. Includes Resp's summer pay.	Index #39
07/18/2019	Proposed Uniform Support Order Party: Attorney Rockefeller, Christine Marie, ESQ Resp	Index #40
11/18/2019	Approved (Judicial Officer: Lemire, Jennifer A) as modified by Court	
07/18/2019	Proposed Decree Party: Attorney Rockefeller, Christine Marie, ESQ Resp	Index #41
07/18/2019	Financial Affidavit Party: Attorney Rockefeller, Christine Marie, ESQ Resp	Index #42
07/18/2019	Financial Affidavit Party: Attorney Macoul, John Arthur, ESQ Petr	Index #43
07/18/2019	Child Support Guidelines Worksheet Party: Attorney Macoul, John Arthur, ESQ Petr, Two Children, Monthly	Index #44
07/18/2019	Proposed Uniform Support Order Party: Attorney Macoul, John Arthur, ESQ Petr	Index #45
07/18/2019	Proposed Decree Party: Attorney Macoul, John Arthur, ESQ Petr	Index #46
11/18/2019	Approved (Judicial Officer: Lemire, Jennifer A) As modified by the Court	
07/19/2019	Final Divorce Hearing	

CASE SUMMARY

CASE NO. 632-2017-DM-00399

final divorce hearing - day 2 of 3 days

07/25/2019	Final Divorce Hearing <i>FINAL DIVORCE HEARING - DAY 3 OF 3 DAYS</i>	
08/05/2019	Motion Party: Attorney Macoul, John Arthur, ESQ <i>Petr- to Maintain Open Record and/or Other Relief</i>	Index #47
08/07/2019	Response Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's - to Motion to Maintain Open Record</i>	Index #48
09/17/2019	Telephonic Conference (Judicial Officer: Lemire, Jennifer A) <i>Telephonic Conference per August 8, 2019 Order</i>	
09/17/2019	Order (Judicial Officer: Lemire, Jennifer A) <i>Order from Telephonic Conference held 9/17/2019</i>	Index #49
10/08/2019	Final Hearing (Judicial Officer: Lemire, Jennifer A) <i>Final Hearing (Day 3 of 3) on Limited Issue re: Trust</i>	
10/08/2019	Findings of Fact/Rulings of Law Party: Attorney Macoul, John Arthur, ESQ <i>Pet's</i>	Index #50
11/18/2019	Order Issued (Judicial Officer: Lemire, Jennifer A)	
10/08/2019	Findings of Fact/Rulings of Law Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's</i>	Index #51
11/18/2019	Order Issued (Judicial Officer: Lemire, Jennifer A)	
10/08/2019	Findings of Fact/Rulings of Law Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp's Supplemental Request for Findings of Fact and Rulings of Law</i>	Index #52
11/18/2019	Order (Judicial Officer: Lemire, Jennifer A) <i>Final Order (Narrative)</i>	Index #53
11/18/2019	Decree of Divorce (Judicial Officer: Lemire, Jennifer A)	Index #54
11/27/2019	Request for Sound Recording Party: Petitioner EARLEY, WM MICHAEL	Index #55
12/02/2019	Motion to Reconsider Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp- and Clarification</i>	Index #56
12/02/2019	Motion for Clarification Party: Petitioner EARLEY, WM MICHAEL <i>Petr - Motion for Partial Clarification: partial Reconsideration, and or Other Relief</i>	Index #57
12/12/2019	Objection Party: Attorney Rockefeller, Christine Marie, ESQ <i>Resp- to Petitioners Motion and Request for Further Relief</i>	Index #58
12/12/2019	Objection Party: Attorney Macoul, John Arthur, ESQ <i>Petr - to Respondents Motion: for Reconsideration and Clarification</i>	Index #59
12/16/2019	Response Party: Attorney Macoul, John Arthur, ESQ <i>Pet's Reply and Objection to Resp's Objection to Pet's Motion and Resp's Request for Further</i>	Index #60

CASE SUMMARY
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Relief

12/18/2019	Other Party: Attorney Rockefeller, Christine Marie, ESQ <i>Respondent's Notice of Correction to Respondent's Objection to Petitioner's Motion</i>	<i>Index #61</i>
12/30/2019	Order Issued (Judicial Officer: Lemire, Jennifer A) <i>Paragraphs A, B and C are granted</i>	
12/23/2019	Response Party: Attorney Macoul, John Arthur, ESQ <i>Pet's Response to Resp's Notice of Correction to Resp's Objection to Pet's Motion</i>	<i>Index #62</i>
12/30/2019	Order (Judicial Officer: Lemire, Jennifer A) <i>Order on Motion for Reconsideration and/or Clarification</i>	<i>Index #63</i>
01/30/2020	Notice of Appeal to Supreme Court Party: Attorney Rockefeller, Christine Marie, ESQ <i>Respondent's</i>	<i>Index #64</i>
02/21/2020	Supreme Court Order <i>Notice of Docketing and Mandatory EFile</i>	<i>Index #65</i>
02/24/2020	Supreme Court Order <i>Case Accepted.</i>	<i>Index #66</i>
02/24/2020	Withdrawal Party: Attorney Rockefeller, Christine Marie, ESQ <i>Atty Macoul withdraws as Atty for Pet</i>	<i>Index #67</i>
03/23/2020	Supreme Court Order <i>Notice for transcription</i>	<i>Index #68</i>
03/24/2020	Appearance Party: Petitioner EARLEY, WM MICHAEL <i>Pet appears pro se</i>	<i>Index #69</i>
03/24/2020	Stipulation Party: Attorney Rockefeller, Christine Marie, ESQ; Petitioner EARLEY, WM MICHAEL; Respondent Earley, RYANNE	<i>Index #70</i>
03/26/2020	Approved (Judicial Officer: Foley, Robert J)	

TARGET DATE	TIME STANDARDS
01/31/2020 ***Overdue***	Case Review (20 Days)

DATE	FINANCIAL INFORMATION
	Petitioner EARLEY, WM MICHAEL
	Total Charges 377.00
	Total Payments and Credits 377.00
	Balance Due as of 9/16/2020 0.00