

THE STATE OF NEW HAMPSHIRE
SUPREME COURT
Case No. 2020-0051

In The Matter of Wm. Michael Earley and Ryanne Earley

RULE 7 MANDATORY APPEAL FROM DECISION OF
7th CIRCUIT – FAMILY DIVISION – DOVER
(Hon. Jennifer A. Lemire)

Brief of Appellant, Ryanne Earley

Christine M. Rockefeller (N. H. Bar #4640)
Burns, Bryant, Cox, Rockefeller & Durkin, P. A.
255 Washington Street
Dover, NH 03820
(603) 742-2332
crockefeller@burnsbryant.com

TABLE OF CONTENTS

	<u>Page No.</u>
Table of Contents	i
Table of Cases, Statutes and Other Authorities.....	ii - vi
Questions Presented	vii
Statement of the Case	1
Statement of the Facts	2
Summary of the Argument	4
 Argument	
1. The Trial Court Erred in Ruling That Respondent’s Interest In the O’Neil Family Irrevocable Trust Of 2000, Including All Future Distributions from That Trust Made In The Five (5) Years Following the Divorce, Constituted Marital Property Subject to Division.....	5
2. The Trial Court’s Award of Current Trust Assets and Future Trust Distributions to Petitioner Also Violates RSA 564-B:5-504, Which Bans Creditor’s Claims Against A Beneficiary Of A Discretionary Trust.....	8
Conclusion	11
Certification Pursuant to Rule 16(3)(i)	11
Statement with Respect to Oral Argument	11
Certificate of Service	12
 Copies of Decisions Below Being Appealed	
1. Notice of Decision dated 11/21/2019.....	13
2. Final Order dated 11/18/2019, Hon. Jennifer A. Lemire	14
3. Final Decree on Petition for Divorce, Legal Separation, Or Civil Union Dissolution dated 11/18/2019	30

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

<u>Cases</u>	<u>Page No.</u>
<u>In the Matter of Elizabeth Chamberlin and William Chamberlin,</u> 155 NH 13 (2007)	5, 6
<u>Flaherty v. Flaherty,</u> 138 NH 337 (1994)	9, 10
<u>Goodlander v. Tamposi,</u> 161 NH 490 (2011)	4, 6, 7, 9, 10

Statutes

N. H. Rev. Stat. Ann §458:16-a I. 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. Intangible property includes, but is not limited to, employment benefits, vested and non-vested pension or other retirement benefits, or savings plans. To the extent permitted by federal law, property shall include military retirement and veterans' disability benefits Source. 1987, 278:1. 2000, 178:1. 2004, 136:3, eff. May 19, 2004. 2019, 130:1, eff. Aug. 24, 2019	4, 5, 6, 8
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------

N. H. Rev. Stat. Ann. §564:B 5-502, 5-504, 8-814, 11-1104

564-B:5-502 Creditor's Claim Against a Beneficiary of a Trust Containing a Spendthrift Provision. –

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision.

(d) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, a creditor or assignee of the beneficiary may not reach:

(1) The beneficiary's interest in the trust; or

(2) A distribution from the trust before its receipt by the beneficiary.

- (e) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, the beneficiary's interest:
 - (1) Is not property for purposes of RSA 458:16-a, I; and
 - (2) Shall not be subject to any forced heirship, legitime, forced share, or any similar heirship rights under the laws of any jurisdiction.
- (f) To the extent that a beneficiary's interest in a trust is subject to a spendthrift provision, a court may authorize an exception creditor of the beneficiary to attach present or future distributions to or for the benefit of the beneficiary.
 - (1) For purposes of this subsection (f), the following definitions shall apply:
 - (A) "Exception creditor" means, with respect to a beneficiary:
 - (i) An individual to the extent that there is a judgment or court order against the beneficiary for child support in this or any other state;
 - (ii) A spouse or former spouse to the extent that there is a judgment or court order against the beneficiary for basic alimony;
 - (iii) A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; or
 - (iv) This state or the United States for a claim against the beneficiary to the extent that a statute of this state or federal law so provides.
 - (B) "Basic alimony" means the portion of alimony attributable to the most basic food, shelter, and medical needs of the spouse or former spouse if the judgment or court order expressly specifies that portion.
 - (2) Attachment of present or future distributions is the exception creditor's exclusive remedy against the beneficiary's interest in the trust.
 - (3) The court may limit the relief as is appropriate under the circumstances.
 - (4) Subsection (d)(2) shall not apply to an exception creditor.

Source. 2004, 130:1, eff. Oct. 1, 2004. 2017, 257:18, eff. Sept. 16, 2017 4, 6, 7, 8, 9, 11

564-B:5-504 Creditor's Claim Against a Beneficiary of a Discretionary Trust. –

- (a) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:
 - (1) The discretion is expressed in the form of a standard of distribution; or
 - (2) The trustee has abused the discretion.
- (b) Subject to subsection (c), a creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely by reason that the beneficiary:
 - (1) Is a trustee; or
 - (2) In any fiduciary capacity, has the power to direct distributions.

(c) Upon petition by a creditor or assignee of a beneficiary, a court may compel a distribution to the beneficiary to the extent that:

(1) The beneficiary:

(A) Is a trustee; or

(B) In any fiduciary capacity, has the power to direct distributions;

(2) In the capacity described in subsection (c)(1), the beneficiary has:

(A) The discretionary power to make distributions to himself, herself, or itself; or

(B) The discretionary power to direct distributions to himself, herself, or itself;

(3) The discretion is expressed in the form of a standard of distribution;

(4) The beneficiary can exercise the power without the consent of any trustee, trust advisor, trust protector, or person holding an adverse interest; and

(5) The beneficiary has abused the discretion.

(d) This section does not limit the right of a beneficiary to commence a judicial proceeding against a trustee, trust advisor, or trust protector for:

(1) An abuse of discretion; or

(2) A failure to comply with a standard for distribution.

(e)(1) Upon petition by an exception creditor of a beneficiary, a court may compel a distribution to the beneficiary to the extent that the trustee:

(A) Has abused a discretion; or

(B) Has failed to comply with a standard of distribution.

(2) For purposes of this subsection, the following definitions apply:

(A) "Exception creditor" means, with respect to a beneficiary:

(i) An individual to the extent that there is a judgment or court order against the beneficiary for child support in this or any other state; or

(ii) A spouse or former spouse to the extent that there is a judgment or court order against the beneficiary for basic alimony.

(B) "Basic alimony" means the portion of alimony attributable to the most basic food, shelter, and medical needs of the spouse or former spouse if the judgment or court order expressly specifies that portion.

(3) In compelling a distribution under this subsection, the court shall direct the trustee to pay to the exception creditor an amount that is equitable under the circumstances, but not more than the lesser of:

(A) The amount that is necessary to satisfy the judgment or court order for:

(i) In the case of an exception creditor described in subsection (e)(2)(A)(i), child support; or

(ii) In the case of an exception creditor described in subsection (e)(2)(A)(ii), basic alimony; and

(B) The maximum amount of trust property that can be distributed to or for the benefit of the beneficiary from the trust.

(4) Subsection (a) shall not apply to an exception creditor.

Source. 2004, 130:1. 2005, 270:14. 2006, 320:55, 56,

eff. Aug. 19, 2006. 2017, 257:19, eff. Sept. 16, 2017. 2019, 230:2,
eff. July 12, 2019 4, 8, 9, 10

564-B:8-814 Discretionary Powers; Tax Savings. –

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to the provisions of paragraph (a), if a distribution to or for the benefit of a beneficiary is subject to the exercise of the trustee's discretion, whether or not the terms of a trust include a standard to guide the trustee in making distribution decisions, then the beneficiary's interest is neither a property interest nor an enforceable right, but a mere expectancy.

(c) Subject to the provisions of paragraph (a), unless the terms of the trust expressly provide otherwise, if the terms of a trust permit distributions among a class of beneficiaries, distributions to or for the benefit of whom are subject to the exercise of the trustee's discretion without a standard to guide the trustee in making distribution decisions, then the trustee may make distributions unequally among the beneficiaries and may make distributions entirely to one beneficiary to the exclusion of the other beneficiaries.

(d) Subject to paragraph (f), and unless the terms of the trust expressly indicate that a rule in this paragraph does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power whose exercise is limited or prohibited by paragraph (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special trustee with authority to exercise the power.

(f) Paragraph (d) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction was previously allowed under section 2056(b)(5)1 or 2523(e)2 of the Internal Revenue Code;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c)3 of the Internal Revenue Code.
 1 26 U.S.C.A. § 2056(b)(5).
 2 26 U.S.C.A. § 2523(e).
 Source. 2004, 130:1. 2005, 270:26. 2006, 320:65, eff. Aug. 19, 2006. 2008, 374:15, eff. Sept. 9, 2008..... 4, 9, 10

564-B:11-1104 Application to Existing Relationships. –

(a) Except as otherwise provided in this chapter, on the effective date of this chapter:

- (1) this chapter applies to all trusts created before, on, or after its effective date;
- (2) this chapter applies to all judicial proceedings concerning trusts commenced on or after its effective date;
- (3) this chapter applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;
- (4) any rule of construction or presumption provided in this chapter applies to trust instruments executed before the effective date of this chapter unless there is a clear indication of a contrary intent in the terms of the trust; and
- (5) an act done before the effective date of this chapter is not affected by this chapter.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this chapter, that statute continues to apply to the right even if it has been repealed or superseded.

Source. 2004, 130:1. 2005, 270:33, eff. Sept. 20, 2005 5

Other Authorities

Leary (Botchman), Jacqueline, “New Law Changes Treatment of Trust Interest in Divorce” (November 2017), New Hampshire Bar News, November 15, 2017 8

McDonald, Joseph and Knox, Megan, “Update: New Rules for the Treatment of a Divorcing Spouse’s Third-Party Trust Interests in Divorce” New Hampshire Bar News, January 15, 2020 8

STATEMENT OF THE CASE

The parties, Wm. Michael Earley and Ryanne Earley (hereinafter Michael and Ryanne) were married on October 5, 2002. They have three children, all of whom are minors. Michael Earley filed a Petition for Divorce on October 2, 2017 based on irreconcilable differences. The case was presented during a two-day testimonial hearing July 18-19, 2019, followed by a hearing on October 8, 2019, to address the issue of whether the irrevocable trust created by Ryanne's parents in the year 2000 was a marital asset. After the completion of testimony and presentation of arguments on October 8, 2019, the Court issued its final Narrative Order and Final Decree on November 21, 2019, awarding Petitioner a present and future interest in the corpus of The O'Neil Irrevocable Trust. See, November 21, 2019 Order and Decree, appended to Brief as pp. 13-48, at 24-28 and 45-48.

At the time of the parties' divorce, the corpus of The O'Neil Family Irrevocable Trust of 2000 (hereinafter "The Trust") consisted of one asset, a life insurance policy insuring the lives of Ryanne's parents, Gerald and Joan O'Neil, both of whom are living. The Trial Court awarded Michael one-sixth (1/6) of the cash value of the life insurance, and fifty percent (50%) of all future distributions that Ryanne receives from The Trust during the five years following the effective date of the Divorce Decree. See, Order and Decree, pp. 24-28 and 45-48.

The Respondent, Ryanne Earley, filed a Motion for Reconsideration arguing that The O'Neil Family Irrevocable Trust of 2000 was not marital property and thus it was error for the Court to award Petitioner an interest therein. App. 33-44. By Order dated December 31, 2019, the Court denied the Motion for Reconsideration and confirmed its ruling that the Irrevocable Trust was marital property. App. 45-48. This appeal ensues.

STATEMENT OF THE FACTS

Ryanne's parents, Gerald T. and Joan B. O'Neil (hereinafter "O'Neils"), established The O'Neil Family Irrevocable Trust in 2000, funding it with Ten Dollars (\$10.00). The Trust was settled in New Hampshire, and is controlled by New Hampshire law. App. 18-20. The O'Neils also established revocable trusts, but such trusts are not the subject of this appeal. Both the Revocable and the Irrevocable Trusts name David Avery, the O'Neils' financial advisor, as the Trustee. App. 3. Between 2001 and 2008, Ryanne received five (5) distributions from the trusts totaling \$65,000, with the last distribution being on May 16, 2008. Tr. 478.

As of the final divorce hearing in this matter, and for several years prior thereto, the only asset owned by The O'Neil Family Irrevocable Trust of 2000 was a flexible premium variable life insurance policy issued by Nationwide Life Insurance Company on March 16, 2001. The policy 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. The death benefit is \$2 Million and as of the June 28, 2019 policy statement, it had a cash value of \$184,930.42. The Irrevocable Trust does not own any other accounts or assets and has not filed a tax return since 2015. Tr., 466-470.

Ryanne Earley and her two siblings (or their issue should they predecease their parents) are the beneficiaries of The O'Neil Family Irrevocable Trust of 2000. App. 3. The O'Neil Trust contains a spendthrift clause prohibiting voluntary and involuntary transfers of the beneficiary's interest, and specifically extends the spendthrift clause to spouses of beneficiaries. App. 16. The Irrevocable Trust is a third-party discretionary trust established by Ryanne's parents in 2000, two years prior to the marriage of the parties. App. 3. Paragraph 1 of the trust provides that the

trustee shall make distributions from the trust from time to time “in its sole discretion pursuant to the terms of the trust.” App.3-4. (emphasis added.)

While the Trust extends extremely limited Crummey powers to the beneficiaries, those powers apply only to certain inter vivos gifts or other transfers made by the Grantors during their lifetime. The Settlers have no rights to demand distributions, rather the independent trustee, David Avery, is vested with discretion to make distributions on their behalf, but not directly to Grantors. App. 7.

Upon the death of both of Ryanne’s parents, The Trust is to be distributed to the three O’Neil children equally provided such child survives the death of the second Grantor to die. App. 6-8. If an O’Neil child survives the second Grantor to die, then the child becomes a beneficiary of The Trust. If an O’Neil child does not survive both parents, then the O’Neil child’s children become beneficiaries. App. 3,8. There is no general power of appointment available to the beneficiaries. Thus, Ryanne Earley has no vested right in this trust as she must survive both of her parents; if there are no assets in the trust upon her parents’ death, or if she fails to survive her parents, then Ryanne Earley receives nothing.

As set forth above, Section 2 (B) (3) of the Irrevocable Trust contains limited Crummey powers allowing certain beneficiaries to demand distributions from inter vivos transfers to the irrevocable trust; if the Grantors choose to make inter vivos gifts or transfers to The Trust, they may instruct the Trustee to apportion such transfers among some or all of the beneficiaries, equally or unequally. App. 3. Thus, the Grantors have veto power over the Crummey rights, as the Grantors may elect to eliminate a beneficiary from sharing in the inter vivos transfer. If part of an inter vivos gift is apportioned to a beneficiary, then the beneficiary may request a distribution of his/her apportioned amount within a reasonable period of time after receipt of the

notice of the gift or transfer; demand must be made no later than December 31 of the calendar year in which the inter vivos gift or transfer is made. App. 5. Further, the beneficiary's right to request such a distribution from the inter vivos transfer is also limited as it is tied directly to the Annual Gift Tax Exclusion under Section 2503 of the Internal Revenue Code. The right to make demand by the beneficiary is non-cumulative and the beneficiary must exercise the demand in writing before the earlier of the thirtieth day after receipt by said beneficiary of notice of the inter vivos gift or transfer, or December 31 of the calendar year in which the inter vivos gift or transfer is made. App. 5. Clearly, these Crummey withdrawal rights are limited and non-cumulative, thus they do not destroy the discretionary nature of this third-party trust.

SUMMARY OF THE ARGUMENT

Where, as here, a beneficiary's interest in a trust is subject to a spendthrift provision, RSA 564-B:5-502 (e)(1) dictates that the beneficiary's interest is not marital property for purposes of RSA 458:16-a, I, and it was clear error for the Trial Court to conclude that Ryanne's interest in The O'Neil Family Irrevocable Trust was marital property.

In addition to 564-B:5-502, the New Hampshire Trust Code further provides that with respect to discretionary trusts, which includes The O'Neil Family Irrevocable Trust of 2000, a beneficiary's interest in a discretionary trust is neither a property interest nor an enforceable right, but a mere expectancy. RSA 564-B:5-504 and RSA 564-B:8-814 (b). Awarding Michael Earley one-sixth (1/6) of the value of the life insurance policy and fifty percent (50%) of any future distributions made to Ryanne Earley within five (5) years is in direct conflict with RSA 564-B:5-502, 5-504, 8-814, and Goodlander v. Tamposi, 161 NH 490 (2011) .

ARGUMENT

1. THE TRIAL COURT ERRED IN RULING THAT RESPONDENT'S INTEREST IN THE O'NEIL FAMILY IRREVOCABLE TRUST OF 2000, INCLUDING ALL FUTURE DISTRIBUTIONS FROM THAT TRUST MADE IN THE FIVE (5) YEARS FOLLOWING THE DIVORCE, CONSTITUTED MARITAL PROPERTY SUBJECT TO DIVISION.

The issue in this divorce proceeding is whether Ryanne Earley's interest in The O'Neil Family Irrevocable Trust of 2000 is marital property. New Hampshire divorce law states that:

458:16-a Property Settlement. –

I. 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. Intangible property includes, but is not limited to, employment benefits, vested and non-vested pension or other retirement benefits, or savings plans. To the extent permitted by federal law, property shall include military retirement and veterans' disability benefits.

If an asset is not property as set forth in RSA 458:16-a, I, then it may not be allocated to a divorcing spouse in a divorce proceeding.

Under New Hampshire law, the Trial Court first determines, as a matter of law, which assets constitute marital property under RSA 458:16-a, I, and thus are subject to equitable distribution. The Court then exercises its discretion to make an equitable distribution of those assets. In the Matter of Chamberlin, 155 N. H. 13 (2007). The Trial Court's determination as to whether an asset is marital property is reviewed de novo, while equitable divisions of property are reviewed for an unsustainable exercise of discretion. Id., at 16. In the present case, Ryanne Earley challenges the Court's determination that her interest in The O'Neil Family Irrevocable Trust of 2000 constitutes marital property.

RSA 564-B, known as New Hampshire's Uniform Trust Code (hereinafter "UTC"), was initially enacted in 2004, and substantially rewritten in 2005 and 2006. Additionally, there have

been periodic amendments to our UTC since then, including RSA 564-B:5-502(e)(1), which became effective September 16, 2017, prior to the commencement of this divorce proceeding.

Our New Hampshire Supreme Court has had an opportunity to interpret and apply earlier UTC provisions in the divorce context. In 2006, the Court issued its decision In the Matter of Elizabeth Chamberlin and William Chamberlin, 155 NH 13 (2007). The Chamberlin case was decided prior to the enactment of 5-502 (e)(1), but nevertheless, the Chamberlin Court confirmed that the parties' act of placing liquid assets in an irrevocable trust removed them from the statutory definition of marital property. The Chamberlin Court further noted that because the trust created in that case was a charitable trust, the parties had no remainder interest in the trust, but under its terms they did retain the right to receive distributions of interest so long as the corpus exceeded \$110,000. It was undisputed that the assets used to fund the Chamberlin trust were joint marital assets. The Chamberlin Court went on to hold that while the corpus itself was not a marital asset, the right to receive distributions was a marital asset subject to distribution. However, as noted above, the Chamberlin case was decided prior to the enactment of Section 5-502(e), which provides that to the extent a beneficiary's interest in a trust is subject to a spendthrift provision, the beneficiary's interest is not property for purposes of 458:16-a. (emphasis added.)

The next significant family law decision issued by our Supreme Court addressing the UTC was the Goodlander decision issued in 2011. In the Matter of Theodore J. Goodlander v. Elizabeth M. Tamposi, 161 NH 490 (2011). As with the Chamberlin case, the Goodlander case preceded the adoption of 5-502(e)(1). However, the Goodlander case is instructive as it addressed the issue of retroactivity of our UTC, as applied to trusts which predate our UTC. While The O'Neil Trust of 2000 was established prior to the passage of New Hampshire's

Uniform Trust Code, Section 11-1104(a) (1) of our UTC provides that “this chapter applies to all trusts created before, on, or after its effective date.” Section 11-1104(a) 2 further provides that “this Chapter applies to all judicial proceedings concerning trusts commenced on or after its effective date.” Both circumstances are met in the present case. The Trust was created before our UTC, and the divorce action commenced after its effective date. The Goodlander case confirmed that the retroactivity of the statute was not unconstitutional, and thus it is clear that all parts of 564-B, including 5-502, apply to The O’Neil Trust.

In the present case, it is undisputed that The O’Neil Family Irrevocable Trust of 2000 is governed by New Hampshire law and contains a spendthrift provision. App. 16, 18. The spendthrift provision states as follows:

Except as herein otherwise provided, the interest of any beneficiary hereunder, either as to income or principal, shall not be anticipated, alienated or in any other manner assigned or pledged or promised by such beneficiary, and shall not be reached by, or be subject to, any legal, equitable or other process, including any bankruptcy proceeding, or be subject to the interference or control of creditors or others in any way or manner, and all payments to or interest of any beneficiary shall be free from the control or claim of any spouse. App. 16. Emphasis added.

Under the New Hampshire Trust Code, where a trust contains a spendthrift provision, it is automatically excluded from the definition of marital property, unless the divorcing spouse is an “exception creditor.” RSA 564-B:5-502 (e) (f). Under the exception creditor provision, if a beneficiary has a judgment or court order against him or her for child support or basic alimony, then the beneficiary’s interest in the trust not excluded from the definition of marital property. The obvious reasoning behind the exception creditor provision was to strike some balance between the rights of family law litigants and the rights of Settlers/Grantors of trusts. It is undisputed that Ryanne Earley is not an exception creditor; she has no judgment or court order against her for child support in this or any other state, nor are there any basic alimony orders

against her. In the instant case, there are no exceptions to RSA 564-B:5-502 (e)(1), thus it applies to this trust and prevents the Court from considering The Trust as marital property.

Section 5-502 (e)(1) removes all doubt which may have existed prior to its passage, and confirms that a beneficiary's interest in a trust which is subject to a spendthrift provision is, by definition, not property for purposes of RSA 458:16-a, I. "Now, all mandatory current and remainder trust interests in New Hampshire trusts are excluded under amended Trust Code §5-502(d) and (e)(1) if they are protected by a spendthrift clause. McDonald, Joseph and Knox, Megan, "Update: New Rules for the Treatment of a Divorcing Spouse's Third-Party Trust Interests in Divorce," New Hampshire Bar News, January 15, 2020, p. 4 and Leary (Botchman), Jacqueline, "New Law Changes Treatment of Trust Interest in Divorce" (November 2017), New Hampshire Bar News, November 15, 2017.

The O'Neil Trust was settled in New Hampshire and by its terms is governed by New Hampshire law. RSA 564-B:5-502 (e) (1) is clear on its face, and by definition, excludes trusts such as The O'Neil Family Irrevocable Trust from consideration in a property settlement. It was error for the Court to ignore the plain language of the statute. The remedy for ignoring the plain language of the statute is for this Court to vacate that portion of the final decree awarding Petitioner one-sixth (1/6) of the value of the life insurance policy and fifty percent (50%) of all distributions made within five years of the Decree of Divorce.

2. THE TRIAL COURT'S AWARD OF CURRENT TRUST ASSETS AND FUTURE TRUST DISTRIBUTIONS TO PETITIONER ALSO VIOLATES RSA 564-B:5-504, WHICH BANS CREDITOR'S CLAIMS AGAINST A BENEFICIARY OF A DISCRETIONARY TRUST.

While the Respondent submits that this case is easily determined by a straightforward application of RSA 564-B:5-502(e)(1) to The O'Neil Trust, the Respondent nevertheless 5-502 addresses the substantive rulings and findings by the Trial Court. The discussion of the Trial

Court regarding the trust assets may be found at pp. 11-15 of the Court's November 29, 2019 Final Order, appended hereto at pp. 24-28.

The O'Neil Trust is a third-party discretionary trust containing limited Crummey powers which do not destroy the discretionary character of this Trust. Respectfully, the Trial Court erred when it ruled that Ryanne Earley's Crummey rights were tantamount to absolute and unrestricted rights to demand funds, thus concluding that Ryanne's interest constituted marital property. In so doing, the Court ignored 564:B 5-504, 8-814, and the Goodlander case, and erroneously relied upon the Flaherty case, thereby incorrectly concluding that The O'Neil Trust was a marital asset.

Respondent respectfully submits that Court's reliance of the case of Flaherty v. Flaherty, 138 NH 337 (1994) is misplaced due to several factors. The trust at issue in Flaherty was governed by Massachusetts law, thus in applying Massachusetts law, the Court concluded that the anti-alienation clause (i.e., spendthrift) in the Flaherty trust did not preclude the trust from being included as marital property. New Hampshire law on the applicability of spendthrift provisions in the divorce setting is different from Massachusetts law. Under New Hampshire law, this spendthrift provision is valid and applicable, thus precluding a finding that the Trust is a marital asset. RSA 564-B:5-502, 504.

In Flaherty the Settlers testified that the intent was that each family member and their spouses and families would enjoy the members' interest in the trust. There is no such intent, express or implied, with The O'Neil Family Irrevocable Trust of 2000. In fact, the trust states the exact opposite in the Spendthrift Provision, Article 13 which affirms that "...all payments to or interest of any beneficiary shall be free from the control or claim of any spouse". Emphasis added. There was no testimony by any witness, including Petitioner, that the O'Neils intended to have Michael Earley share in the trust interests. Further, in the Flaherty case, the husband was

Co-Trustee of the trust, and his status as beneficiary was not contingent; he need not survive either or both of the Settlers, nor was his receipt of benefits conditioned on any other factors. His interest was fully vested and was not contingent upon any factors.

The instant case presents the exact opposite of the Flaherty case, where the husband's interest "was certain to reach him upon the specific event of the death of his last surviving parent. If the Defendant should die before his last surviving parent, then his interest would pass through his estate as an owned asset". Flaherty, 138 NH 337, 340. In Flaherty, the husband had an absolute right not only to receive assets during his lifetime, but could control where the trust assets would go in the event he predeceased. In the Earley case, Ryanne Earley has no ability to receive, control, or direct any entitlement to assets of the Trust. If she fails to survive both of her parents her interest automatically ceases, and her children become beneficiaries in her stead.

Contrary to the Flaherty case, Ryanne Earley is not a Co-Trustee, and her status as beneficiary is in fact contingent upon her surviving both of her parents. She has absolutely no current interest in the corpus of this trust, rather she must survive both parents before her interest vests. If Ryanne Earley does not survive both of her parents, then any contingent interest she had as a Beneficiary is extinguished, and she receives nothing from the Trust. Thus, under Goodlander and the UTC 564-B:5-504 and 8-814, Ryanne Earley's interest in The O'Neil Trust is neither a property interest nor an enforceable right, but rather it is a mere expectancy.

Finally, the lower court was mistaken when it concluded that Ryanne Earley's share "cannot be diminished; it will be 1/3 of at least \$2,000,000" See, Divorce Order p. 14 appended hereto at pp. 27. This is clearly an erroneous reading of the language of The Trust. Her share can indeed be diminished, in fact it can be eliminated entirely. Ryanne Earley will not receive 1/3 of \$2,000,000 unless a myriad of conditions are met. She must survive both her mother and

her father; the Irrevocable Trust must still exist; and the life insurance policy must be in full force and effect without any loans or other claims. There is absolutely no certainty that she will receive “1/3 of at least \$2,000,000.” Should Ryanne Earley predecease her parents, she receives nothing, yet if the Trial Court’s ruling stands, Petitioner will receive 1/6 of the value of The Trust now, and 50% of any distributions in the next five years. Given the clear mandate of RSA 564-B:5-502, it was error for the Court to rely upon the Flaherty case to conclude that The O’Neil Trust is a divisible marital asset.

CONCLUSION

New Hampshire law specifically excludes The O’Neil Trust from being considered marital property, as the Trust contains a spendthrift clause, is a discretionary trust, was settled in New Hampshire, and is controlled by New Hampshire law. Thus, Ryanne’s interest therein is neither a property interest nor an enforceable right, but a mere expectancy. For the reasons stated above, Ryanne Earley respectfully requests that this Honorable Court vacate that portion of the 7th Circuit-Family Division -Dover ruling that Ryanne Earley’s interests in The O’Neil Family Irrevocable Trust of 2000 is marital property.

CERTIFICATION PURSUANT TO RULE 16(3)(i)

Pursuant to Supreme Court Rule 16(3)(i), I hereby certify that the Decisions being appealed were in writing, and that true and accurate copies of the same are appended to this Brief.

ORAL ARGUMENT

Christine M. Rockefeller, Esquire, will argue the case for appellant and fifteen (15) minutes is requested for this purpose.

Respectfully submitted,

RYANNE EARLEY

By Her Attorneys

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

Dated: July 9, 2020

By /s/ Christine M. Rockefeller

Christine M. Rockefeller

255 Washington Street

Dover, NH 03820

Tel: (603) 742-2332

Bar No 4046

Email: crockefeller@burnsbryant.com

CERTIFICATION OF SERVICE

I, Christine M. Rockefeller, hereby certify that a copy of the Brief of Appellant, and Appendix thereto was forwarded by electronic service through the NH Judicial Court e-filing system to all parties of record, and has been mailed first-class U.S.P.S. to Wm. Michael Earley, 5 Hickory Lane, Somersworth, NH 03878.

/s/ Christine M. Rockefeller

✓

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

7th Circuit - Family Division - Dover
25 St. Thomas St.
Dover NH 03820

NOV 20 2019

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**CHRISTINE MARIE ROCKEFELLER, ESQ
BURNS BRYANT COX ROCKEFELLER & DURKIN PA
255 WASHINGTON STREET
DOVER NH 03820**

Case Name: **In the Matter of WM MICHAEL EARLEY and RYANNE EARLEY**
Case Number: **632-2017-DM-00399**

Enclosed please find a copy of the Court's Order dated November 18, 2019 relative to:

**Agreed Upon Final Parenting Plan
Child Support Guidelines Worksheet
Uniform Support Order
Final Decree on Petition for Divorce
Petitioner's Request for Findings and Rulings
Respondent's Request for Findings and Rulings (and
Supplemental Request)
Final Order (Narrative)
Decree of Divorce**

Any party obligated to pay child support is advised that it is his/her responsibility to keep the Court (and the Division of Human Services if appropriate) advised of his/her current mailing address in writing, until such time as support payments are terminated.

It will cost \$40.00 for a certified copy of your decree.

This matter will become final on 12/23/2019 known as the Judgment Day, if no objections or appeals are filed. Objections must be filed with this court within 10 days of the date of the Notice of Decision, appeals to the Supreme Court within 30 days.

The Clerk's office is in possession of exhibits belonging to:
Petitioner and Respondent

If you wish to have these exhibits returned, you must pick them up no later than 10 days after the effective date of the decree. If the effective date is stayed by an appeal, Motion for Reconsideration or the like, the effective date will be pursuant to Superior Court Rule 74.

Any unclaimed exhibits will be destroyed after that date.

PLEASE BRING THIS LETTER WITH YOU.

November 21, 2019

Cheryll-Ann Andrews
Clerk of Court

(129)C: John Arthur Macoul, ESQ

The State of New Hampshire
JUDICIAL BRANCH

STRAFFORD COUNTY

7TH CIRCUIT-FAMILY DIVISION-DOVER

In the Matter of:

Wm Michael Earley, Petitioner and Ryanne Earley, Respondent

Case No. 632-2017-DM-00399

FINAL ORDER

This matter came before the Court on July 17, 18 and October 8, 2019 for a Final Hearing on the Merits. Present on all dates were the Petitioner with his counsel, John Macoul, Esquire, and the Respondent with her counsel, Christine Rockefeller, Esquire. A record was made of the hearing.

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 that at the conclusion of the hearing on July 19, 2019 an issue was raised regarding the Respondent's alleged interests in trusts created by her parents. Respondent's counsel was afforded seven (7) days to produce copy of the trust documents to Petitioner's counsel and they were to thereafter confer and advise the Court whether they required a telephonic conference to address the issue further. On August 8, 2019 the Court granted Petitioner's Motion to Maintain Open Record and/or Other Relief filed August 5, 2019 requesting a telephone conference, ordering that "[a] Telephonic Conference with counsel shall occur 9/17/19 at 11:00 a.m. In the interim, the parties may conduct discovery concerning the Trust(s) referenced herein. The record remains open as to the Trust issue only, pending the Conference and further order of the Court." During the Telephonic Conference held September 17, 2019 as reflected in the Order entered the same date, the parties by agreement were afforded additional time to obtain information concerning the Trusts and the conclusion of the Final Hearing was scheduled for October 8, 2019 (counsel presented offers of proof solely addressing trust issues).

Prior to the Final Hearing the parties entered into an Agreed Upon Final Parenting Plan relative to their three (3) minor children: Brielle (14 years old); Treston (12 years old); and Cade (10 years old). It was approved by the Court on July 18, 2019.

All other issues related to this divorce proceeding remained in dispute at the time of hearing and are addressed herein and in the accompanying Final Decree on Petition for Divorce and Final Uniform Support Order.

The undersigned has reviewed and ruled upon the numerous Requests for Findings of Fact and Rulings of Law submitted by both parties to this action. The Court's Orders with respect thereto are issued herewith and the findings and rulings that have been granted are incorporated herein by reference. In addition to those findings, the Court makes the findings set forth hereafter which likewise are based upon the record, the parties' testimony, the testimony of the Petitioner's real estate appraiser, and the evidence submitted to the extent found to be relevant and reliable and giving to it the weight deemed appropriate in light of the issues in dispute.

BACKGROUND

The parties have been married for 16 years. Both parties are young and healthy. They are both 44 years old. As already noted three children have been born to the parties during their marriage: Brielle (14 years old); Treston (12 years old); and Cade (10 years old). As reflected in their Agreed Upon Final Parenting Plan approved July 18, 2019 they have agreed that they will share decision-making responsibility for the children and that they will also share residential responsibility for the children on an equal basis. Their agreed upon routine parenting schedule has the children spending every Monday and Tuesday with Respondent, every Wednesday and Thursday with Petitioner, and alternating the weekends from Friday through Sunday between the parents. During their testimony, each parent made positive comments about the other in terms of his/her respective parenting ability and relationship with the children.

The parties met in 1995 when they were students at the University of New Hampshire. Petitioner has since obtained a Bachelor's Degree in Business Administration and an MBA in Finance. Respondent has since obtained her Bachelor's Degree and a Master's Degree in Communication. When the parties were married in 2002 Petitioner was an insurance underwriter at Liberty Mutual. He is now employed

as a private CFO for a company based in Auburndale, Massachusetts for which he has been working since August of 2016. Respondent is employed as a speech pathologist for the Learning Skills Academy. She has worked in a school setting for all of her professional career.

The parties' incomes are disparate. In 2018 Petitioner's reported earnings were approximately \$237,000 and included a bonus of approximately \$30,000. In 2018 Respondent's reported earnings were approximately \$69,000 which included her regular salary for employment pursuant to her contract for the school year and additional employment during the summer school vacation. Though Petitioner testified otherwise, the Court found credible the Respondent's testimony that she has historically throughout the marriage worked in a school setting and has also had employment during the summer school vacation. The Court does not find her to be voluntarily under-employed.

Though Petitioner understandably complains about his commute for work which causes him to be in a car for close to four (4) hours per day much of the time, the Court notes that he has been making a commute to at least Boston for his employment since 2010 and while the commute is a hardship and causes additional expense he has been able to earn substantial income and work in the field of his choosing by having such a commute, and described having looked from "Portland to Boston" for comparable employment over the years and this is ultimately what he chose. It has enabled him to provide for the family with a substantial income over the years. He has also chosen at times (ie. from 1998 until 2010) to work a second job as a part-time police officer, though he has not done this for several years.

The family also benefitted from gifts that the Respondent received throughout the marriage from her parents. Her parents established an Irrevocable Trust and also mutual Revocable Trusts which are addressed with more specificity elsewhere in this Order. During the marriage the Respondent received monetary distributions from the Irrevocable Trust totaling \$65,000 and also received money and/or vehicle(s) from the Revocable Trusts and/or directly from her parents, to include \$25,000 in 2014 from one of the Revocable Trusts with which she purchased a vehicle.

It is apparent that the parties' marriage had broken down by 2013 when the

parties began “nesting.” They both testified about the “nesting period” which was defined as beginning sometime in 2013 and continuing until sometime in 2018 when they began exercising their respective parenting time in separate homes. The Court found the Respondent’s testimony about this nesting period to be more credible than Petitioner’s. As explained by Respondent, she remained living in the marital home and Petitioner would generally come and stay at the home on an every other weekend basis from Saturday morning until Sunday evening to spend time with the children. There were times when he would also come to the home during the week, for instance to take the children out to dinner or when he was also in the area because coaching a sport (which may or may not have involved the parties’ children as he coached for them as well as for other children). Respondent testified that this generally occurred “about once per week.” Petitioner testified that he generally coached on Thursdays. When the Petitioner was not at the home to spend time with the children he was living with a friend in the Brookline, Massachusetts area. At about the time that the divorce process began the Petitioner obtained his apartment in Dover. As already noted, the parties now share residential responsibility for the children equally.

CHILD SUPPORT

The Child Support Guidelines Worksheets submitted by the parties are similar in most respects. The Court finds that the Worksheet submitted by Petitioner is more accurate as it includes his allowable child care expense as was described by him as necessary largely as the result of his substantial commute to and from work. The parties have used the same figures for the parties’ respective incomes for the purpose of calculating child support according with the Guidelines: \$17,500 for the Petitioner (which figure is exclusive of bonuses) and \$5,908 for the Respondent (which includes her summer employment income).

The Court finds that the Petitioner’s presumptive child support obligation pursuant to the Guidelines is \$3,510 per month.

The Petitioner argues he ought to be afforded an adjustment from a strict application of the Child Support Guidelines in light of the parties’ shared parenting schedule and his proposal that he will share equally in all miscellaneous expenses for the children. He also argues that because of his substantially high income he should be

afforded an adjustment. He has the burden of proving that such special circumstances exist by a preponderance of the evidence. RSA 458-C:5, II.

The Court is to consider special circumstances such as those described in RSA 458-C:5, I (which include those identified by Petitioner) when determining whether a deviation from a strict application of the Guidelines is in the best interests of the children and may make an adjustment in the application of the Guidelines in such case. As it must, the Court has considered the Petitioner's requests for findings of special circumstances warranting deviation from the Guidelines in this case.

While the parenting schedule may constitute a special circumstance warranting a deviation RSA 458-C:5, I(h)(1) provides that "[e]qual or approximately equal parenting residential responsibilities in and of itself shall not eliminate the need for child support and shall not by itself constitute ground for an adjustment." It is undisputed that the parties do have equal parenting residential responsibilities in this case. In considering whether to deviate in light of the equal parenting responsibilities, RSA 458-C:5, I(h)(2) provides that the Court may consider the following factors:

(A) Whether, in cases of equal or approximately equal residential responsibility, the parties have agreed to the specific apportionment of variable expenses for the children, including but not limited to education, school supplies, day care, after school, vacation and summer care, extracurricular activities, clothing, health care coverage costs and uninsured health care costs, and other child-related expenses.

(B) Whether the obligor parent has established that the equal or approximately equal residential responsibility will result in a reduction of any of the fixed costs of child rearing incurred by the obligee parent.

(C) Whether the income of the lower earning parent enables that parent to meet the costs of child rearing in a similar or approximately equal style to that of the other parent.

The Court has considered the factors listed in RSA 458-C:5, I(h)(2) subparagraphs (A), (B) and (C) cited above and in each instance finds the answer to be "no." The Petitioner has not sufficiently proven any of the circumstances identified in subparagraphs (A), (b) or (C). He has not demonstrated that the parties have an agreement on the specific apportionment of variable expenses for the children. While the Petitioner pays for certain expenses and proposes to share equally in other expenses for the children, the parties have no agreement to that effect. As the Respondent points

out, his income is substantially greater than hers and consequently she argues that sharing expenses “50/50” as he proposes is not necessarily fair. Petitioner testified that it is not fair for the parents to each contribute to the support of the children in proportion to their respective income. Petitioner proposes to pay less than Guidelines child support and one-half of the children’s extracurricular expenses, stating that “the children are half mine I want to pay half.”

The Court also considers that Respondent remains in the same marital home in which the family lived as a whole, and there has been no showing that her household expenses have reduced since the children have been spending more time with the Petitioner. Petitioner surmises that her grocery bill may be less, but he has not shown that her fixed costs of child rearing have diminished as a whole. And the Court cannot find on the evidence before it that Respondent’s income, the total of which on a monthly basis is only a third of Petitioner’s monthly base pay alone, allows her to meet the costs of raising the children in a similar or approximately equal style to that of the Petitioner. It should be noted that Petitioner is also proposing to pay no child support at all on any bonuses he receives from his employment. He received a bonus totaling \$30,400 in 2018.

Further, the Court does not find that the Petitioner has necessarily proven that his income is “significantly high” such that he should be afforded a deviation from the Guidelines under RSA 458-C:5, I(b). Assuming that it is, the Court does not find that he has proven that the presumptive child support determined by the Guidelines (\$3,510) “substantially exceeds the children’s reasonable needs, taking into account the style of living to which they have become accustomed or will experience in either party’s home.” RSA 458-C:5, I(b)(1). The Petitioner notes that he must maintain a separate home in which to provide for the children the half of the time when they are in his care, and his monthly rent (\$2,550) exceeds the mortgage, taxes and insurance combined relative to the marital home (\$2,310) in which the children reside half of the time when they are in the Respondent’s care. Both parties necessarily have additional household expenses associated with utilities and home maintenance. Both parties will incur a grocery expense for the children. Further, the Court considers that these are very active children who incur substantial miscellaneous expenses for sports, camps, etc., and that these

expenses will all be the Respondent's responsibility to pay with Guidelines child support. The Court cannot find on the evidence before it that Petitioner has proven by a preponderance thereof that Guidelines child support "substantially exceeds the children's reasonable needs," when all of this is taken into account.

The Court concludes that the Petitioner has failed to meet his burden of proving by a preponderance of the evidence that a special circumstance exists that warrants a deviation from the Guidelines. The Court cannot conclude in any event that such a deviation as he proposes is in the children's best interests.

Consequently, the Petitioner shall pay child support to the Respondent in accordance with the Guidelines. This necessarily means that the Court cannot order the Petitioner to share in the children's miscellaneous extracurricular expenses (excluding health insurance and uninsured medical expenses), which are considered to be a part of Guidelines child support. In re: Coderre, 148 N.H. 401 (2002). Both parties propose that the Petitioner will continue to maintain health and dental insurance for the children which he represents costs him \$288 per month out of pocket and which is less than his reasonable medical cost obligation, and the Court so orders. The Court approves the Respondent's proposal for the sharing of the children's uninsured medical expenses, which is commensurate with the parties' respective incomes upon which child support was calculated (75% Petitioner and 25% Respondent).

ALIMONY

The Respondent requests alimony. As the Petition for Divorce was filed in 2017, prior to the enactment of RSA 458:19-a which became effective January 1, 2019, and the parties are not in agreement that the new alimony statute should apply, the alimony statute that was in effect when the divorce commenced, RSA 458:19 (effective October 1, 2005) applies to Respondent's request.

In determining whether an alimony award is appropriate, the Court is guided first by RSA 458:19, I (effective October 1, 2005), which provided as follows:

Upon motion of either party for alimony payments, the court shall make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite or indefinite period of time, if the motion for alimony payments is made within 5 years of the decree of nullity or divorce and the court finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and

(b) The party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and

(c) The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is allocated parental rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home.

Also, when determining the amount of alimony if alimony is to be awarded, the Court is to consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded under RSA 458:16-a, vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; the fault of either party as defined in RSA 458:16-a, II(1); and the federal tax consequences of the order. RSA 458-C:19, IV(b) (effective October 1, 2005). In this case, the Court has considered each of these factors to the extent that they are applicable (for instance, neither party has pled nor has the Court found fault as defined in RSA 458:16-a, II(1)).

Respondent's gross monthly income is \$5,908. She will receive child support of \$3,510, for a total of \$9,418 with which to meet her expenses. Under the statute the initial inquiry must be, with those combined resources and the property that she is awarded hereunder will she be fully able to be self-supporting at a standard of living that meets her reasonable needs taking into consideration the lifestyle to which the parties became accustomed during the marriage? She claims necessary monthly living expenses of \$9,945. While this exceeds what her total monthly income will be by \$527, the Court notes that she has included in her expenses \$906 per month that she is voluntarily contributing into a 401k plan. This is a purely discretionary expense. She

also acknowledged during her testimony that her listed expense for “lawn mowing and treatment” is an anticipated expense as she currently does this herself, and that one of her claimed expenses associated with the children’s sports was in fact lower than as represented on her Financial Affidavit (because they had received a “multi-child discount”). The Court notes 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.

Upon this divorce, the Respondent will also be awarded approximately one-half of the parties’ marital estate and may continue to receive distributions from the Trust(s) established by her parents.

Taking all of the foregoing into consideration, the Court cannot find that the Respondent has demonstrated a need for alimony and, consequently, the Court need not go further in its analysis under RSA 458:19 (effective October 1, 2005) in determining whether to award her alimony. Her alimony request is denied.

LIFE INSURANCE

The Court may order a party to maintain life insurance as security for a support obligation. RSA 458:21. The Petitioner presently has a life insurance policy through his employment with a face amount of \$150,000 (he testified that it is equal to one times his salary to a maximum of \$150,000). The Court finds that this amount is insufficient to serve as security for his child support obligation hereunder. There are three children, the oldest being 14 years old and the youngest only 10 years old, which means that he presumably will continue to have a child support obligation (though it may reduce over time as the children become emancipated) for almost eight more years. Respondent requests a policy with a face amount of \$500,000, which the Court finds reasonable in light of the age of the children. It may be a term policy, with a gradually reducing benefit so long as at all times the face amount is sufficient to cover the balance of the Petitioner’s obligation.

PERSONAL PROPERTY

During the Final Hearing the Petitioner testified in support of the requests contained in Addendum A to his Proposed Final Decree which are items of personal property that he proposes to be awarded. Having considered both parties' testimony with respect to the items, the Court has allocated them between the parties as it finds fair and equitable considering that testimony, and considering the other allocation of property made herein. The Court also notes that in doing so, it considered that both parties valued their furniture and personal property at \$0.

RETIREMENT ASSETS

The parties have certain retirement assets that they agree to a certain extent should be allocated between the parties equally, though the Petitioner proposes that one of his retirement assets was pre-marital and should be set apart to him as a result and they propose that certain of the assets be valued as of different dates.

When considering first the Petitioner's request that he retain his entire Putnam Retirement Account which he testified has a balance of \$14,226 because he acquired it prior to the marriage, the Court considered the Respondent's testimony that this would not be fair given that he is not proposing that she keep the Ameritrade Retirement Account which she values at \$33,586 and which she argues was hers before the marriage. She also proposes that all of the parties' assets, including retirement assets, be valued as of the date of divorce, whereas Petitioner proposes that the retirement assets be valued as of the date the Petition was filed, October 2, 2017.

Given that this is a long term marriage that produced three children and the parties acquired the vast majority of the assets they have now during their marriage, the Court finds that it is fair and equitable to include all of the retirement accounts in the marital estate and to value all of them for the purposes of allocation between the parties as of the date of divorce. While a defined benefit pension is to be valued in a particular way and according to a particular formula as provided for in Hodgins v. Hodgins, 126 N.H. 711 (1985) and commonly known as the "Hodgins formula" which uses the date of filing, as opposed to the date of divorce, the Court has discretion to determine what date ought to be used to value other assets, including other types of retirement assets. In the matter of Gordon, 147 N.H. 693 (2002) ("marital property" includes any property

acquired up to the date of decree); In the Matter of Nyhan, 147 N.H. 768 (2002)(for IRA and 401(k) accounts the date of the hearing is an appropriate date for division).

Taking all of the foregoing into consideration, the Court finds that all of the parties' retirement assets shall be allocated between them as equally as possible, as of the date of divorce.

TRUST ASSETS

The rulings on the parties' various requests for findings of fact and rulings of law which have been separately granted by the Court are incorporated herein by reference. To a large extent, the applicable law relative to the treatment of the Respondent's interests in the Irrevocable Trust and Revocable Trusts established by her parents and for which she has been named a beneficiary is addressed therein and the Court consequently does not repeat it all herein.

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 parties' marriage. Based upon the evidence presented, those payments have to date totaled \$65,000. 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 gift tax exclusion from any *inter vivos* transfer made into the trust by her parents. Her parents, who are still living, have no right to any distributions of trust principal or income. The trust's assets at this time consist entirely of a life insurance policy on the life of the Respondent's parents which has a death benefit of \$2,000,000 upon the last of the Grantors to die, or the amount of the cash value of the policy (presently in the vicinity of \$185,000), whichever is greater. For some time now the insurance policy has been self-sustaining in the sense that the annual premium is paid by the interest generated thereon.

Respondent also received money and/or assets from her parents during the marriage through their Revocable Trusts, to include a check for \$25,000 in 2014 with which she purchased a Chrysler Town & Country van which benefitted the family. There

was also testimony about other vehicles that Respondent received from her parents during the marriage, though she testified some were “hand me downs” as opposed to direct or indirect transfers from a trust.

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 benefitted the family. She argues that the only issue is whether any potential distributions post-divorce from the Irrevocable Trust will constitute marital assets.

In Flaherty v. Flaherty, 138 N.H. 337 (1994), the trial court’s award of one-half of the husband’s interest in an irrevocable spendthrift trust created by his parents to his wife was affirmed. The husband was a co-trustee of the trust with one of his brothers. The parents could add assets to the trust and were to receive up to \$1,000 trust income annually. Upon the death of the last surviving parent, the trust was to be distributed to their six children in equal shares. Though Massachusetts law was found to have controlled the governing, construing, and 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 property division in the parties’ New Hampshire divorce proceeding. The Court in Flaherty found that “although the [husband] does not enjoy a present possessory interest in the trust, his interest is vested; i.e., 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.” Id at 339. 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 the inclusion of the interest in the marital assets.” Id at 340. Further, though the Court in Flaherty applied Massachusetts law in determining that the spendthrift provision does not exclude the husband’s interest thereunder from being included in the marital property to be considered for division in his divorce, the Court when discussing the law in support of that conclusion appeared to agree that where the husband was an

ascertained remainderman at the creation of the trust, as the Respondent in this case was, it was appropriate to include his interest in the trust in the marital property for purposes of allocation in divorce despite the trust containing a spendthrift provision. The Court finds that to do so in this case is similarly appropriate.

Respondent argues that the Flaherty case is not on point, and points to the more recent cases of Chamberlin and Chamberlin, 155 N.H. 13 (2007) and In the Matter of Goodlander and Tamposi, 161 N.H. 490 (2011). A review of those cases, however, does not lead the undersigned to reach a different result.

In Chamberlin, the divorcing parties had been the settlors of the Irrevocable Charitable Trust at issue. They only retained the right to receive income distributions generated by the trust's corpus if it exceeded \$110,000. In Chamberlin, as in the present case, the trust's corpus was found not to constitute a marital asset subject to distribution upon divorce. The question instead was "[w]hether the statutory definition of marital property includes a settlor's right to receive interest from an irrevocable charitable trust" and the Court held that "such an interest does constitute marital property subject to distribution in a divorce and that such an entitlement has a present value that must be taken into account in the division of marital property." Chamberlin and Chamberlin, 155 N.H. at 17-18. The parties to the instant case are not the settlors of the Irrevocable Trust established by the Respondent's parents, and so it is even clearer that the trust's corpus is not a marital asset. However, the Respondent is an established remainderman of the trust and has an interest in it, and her interest is similarly marital property subject to distribution in this divorce.

The trust at issue in Goodlander contained a provision similar to a provision in the Irrevocable Trust at issue in this case which provides that the trustee has sole discretion to make distributions for a beneficiary (i.e. the Respondent) as the trustee considers necessary for her education and maintenance in health and reasonable comfort, and the Court in Goodlander found that this created only a "mere expectancy" as opposed to a property interest subject to division in the beneficiary's divorce. Goodlander and Tamposi, 161 N.H. at 493-494. The Court distinguished its holding in Goodlander from the Chamberlin case by describing the beneficiary's interest in Goodlander as a "hope for a discretionary distribution" which was not a "fixed, certain

and absolute right.” *Id.* at 496. In the present case, while the trustee similarly has the discretion to make certain distributions to the Respondent “for [her] support in reasonable comfort, education... and maintenance in health...,” the Respondent also has the “absolute and unrestricted right...to demand and promptly receive” distributions up to the maximum amount allowed by the annual gift tax exclusion of any *inter vivos* gift or transfer made to the trust. And unlike the trust at issue in Goodlander, which could be diminished by distributions to other beneficiaries including the parties’ children, here, the beneficiary-spouse’s share cannot be diminished; it will be 1/3 of at least \$2,000,000.

For these reasons, the Court finds that the Respondent’s interest in the Irrevocable Trust is a marital asset subject to distribution between the parties. The Court values that interest at 1/3 of the current cash value of the life insurance policy which is the sole asset of said Trust, which is currently in the vicinity of \$185,000. Consequently, Petitioner is entitled to 50% of approximately \$61,666, or approximately \$30,833. The Court does not value the interest at 1/3 of \$2,000,000 for the reason that the Respondent is 44 years old and her parents are 74 years old and arguably either of them could live another 20 or so years before she will see such a distribution. It is inappropriate to tie the parties together for so long post-divorce and to find that Petitioner is entitled to a portion of such a distribution, particularly given that their marriage lasted only 16 years. Using similar reasoning, the Court does not find that Petitioner is entitled to 50% of any distribution that Respondent should receive from the Irrevocable Trust indefinitely, as Petitioner proposes, and instead has determined that a maximum of five (5) years from the effective date of the Divorce Decree is an appropriate duration of time during which Petitioner should receive 50% of any distribution Respondent should receive (ie. pursuant to the provision which permits her to demand distributions from *inter vivos* transfers up to the maximum annual gift tax exclusion). The Court finds that such distributions occurred during the marriage (totaling \$65,000) and Petitioner consequently had a reasonable expectation that they would continue into the future and that the family would have continued to benefit from them. Again, however, it would be inappropriate to tie the parties together for any longer than five (5) years post-divorce and finds such time period to be reasonable and

appropriate under the circumstances that present themselves in this case.

Petitioner's proposal for the distribution of Respondent's interest in the Irrevocable Trust has been modified by the Court to be consistent with the foregoing findings and rulings.

The Court finds differently with respect to the Revocable Trusts established by Respondent's parents because her parents are still living and could alter or terminate the trusts at any time, have the right during their lifetime to demand payments of principal and/or income, upon one of their deaths the assets are transferred to the survivor's revocable trust, there is no evidence that either trust is funded at this time, and whether the Respondent ultimately will receive any interest thereunder is not fixed and ascertainable but contingent upon several events to occur. In the case of the Revocable Trusts, any interest that the Respondent has is indeed a mere expectancy and is not a marital asset subject to distribution. It has negligible if any current value.

MARITAL HOME

The Court finds that the fair market value of the home is as the Petitioner's expert witness opined in her report and during her credible testimony which supports such a finding. The Court approves as modified the Respondent's proposal that she be awarded the marital home and be obligated to refinance the mortgage to have the Petitioner's name removed from the liability and pay a sum of money to Petitioner for his share of the equity in the property at the time of refinance. She proposes that she have 120 days to effectuate the refinance; Respondent proposes that she refinance in 60 days. Neither party testified as to how or why they arrived at these proposed timeframes; in the absence of evidence to determine how much time is truly necessary and why, the Court finds it fair and appropriate to order that the refinance and payment of equity occur within 90 days of the effective date of the divorce and so orders.

ARREARAGE

While the Petitioner argues that he should not be responsible for payment of the arrearages he has accrued relative to his financial obligations pursuant to the Temporary Decree that have gone unpaid to date, he has not provided sufficient legal or other basis to persuade the Court that this is fair and equitable. To the extent that the Respondent was able to not only meet her expenses and those of the children with his

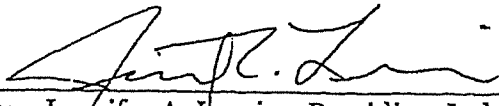
financial assistance provided pursuant to his obligations under the Temporary Decree and also was able to contribute to her 401(k) and pay a credit card balance off, the Court has considered this in relation to her request for alimony and overall property settlement; the Court does not find it appropriate, required by applicable law, or in the children's best interests to erase the arrearages that have accrued due to unpaid court ordered financial obligations which include payment of expenses associated with the marital home and unpaid child support. Consequently, as the Respondent has proposed, the total amount of the arrearages shall be deducted from the Petitioner's share of the equity in the marital home at the time of refinance and/or sale.

The Court finds that the allocation of the marital estate provided for herein and in the accompanying Final Decree on Petition for Divorce represents an equal or nearly equal and thus an equitable division of property between the parties. The Court finds that this is equitable based upon the length of the parties' marriage, their ages, health, occupations, income, needs and liabilities, the opportunity of each of the parties for future acquisition of capital assets and income, and other factors which the Court has found relevant as identified elsewhere in this Final Order, the Final Decree, and in the Orders on Requests for Findings of Fact and Rulings of Law.

See Final Decree on Petition for Divorce, Final Parenting Plan and Final Uniform Support Order, as well as Orders on Requests for Findings of Fact and Rulings of Law, all issued herewith and incorporated in the parties' Decree of Divorce.

So Ordered:

11/18/19
Date


Hon. Jennifer A. Lemire, Presiding Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: 7th Circuit - Family Division - Dover
Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley
Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION,
OR CIVIL UNION DISSOLUTION

This decree is (choose one) :

- Agreed to by Parties Proposed By Wm. Michael Earley
 Ordered by the Court after hearing on 7/18/2019^{7/19/19 and 10/8/19} at which petitioner respondent appeared, both with counsel.
1. Type of case: (Choose Divorce, Legal Separation or Civil Union Dissolution)

DIVORCE

A decree of divorce is granted to the petitioner respondent parties based on:
 Irreconcilable differences that have caused the irremediable breakdown of the marriage; or
 Grounds stated in the petition. Cross petition, if any, is dismissed.

LEGAL SEPARATION

A decree of legal separation is granted to petitioner respondent parties based on:
 Irreconcilable differences that have caused the irremediable breakdown of the marriage; or
 Grounds stated in the petition. Cross petition, if any, is dismissed.

CIVIL UNION DISSOLUTION

A decree of civil union dissolution is granted to petitioner respondent parties based on :
 Irreconcilable differences that have caused the irremediable breakdown of the civil union; or
 Grounds stated in the petition. Cross petition, if any, is dismissed.

2. Parenting Plan and Uniform Support Order N/A

(424) See attached Parenting Plan and Uniform Support Order

3. Dependents N/A

The parties shall claim the minor child(ren) and/or other qualifying relative as dependent(s) for all income tax purposes, in the following manner:

Petitioner, if otherwise qualified under federal/state law, shall be entitled to claim Treston and Cade as tax dependent(s) for:

(424) all years even years odd years. other And Brielle in even years.

Respondent, if otherwise qualified under federal/state law, shall be entitled to claim Brielle as tax dependent(s) for:

(424) all years even years odd years. other And Treston and Cade in even years.

(424) A parent may only claim a child as a dependent if that parent is current on child support for the applicable tax year.

Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley

Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

4. OPTIONAL: Post-Secondary Educational Expenses N/A

IMPORTANT NOTE: The court cannot order parties to pay for college or other educational expenses beyond the completion of high school unless BOTH parties agree. However, if the parties agree to contribute to these expenses by checking the boxes in Section 4, below, this agreement will become an enforceable order of the court.

The parties agree to contributions to college or other educational expenses beyond the completion of high school in the following manner:

Type of contribution

Contributions to an account by Petitioner Respondent Both

Contribution of an asset:

Payments shall be made as post-secondary education expenses are incurred:

Payments shall be made by Petitioner Respondent Both

Both parties agree that this post-secondary educational expense agreement IS modifiable based on a substantial change in circumstances that was not foreseeable when the agreement was signed

Both parties agree that this post-secondary education expense agreement is NOT modifiable and the specific dollar amount to be contributed by either or both parents is set forth above

5. Guardian Ad Litem Fees N/A

See Order on Appointment of Guardian Ad Litem

Other :

6. Alimony N/A

See attached Uniform Alimony Order

Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley

Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

7. Health Insurance for Spouse N/A

(FOL) The continuation of Wm. Michael Earley's employer-sponsored group medical health insurance benefits on behalf of Ryanne Earley shall be governed by RSA 415:18, VII-b, COBRA, or other applicable law.

_____ shall maintain health insurance for the benefit of _____

This obligation shall terminate:

_____ shall maintain dental insurance for the benefit of _____

This obligation shall terminate:

_____ shall be responsible for payment of the premiums.

This obligation shall terminate:

(FOL) Each party shall be responsible for his/her own medical and dental insurance and for paying all of his/her own unreimbursed medical, dental, optical, and other expenses not otherwise covered by insurance.

8. Life Insurance N/A

Each party is awarded any and all life insurance policies owned by that party, free and clear of any right, title, or interest of the other, *except as provided below (FOL)*

(FOL) Wm. Michael Earley shall maintain a life insurance policy in the minimum amount of \$ 500,000.00 designating Ryanne Earley as trustee for the benefit of the child(ren). This obligation shall continue as long as the insured is obligated to pay support.

Other: Ryanne name Wm. Michael Earley
(FOL) Each party shall maintain his or her current life insurance policies, naming the other party as trustee beneficiary for the benefit of the minor children.

of her life insurance policy

9. Motor Vehicles N/A

Each party is awarded the vehicles in his/her name or possession, free of any right, title or interest of the other.

Wm. Michael Earley is awarded the motorcycle free and clear of any interest of the wife

_____ is awarded the _____ free and clear of any interest of _____

Each party shall be responsible for all expenses as to his/her vehicles, including car payments, maintenance, registration and insurance.

10. Furniture and Other Personal Property NA

The parties have already fairly divided between themselves their household furniture, furnishings and all other tangible property (other than as specifically set forth below), and each party is awarded that property currently in his/her possession, free and clear of any interest of the other.

Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley

Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

Petitioner is awarded the following specific items of personal property:

petitioner is awarded any and all personal property currently in his possession, as well as the items referenced in Addendum "A", which items shall be provided to the husband, in good and proper condition. *as modified by the Court (fdu)*

Respondent is awarded the following specific items of personal property:

Balance of furnishings, electronics, etc., in marital home are awarded to respondent.

11. Retirement Plans and Other-Tax Deferred Assets N/A

Each party is awarded any interest in any pension, retirement, 401(k), IRA, or other retirement account that s/he may have and as shown on his/her respective financial affidavits free and clear of any interest of the other.

_____ is awarded one-half of _____'s IRA and/or 401(k) as of the date of this decree.

_____ is awarded one-half of _____'s pension plan which accrued between the date of the marriage or civil union and the date of the filing of the petition for divorce, legal separation, or dissolution pursuant to the Hodgins formula.

Subject to the above distribution, _____ is awarded all other right, title, and interest in his/her pension plan, free of any further interest of _____

A Qualified Domestic Relations Order shall be prepared by _____ within a reasonable period of time from the date of this decree and filed with the Court for approval.

Other:

(fdu) All retirement accounts shall be equalized so each party receives 50%. Any QDRO's necessary to effectuate transfer(s) shall be paid for by the parties equally.

12. Other Financial Assets NA

The parties are awarded their respective checking and/or savings bank accounts, credit union accounts, certificates of deposits and the like, and all similar accounts as shown on their individual financial affidavits filed with the court.

(fdu) Petitioner is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

See Revised Addendum B, #21 (re: The O'Neil Family Irrevocable Trust of 2000).

(fdu) Respondent is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property: *Any interest she has in the Gerald O'Neil and Joan O'Neil Revocable Living Trusts.*

Other:

(fdu) The Court denies the Respondent's request for a payment of \$5,000 relative to the \$10,000 advance Petitioner was afforded pursuant to the Temporary Orders, finding that this is fair and equitable considering the values of the motor vehicle and personal property awarded to her herein, which likely exceed that awarded to Petitioner by a similar amount, and the overall property allocation. See also Addendum B, #12, A and B.

Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley

Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

13. Business Interests of the Parties N/A

- _____ is awarded all right, title, and interest in the business known as _____ free of any claim or interest of the other party.
_____ shall be solely responsible for all debts of the business and shall be entitled to receive all profits from the business.
_____ shall transfer all property interest and stock to _____ forthwith and shall resign as an officer or director in the business forthwith.

Other:

14. Division of Debt NA

- The parties shall each be responsible for any debt they have incurred after the date of separation, holding each other harmless of the same.
- The parties' joint marital/civil union debt shall be divided as follows:
Petitioner shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

Respondent shall assume and be solely responsible for the following marital/civil union debts and obligations incurred during the marriage/civil union:

15. Marital /Civil Union Home NA

- (ZSL) Ryanne Earley is awarded all right, title, and interest in the real estate located at 8 Horizon Way, Dover, NH free of any right, title or interest of the other party.
Effective 8/1/19, Ryanne Earley shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.
- (ZSL) Ryanne Earley shall refinance the mortgage on the home so as to remove the other party's name from the mortgage by 90 days from effective date of Decree or the home will be placed on the market and sold.
- The marital/civil union home shall be sold and, upon sale, the net proceeds shall be divided equally between the parties.
- (ZSL) Other: Upon refinance/sale, the net equity/proceeds shall be divided equally; however, Michael's arrearage of \$21,155 shall be deducted from his share and paid to Ryanne.

Case Name: In the Matter of Wm. Michael Earley and Ryanne L. Earley

Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

16. Other Real Property N/A

- The real estate located at _____ is awarded to _____ free of any right, title, or interest of the other party, but subject to any encumbrance thereon.
- _____ shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.
- Other:

17. Enforceability after Death NA

- (Ad) The terms of this decree shall be a charge against each party's estate.

18. Signing of Documents NA

- Each party shall, within thirty (30) days, sign and deliver to the other party any document or paper that is needed to fulfill or accomplish the terms of this decree.

19. Restraining Order NA

- _____ is restrained and enjoined from entering the home or the place of employment of the other party, and from harassing, intimidating or threatening the other party or his/her relatives or other household members.
- Other:

20. Name Change (Divorce or Civil Union Dissolution Only) NA

- (Ad) Ryanne Earley may resume use of his/her former name: O'Neil

21. Other Requests

- Attorney's Fees:** Any party that unreasonably fails to comply with this decree or other court orders (including "Uniform Support Order") may be responsible to reimburse the other party for whatever costs, including reasonable attorney's fees, that may be incurred in order to enforce compliance.
- Tax Refunds:** Any tax refund due or anticipated by the parties resulting from their having filed a joint federal and/or state income tax return for this or any prior year shall, upon receipt, be endorsed by both parties and equally distributed between them.
- Disclosure of Assets:** The parties warrant that they have fully disclosed all assets within their knowledge on their respective Financial Affidavit, specifically including any pension, profit sharing or retirement account, along with reasonable estimated values of each asset. The financial information contained on each party's Financial Affidavit is accurate and complete and has been relied upon by the other party.
- Compliance with Rule 1.25-A (Family Division Only):**
 - The parties have fully complied with Rule 1.25-A; or
 - The parties agreed to limit their document exchange under Rule 1.25-A.

Case Name: In the Matter of Wm. Michael Earley and Rynanne L. Earley
Case Number: 632-2017-DM-00399

FINAL DECREE ON PETITION FOR DIVORCE, LEGAL SEPARATION, OR CIVIL UNION DISSOLUTION

- Mutual Releases: Other than as set forth in this decree or other order of this court (including "Uniform Support Order") each party releases and agrees to defend, indemnify and hold the other harmless from any and all claims of any nature whatsoever arising out of the marriage.
- Obligations: Unless specifically mentioned in this decree, each party shall be solely responsible for any bills, obligations or other indebtedness that he or she has charged or incurred before or during the marriage or civil union.
- Change in Address or Employment: Each party shall promptly notify the other of any change in his/her address or telephone number, and of any material change in employment as long as there are any continuing obligations under this decree. "Material change" will include availability of medical, dental or life insurance and any substantial increase or decrease in earnings or other income.
- Waiver of Attendance: Both parties waive attendance at a final hearing.
- Miscellaneous:
SEE ADDENDUM 'B' and Revised Addendum 'B' (approved and incorporated herein as modified). (JAL)

I/we believe that this is a fair and reasonable resolution of all the issues related to our marriage or civil union. I/we request that the Court approve this decree and incorporate all of its terms and conditions as part of the Decree of Divorce, Decree of Legal Separation, or Decree of Civil Union Dissolution.

July 17, 2019 [Signature] Date Signature of Petitioner
7/17/19 [Signature] Date Signature of Attorney/Witness for Petitioner

Date Signature of Respondent Date Signature of Attorney/Witness for Respondent

I state that on this date I provided a copy of this document to opposing counsel
or to _____ (the other party's attorney) by:

Hand-delivery or US Mail or E-mail

7/18/19 [Signature]
Date Signature

Recommended:

Date Signature of Marital Master
Printed Name of Marital Master

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

11/18/19 [Signature] Date Signature of Judge
Jennifer A. Lemire
Printed Name of Judge Judge

Addendum A

To be received

- 1 Husband's remaining personal effects, clothing, jewelry, sports memorabilia, photos, childhood items, etc.
- 2 Garage peg board
- (QSL) ~~3 Rakes, garden tools and push broom~~
- 4 Generator
- 5 Power washer
- (QSL) 6 50% Brielle's art work (if requested by Brielle)
- 7 Large air conditioner
- 8 Trash compactor
- (QSL) ~~9 Dish washer~~
- 10 Large kitchen table, chairs and extensions
- 11 Mixing bowls
- (QSL) ~~12 Pots, pans, other kitchen items~~
- (QSL) ~~13 Cookie sheets and baking pans~~
- ~~14 Silverware~~
- 15 Christmas cards of kids
- (QSL) ~~16 Sofa table~~
- ~~17 Large plasma screen television~~
- 18 Speaker wire throughout
- (QSL) ~~19 Elliptical trainer~~
- 20 Baseball batting cage net
- 21 Basement shelving I built with my father
- 22 Workbench in basement
- 23 Foldable portable tables
- 24 Pop up tent canopies
- (QSL) ~~25 Coolers (except those purchased by Respondent since the Petitioner began renting a separate residence)~~
- ~~26 Tools (same as # 25)~~
- 27 Martial arts kick bag
- 28 Small table/bench in the basement
- (QSL) ~~29 Copies of Children's pictures on wall leading up to bedroom~~
- 30 Cade's television (husband purchased)
- 31 Brielle's television and rack (husband purchased)
- 32 Trophies
- (QSL) ~~33 Mirror in bathroom of master bedroom~~
- 34 My dresser drawer
- 35 Wood storage shelves in basement

Previously received

- 1 Couch
- 2 Love seat #1
- 3 Denon receiver, 5 speakers and subwoofer entertainment

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

ADDENDUM "B"

#6. ALIMONY

The husband maintains that the wife has failed to show applicable and appropriate need for alimony, beyond her earnings and child support as ordered by the court. (KAL)

Should the court, notwithstanding the forgoing, order alimony to be paid, the husband's obligation to pay the same shall, unless earlier terminated, terminate on the first occurring of the following events:

- a. December 31, 2022;
- b. Wife's remarriage;
- c. Wife's co-habitation with a significant other or romantic partner;
- d. Husband obtaining full "full retirement age", meaning the age when he is eligible to receive full retirement benefits under the Federal Old Age, Survivors, And Disability Insurance Social Security Program;
- e. The death of either party

The husband's obligation to make the above-referenced payments shall be suspended and forgiven for any and all months wherein the husband is required to make payments towards the mortgage or other expenses associated with the home at 8 Harlan's Way, Dover, New Hampshire, pending the sale of the same.

#7. HEALTH INSURANCE FOR SPOUSE

So long as husband's employer-provided health insurance allows the continued coverage for the wife, at no additional cost, the same shall be maintained for the wife consistent with the said policy. Should the said policy allow for continued coverage for the wife, but at an additional cost or expense, the wife shall have the option of remaining covered by the said policy provided the wife promptly and properly reimburses the husband, on a monthly basis, for any and all additional premiums associated with the wife's coverage.

#9. MOTOR VEHICLES:

In light of the disparity in the equity and values of the automobiles of the parties and the motorcycle, the husband is awarded, from the marital estate, the additional sum of \$6,500.00, representing the difference between the equities in the vehicle and motorcycle awarded to the

husband versus the wife's vehicle.

The said sum shall be paid by the wife to the husband within thirty (30) days of the effective date of the divorce decree. (SAL)

#11. RETIREMENT PLANS AND OTHER TAX-DEFERRED ASSETS:

- A. The husband is awarded his Putman 401-k money market account, which was the sole and exclusive property of the husband prior to the marriage, and to which no additional funds have been deposited during the marriage of the parties. The same is awarded to the husband and decreed his sole and exclusive property, free and clear of any and all claims of the wife.
- B. Any other retirement plans or accounts, as referenced on the financial affidavits of the parties, shall be equalized in value as of the date of filing and commencement of the present divorce proceedings. In this regard, each party is awarded any and all said retirement plans in their name. The husband shall, from the retirement account of his choosing, transfer and roll over to the retirement account of the designated retirement account of the wife, such sum as is necessary to effectuate the equalization of the total accounts awarded each party as of the date of filing, as referenced above.

The parties shall execute any and all documentation as may prove necessary to effectuate the terms of this provision including, but not limited to any and all Qualified Domestic Relations Orders as may prove necessary. The parties shall utilize the services of a mutually agreeable professional to draft any such Qualified Domestic Relations Orders for submission to the court, with the parties to share equally in the cost associated with the same.

#12. OTHER FINANCIAL ASSETS:

- A. The husband is awarded the account of his former business, Stratalytics.
- B. The parties are each awarded fifty [50%] percent of any stock options granted to the husband from his current employer SiteSpeck, Inc. which vested as of the filing and commencement of the present divorce proceeds. To the extent any of the said options may be exercised in the future, after deducting any and all costs associated with the exercising of the said options including, but not limited to, taxes, broker fees, etc., shall be divided equally amongst the parties.

Husband shall notify the wife should any of the said options eventually be exercised and shall provide to her the relevant information concerning the same.

#15. MARITAL HOME:

A. Subject to the following and all conditions referenced, the wife shall have the first option to purchase the marital home and premises at 8 Harlan's Way, Dover, New Hampshire, by paying and tendering to the husband, for his one-half share of the home, a sum equal to fifty [50%] percent of the difference between the fair market value of the home, as determined by the court, and the outstanding balance due on the mortgage secured by the home as of the date of payment to the husband. Upon the timely and proper tendering by the wife to the husband of the said sum due, the husband shall provide to the wife a quit claim deed of his right, title and interest in and to the said property. This provision is subject to, and conditioned upon the following:

1. The wife shall notify the husband, in writing, within thirty [30] days of the date of this decree, her exercising of the option to purchase the said home and premises and providing documentary evidence to the husband of her pre-qualification to refinance the home as referenced herein.

The conveyance of the said property to the wife as referenced herein, along with the payment due to the husband and all other conditions referenced herein, are to be fully complied with and finalized within sixty [60] days of the wife providing to the husband her timely written notice of the exercising of her option to purchase the home as referenced herein. Time is of the essence.

2. The wife shall refinance the said marital home, prior to or simultaneous with the conveyance by the husband to the wife, so as to remove the husband as a liable party on the mortgage and debts currently secured by the said marital home and premises. The wife shall at all times hold the husband harmless relative to any and all costs, liabilities or expenses associated with the said home.
3. In addition to the sum referenced above, the wife shall pay to the husband, prior to the said conveyance, any and all other sums due from the wife to the husband pursuant to the terms of this decree;

B. Should the wife not exercise her option to purchase the home under the terms and conditions referenced above, or should the wife fail to timely and properly refinance and meet all conditions referenced above, the husband shall then have the second option to purchase the wife's interest in the said home under the same conditions and requirements;

C. Should neither party timely and properly notify the other and/or purchase the home under the above deadlines and conditions, the home and premises at 8 Harlan's Way,

~~Dover, New Hampshire shall be promptly listed for sale, with a mutually agreeable realtor, upon such terms and conditions as the parties may mutually agree, which agreement shall not be unreasonably withheld. The parties shall at all times use good faith and due diligence to sell the said property as soon as possible and shall follow the reasonable suggestions and requests of the real estate broker in adjusting the asking/selling price, terms and conditions of sale, etc., so as to effectuate a prompt sale and disposition of the property.~~ (FAL)

~~Until such time as the home and premises are sold as referred to above, the wife shall continue to have the sole and exclusive use and possession of the property, subject to the following:~~

- ~~1. The wife shall not allow any unrelated adult individual to co-habitate or reside at said home;~~
- ~~2. The wife shall at all times keep the said home in good and appropriate condition, suitable for showing to potential buyers;~~
- ~~3. Until such time as the said home is sold:
 - ~~a. The wife shall be responsible for, and shall timely pay, the mortgage, insurance, taxes, utilities and other expenses associated with the premises and shall hold the husband harmless regarding the same;~~
 - ~~b. To the extent any repairs or capital improvements are necessary to prepare the property for sale, the same shall be shared equally by the parties and agreed to in writing.~~~~
- ~~4. The net proceeds derived from the said sale shall be distributed amongst the parties equally.~~

~~#19. RESTRAINING ORDER~~ (FAL)

- ~~a. Neither party shall incur any debts, expenses or liabilities for which the other party may be potentially liable;~~
- ~~b. Neither party shall affix the name of the other party to any documents;~~

~~#21. OTHER REQUESTS:~~

- ~~A. The parties may amend their 2018 federal tax return filings so as to file a joint return. The parties shall advise each other in writing, within ten [10] days of this decree as to whether or not they are agreeable in so amending their returns to file jointly. Should the parties file such a joint return, any refund received or available as a result~~

thereof shall be shared equally between the parties and any additional taxes similarly shared equally by the parties.

Should the parties not mutually agree to file a joint federal and state tax returns for the tax year 2018, then the following shall apply: (4/21)

1. The wife, RYANNE EARLEY, shall, within twenty [20] days of the date of this decree, pay and tender to the husband, WILLIAM MICHAEL EARLEY, a sum equal to fifty [50%] percent of any and all refunds or credits received by the wife relative to her 2018 tax filings;
2. The wife, RYANNE EARLEY, shall within twenty [20] days of the date of [50%] this decree, pay and tender to the husband, an additional sum equal to fifty [50%] percent of any and all federal and state tax liability, penalties and/or interest incurred by the husband for tax year 2018 beyond his pay roll-withheld taxes.

B. Under the terms of the original temporary decree, pursuant to the retroactive effect initially ordered, there would remain additional sums due from the husband to the wife. Taking into account the provisions of this final decree, any and all additional sums towards alleged arrearages under the temporary orders, that would have otherwise been due from the husband to the wife, are hereby forgiven and vacated, with husband having no further responsibility for payment of the same. (4/21)

REVISED ADDENDUM 'B'

~~#6. ALIMONY~~

~~The husband maintains that the wife has failed to show applicable and appropriate need for alimony, beyond her earnings and child support as ordered by the court.~~

~~Should the court, notwithstanding the forgoing, order alimony to be paid, the husband's obligation to pay the same shall, unless earlier terminated, terminate on the first occurring of the following events:~~

- ~~a. December 31, 2022;~~
- ~~b. Wife's remarriage;~~
- ~~c. Wife's co-habitation with a significant other or romantic partner;~~
- ~~d. Husband obtaining full "full retirement age", meaning the age when he is eligible to receive full retirement benefits under the Federal Old Age, Survivors, And Disability Insurance Social Security Program;~~
- ~~e. The death of either party~~

~~The husband's obligation to make the above-referenced payments shall be suspended and forgiven for any and all months wherein the husband is required to make payments towards the mortgage or other expenses associated with the home at 8 Harlan's Way, Dover, New Hampshire, pending the sale of the same.~~

~~#7. HEALTH INSURANCE FOR SPOUSE~~

~~So long as husband's employer-provided health insurance allows the continued coverage for the wife, at no additional cost, the same shall be maintained for the wife consistent with the said policy. Should the said policy allow for continued coverage for the wife, but at an additional cost or expense, the wife shall have the option of remaining covered by the said policy provided the wife promptly and properly reimburses the husband, on a monthly basis, for any and all additional premiums associated with the wife's coverage.~~

~~#9. MOTOR VEHICLES:~~

~~In light of the disparity in the equity and values of the automobiles of the parties and the motorcycle, the husband is awarded, from the marital estate, the additional sum of \$6,500.00, representing the difference between the equities in the vehicle and motorcycle awarded to the husband versus the wife's vehicle.~~

~~The said sum shall be paid by the wife to the husband within thirty (30) days of the effective date of the divorce decree.~~

the timely and proper tendering by the wife to the husband of the said sum due, the husband shall provide to the wife a quit claim deed of his right, title and interest in and to the said property. This provision is subject to, and conditioned upon the following: (9/21)

1. The wife shall notify the husband, in writing, within thirty [30] days of the date of this decree, her exercising of the option to purchase the said home and premises and providing documentary evidence to the husband of her pre-qualification to refinance the home as referenced herein.

The conveyance of the said property to the wife as referenced herein, along with the payment due to the husband and all other conditions referenced herein, are to be fully complied with and finalized within sixty [60] days of the wife providing to the husband her timely written notice of the exercising of her option to purchase the home as referenced herein. Time is of the essence.

2. The wife shall refinance the said marital home, prior to or simultaneous with the conveyance by the husband to the wife, so as to remove the husband as a liable party on the mortgage and debts currently secured by the said marital home and premises. The wife shall at all times hold the husband harmless relative to any and all costs, liabilities or expenses associated with the said home.
3. In addition to the sum referenced above, the wife shall pay to the husband, prior to the said conveyance, any and all other sums due from the wife to the husband pursuant to the terms of this decree;

- B. Should the wife not exercise her option to purchase the home under the terms and conditions referenced above, or should the wife fail to timely and properly refinance and meet all conditions referenced above, the husband shall then have the second option to purchase the wife's interest in the said home under the same conditions and requirements;
- C. Should neither party timely and properly notify the other and/or purchase the home under the above deadlines and conditions, the home and premises at 8 Harlan's Way, Dover, New Hampshire shall be promptly listed for sale, with a mutually agreeable realtor, upon such terms and conditions as the parties may mutually agree, which agreement shall not be unreasonably withheld. The parties shall at all times use good faith and due diligence to sell the said property as soon as possible and shall follow the reasonable suggestions and requests of the real estate broker in adjusting the asking/selling price, terms and conditions of sale, etc., so as to effectuate a prompt sale and disposition of the property.

Until such time as the home and premises are sold as referred to above, the wife shall continue to have the sole and exclusive use and possession of the property, subject to the following: (7d)

1. The wife shall not allow any unrelated adult individual to co-habitate or reside at said home;
2. The wife shall at all times keep the said home in good and appropriate condition, suitable for showing to potential buyers;
3. Until such time as the said home is sold:
 - a. The wife shall be responsible for, and shall timely pay, the mortgage, insurance, taxes, utilities and other expenses associated with the premises and shall hold the husband harmless regarding the same;
 - b. To the extent any repairs or capital improvements are necessary to prepare the property for sale, the same shall be shared equally by the parties and agreed to in writing.
4. The net proceeds derived from the said sale shall be distributed amongst the parties equally.

#19. RESTRAINING ORDER

- a. Neither party shall incur any debts, expenses or liabilities for which the other party may be potentially liable;
- b. Neither party shall affix the name of the other party to any documents,

#21. OTHER REQUESTS:

A. The petitioner, Wm. Michael Earley, is ^{entitled to} ~~hereby awarded~~ a fifty [50%] percent ^{of Ryanne Earley's} ~~undivided~~ interest, ~~free and clear of any and all claims of the respondent, Ryanne Earley, in any and all rights, benefits, and/or other interest of the respondent, Ryanne Earley, in any trusts including, but not limited to "The O'Neil Family Irrevocable Trust of 2000", the "Gerald T. O'Neil 1998 Revocable Living Trust" and the "Joan B. O'Neil 1998 Revocable Living Trust", and any and all benefits received by the respondent or to be received since the commencement of the present proceedings, along with future benefits or distributions under the terms of the same, and any and all rights, benefits or interest the respondent may have in the assets of any of the said trusts.~~ ^{The Court values Ryanne Earley's interest for the purpose of allocating the marital estate to be 1/3 of the current cash value of the life insurance policy that is the sole asset of the Trust. *} (7d)

The respondent shall promptly notify the petitioner in writing of any and all sums, ^{the Irrevocable Trust} ~~any of the trusts and/or~~ distributions, property, or other benefits that are to be distributed by (7d)

* Accordingly, Wm. Michael Earley is entitled (7d)
to 50% of approximately \$185,000, or approximately
\$30,833. (\$184,930.42 was the most recent value
provided to the Court, valued as of June 30, 2019).

received by the respondent from ~~any of the said trusts~~, and shall promptly pay and distribute to the petitioner fifty [50%] percent of any and all such sums, distributions, property, or other benefits, and/or other interests received by the respondent since the commencement of the present proceedings, ~~or to be received by the respondent in the future, from or relative to any of the said trusts~~. The respondent shall further provide to the petitioner copies of any and all correspondences, notices, emails, text messages, and any and all other documentation or electronic communications, and other information as may be available relative to each said sums, distributions, properties, or other benefits distributed or received, or to be distributed or received by the respondent, ~~for that five (5) year period.~~ ^{for a period of five (5) years from the effective date of the Divorce Decree.} (JSL)

~~The respondent shall, at all times, promptly and provide to the petitioner and his designated representative, authorizations, in a form to the satisfaction of the petitioner, so as to afford the petitioner full and continuous access to any and all documentation and information relative to the said trusts, including, but not limited to documentation and information relative to the assets of the said trusts and any sums, distributions, property or other benefits and/or interests of the respondent in any of the said trusts. Further, the respondent shall at all times promptly and properly executed, in a form satisfactory to the petitioner, any and all documentation as may prove necessary or desirable to effectuate an assignment to the petitioner of his said fifty [50%] percent interest as referenced above and/or to provide for direct communication and distribution to the petitioner by the appropriate trustees and/or representatives of any of the said trusts.~~ (JSL)

The respondent shall further, within fourteen [14] days of the clerk's notice forwarding this decree, fully disclose to the petitioner any and all action which she may have taken or joined in, or which otherwise has affected her beneficial interest in, ~~any trust to which she held any beneficiary interest as of the commencement of the present divorce proceedings including, but not limited to the "The O'Neil Family Irrevocable Trust of 2000", the "Gerald T. O'Neil 1998 Revocable Living Trust" and the "Joan B. O'Neil 1998 Revocable Living Trust",~~ and shall within said time frame, provide to the petitioner copies of any and all agreements, modifications, correspondences, notes, memorandum, emails, text messages, and any and all other documentation or electronic communication in any way relating to any such actions or events. (JSL)

The respondent shall, within fourteen [14] days of the clerk's notice forwarding this decree, notify the trustee, trustees, and any successor trustees of the terms and provisions of this decree and shall provide a copy of the same to the trustee and/or any successor trustees to request and seek full compliance with the terms and the provisions of this decree.

The respondent shall further, within fourteen [14] days of the clerk's notice forwarding this decree, provide to the trustee and/or successor trustees of "The O'Neil Family Irrevocable Trust of 2000", the "Gerald T. O'Neil 1998 Revocable Living Trust" and the "Joan B. O'Neil 1998 Revocable Living Trust" such written requests, to the satisfaction of the petitioner, to authorize, seek, and ensure full compliance by the trust and trustees with the provisions contained within this decree. Such documentation shall immediately be provided to any (JSL)

future or subsequent successor trustees. Copies of any and all such documentation as fully executed and forwarded to the trustee or trustees, shall at all times be promptly be forwarded to the petitioner.

~~The respondent shall, at all times, promptly and immediately forward to the petitioner copies of any and all accountings, inventories, reports, financial statements and/or materials, correspondences, emails, text messages, and any and all other written documentation or electronic information or mail received by the respondent from the trustee, trustees, or successor trustees of any of the said trusts.~~ (JEL)

~~See also narrative final order. (JEL)~~

~~IN THE ALTERNATIVE, AND WITHOUT WAIVING PETITIONER'S RIGHTS AND REQUESTS AND AS REFERENCED ABOVE, should the Court not assign to the petitioner a specific percentage or interest in the respondent's beneficial interest under the various trusts, that the Court award to the petitioner, by way of property distribution, additional assets and/or an additional sums to be paid by the respondent to the petitioner within thirty [30] days of the clerk's notice forwarding this decree, in an amount equal to one-sixth [one-half of the respondent's one-third interest] of the cash surrender value of the Universal life insurance policy maintained by the irrevocable trust which said policy had a cash surrender value of \$184,930.42 as of June 28, 2019, along with a sum equal to one-sixth of the current value of any and all other assets held by any of the above-referenced trusts and/or any and all other trusts in which the respondent had any interest as of the commencement of the divorce proceeding.~~ (JEL)

- B. The parties may amend their 2018 federal tax return filings so as to file a joint return. The parties shall advise each other in writing, within ten [10] days of this decree as to whether or not they are agreeable in so amending their returns to file jointly. Should the parties file such a joint return, any refund received or available as a result thereof shall be shared equally between the parties and any additional taxes similarly shared equally by the parties.

Should the parties not mutually agree to file a joint federal and state tax returns for the tax year 2018, then the following shall apply:

1. The wife, Ryanne Earley, shall, within twenty [20] days of the date of this decree, pay and tender to the husband, William Michael Earley, a sum equal to fifty [50%] percent of any and all refunds or credits received by the wife relative to her 2018 tax filings;
2. The wife, Ryanne Earley, shall within twenty [20] days of the date of this decree, pay and tender to the husband, an additional sum equal to fifty [50%] percent of any and all federal and state tax liability, penalties and/or interest incurred by the husband for tax year 2018 beyond his pay roll-withheld taxes.

- C. Under the terms of the original temporary decree, pursuant to the retroactive effect initially ordered, there would remain additional sums due from the husband to the wife. Taking No

~~account the provisions of this final decree, any and all additional sums towards alleged arrearages under the temporary orders, that would have otherwise been due from the husband to the wife, are hereby forgiven and vacated, with husband having no further responsibility for payment of the same.~~ (JDL)

Ryanne Garley may either pay Wm Michael Garley his 1/2 share of her 1/3 interest in the current cash value of the life insurance policy within fourteen (14) days of the effective date of the Decree of Divorce or, at her election, it may be deducted from her share of the equity in the marital home and paid to Wm Michael Garley at the time of its refinance or sale (as provided for in Paragraph 15). (JDL)