

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT
OCTOBER TERM
2020 SESSION**

**In the Matter of Lura Sanborn and Jeffrey Bart
2020-0080**

**RULE 7 MANDATORY APPEAL FROM
6TH CIRCUIT – FAMILY DIVISION – CONCORD**

**OPENING BRIEF OF RESPONDENT
Jeffrey Bart**

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**Attorney Sheehan will represent
Mr. Bart at Oral Argument**

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TEXT OF PERTINENT LEGAL AUTHORITY

STATUTES

458-C:4 Application of Guidelines

I. Subject to the provisions of RSA 458-C:5, guidelines provided under this chapter shall be applied in all child support cases, including temporary orders, and in any order modifying a support order.

II. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support. A written finding or a specific finding by the presiding officer on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in RSA 458-C:5, shall be sufficient to rebut the presumption in such case.

III. [Repealed.]

IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to guidelines provided under this chapter, the presiding officer shall determine whether the application of the guidelines would be inappropriate or unjust in such particular case, using the criteria set forth in RSA 458-C:5, and in certifying the agreement shall enter a written finding or a specific finding on the record that the application of the guidelines would be inappropriate or unjust and state the facts supporting such finding.

RSA 458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances

I. Special circumstances, including, but not limited to, the following, if raised by any party to the action or by the court, shall be considered in light of the best interests of the child and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:

(a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children.

(b) Significantly high or low income of the obligee or obligor.

(1) In considering an adjustment when one or both parents have high income, the court shall consider whether the child support amount derived from application of the guidelines substantially exceeds the child's or children's reasonable needs, taking into account the style of living to which the child or children have become accustomed or will experience in either party's home.

(2) In considering an adjustment when one or both parents have low income, the court shall determine how to optimize use of the parents' combined incomes to arrive at the best possible outcome for the child or children, provided that the basic support needs of the child or children are met. In making this determination, the court may consider income tax consequences, the earned income tax credit, the allocation of the right of a parent to claim a child as a dependent for income tax purposes, and other child-related tax benefits.

(c) The economic consequences of the presence of stepparents, step-children or natural or adopted children.

(d) Reasonable expenses incurred by the obligor parent in exercising parental rights and responsibilities, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment.

(e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child.

(f) The opportunity to optimize both parties' after-tax income by taking into account federal tax consequences of an order of support, including the right to claim the child or children as dependents for income tax purposes.

(g) State tax obligations.

(h) Parenting schedule.

(1) Equal 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.

(2) In considering requests for adjustments to the application of the child support guidelines based on the parenting schedule, 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 insurance costs and uninsured health 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.

(i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child.

(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.

II. The party relying on the provisions of this section shall demonstrate special circumstances by a preponderance of the evidence.

458-C:7 Modification of Order

I. (a) The obligor or obligee may apply to the court or, when the department of health and human services has issued a legal order of support pursuant to RSA 161-C, to the department, whichever issued the existing order, for modification of such order 3 years after the entry of the last order for support, without the need to show a substantial change of circumstances. This section shall not prohibit the obligor or obligee from applying at any time for a modification based on substantial change of circumstances.

(b) Not less than once every 3 years the department shall provide notice to the parties subject to a child support order payable through the department informing them of their right to request a review, and, if appropriate, the right to apply for adjustment of the child support order. The notice provision may be included as part of the initial support order or any subsequent orders.

(c) Not less than once every 3 years the department shall review all child support orders in which there is an assignment to the department pursuant to Title IV-A of the Social Security Act and, if appropriate, apply for adjustment of the child support order in accordance with the child support guidelines.

II. Any child support modification shall not be effective prior to the date that notice of the petition for modification has been given to the respondent. "Notice" means:

(a) Service as specified in civil actions; or

(b) Acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following said acceptance, and as long as the petitioner provides proof of acceptance by a certified mail receipt. Nothing in this subparagraph shall be construed to affect service as required by law.

III. Whenever the court, pursuant to this chapter, modifies a support order which results in an overpayment of support, the court shall order, absent a showing of undue hardship, the obligee to directly reimburse the obligor for such overpayment of support or order an adjustment to the modified support order until reimbursement of the overpayment has been satisfied. Any reimbursement ordered shall be only for an overpayment that occurs after the date that notice of the petition for modification of support order was given to the respondent. The court shall enter an order for reimbursement as a provision of the modified order, which order for reimbursement shall take effect 30 days after issuance, unless either the obligor or obligee requests, within such 30-day period, a separate hearing to determine the amount and frequency of reimbursement.

COURT RULES

Family Division Rule 2.29 Effective Dates

A. *Uncontested Matters.* Decrees in uncontested cases where the parties have filed a permanent agreement shall become effective on the date signed by the judge, or countersigned

by a judge pursuant to RSA 490-D:9, unless otherwise specified by the Court.

B. *Contested and Defaulted Matters.* In contested cases or upon the default of either party, the following rules apply.

1. The following orders are effective upon the issuance of the clerk's notice of decision, unless the court specifies, either orally or in writing, another effective date:

- a. Temporary orders;
- b. Parenting plans;
- c. Uniform support orders
- d. Orders for alimony or payments of on-going expenses; and
- e. Provisions concerning the welfare of a child or the safety of a party,

at the discretion of the court.

2. All orders other than those described in subsection 1 are effective on the 31st day from the date of the clerk's notice of decision unless the order specifies another effective date, a party files a timely post-decision motion (see Supreme Court Rule 7(1)(c)), or a party files an appeal.

3. If any party files a timely post-decision motion, but no appeal is filed, all orders other than those described in subsection 1 are effective on the 31st day from the date of the clerk's notice of decision on the motion or another date at the discretion of the court.

4. If any party files an appeal, all orders described in subsection 1 shall continue in effect until the supreme court mandate or the conclusion of such further proceedings as the supreme court may order, whichever is last. During this period, no orders as to marital status or parentage or as to property division shall take effect.

5. Nothing in this Rule modifies Family Division Rule 1.31 or Supreme Court Rule 7 as to the time for filing an appeal.

C. *Inactive Cases.* All domestic relations cases which have been placed on hold by request of the parties shall be dismissed after six (6) months unless there is a request by a party to reactivate the case, or a request for a further extension for good cause.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court erred as a matter of law by ordering that Mr. Bart's child support obligation shall be automatically modified on an annual basis, retroactive to the beginning of the prior calendar year, without any judicial determination that the new amount of child support is just and appropriate? (Respondent's Motion for Reconsideration of Final Decree on Petition for Divorce, Addendum, "Add." at 60-61).

2. Whether the trial court erred when it treated marital assets used by Mr. Bart to pay his legal fees as an advance on his share of the marital estate, but failed to hold Ms. Sanborn to the same standard? (Respondent's Motion for Reconsideration of Final Decree on Petition for Divorce, Add. at 58-60).

3. Whether the trial court erred as a matter of law when it modified the terms of the Final Decree after this appeal had been perfected to this Court? (Respondent's Motion for Reconsideration, Add. at 87-89).

STATEMENT OF THE FACTS AND CASE

The parties were married July 16, 2005. The Petitioner, Lura Sanborn, filed for divorce in September of 2017. Ms. Sanborn is age 42 (d.o.b. 01/17/1978) and the Respondent, Jeffrey Bart is age 51 (d.o.b. 01/15/1969). The parties have one child together – Walden, age 12 (d.o.b. 07/07/2008).

On February 8, 2018, the trial court issued temporary orders which included, among other things, orders requiring Mr. Bart to pay child support and alimony to Ms. Sanborn (the “Temporary Decree”). (Addendum, hereinafter “Add.” at 90). The Temporary Decree granted Ms. Sanborn exclusive use and possession for the former marital residence but required Mr. Bart to pay one-half of the ongoing real estate taxes associated with this residence. (Add. at 95).

Mr. Bart owns a majority interest in the Granite State Candy Shoppe (GSCS) in Concord. (Add. at 76, Request #34). Mr. Bart also owns a majority interest in the building at 9-17 Warren Street in Concord in which GSCS is located. (Add. at 80; Request #81). GSCS has been owned and operated by Mr. Bart’s family since 1927. (Add. at 19). Mr. Bart’s interest in GSCS and the building were inherited and/or gifted from his family. (Add. at 26). Ms. Sanborn is employed as a librarian at the St. Paul’s School in Concord and reported at the final hearing that she earns \$5,155 per month, or \$61,860 annually. (Add. at 73; Request #6).

A final hearing was held over six days between May 21, 2019 and September 5, 2019, following which the trial court issued the Final Decree of Divorce (the “Final Decree”). (Add. at 16-53). The Final Decree addresses the numerous issues which remained in dispute at the time of trial, including the final parenting plan, child support, alimony, the valuation of certain real estate and business interests, and the overall division of the marital estate.

The trial court found that Mr. Bart's present annual income is \$116,616 (\$9,718 per month) and ordered him to pay child support of \$1,342 per month. (Add. at 23). The trial court found that \$1,342 per month was in accordance with the child support guidelines. However, the Final Decree also includes orders intended to determine Mr. Bart's child support obligation in the future. The trial court ruled in the narrative portion of the Final Decree as follows:

“Should Jeffrey receive additional income (to include without limitation, guaranteed payments, wages, distributions, dividends or other compensation) such that his income in any tax year exceeds \$9,718/month or \$116,616/year, he shall pay additional child support on such additional income. Any additional income shall be run through the New Hampshire Child Support Guidelines Worksheet. The additional income shall be calculated no later than April 15 and paid within 10 days of the recalculation. For so long as Jeffrey has an obligation to pay child support, the parties shall annually exchange all state and federal tax returns (by April 15 of each year)....” (Add. at 23).

The Final Decree does not provide for an automatic reduction in Mr. Bart's child support in the event his income is less than \$116,000 in any particular year, or if Ms. Sanborn experiences an increase in her income.

After considering the statutory factors set forth in RSA 458:16-a, the trial court found that an unequal division of marital assets in Mr. Bart's favor was equitable in light of the fact that both GSCS and the building on Warren Street were inherited or gifted from his family. See, RSA 458:16-a, II (n). (Add. at 26). The final division of assets, which is set forth in Appendix A of the Final Decree, awards 55% of the marital estate to Mr. Bart and 45% to Ms. Sanborn. (Add. at 35-36).

Both parties accessed marital assets during the divorce process to pay their respective legal fees. The trial court found that Mr. Bart had accessed \$64,098 from an investment account for this purpose. (Add. at 31). Ms. Sanborn testified, and the trial court found, that she withdrew

at least \$53,259 from marital savings to pay her attorney's fees. (Trial Transcript, "Tr. at 685-696; Add. at 74, Requests #13, #15, #16). The trial court declined Ms. Sanborn's request for an order requiring Mr. Bart to reimburse her for any portion of the legal fees she incurred during the divorce. (Add. at 32-33).

The trial court specifically held in the Final Decree that "Ms. Sanborn should not have to bear the cost of Mr. Bart's legal fees." (Add. at 31). As a result, the trial court, citing In re Hampers, 154 N.H. 275, 291 (2006), treated the \$64,098 that Mr. Bart withdrew from the investment account as an advance on his share of the marital estate, and deducted \$65,000 from Ms. Sanborn's side of the ledger when dividing the marital estate at Appendix A. (Add. at 31, 36). However, the trial court, without explanation, made no such adjustment for the \$53,259 that Ms. Sanborn withdrew from marital assets to pay her legal fees.

The Final Decree awarded Ms. Sanborn the former marital residence, subject to her being "responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property." (Add. at 41). The Final Decree contains no language that would require Mr. Bart to pay one-half of these real estate taxes in the event of an appeal.

Following the issuance of the Final Decree, both parties filed timely motions to reconsider. In an order dated December 31, 2019, the trial court denied both parties' motions to reconsider with the exception of two minor changes which are not relevant to this appeal. (Add. at 68). Ms. Sanborn did not ask the trial court to reconsider the portion of the Final Decree that requires her to pay all the expenses associated with the marital residence.

On February 13, 2020, Mr. Bart filed his notice of appeal in this matter. On February 24, 2020 Ms. Sanborn filed her cross appeal. On March 6, 2020, this Court issued its notice confirming that the case had been accepted and docketed.

On May 4, 2020, Ms. Sanborn filed a motion with the trial court alleging that it would be unfair to require her to solely responsible for the real estate taxes on the former marital residence during the pendency of this appeal. (Add. at 55-56). Despite Mr. Bart's objection, the trial court granted Ms. Sanborn's motion without explanation. (Add. at 57). Mr. Bart filed a motion to reconsider this decision which was denied. (Add. at 89).

SUMMARY OF ARGUMENT

The trial court erred as a matter of law in issuing its order regarding Mr. Bart's future child support obligations. RSA 458-C:7 establishes the proper procedure for the modification of all child support orders. The trial court erred by not requiring Ms. Sanborn to apply to the court for a modification of child support in accordance with the standards set forth in the statute, and by ordering that child support be modified retroactively on an annual basis.

Although the child support guidelines establish a presumptive amount of child support, a party must be afforded an opportunity to rebut this presumption whenever a new amount of child support is ordered, and a court must consider all of the statutory factors set forth RSA 458-C:5 to determine whether the new amount mandated by the guidelines is fair and just. The trial court erred by issuing an order which calls for automatic modifications of child support in the future without any judicial review or an opportunity for Mr. Bart to be heard on the issue.

The trial court erred when it failed to make an adjustment to the final division of marital assets to account for \$53,259 that Ms. Sanborn withdrew from marital assets to pay for her divorce related legal fees. Having concluded that neither party could be legally obligated to contribute towards the legal fees of the other and then adjusting for the amounts used by Mr. Bart for his legal fees, the trial court was required to make this same adjustment for Ms. Sanborn. On this issue, the terms of the Final Decree are inconsistent with trial court's own findings of fact and law.

The trial court erred as a matter of law when it modified the terms of the Final Decree to require Mr. Bart to pay one-half of the real estate taxes for the former marital residence after Mr. Bart's appeal to this Court had been perfected. Once the appeal was accepted and docketed, this Court assumed exclusive jurisdiction over the Final Decree and all matters covered therein. The trial court had no jurisdiction to modify the Final Decree in May of 2020.

ARGUMENT

I. **The trial court erred as a matter of law by ordering that Mr. Bart’s child support obligation shall be automatically modified on an annual basis, retroactive to the beginning of the prior calendar year, without any judicial determination that the new amount of child support is just and appropriate.**

RSA 458-C:7 sets forth clear statutory conditions for the review and modification of child support orders. The statute states that that either party “may apply to the court” for the modification of a child support (a) after three years from the issuance of the prior order, or (b) in the event of a substantial change in circumstances. RSA 458-C:7, I (a). The statute further states that, “[a]ny child support modification shall not be effective prior to the date that notice of the petition for modification has been given to the respondent.” RSA 458-C:7, II.

Here, the trial court ignored the statutory requirements of RSA 458-C:7 in at least three respects: (a) by not requiring Ms. Sanborn to actually apply to the court for a modification of child support; (b) by mandating that child support shall be recalculated annually and without the need for Ms. Sanborn to demonstrate a substantial change in circumstance; and (c) by ordering that the new amount of child support would be owed retroactively to the beginning of the prior calendar year.

This Court has previously held that, pursuant to RSA 458-C:7, II, a trial court has “no discretion to modify any child support order beyond the date of ‘notice’ to the [other party]...” In re Birmingham, 154 N.H. 51, 58 (2006); see also In re Hampers, 166 N.H. 422, 446 (2014)(“[T]he purpose of modification procedures is to ensure that the parties’ obligations are commensurate with their respective needs and their respective abilities to meet them as of the time of the motion to modify and going forward.”)

RSA 458-C:7 evidences clear legislature intent to establish a fair and orderly process for the review and modification of all child support orders. The statute strikes a balance which ensures that child support orders remain fair, but also prevents parties from unnecessarily returning to court each year to recalculate child support. The prohibition on retroactive child support in the statute is consistent with this Court's prior rulings that child support must be based on present income. In re Feddersen & Cannon, 149 N.H. 194, 196 (2003). If trial courts were allowed to establish their own procedures for how and when child support obligations are modified, this would defeat the stated goal of RSA 458-C to "establish a uniform system to determine the amount of child support awards." In re Silva, 171 N.H. 1, 4 (2018).

The trial court also erred by ordering that Mr. Bart's child support obligation shall be automatically recalculated without a hearing or any other form of judicial review to determine whether the new amount is just and appropriate. RSA 458-C:4 (II) states that, "[t]here shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support." (emphasis added). RSA 458-C:5 further states that certain special factors, "if raised by any party to the action or by the court, shall be considered in light of the best interests of the child and may result in adjustments in the application of support guidelines provided under this chapter." (emphasis added). See, In re Silva, 171 N.H. at 4.

Prior to the issuance of any new child support amount, Mr. Bart must be afforded the opportunity to challenge the strict application of the child support guidelines and to allege whether special factors are present that might render the new amount unjust or inappropriate under existing circumstances at the time. The Final Decree deprives Mr. Bart of this right by

ordering that, on April 15 of each year, his child support shall automatically be modified using a new guideline amount retroactive to the start of the prior calendar year.

The child support guidelines are just that – guidelines. While the trial court may have determined that their strict application was warranted at the time of the Final Decree, it cannot assume that this will always be the case. Courts have an ongoing duty to review all new orders of child support before they become final to ensure that they are just and appropriate at the time of issuance. In re: LaRocque, 164 N.H. 148, 151 (2012)(all new orders of child support, even agreements, must be reviewed and approved by the court).

The Final Decree is also patently unfair in that it only calls for the automatic modification of child support in the event that Mr. Bart's income increases, but not if his income decreases. The Final Decree creates a floor, but not a ceiling, for Mr. Bart's child support obligation. Although the Final Decree does not prevent Mr. Bart from seeking a modification of his support obligation if there is a substantial change in his financial situation, unlike Ms. Sanborn, he would be required to apply to the court for relief and he would not be entitled to retroactive relief prior to the date of service. If the goal of RSA 458-C is to establish child support orders that are fair to both parties, then the Final Decree fails in this regard. If the process established by the trial court for the automatic recalculation of child support is allowed to stand, then it must be amended to cut both ways.

II. The trial court erred when it treated marital funds used by Mr. Bart to pay his legal fees as an advance on his share of the marital estate but failed to hold Ms. Sanborn to the same standard.

In dividing the marital estate, the trial court found that Mr. Bart accessed \$64,098 from an investment account during the divorce to pay his legal fees. (Add. at 31). Further finding that

“Ms. Sanborn should not have to bear the cost of Mr. Bart’s legal fees,” the trial court treated this amount as an advance on Mr. Bart’s share of the marital estate, and, to approximately offset Mr. Bart’s use of the \$64,098, deducted \$65,000 from the value of the assets being awarded to Ms. Sanborn when calculating the final division of the marital estate. (Add. at 36). This in turn, increased the equalization payment owed by Mr. Bart to Ms. Sanborn in order to effectuate the final division of marital assets. (Add. at 36).

Mr. Bart does not contest the trial court’s finding that he accessed \$64,098 from marital assets to pay his legal fees. However, the trial court inexplicably ignored its own finding, based upon Ms. Sanborn’s own testimony, that Ms. Sanborn withdrew \$53,259 from marital savings to pay her legal fees. (Tr. at 685-696; Add. at 74, Requests #13, #15, #16). When calculating the final division of marital assets, no adjustment was made by the trial court to account for this \$53,259. (Add. at 36).

Having found that the use of marital assets by one party to pay their legal fees has the effect of requiring the other spouse to pay for the other’s attorney’s fees, and having found that, if left uncorrected, such a result would be contrary to the law as stated in In re Hampers, 154 N.H. 275, 291 (2006), the trial court was then required to make an adjustment to the overall division of the marital estate to account for Ms. Sanborn’s use of the \$53,259. It did not do so.

It must be noted that Ms. Sanborn made a specific request that Mr. Bart be ordered to pay a portion of her legal fees. However, after carefully reviewing the applicable law, the trial court specifically found that there was no legal basis for requiring Mr. Bart to pay any portion of Ms. Sanborn’s legal fees. (Add. at 32-33).

III. The trial court erred as a matter of law when it modified the Final Decree after this appeal had already been perfected to this Court.

The Final Decree states that Ms. Sanborn is to be solely responsible for all ongoing costs associated with the former marital residence, including the real estate taxes. Ms. Sanborn reported at the time of the final hearing that she earns \$61,860 annually (Add. at 73), and the Final Decree awarded her \$1,342 per month in child support and \$1,000 per month in alimony. (Add. at 44, 47).

The effective date of the orders in the Final Decree is governed by Family Division Rule 2.29. Pursuant to 2.29 (B)(1)(d) all “[o]rders for alimony or payments of on-going expenses” are “effective upon the issuance of the clerk’s notice of decision, unless the court specifies, either orally or in writing, another effective date.” Because the real estate taxes are an on-going expense, they became Ms. Sanborn’s sole responsibility upon issuance of the Final Decree. At the time Ms. Sanborn filed her motion to reconsider the Final Decree, she could have asked the trial court to amend the Final Decree to address how the real estate taxes would be paid in the event of an appeal; however, she elected not to do so.

Instead, Ms. Sanborn waited until May of 2020 to file her Motion to Enforce Temporary Decree Regarding Taxes on Marital Home (the “Motion to Enforce”) with the trial court. Without alleging any substantial change in her financial circumstances, Ms. Sanborn argued for the first time that it would be unfair to hold her solely responsible for the real estate taxes while this appeal is pending. Although framed as a motion to enforce the Temporary Decree, the Motion to Enforce is logically inconsistent since Ms. Sanborn readily concedes that other portions of the Final Decree that were previously covered by the Temporary Decree (and are also governed by Rule 2.29)(e.g., alimony), went into effect immediately upon the issuance of the Final Decree.

Ms. Sanborn offered no explanation as to why some provisions in Temporary decree would be immediately superseded by the Final Decree, but others would not.

In its Order of May 18, 2020, the trial court granted the Motion to Enforce without any explanation. (Add. at 57). However, the effect of this Order is clear: the trial court modified the Final Decree to increase Mr. Bart's financial obligations to Ms. Sanborn.

In Rautenberg v. Munnis, 107 N.H. 446 (1966), this Court held that the perfection of an appeal vests this Court with exclusive jurisdiction over the subject matter of the appeal. In so holding, this Court ruled that "when an appeal is taken, it does affect the operation or execution of the order, judgment or decree from which the appeal is taken, and any matters embraced therein. After the appeal has been perfected, this Court is vested with the exclusive power and jurisdiction over the subject matter of the proceedings, and the authority and control of the lower court with reference thereto are suspended." Id. at 447.

Because this Court had exclusive jurisdiction over the Final Decree on May 18, 2020, it was an error of law for the trial court to issue an order that modified the terms of the Final Decree on said date.

CONCLUSION

For the forgoing reasons, the respondent respectfully requests (1) that the provisions in the Final Decree that require the automatic recalculation of child support retroactively each year be vacated; (2) that this matter be remanded back to the trial court to correct the division of marital assets to account for the \$53,259 used by the petitioner for her legal fees; and (3) that the trial court's Order of May 18, 2020 be vacated.

REQUEST FOR ORAL ARGUMENT

Respondent requests oral argument to be presented by Patrick J. Sheehan, Esquire.

Undersigned counsel hereby certifies that the underlying decisions of the trial court that are being appealed to this Court are attached as the first two documents in the Addendum at p. 16 and p. 54 respectively.

Respectfully submitted,

JEFFREY BART

By his attorneys,

SHEEHAN LAW OFFICE, PLLC

Dated: October 13, 2020

By: /s/ Patrick J. Sheehan

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**** CERTIFICATE OF SERVICE ****

I hereby certify that a copy of the foregoing motion was delivered on this date via electronic service through the e-filing system of the NH Supreme Court to Attorney Jeremy Eggleton, Esq, counsel for Lura Sanborn.

/s/ Patrick J. Sheehan

ADDENDUM

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

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Concord NH 03301

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NOTICE OF DECISION

**PATRICK J. SHEEHAN, ESQ
SULLOWAY & HOLLIS
35A PLEASANT STREET
CONCORD NH 03301**

Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**

Case Number: **629-2017-DM-00409**

Enclosed please find a copy of the Court's Order dated November 04, 2019 relative to:

SEE ATTACHED COURT ORDERS

**Parenting Plan
Uniform Support Order
Uniform Alimony Order
Final Decree on Petition for Divorce
ORDER**

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 12/19/2019 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:
P/R

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 18, 2019

Theresa A. McCafferty
Clerk of Court

(152)

C: Judith Ann Fairclough, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

MERRIMACK COUNTY

6th CIRCUIT – FAMILY DIVISION – CONCORD

In the Matter of:
Lura Sanborn, Petitioner, and Jeffrey Bart, Respondent
Case No. 629-2017-DM-00409

ORDER

This matter was before the Court for a multi-day Final Hearing that began on May 21, 2019 and concluded on September 5, 2019. The Petitioner (“Mother”) was represented by Attorney Judith Ann Fairclough, who was assisted by other attorneys from her firm. The Respondent (“Father”) was represented by Attorney Patrick J. Sheehan.

The parties were married in Portland, Maine on July 16, 2005. They are the parents of Walden Sanborn Bart (DOB 7/7/08).

Mother initiated the divorce proceedings in September of 2017. Father filed a Cross Petition. By Stipulation, approved January 18, 2019, the parties waived their respective fault claims and proceeded with a divorce on the ground of irreconcilable differences.

The disputed issues before the Court are as follows:

- a. Parenting Plan
- b. Child Support
- c. Alimony
- d. Value of business interests and real estate
- e. Overall division of marital assets and liabilities
- f. Health insurance coverage for respondent
- g. Motion for Contempt

The Court adopts the following findings of Fact and Rulings of Law:

Petitioner's: 1,2, 6, 7-9, 12, 13-14, 23, 25, 32, 40, 44, 46-48, 50, 52, 54, 56-62, 66, 70, 79, 81-83, 85, 87-91, 94, 96, 101-102, 104-105, 112, 118-122, 127-130, 133-134, 140-141, 146, 151, 153-155, 157-158, 260, 165, 168, 171-175, 180-183, 190-196, 199, 203, 216, 230-232, 251-252, 256, 260-261, 268, 270-271, 276, 280, 300-301, 304, 311,

Respondent's: 1-10, 14-16, 18-19, 21, 23-26, 28-29, 34-40, 42-54, 56-60, 65, 70, 73, 76-92, 96, 101-102 and 20, 22, and 30 as amended

- 20 amended to read Exhibit 38;
- 22 amended to read that the amount paid was \$55,047.72,
- 30 amended to clarify that the inspection was ordered October 18, 2018 and conducted October 23, 2018.

Pursuant to RSA 491:15 and applicable case law, Geiss v. Bourassa, 140 N.H. 629 (1996), Holliday v. Holliday 139 N.H. 213, 219 (1994), and Howard v. Howard 129 NH 657 (1987), the narrative set forth in this order and any proposed findings and rulings actually granted constitute the Court's finding of fact and rulings of law. Any of the parties' requests for Findings and Rulings not incorporated or granted, either expressly or by implication, are rejected as argumentative, irrelevant or improper.

General History

Mother first met Father in 1996, when she was in high school. Father's family owned Granite State Candy Shoppe ("GSCS"). Mother interviewed with and was hired by Father for employment in the store. Mother was eighteen and Father was twenty seven when they began dating. The parties maintained a relationship throughout Mother's time in college.

GSCS is a family owned business that was established in 1927 by Father's grandfather. Eventually, Father's father and uncle took over the operation. GSCS sells chocolates, candies, roasted nuts and ice cream. GSCS sells products it makes onsite and products that it purchases and repackages. There are two store locations. The main store is located in a building that was and is still owned by the Bart family. The second store is in Manchester.

Mother has been employed throughout the marriage as a librarian at St. Paul's School in Concord. Initially she was a twelve month employee but she now works ten months of the year, allowing her to be home for July and August. Father operates GSCS and oversees rental properties. He testified that at some point he has done every job associated with the business from waiting on customers to fixing broken equipment and taking out the trash.

Mother represented that before the couple separated, she was responsible for the majority of their son's care. She did all of the transportation, coordinated playdates and arranged extracurricular activities.

Father disagreed with Mother's representation and testified that he also transported Walden to and from school. By way of example, he explained that he took care of Walden exclusively on Wednesday nights when Mother was working. He stated that on those nights he would pick Walden up from daycare, feed him, give him a bath and make sure that he brushed his teeth.

Father also challenged Mother's claim that he was not an involved parent. He represented that he and Walden enjoy hiking and biking together.

Due to the nature of Father's business, he often works long hours. Mother testified that during the marriage he regularly worked 12-14 hour days, six or seven days/week. She stated that his hours were even longer during the holidays. However, before the divorce was filed, Father began to cut back on his work schedule. He stopped working on Saturdays and began taking Walden to activities and attending medical appointments.

Although Mother appreciates Father's new involvement in Walden's life, she is concerned about the money that he is spending on their son. Financially, Mother is unable to compete with Father's

outings and adventures. She testified that this financial imbalance creates confusion for Walden and allows Father to be the "fun" parent.

Mother acknowledged that Walden loves Father. Father stated that Mother is a wonderful mother and he recognizes how important it is for Walden to have a relationship with both parents.

The parties approach parenting differently and each takes issue with the actions and decisions of the other.

Mother is concerned with Walden's care when he is with Father. Mother described an occasion when Father brought Walden to school on his motorcycle. Mother disapproved. She also stated that Father brews his own beer and one day, after Father's parenting time, Walden came home from school with an empty beer bottle. Mother did not feel it was appropriate for Walden to have a beer bottle in school. Additionally, she is worried because Walden and Father have discussed Walden riding his bike to school next year; Mother believes the road is too busy.

Father denied that his actions and decisions have put Walden in harm's way.

Father disputed Mother's concerns regarding the beer bottle that Walden brought home from school. Father explained that he brews his own beer and has special labels that he applies to the bottles. On one occasion, Walden was assisting him with filling the bottles and applying the labels. Walden requested a souvenir and Father sent him home with an empty bottle. He was instructed to keep it in his bag and not remove it at school. Father represented that he was not contacted by the school and there were no issues with Walden having the bottle.

Father admitted that he took Walden to school on the back of his motorcycle. Walden was appropriately dressed in a full helmet and boots. Father explained that it was the last day of school and Walden had requested this mode of transportation. Father reported that he lives about a mile from the school and Mother was aware that occasionally he would ride with Walden on the back of the motorcycle. They had been taking short trips such as this, since before the divorce was filed.

Neither party believes that the other parent is effectively co-parenting. Mother feels that Father makes decisions without discussion. This was highlighted to her by the events surrounding Walden's summer plans. Mother indicated that Walden has an Individualized Education Program ("IEP"). Although he is strong in reading, Walden struggles with math. His motivation and focus also need support. In March of 2019, the education team contacted Mother and told her that Walden qualified for the Extended School Year Program ("ESY"). Mother believed that it was in Walden's best interest to attend and she expressed this position to Father in an email. Approximately ten days later, Father emailed Mother and informed her that he had contacted the school and signed documents saying that Walden would not be attending ESY. Instead, he had arranged for a tutor. Mother acknowledged that Father had raised the issue of hiring a tutor at an earlier IEP meeting. However, she believed that Father had made a decision regarding Walden's education, without first consulting her. Further, Mother was under the impression that tutoring would occur at Father's home and per the Temporary Orders, the parties were prohibited from entering each other's home. Thus, she believed the tutoring was designed to restrict her involvement in Walden's education.

Father represented that the parties do not sit down to discuss their conflicts. Instead, they communicate by text message. Recognizing that Walden does not enjoy school, Father suggested that a tutor might be more effective. He also questioned the need for summer school because he and Walden had been working together to improve Walden's math skills. Father indicated that he reached out to Mother in March, to begin a dialogue about the summer plans. Mother referred him to her lawyer (Ex W).

Ultimately, the parties participated in mediation and reached an agreement on Walden's summer schedule. Mother understood the agreement to be that their son would attend summer school for a minimum of 1.5 hours/day. They also agreed to have Walden attend soccer camp. Yet, after signing the agreement, Father contacted Mother and expressed an interest in registering Walden for mountain bike camp. Father's actions made Mother feel like she was being ignored. In her mind, Father had taken control of the whole summer.

To that end, Mother filed a Motion for Contempt. She represented that the parties had attended mediation and agreed that Walden would attend Summer School and play soccer. Mother was concerned because she had already coordinated soccer camp with ESY and Father was discussing an alternate activity with Walden. She felt that the conversation should have remained between the parents rather than discussed with their son.

Mother acknowledged that Father requested to meet with her to discuss Walden's schedule. However, she chose not to meet with Father because he has a history of being dishonest.

Father represented that he offered the mountain bike camp, despite the mediated agreement, because he did not think that the soccer camp plans had been confirmed. He also knew that Walden had not played organized soccer in years and he enjoyed mountain biking. Father believes that Walden should be included in the conversation concerning his activities.

Rulings

After reviewing the pleadings, exhibits and credible evidence submitted at the hearing, including but not limited to the demeanor of the parties, the Court rules as follows:

Pursuant to RSA 458:7-a, the Court grants Final Decree of Divorce on the ground of irreconcilable differences which have caused the irremediable breakdown of the marriage.

Parenting

Mother believes that the routine schedule outlined in the Temporary Parenting Plan should remain in place. Mother argues that this schedule works well for Walden and she continues to have concerns about his care when he is with Father.

Father believes that a more balanced parenting schedule is appropriate. This would allow for fewer transitions for Walden. Father also believes that if the other parent is tied up during his/her parenting time, that that time with Walden should be offered to the other parent. Mother has been unwilling to offer Father parenting time with Walden when she has had to work. Father described one instance in which she left Walden at home, alone, rather than offer that time to Father.

RSA 461-A:2, I, states that "because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state...to support frequent and continuing contact between each child and both parents" and to "encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced" unless it is clearly shown to be detrimental.

Having considered the evidence, the Court finds that both parents will be able to provide Walden with love and affection and that both are able to assure that he receives adequate food, clothing, shelter, medical care, and a safe environment. Therefore, a shared parenting schedule is appropriate and in Walden's best interest. *See Parenting Plan*

Child Support

Mother is seeking child support, as well as arrearage. She argued that there is retroactive child support owed because the Court incorrectly attributed health insurance to Father in its calculations for Temporary Support. However, prior to the Final Hearing, no motion was filed with the Court to correct this oversight.

While the Court finds that child support is appropriate, the Court declines to recalculate child support with Lura receiving the credit for the medical support. Although the Court finds that this was a scrivener's error in the child support calculation, this error was not raised until the Final Hearing and the Court does not find that there was proper notice.

Throughout the marriage, the parties maintained separate checking/savings accounts. Each was responsible for certain marital and/or family expenses. Mother claims that she was primarily responsible for costs associated with Walden. She represented that following Walden's birth, a marriage counselor encouraged Father to contribute financially to Walden's care. It was only then that Father began giving Mother money; he would leave \$5000 cash in a zipped bag on her bureau. She used this money to pay for groceries and certain extra-curricular activities. Mother denied ever asking Father about the source of the cash. She believed that he was paid in December and assumed that it was coming from his salary. Mother claimed that she was not aware that the money Father left for her, was income that he neglected to report for tax purposes.

Father disputed this assertion and argued that he and Mother shared expenses. He also denied that she was unaware of the underreported income, stating that he specifically told Mother that the money he gave her had not been included in the couple's reported income from the business and that she should not deposit it into an account.

Following the filing of the divorce petition, Father stopped providing Mother with these funds.

The Court finds that Father has not always been forthright with disclosing his finances. It was not until the filing of the divorce that his underreported income was identified.

Therefore, the Court adds the following to the Uniform Support Order:

Should Jeffrey receive additional income (to include without limitation, guaranteed payments, wages, distributions, dividends or other compensation) such that his income in any tax year exceeds \$9718/month or \$116,616/year, he shall pay additional child support on such additional income. Any additional income shall be run through the New Hampshire Child Support Guidelines Worksheet. The additional income shall be calculated no later than April 15 and paid within ten days of the recalculation. For so long as Jeffrey has an obligation to pay child support, the parties shall annually exchange all state and federal tax returns (by April 15 of each year) and in addition, Jeffrey shall provide all partnership returns within 30 days of their filing as well as draw/distribution records for CMJ and GSCS, as well as all schedules, 1099, and k-1s.

Additionally, the Court recalculates child support for the period of the Temporary Uniform Support Order to the date of the Final Temporary Uniform Support Order, using Jeffrey's monthly income, as determined by the Court for that period of time.

February 2018 through May 2018:

\$8334.50 income from financial affidavit
+ \$3103.91 income from CMJ from Exhibit 35, 2018 k-1 =
\$11,438.41 = monthly income from February to May 2018
Running guidelines, child support should have been \$ 1557
Difference from what he was paying = $\$328 \times 4 = \1312

June 2018 through December 2018:

\$8334.50 income from financial affidavit
+ \$3103.91 income from CMJ from Exhibit 35, 2018 k-1
+ \$3333.33/month income from CMJ for 2018, (\$40,000 withdrawn from CMJ Associates account in June 2018, distributed over twelve month period)
\$14,771.74 = monthly income from June 2018-December 2018
Running guidelines, child support should have been \$ 1984
Difference from child support being paid = $\$755 \times 7 \text{ months} = \5285

January 2019 through June 2019:

\$8334.50 income from financial affidavit
+ \$3333.33/month income from CMJ for 2018, (\$40,000 withdrawn from CMJ Associates account in June 2018, distributed over twelve month period)
\$11,667.83 for January 2019 - June 2019
Running guidelines, child support should have been \$1587
Difference from what he was paying = $\$358 \times 6 \text{ months} = \2148

Running guidelines based on Father's August 2, 2019 Financial Affidavit and Mother's July 30, 2019 Financial Affidavit = \$1342 for July until November, 2019.

Difference from what he was paying = $113 \times 5 = \$565$

Adding the differences for the period of time in which the Temporary Order was in place, the Court finds that Father underpaid child support and there is an arrearage in the amount of \$9310 (\$1312 + \$5285 + \$2148 + \$565). Within 30 days of the Notice of this Decision, Father shall pay Mother \$9310.

The Court finds that this recalculation and arrearage Order is appropriate as Father's actual income was unknown until the Final Hearing. (See Paragraph 2 of Temporary Decree).

During the Hearing, Mother claimed that Father had failed to reimburse her for his portion of Walden's uninsured medical expenses. Father argued that Mother paid for these expenses through their HSA fund and that his portion should likewise come from the HSA.

Both parties acknowledged that there is inconsistency between the language in the Temporary Decree and the Temporary Uniform Support Order. The Temporary Decree states that "both parties may access the HSA account to pay their own reasonable and necessary medical expenses and those of Walden provided they account to the other for all withdrawals and payments within 14 days of such withdrawals..." The Temporary Uniform Support Order states that the Obligor/Father is responsible for 2/3 of uninsured medical expenses and the Obligees/Mother is responsible for 1/3 of uninsured medical expenses.

On August 8, 2018, Father filed a Motion to Enforce Temporary Orders and to Compel Accounting of HSA Funds (Docket No. 53). Mother objected. In an Order dated October 25, 2018, the Court noted that "counsel represented...that the pending motions had been resolved." Therefore, the Court declines to make any further Orders as it relates to past expenses and the use of the HSA. The Court finds that any requests for reimbursement or funds related to past uninsured medical expenses have been waived. Going forward, the Court maintains the division established in the Temporary Uniform Support Order and requires the Obligor/Father to pay 2/3 and Obligees/Mother to pay 1/3 of Walden's uninsured medical expenses. *See Uniform Support Order*

Alimony

The parties agreed that the law in effect at the time the lawsuit was filed would govern alimony, rather than the 2018 amendments to that law (effective for cases filed after 1/1/19). The Court finds that Mother lacks sufficient income, property, or both, to provide for her own reasonable needs, taking into account the marital lifestyle. See RSA 458:19, I(a). The Court does not find that Mother is underemployed. RSA 458:19, I(c). Additionally, the Court finds that Father is able to meet his own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households. See RSA 458:19, I(b).

Pursuant to RSA 458:19, IV(b) (2018),

In determining the amount of alimony, the court shall 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**

(Emphases added.)

Again, the Court notes the challenges with establishing Father's income. As the primary owner of both GSCS and CMJ, Father has a much greater opportunity for future acquisition of capital assets and income than does Mother, a salaried employee. And because he is awarded a slightly larger share of the marital estate (see property distribution, below), "the property awarded under RSA 458:16-a" factor favors Mother's receipt of alimony to help meet her reasonable needs.

The Court recognizes that both parties are frugal in their spending and finds that the expenses listed in their Financial Affidavits to be modest.

After considering all of the above, the Court awards alimony. See *Uniform Alimony Order*.

Health Insurance Coverage

The continuation of health insurance benefits on behalf of Jeffrey shall be governed by RSA 415:18, VII-b, COBRA, or other applicable law. 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.

Mother shall maintain health insurance for Walden.

Property Distribution

Having considered all of the facts and evidence the Court finds that the attached Final Decree of Divorce represents an equitable distribution of the parties' marital estate. See *Final Divorce Decree*.

RSA 458:16-a, II grants the Court the authority to order an equitable division of property between the parties. The Court presumes that an equal division is an equitable distribution of property, unless it decides that an equal division would not be appropriate or equitable after considering a number of factors.

In 2016, the parties refinanced the marital home and applied money from Mother's savings, in order to pay for renovations to their house. The evidence shows that the couple spent over \$85,000 on various projects.

The parties agree on the current value of the marital home. Mother is maintaining that residence, while Father resides in a nearby home, purchased by his mother and for which he is paying rent. Mother is seeking financial assistance for issues within the marital home. Mother had the home professionally inspected and certain areas of concern were identified. Mother asserts that the boiler needs to be replaced, the wood stove does not meet code and there is black mold in the attic. She is interested in converting the home to propane. There is also a fireplace in the home that she would like to replace. The tub is cracked and she has been instructed by a plumber to refrain from using it. Mother asserts that the Temporary Decree requires Father to pay for these extraordinary expenses.

Father disagrees that the repairs identified by Mother qualify as extraordinary expenses. He argues that these conditions existed at the time of the appraisal. Consequently, no further compensation for repairs is warranted.

The Court declines to require Father to pay for repairs to the house. The Court finds that the house issues, that Mother wishes to repair, were present at the time of the appraisal. Therefore, they are including in the valuation of the marital home.

Mother is awarded the marital home and the Court assigns to the home the value, as agreed upon by the parties.

Father is the controlling member of two Limited Liability Corporations which own and operate Granite State Candy Shoppe ("GSCS") and the Concord property in which GSCS is located. Mother is a member of the LLC that owns GSCS, although the source of her ownership was not explained or provided. (The experts each worked around this omission by valuing the "marital" 90% share, without dividing that share into 10% for Mother and 80% for Father.) The candy business and the property in which it is located have been in Father's family for nearly 100 years. The business and property were inherited and/or gifted to Father. Therefore, the Court finds that pursuant to RSA 458:16-a, II (n), an unequal distribution is appropriate.

Valuation of both businesses was contested. Mother introduced a valuation report and expert testimony from Anthony Albright, CPA-ABV¹, who concluded that the value of the marital 90% share of GSCS was \$584,100. Father introduced a valuation report and expert testimony from Richard Maloney, CPA-ABV, who concluded that the value of the same marital 90% share of GSCS was instead \$152,000. Based on the calculations below, the court concludes that the value of the marital 90% share of GSCS is actually \$342,009.

The experts agreed that they both valued GSCS as a going concern, and both valued it for its fair market value. They explained the three principal valuation methods: the income approach, the asset approach, and the market approach. Mr. Albright testified that a closely held business like GSCS would normally be valued using the income approach. However, he placed less emphasis on the income approach in reaching his final valuation because he was concerned about the unreported income that had caused revisions to the tax returns for GSCS for the years 2014, 2015, and 2016. Mr. Albright's final number, \$584,100, was based only 20% upon his income approach method (the "capitalization of earnings" method). The other 80% of that number was based upon two different market approaches. The first was a "market data" method whereby Mr. Albright used a national database called *DealStats* to find comparable sales of confectionary and chocolate businesses of a roughly similar sales range, narrowing their results down to 5 companies sold within the last 20 years. Among these sales was a competitor of GSCS, a company based in Weirs Beach called Kellerhaus, which sold in 2004 for \$775,000, or 1.12 times annual sales. From those 5 comparable sales, Mr. Albright derived a ratio of the Market Value of Invested Capital (MVIC – or the purchase price) to sales for the companies; the mean value of this ratio was 0.71. He applied this as a "P/R Ratio," short for "Price to Revenues Ratio," so he multiplied the value multiple (.709) by the selective revenue

¹ Accredited in Business Valuation, a professional designation awarded to a CPA who specializes in calculating the value of businesses.

base of GSCS (derived from an average of its gross revenues over the years 2014 – 2018). After subtracting interest bearing debt – but before applying a marketability discount (or reducing to the 90% that is part of the marital estate) – Mr. Albright reached a value of \$782,000 by applying the market approach. He weighted this result at 40%, so twice as heavily as his income approach. The second market approach was based upon a “company-specific valuation,” specifically, the 2013 purchase by the company of Michael Bart’s interest. From this purchase, Mr. Albright derived a “control premium,” which he used to calculate the value of GSCS (before marketability discount and 90% ownership) at \$975,000. He also weighted this result at 40%, so twice as heavily as his income approach. Weighting his income approach valuation of \$541,000 at 20%; his “price/ revenues multiple” valuation of \$782,000 at 40%; and his “Subject Company Price/ Revenues Multiple” of \$975,000 at 40%, Mr. Albright found an indicated value for GSCS before marketability discount of \$811,000. Applying a 20% discount for marketability brought him to \$648,800, which he rounded to \$649,000. The marital 90% interest in GSCS, then, is worth \$584,100, in Mr. Albright’s calculation.

Mr. Maloney also testified about his methodology for calculating the value of GSCS under the income approach. Although Mr. Maloney and Mr. Albright used different bases of income for GSCS, the capitalization rate they used – “that rate as an investor you expect to receive from your investment,” according to Mr. Maloney – was very close. Significantly, Mr. Maloney used a weighted average when determining the net income of GSCS – 5x for 2018, 4x for 2017, 3x for 2016, 2x for 2015, and 1x for 2014. He explained that more recent years’ income would generally more closely reflect income going into the future, which a prospective buyer would rely on, so that is how he conducted his analysis under the income approach. His ultimate conclusion of value under the income approach (before discounts) was \$237,232. Mr. Maloney did not value GSCS under the market approach. He did value GSCS under the asset approach, which he explained “usually serves as the minimum value,” and is helpful in cases where a company is not generating income and so its assets are sold off and that is how its buyer makes its money. His conclusion of the value of GSCS under the asset approach – which included no value for goodwill – was \$199,517. He weighted the asset approach at 33% and the income approach at 67%, valuing the company at \$224,661 before applying a 25% marketability discount (taking the value down to \$168,496) and the 90% marital ownership, leading to his conclusion that the marital share of GSCS was worth \$152,000.

Both experts were thoughtful and well-prepared. Both thoroughly explained the normalization adjustments they had conducted in preparing their valuations under the income approach. Common sense and the balance sheets themselves indicate that the value of GSCS is somewhere between the two experts’ valuations. Both Mr. Maloney and Mr. Albright testified that they bring a sanity check, reality check, or common sense to their approaches. As a sanity check for the Court, the average of Mr. Albright’s value and Mr. Maloney’s value, \$584,100 and \$152,000, is \$368,050. Mr. Maloney himself, when asked on cross-examination, could not say that he would advise Mr. Bart to sell his interest in GSCS for \$152,000, even though that was Mr. Maloney’s conclusion of the value of his interest.

The Court is not prepared or qualified to look at the GSCS balance sheets or tax returns and question the normalization adjustments that either Mr. Maloney or Mr. Albright conducted. In the end, the “nitty-gritty” of what the CPAs have done in their expert analyses are unassailable. However, each expert has some big-picture flaws, which either inflated the value of GSCS (in Mr. Albright’s

case) or lowered the value (in Mr. Maloney's case). The Court must address these big-picture issues in order to calculate the true value of GSCS as accurately as possible.

The first and most significant issue apparent in Mr. Albright's approach is the weight that he gave to the market approaches. The Court is not comfortable considering the "company-specific" purchase of Michael Bart's interest in GSCS (and CMJ) as an arms-length transaction from which a revenue multiple may be derived – let alone weighting that value twice as heavily as the income approach. This is a family transaction. Jeffrey Bart testified credibly that the buyout took place when Michael Bart was having a difficult time psychologically, and the buyout was structured in order to give Michael Bart a steady stream of income while removing him from a position where he could harm the family businesses. Perhaps, as Mr. Albright testified, the tax returns surrounding the transaction should have reflected something different if this purchase was at something other than market value. However, Jeffrey Bart testified that GSCS was not appraised prior to this buyout. Perhaps the family all accepted that the stream of income they were supplying to Michael Bart in exchange for his interest actually constituted fair value for the purposes of this sale. That does not mean, however, that it constitutes fair market value for the purposes of a business appraisal six years later in the context of a divorce. The Michael Bart transaction skewed Mr. Albright's numbers very high. The Court will not consider that transaction in calculating the actual fair market value of GSCS.

The reason that Mr. Albright gave for minimizing the weight of the income approach – the lack of certainty regarding the numbers reflected on the tax returns and balance sheets – is a legitimate one, as far as it goes. But both Mr. Albright and Mr. Maloney had access to the amended tax returns for 2014, 2015, and 2016. Those amended returns corrected the underreporting issue and, as far as anyone can tell, accurately reflected the income of GSCS for those years. And, on further investigation, Mr. Albright's quibbles with the condensed version of Quickbooks data that he received did not appear to reflect any nefarious scheme, but rather the fact that he had to work with one full set of data prior to April 2018, and another full set of data from April 2018 forward to the December 2018 appraisal date, and had to reconcile these data sets in a painstaking way.

Mr. Albright is correct that the tax returns from 2017 and 2018 were not amended, and we do not know whether the underreporting that had affected 2014, 2015, and 2016 was also present in 2017 and 2018. The income numbers for 2017 and 2018 were certainly notably lower than in the years where the tax returns had been amended. But that is not a reason to discount the approach that he testified was the approach most relevant to valuing a closely-held business. He testified that he conducts a straight average of revenues, rather than a weighted average like Mr. Maloney does, in order to smooth out any fluctuations over the course of years. Using the straight across average, where 3 of the 5 years had already been corrected and were therefore reliable evidence, Mr. Albright's valuation under the market approach was \$541,000 before discounts. That number should have been given more weight than the 20% Mr. Albright gave it.

Mr. Maloney's numbers, however, were skewed by the weighted average. Although a weighted average may normally be appropriate, so that the most recent years' income is given more weight in estimating future income, in this particular case, the 2017 and 2018 numbers were significantly lower than the numbers from the amended tax years of 2014, 2015, and 2016. Without getting into Mr. Maloney's (supported) normalization adjustments, his normalized net income numbers for the years 2014 through 2018 were as follows:

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Year	2014	2015	2016	2017	2018
RM normalized net income	\$103,410	\$52,637	\$64,513	\$19,810	\$7,615

A straight average of those numbers yields \$49,597, rather than the \$34,636 Mr. Maloney calculated when weighting the most recent years most heavily. But Mr. Albright correctly flagged concerns about underreporting in the not-amended years, 2017 and 2018. Therefore, a more accurate approach, using Mr. Maloney's reasoning favoring more heavily weighting the reliable predictors, is to double-weight the three years for which the parties have amended tax returns, and single-weight the years for which they have not. Each of the years is counted. But those that are reliable get a bit more weight. Applying this weight structure to Mr. Maloney's normalized net income numbers yields:

Year	2014	2015	2016	2017	2018
RM normalized net income	\$103,410	\$52,637	\$64,513	\$19,810	\$7,615
Weight	2	2	2	1	1
Total	206,820	105,274	129,026	19,810	7,615

So the average, weighting the more reliable years slightly more, is \$58,568.13.

To turn this normalized net income into a valuation of GSCS, Mr. Maloney divides normalized net income by the weighted average cost of capital. Mr. Maloney testified persuasively that the "50% debt" that GSCS "owes," which is actually owed to Jeffrey Bart himself, based upon the Michael Bart buyout and Michael Bart's early death, is more equity than it is debt, and therefore should not figure into the weighted cost of capital. He therefore suggested that a buyer would use 75% equity and 25% debt, rather than the 50-50 split that Mr. Albright suggested (based upon his interpretation of the debt to Mr. Bart as an actual debt, rather than equity). Because the Court agrees with Mr. Maloney that the "debt" to Mr. Bart is properly considered equity, Mr. Maloney's 75% equity – 25% debt division appears sensible. Using this split, Mr. Maloney calculated 14.6% as the weighted average cost of capital (including using the capitalization rate that he and Mr. Albright very nearly agreed upon). Dividing \$58,568.13 by 14.6%, the value of GSCS using the revised normalized net income and retaining Mr. Maloney's WACC is \$401,151.58.

As noted above, both Mr. Maloney and Mr. Albright argued persuasively for their normalization adjustments, and both of their income methods deserve consideration in the ultimate valuation of GSCS. And, although due much less weight, Mr. Albright's market valuation method and Mr. Maloney's asset valuation method also enter into the calculation. The experts used the varying approaches – each given the weight they deserved – to verify and support the calculations they had done in the primary approach. Therefore, it is appropriate to weigh the Court-revised Maloney income method valuation of \$401,151.58 at 40%, and the Albright income method of \$541,000 at 40%, the Maloney asset method valuation of \$199,517 at 10%, and the Albright price-revenues multiple method (from DealStats, not the company-specific Michael Bart purchase) of \$782,000 at 10%. Averaging these according to their weights yields a pre-discount value for GSCS of \$475,012 (rounded to the nearest dollar).

Next, the Court must decide whether Mr. Albright's 20% marketability discount or Mr. Maloney's 25% marketability discount is the more appropriate discount in this case. Mr. Albright's Appendix A to his report details studies and cases leading to his conclusion that a 20% discount is appropriate. He acknowledges "that a marketability discount in the range of 35%-40% is near the mean. These studies, however, are all based on non-control interests which implies lack of marketability discounts may be partially blended." Mr. Maloney agreed that no lack of control discount should be applied (although he did suggest that 25% discount for marketability would be more appropriate). Finding Mr. Albright's separation of the marketability discount and lack of control discount to be appropriate, the Court adopts Mr. Albright's 20% marketability discount.

Applying the 20% marketability discount to the \$475,012 valuation of GSCS yields a value of \$380,010. The 90% marital share of that value is \$342,009. Therefore, the Court concludes that the value of the marital share of GSCS is \$342,009.

The second LLC, CMJ Associates, LLC (CMJ), is the entity that owns the real estate containing GSCS and several residential apartments. The evidence of valuation presented was in the form of appraisal of the real estate, rather than CMJ as an entity. Mother presented a real estate appraisal report and expert testimony of Marsha M. Campaniello, who concluded that the fair market value of a fee simple interest in the building at 9-17 Warren Street in Concord (where GSCS has been based since it opened) is \$860,000. Father presented a summary appraisal report of real estate and the expert testimony of Louis Manias, who concluded that the building's leased fee market value is \$650,000. Because Mr. Manias's testimony compellingly explained his valuation, the Court agrees that the building's fair market value is \$650,000. The value of CMJ, then, is \$650,000, adjusted as needed for debts, plus the assets of the two CMJ bank accounts.

By way of brief explanation, Mr. Manias's testimony was so compelling for two main reasons: (1) his extensive knowledge of Concord real estate, and focus upon finding comparable sales in Concord; and (2) his valuation of the building on a square-footage basis, as opposed to a per unit basis, given its status as a mixed-use building as opposed to residential. Ms. Campaniello's approaches, using comparable sales from other municipalities south of Concord, and valuing the building on a per-apartment basis, were less persuasive. The market for buildings in Derry and in Manchester is different from the market in Concord, as Mr. Manias pointed out. Ms. Campaniello compared the rents (on a per-apartment basis) to other rents charged in Concord, but, as Mr. Manias pointed out, the other apartments were not really analogous. The other buildings in downtown Concord that Ms. Campaniello used as a basis for determining appropriate rent are newer and have more amenities. The apartments in CMJ's building are in what Mr. Manias described as "average" condition, in a building that is not handicapped-accessible, and whose parking spaces (a valuable amenity) are not on-site, but in a parking garage approximately a block away, around the corner and across North State Street. The apartments also do not have air conditioning or dishwashers; only one has a washer/dryer hookup. Mr. Manias and Mr. Bart also both testified to the significant deferred maintenance that the building would require, including a new roof (\$50,000), remediation of extensive pigeon waste in the attic (\$36,000) and potential remediation of lead paint around the windows (\$40,000). Ms. Campaniello testified that she had been informed about additional elements of deferred maintenance, such as interconnecting the individual apartments' smoke detectors

(\$50,000) and installing a sprinkler system (\$100,000).² On cross-examination, Mr. Manias was confronted with a 2013 appraisal done by the same company as he works for, Capital Appraisal Associates, although by a different appraiser, which found the value of the building as of 4/1/12 to be \$780,000. Mr. Manias agreed that the market has remained relatively stable. On re-cross, he explained that, although he described the apartments as being in "average" condition in his summary report, the photographs included with the summary report show that they are dated and some are in below-average condition. Although he did not explicitly connect the deferred maintenance issues with the reduction in value between 2012 and 12/31/2018, his testimony and his report as a whole allowed the inference that the deferral of these necessary maintenance items could reasonably explain the decline in value.

The value of CMJ as an entity is not limited to the value of its real estate; the value of any other CMJ assets must be included. At the time that this divorce was filed, CMJ had two reasonably well-funded bank accounts. Now, the Merrimack County Savings Bank CMJ account (#5704) has a balance of \$3,060,³ of which 95% belongs to Jeffrey Bart. The CMJ Fidelity account (#0391), also known as the CMJ investment account, has a balance of \$1,116, of which 95% belongs to Jeffrey Bart. Mr. Bart testified that one large deduction (approximately \$50,000) from the CMJ investment account was used to pay the tax liability for 2014, 2015, and 2016, plus accrued penalties and interest. Ms. Sanborn's asset distribution chart suggests that the CMJ investment account balance is \$64,098. However, Mr. Bart testified that he used the CMJ investment account to pay his legal fees during this divorce. Ms. Sanborn objected that the CMJ accounts were a marital asset, and Mr. Bart countered that Ms. Sanborn had used savings accounts to pay her legal fees as well. Ms. Sanborn should not have to bear the cost of Mr. Bart's legal fees (see attorney's fees discussion below).

Therefore, Mr. Bart's legal fees will be treated as an advance on his share of the property distribution. See In the Matter of Hampers and Hampers, 154 N.H. 275, 291 (2006). The property distribution therefore should take into account Ms. Sanborn's \$65,000 debt incurred for legal fees as a commensurate distribution. One approach would be, as Ms. Sanborn suggests, considering CMJ to have money in its coffers that is no longer there. The court prefers the approach that recognizes the money has been spent, but gives Ms. Sanborn the same benefit of having those litigation expenses paid from marital assets. With this adjustment included, the value of the marital portion of CMJ is 95% of the \$650,000 value of the real estate minus the \$147,448 in commercial loans that both parties recognized⁴ (so .95 x [650,000 – 147,448], or \$477,424), plus 95% of \$3,060 (which comes out to \$2,907), plus 95% of 1,116 (or \$1,060), for a total of \$481,391 (with each of those numbers rounded to the nearest dollar as necessary). In short, the value of the marital portion of CMJ is \$481,391. See Appendix A

Miscellaneous

Additional Property Settlement

As noted above, the marital estate is being divided slightly unevenly – 55% to Father, recognizing the inherited nature of the assets that created his livelihood and supported the marital lifestyle, and 45%

² Transcript, Day 2, p. 350.

³ Pet'r Ex. 43

⁴ Pet'r Ex. 36

to Mother. To buy out Mother's interest in the marital estate and get to the 45-55 division that is equitable in this case, Father is to pay to Mother the sum of \$215,794.90 within 120 days of the court's Order. See Appendix A.

Attorney's Fees

Mother believes that she is entitled to attorney's fees due to Father's unwillingness to cooperate with discovery.

The general rule in New Hampshire is that each party to litigation must pay her own attorney's fees. In the Matter of Mallett & Mallett, 163 N.H. 202, 211 (2012). Exceptions to this rule include a specific statutory authorization for awarding attorney's fees, an agreement between the parties, or a judicially-created exception to the general rule. Id.; see also Hampers, 154 N.H. at 289. One such judicially-created exception is set forth in Harkeem v. Adams, 117 N.H. 687, 690-91 (1977). "Under the Harkeem exception, an award of attorney's fees to one party is permissible where the other party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons, where the litigant's conduct can be characterized as unreasonably obdurate or obstinate, and where it should have been unnecessary for the successful party to have brought the action.'" Mallett, 163 N.H. at 211-12 (quoting Harkeem, 117 N.H. at 691).

Mother has not demonstrated that Father's conduct with regard to discovery was conducted in bad faith, such that she is entitled to an award of attorney's fees. Mother's litigation process was very costly throughout, through choices that had little to do with Father's compliance with discovery or not. And, as noted, Father's income has been very difficult to determine. Father and his counsel provided Mother and her counsel with the documentation of Father's bank accounts, and with the revised tax returns. But neither party has pinpointed a document or series of documents that would have allowed Mother to determine Father's income, let alone a document that Father refused to provide in discovery. Father's 7/29/19 Motion to Compel and to Dismiss (court document #88) was denied from the bench because the basis for that motion was Mother's omission of a figure for child support or alimony in her proposed decree shared with Father's counsel. The Court agrees with Mother that Father's income was not determinable. Therefore, omission of alimony and child support numbers on her proposed decree was not in bad faith or intended to surprise. But just as Father has not demonstrated a basis for dismissal of Mother's petition for alimony, Mother has not demonstrated a basis for an award of attorney's fees. Neither party knew what Father's income was. It seems that both parties deduced it over the course of Father's testimony. Mother has not produced evidence from which the Court finds bad faith or vexatious delay.

And Mother does not appear to argue for an award of attorney's fees under the judicially-recognized "exception permitting an award of attorney's fees in divorce cases." Mallett, 163 N.H. at 212; see, e.g., DePalantino v. DePalantino, 139 N.H. 522, 526 (1995); Indorf v. Indorf, 132 N.H. 45, 47 (1989); Salito v. Salito, 107 N.H. 77, 77-78 (1966). "In awarding attorney's fees pursuant to this exception, trial courts must use 'reasonable restraint' and the award must be based upon a finding of 'need on the part of one party and ability to pay on the part of the other.'" Mallett, 163 N.H. at 212 (quoting Indorf, 132 N.H. at 47). "The divorce exception was established to protect both parties' rights to access to the courts and defend against a petition for divorce." Mallett, 163 N.H. at 213. "[T]he theoretical basis for awarding attorney's fees in divorce cases is the potential ability of the court to offset the attorney's fees against the ultimate property distribution." Id.; cf. Morrison v. Holt, 42

N.H. 478, 479 (1861) ("If the wife ... prevails, her expenses are usually considered in awarding her alimony." (quotation omitted)); C.S. Garvey, Massachusetts Continuing Legal Education: A Practical Guide to Divorce in New Hampshire, § 5.5.6 (2009) ("More often than not, any advance granted by the trial court will act against your client's property division.").

In this case, as in Hampers, the attorney's fees issue has been addressed in the context of the property division. The money Father spent from the CMJ investment accounts – marital property used for Father's litigation expenses – has been offset against Mother's litigation debt to her counsel. Mother has not pleaded her need and Father's ability to pay, nor has she demonstrated the fees' reasonableness under the procedure outlined in Gosselin v. Gosselin, 136 N.H. 350 (1992). In the absence of these factors, an award of attorney's fees under the divorce exception is not supported.

The Court finds no applicable agreement or exception to the American Rule and declines to award attorney's fees.

Finances/ Tax Liability

Father shall indemnify and hold Mother harmless for any tax liability that may result of Father's underreporting. Until such time as GSCS shares are transferred formally, any tax consequence shall be paid by Father.

Mother's request for her "draw" from GSCS – the amount that was reported on her K-1 – is denied. The K-1 indicates "pass through" income; it may be attributed to her as income for tax purposes without being income that she can actually access. Cf. In the Matter of Hampers & Hampers, 166 N.H. 422, 438-39 (2014) (analogizing self-employment to joint ownership of partnership, which, like LLC or S-corporation, is subject to "pass through" taxation). The distributions that were attributed to her in 2014, 2015, and 2016, while the parties were living together, have been subsumed into the expenses of the marital estate (to the extent they were not provided to Mother in the form of the cash distributions in December that the parties both testified Father provided in those three years). As for the \$4,524 "draw" listed on the 2017 K-1, neither party addressed whether this was actual income or solely pass-through income for tax purposes. Because it is unclear whether this was concrete income that should have been distributed, the Court will not order it distributed; however, Mother should not have to pay any tax on that money. To the extent any tax liability is assessed to Mother as a result of that listed draw, Father shall indemnify her with the taxing entity.

Contempt

Mother argues that Father has violated the Temporary Parenting Plan by not discussing major decisions affecting Walden; not sharing responsibility for all major decisions regarding Walden, including educational, extracurricular and athletic activities; and scheduling activities without first consulting the other parent.

To prevail on her Motion for Contempt, Mother must have established that Father willfully, intentionally and deliberately failed to comply with a Court Order.

The Court finds that Father disagreed with summer school and made efforts to meet with Mother to talk over his concerns. By Mother's own admission she did not sit down with Father to discuss Walden's schedule because she found Father to be dishonest. The Court finds that Father raised the idea of tutoring with Mother before engaging the tutor. Further, the Court accepts Father's testimony that he returned paperwork to the school declining ESY believing that Mother would also submit paperwork with her opinion.

Additionally, the Court finds that Father's email to Mother in which he raised the issue of Mountain Bike Camp was not a violation of the mediated agreement.

Having made these rulings, the Court cannot find that Father willfully, intentionally and deliberately failed to comply with a Court Order and, therefore, does not find Father in contempt.

So Ordered.

11/4/19
Date

Erin B. McIntyre
Hon. Erin B. McIntyre, Judge

**In the Matter of:
Lura Sanborn, Petitioner, and Jeffrey Bart, Respondent
Case No. 629-2017-DM-00409**

<u>LURA</u>	<u>APPENDIX A</u> <u>ASSET</u>	<u>JEFFREY</u>
	<u>MARITAL HOME</u>	
180,025	46 Stonybrook Lane, Hopkinton (\$332,500 – 152,475)	
	<u>VEHICLES</u>	
(\$2908)	2018 Subaru Legacy (\$15,403 – 18,311)	
	2014 Subaru	\$12,313
	1996 GMC Truck	\$1,400
	<u>2004 Harley Davidson Motorcycle</u>	<u>\$2,945</u>
_____	Subtotal	_____
(\$2908)	\$13,750	\$16,658
	<u>BUSINESS ASSETS</u>	
	GSCS (90% interest)	\$342,009
	CMJ real estate (\$650,000 FMV – 147,448 commercial loans = \$502,552) \$502,552 x 0.95 =	\$477,424
	CMJ MCSB Savings #5704 3060 (Ex 43) x .95 =	\$2,907
	CMJ Fidelity #0391 1116 (ex. 40) x .95 =	\$1,060
_____	Subtotal	_____
	\$823,400	\$823,400
	<u>BANK ACCOUNTS</u>	
\$2,000	Merrimack County Savings Bank (MCSB) Checking #8312	
	MCSB Checking #7986	\$1,044
<u>\$3,193</u>	<u>Fidelity Investment #4915</u>	_____
\$5,193	Subtotal	_____
	\$6237	\$1,044

In the Matter of:
Lura Sanborn, Petitioner, and Jeffrey Bart, Respondent
Case No. 629-2017-DM-00409

APPENDIX A, CONTINUED

<u>LURA</u>	<u>ASSET</u>	<u>JEFFREY</u>
<u>TAX DEFERRED/ RETIREMENT ASSETS</u>		
\$140,537	Fidelity Roth IRA #5071	
\$80,680	SPS Fidelity 403(b)	
\$108,261	SPS TIAA	
\$89,541	SPS Unified Trust	
\$38,680	HealthEquity HSA #1164	
	Fidelity Roth IRA #9649	\$183,537
	<u>Fidelity IRA #2924</u>	<u>\$157,694</u>
	Subtotal	
\$457,699	\$798,930	\$341,231
	Grand Subtotals of All Assets	
<u>\$640,009</u>	<u>\$ 1,822,342</u>	<u>\$1,182,333</u>
<u>DEBTS</u>		
Each party's own	Credit Cards	Each party's own
Each party's own	Family Loans	Each party's own
(\$65,000)	Attorney's Fees	Paid from CMJ assets
	Total of Marital Estate	
<u>\$575,009</u>	<u>\$1,757,342</u>	\$1,182,333
Adjustment to 45%/55%		
\$790,803.90	Subtotals	\$966,538.10
45%	on \$1,757,342	55%
<u>\$215,794.90</u>	<u>Equalization Payment</u>	<u>\$(215,794.90)</u>
\$790,803.90	\$1,757,342	\$966,538.10
(45%)	Total	(55%)

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

MERRIMACK COUNTY

6TH CIRCUIT - FAMILY DIVISION - CONCORD

**In the Matter of: Lura Sanborn and Jeffrey bart
Case No. 629-2017-DM-00409**

FINAL DECREE ON PETITION FOR DIVORCE

This decree is

Ordered by the Court after hearing on May 21, 28, August 2, 9, 16 and September 5, 2019, at which petitioner/respondent appeared.

1. Type of Case:

DIVORCE:

A decree of divorce is granted to the petitioner/respondent 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.

2. Parenting Plan and Uniform Support Order

See attached Parenting Plan and Uniform Support Order.

3. Dependents

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 Walden Sanborn Bart as tax dependent(s) for odd years . Should Walden attend St. Paul School then Lura is awarded the dependency exemption for all years of Walden's attendance to insure the 90% tuition discount available to her through her employment at St. Paul School.
- Respondent, if otherwise qualified under federal/state law, shall be entitled to claim Walden Sanborn Bart as tax dependent(s) for even years

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

4. OPTIONAL: Post-Secondary Educational Expenses

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: N/A

Type of contribution (check all that apply):

Contributions to an account by Petitioner Respondent Both

(Specify the amount and frequency of contributions and account information. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

Contribution of an asset:

(Specify the account or other asset being contributed and its current balance or value. If an asset is identified specify how the asset will be used. Also specify what will happen to the contributions in the event the child does not incur post-secondary educational expenses):

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

Payments shall be made by Petitioner Respondent Both

(Specify amount to be paid by each party or the percentage or other formula agreed upon to determine the post-secondary education expense obligation agreed to by the parties):

Select one of the following:

Both parties agree that this post-secondary educational expenses agreement IS modifiable based on the 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.

Note: Before any court hearing to modify or enforce the agreement described above, the parties shall participate in mediation.

5. Guardian ad Litem Fees

N/A

6. Alimony

See attached Uniform Alimony Order.

Alimony shall terminate in the event of the death of Lura but shall continue in the event of the death of Jeffrey. The taxability of alimony shall be governed by the Internal Revenue Code.

7. Health Insurance for Spouse

The continuation of health insurance benefits on behalf of Jeffrey shall be governed by RSA 415:18, VII-b, COBRA, or other applicable law. 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

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.

Jeffrey shall maintain a life insurance policy in the minimum amount of \$250,00 designating Lura as trustee for the benefit of the child. This obligation shall continue as long as the insured is obligated to pay support.

9. Motor Vehicles

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

Lura is awarded the 2018 Subaru free and clear of any interest of Jeffrey.
Jeffrey is awarded the 2014 Subaru, the 1996 GMC truck and the 2004 Harley Davidson motorcycle free and clear of any interest of Lura.

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

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.

Petitioner is awarded the following specific items of personal property: Jeffrey shall provide Lura with a thumb drive or other copy of Walden's infant and childhood photos stored on the server located at the business, same to be provided to Lura within 30 days of the Clerk's Notice of Decision.

11. Retirement Plans and Other Tax-Deferred Assets

- 100% Lura's SPS TIAA/CFEF is awarded to Lura;
- 100% Lura's SPS Fidelity 403(b) is awarded to Lura;
- 100% Lura's Fidelity Roth IRA #5071 is awarded to Lura;
- 100% Lura's SPS Unified Trust defined benefit is plan is awarded to Lura;
- 100% Lura's Health Savings Account is awarded to Lura
- 100% of Jeffrey's Fidelity Roth IRA #9649 is awarded to Jeffrey;
- 100% of Jeffrey's Fidelity IRA #2924 is awarded to Jeffrey

12. Other Financial Assets

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.

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

MCSB checking account #8312, Lura's Fidelity Investment account #4915

Respondent is awarded the following bank accounts, stocks, bonds, mutual funds or other intangible personal property:

Jeffrey's MCSB checking account #7986, Jeffrey's Fidelity BOA stock

Other:

Jeffrey is awarded the inherited \$134,167 loan from GSCS and the inherited \$95,833 loan from CMJ.

Lura is awarded the following accounts for the benefit of Walden: MCSB Youth Savings # 3683, Ohio College Advantage 529 and Etrade #9009

Jeffrey is awarded the following accounts for the benefit of Walden: Vanguard Coverdell #4762 and Vanguard 529 Plan #1531.

13. Business Interests of the Parties

Jeffrey is awarded all right, title, and interest in the marital 90% of the business known as Granite State Candy Shoppe, LLC and the marital 95% of CMJ Associates, LLC, free and clear of any claim or interest of Lura.

Jeffrey shall be solely responsible for all debts of the business and shall be entitled to receive all profits from the business.

Lura shall transfer all property interest and stock to Jeffrey forthwith and shall resign as an officer or director in the business forthwith.

14. Division of Debt

Except as otherwise provided herein, the parties shall each be responsible for any debt they have incurred after the date of separation, holding each other harmless of the same.

Jeffrey shall reimburse Lura for any tax liability resulting from her 10% ownership interest in Granite State Candy Shoppe, LLC through the end of the tax year of the transfer of her 10% interest to Jeffrey. Lura shall provide confirmation of such liability and Jeffrey shall reimburse her in the amount within 30 days.

15. Marital/Civil Union Home

Lura is awarded all right, title and interest in the real estate located at:
46 Stonybrook Lane, Hopkinton, NH free of any right, title or interest of the other party .

Lura shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

Lura shall refinance the mortgage on the home so as to remove Jeffrey's name from the mortgage within 120 days from the date of the Clerk's Notice of Decision, failing which the home will be placed on the market and sold. At the time of which, Jeffrey shall provide Lura with an executed Quitclaim Deed conveying his entire interest in the property to her.

The parties shall share equally all costs of refinance or sale.

Lura shall be solely responsible for all expenses associated with the former marital home and shall indemnify and hold Jeffrey harmless thereon.

16. Other Real Property

Jeffrey is awarded his entire interest in the property owned by CMJ Associates which has been awarded to him pursuant to Paragraph 13 above.

Jeffrey shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property.

17. **Enforceability after Death**

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

18. **Signing of Documents**

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: N/A**

_____ 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.

20. **Name Change: N/A**

_____ may resume use of her/his former name: _____

21. **Other Requests:**

- A. **Additional Property Settlement:** To buy out Mother's interest in the marital estate and get to the 45%-55% division that is equitable in this case, Father is to pay to Mother the sum of \$215,794.90 within 120 days of the court's Order.
- B. **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.
- C. **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.
- D. **Disclosure of Assets:** The parties warrant that they have fully disclosed all assets within their knowledge on their respective Financial Affidavits, 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 has been relied upon by the other party.
- E. **Compliance With Rule 1.25-A:** The parties have fully complied with Rule 1.25-A.
- F. **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 (including any claim for alimony).

- G. **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.
- H. **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.
- I. **Tax Liability:** Jeffrey shall be solely liable and responsible for paying any interest, penalty, late fee or tax obligation ("tax liability") imposed upon either party by the State of New Hampshire or the IRS for the amended 2014, 2015 and 2016 personal joint tax returns and shall indemnify and hold Lura harmless thereon. Furthermore, if there is any tax liability imposed upon either party by the State of New Hampshire or the IRS for any other year based upon a party having failed to report all income on a joint tax return, the party who has failed to report shall be responsible for any and all interest, penalty, late fee or tax obligation imposed upon either party by the State of New Hampshire to the IRS and shall indemnify and hold the other party harmless thereon. Jeffrey shall also indemnify and hold Lura harmless from any tax obligation imposed upon either party relative to tax returns on which he unilaterally signed her name either on the return itself or on the electronic signature filing form. Jeffrey shall reimburse Lura for any tax liability resulting from her 10% ownership interest in Granite State Chocolate Shoppe, through the end of the tax year of the transfer of her 10% interest to Jeffrey. Lura shall provide confirmation of such liability and Jeffrey shall reimburse her in that amount within 30 days.

So Ordered

11/4/19
Date


Signature of Judge

ERIN B. McINTYRE
Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 5th Circuit - Family Division - Newport
Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-00409

UNIFORM ALIMONY ORDER

Name, Residence and Mailing Address of Person
Ordered to Pay Support (Payor)

Jeffrey Bart
67 Snowshoe Trail
Hopkinton, NH

Name, Residence and Mailing Address of
Person Receiving Support (Payee)

Lura Sanborn
46 Stonybrook Lane
Hopkinton, NH

D.O.B. _____ Telephone: _____

D.O.B. _____ Telephone: _____

E-mail Address: _____

E-mail Address: _____

Name of Employer: Granite State Chocolate

Name of Employer: St. Paul's School

Address of Employer:

Address of Employer:

15 Warren St.
Concord, NH

St. Paul's School
Concord, NH

Alimony was contested and is denied because

_____ OR

Alimony was contested and is ordered because

See attached _____ OR

Alimony is based on an agreement of the parties.

Alimony is to be paid as follows:

Term alimony:

\$ 1,000.00 per month (week, month, etc.) by

_____ (method of payment) until 8/1/2025 (date payments will end)

OR 69 (number of) payments of \$ 1,000.00, which ends upon completion of all payments.

The following special circumstances warrant an adjustment from the formula amounts and/or durational limits:

This case precedes the amendments to RSA 458:16. See Attached Narrative and Narrative Order dated 11/4/19.

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM ALIMONY ORDER

Reimbursement alimony:

\$ _____ per _____ (week, month, etc.) by

_____ (method of payment) until _____ (date of termination)

Support ordered is payable by immediate income assignment.

The Court finds that there is good cause to suspend the immediate income assignment because:

Obligor and obligee have agreed in writing.

Payments have been timely and it would be in the best interest of any minor child(ren) because:

Full retirement age and/or actual retirement age will impact payments as follows

Security under RSA 458:19-aa, VI is required as follows

Alimony arrearage:

\$ _____ as of _____,

payable \$ _____ per _____ (week, month, etc.)

Date

Signature of Payor

Date

Signature of Payor's Attorney/Witness

Date

Signature of Payee

Date

Signature of Payee's Attorney/Witness

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.

11/4/19
Date

Erin B. McIntyre
Signature of Judge

ERIN B. MCINTYRE
Printed Name of Judge

The parties agreed that the law in effect at the time the lawsuit was filed would govern alimony, rather than the 2018 amendments to that law (effective for cases filed after 1/1/19). The Court finds that Mother lacks sufficient income, property, or both, to provide for her own reasonable needs, taking into account the marital lifestyle. See RSA 458:19, I(a). The Court does not find that Mother is underemployed. RSA 458:19, I(c). Additionally, the Court finds that Father is able to meet his own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households. See RSA 458:19, I(b).

Pursuant to RSA 458:19, IV(b) (2018),
In determining the amount of alimony, the court shall 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**
(Emphases added.)

Again, the Court notes the challenges with establishing Father's income. As the primary owner of both GSCS and CMJ, Father has a much greater opportunity for future acquisition of capital assets and income than does Mother, a salaried employee. And because he is awarded a slightly larger share of the marital estate (see property distribution, below), "the property awarded under RSA 458:16-a" factor favors Mother's receipt of alimony to help meet her reasonable needs.

The Court recognizes that both parties are frugal in their spending and finds that the expenses listed in their Financial Affidavits to be modest.

After considering all of the above, the Court awards alimony

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit - Family Division - Concord
Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

Name, Residence and Mailing Address of Person
Ordered to Pay Support (Obligor):

Name, Residence and Mailing Address of
Person Receiving Support (Obligee):

Jeffrey Bart
67 Snowshoe Trail Hopkinton, NH
D.O.B.: _____ Telephone: _____
E-mail Address: _____
Name of Employer: Granite State Candy Shop
Address of Employer:
15 Warren Street
Concord, Nh 03301

Lura Sanborn
46 Stonybrook Lane Hopkinton, NH 03229
D.O.B.: _____ Telephone: _____
E-mail Address: _____
Name of Employer: St. Paul's School
Address of Employer:
St. Paul's School
Concord, NH

Child(ren) to whom this order applies:
Full Name

Date of Birth

Walden Sanborn Bart

July 07, 2008

The following parties appeared: Obligor Obligee Bureau of Child Support Services
 Other _____

NOTE: SECTIONS PRECEDED BY ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered:
 after hearing
 upon approval of agreement
 upon default
2. This order is a:
 temporary order
 final order
3. This order modifies a final support obligation in accordance with:
 a three-year review (RSA 458-C:7) OR substantial change in circumstances, as follows:

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):
 - 4.1 CHILD SUPPORT: \$ 1342 per month (week, month, etc.)
 - 4.2 Arrearage of \$ 9310 as of 11/4/19 payable in one lump sum payable \$ _____ per _____ (week, month, etc.) *within 30 Days of the Notice of this Decision*

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

4.3 Medical arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.4 Alimony is ordered. See the Uniform Alimony Order. N/A

4.5 Alimony arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.6 Alimony shall terminate 8/1/2025

5. Payments on all ordered amounts shall begin on _____. All ordered amounts shall be payable to Obligee Bureau of Child Support Services Other _____

6. This order complies with the child support guidelines. RSA 458-C.

This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.

The following special circumstances warrant an adjustment from the guidelines (Enter applicable circumstances below. See Standing Order 6):

7. Support ordered is payable by immediate income assignment.

8. The Court finds that there is good cause to suspend the immediate income assignment because:

Obligor and obligee have agreed in writing.

Payments have been timely and it would be in the best interest of the minor child(ren) because:

9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT.** (See Standing Order 9A).

9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. **OBLIGOR'S** medical support reasonable cost obligation: \$ 389 per month (week, month, etc.)

10A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

11. Health insurance coverage is not available is available to the **OBLIGOR in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 10.**

12. Health insurance coverage available to the **OBLIGOR** is not accessible to the child(ren).

13. **OBLIGEE'S** medical support reasonable cost obligation: \$ 206 per month (week, month, etc.)

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

13A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

14. Health insurance coverage is not available is available to the OBLIGEE in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 13.

15. Health insurance coverage available to the OBLIGEE is not accessible to the child(ren).

HEALTH INSURANCE COVERAGE (Paragraph 16A and/or 16B must be completed):

16A. Obligor Obligee is ordered to provide health insurance coverage for the child(ren) effective ongoing

16B. Obligor Obligee is/are not ordered to provide health insurance coverage at this time but is/are ordered to immediately obtain health insurance coverage when it becomes accessible and available at an amount equal to or less than the ordered medical support reasonable cost obligation.

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts:
Obligor 66 % Obligee 34 % Other: _____

18. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the children. Copies of pleadings related to medical coverage and child support were mailed to the Bureau of Child Support Services, Child Support Legal, 129 Pleasant Street, Concord, NH 03301.

19. Obligor Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.

20. The State of _____ has provided public assistance for the benefit of the minor child(ren) between _____ and _____ for _____ weeks. Obligor is indebted for the assistance in the total amount of \$ _____

21. Variation to standing order (specify paragraph #), additional agreement or order of the Court:

Obligor

Obligee

Staff Attorney
Bureau of Child Support Services

Obligor's Attorney/Witness

Obligee's Attorney/Witness

Date

Date

Date

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 21) are part of this order and apply to all parties.

Recommended:

Date

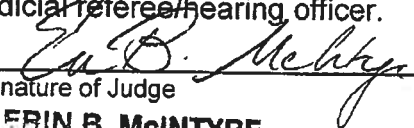
Signature of Marital Master/Hearing Officer

Printed Name of Marital Master/Hearing Officer

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.

11/4/19
Date



Signature of Judge

ERIN B. MCINTYRE

Printed Name of Judge

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

**THE STATE OF NEW HAMPSHIRE
UNIFORM SUPPORT ORDER — STANDING ORDER**

NOTICE: This Standing Order (SO) is a part of all Uniform Support Orders (USO) and shall be given full effect as an order of the Court. Variations to paragraphs of the SO in a specific case must be entered in paragraph 21 of the USO and approved by the Court.

(Paragraph numbers in the SO correspond to related paragraph numbers in the USO. Variations entered in paragraph 21 should reference the related paragraph number.)

SUPPORT PAYMENT TERMS

- SO-3A. All prior orders not inconsistent with this order remain in full force and effect.
- SO-3B. In cases where the order of another jurisdiction is registered for modification, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing jurisdiction. (See RSA 546-B:49,III.)
- SO-3C. This order shall be subject to review and Court modification three years from its effective date upon the request of a party. Any party may petition the Court at any time for a modification of this support order if there is a substantial change in circumstances. The effective date of any modification shall be no earlier than the date of notice to the other party. "Notice" means either of the following: 1) service as specified in civil actions or 2) the respondent's acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following the respondent's acceptance. See RSA 458-C:7.
- SO-3D. No modification of a support order shall alter any arrearages due prior to the date of filing the pleading for modification. RSA 461-A:14, VIII.
- SO-4A. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action, except where duration of the support obligation has been previously determined by another jurisdiction, or is governed by the law of another jurisdiction, and may not be modified in accordance with statutory language referenced in SO-3B. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21. (See RSA 461-A:14, IV)
- SO-4B. In multiple child orders, the amount of child support may be recalculated according to the guidelines whenever there is a change in the number of children for whom support is ordered, upon petition of any party. In single child orders, the support obligation terminates automatically, without the need for further court action, upon the emancipation of the child. The obligor remains obligated for any and all arrearages of the support obligation that may exist at the time of emancipation.
- SO-4C. If the order establishes a support obligation for more than one child, and if the court can determine that within the next 3 years support will terminate for one of the children, the amount of the new child support obligation for the remaining children may be stated in the order and shall take effect on the date or event specified without further legal action.
- SO-4D. In cases payable through the New Hampshire Bureau of Child Support Services (BCSS), if there are arrearages when support for a child is terminated, payments on the arrearages shall increase by the amount of any reduction of child support until the arrearages are paid in full.
- SO-4E. Pursuant to RSA 161-C:22, III when an assignment of support rights has terminated and obligor and the recipient of public assistance reunite, obligor may request a suspension of the collection of support arrearage owed to the state under RSA 161-C:4. So long as the family remains reunited and provided that the adjusted gross income of the family as defined by RSA 458-C is equal to or less than 185% of the Federal poverty guidelines as set by the United States Department of Health and Human Services, BCSS shall not take any action to collect the support arrearage owed to the State.
- SO-4F. If the collection of a support arrearage pursuant to RSA 161-C:4 is suspended, the obligor shall provide BCSS with a financial affidavit every six months evidencing the income of the reunited family and shall notify his or her child support worker in writing within ten days of any change in income or if the family is no longer reunited. Failure to report changes in income or in the status of the family as reunited or to provide a financial affidavit shall cause the suspension of collection to terminate.

Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**

Case Number: **629-2017-DM-00409**

UNIFORM SUPPORT ORDER

- SO-4G. Each party shall inform the Court in writing of any change in address, within 15 days of the change, so long as this order is in effect. Service of notice of any proceeding related to this order shall be sufficient if made on a party at the last address on file with the Court. A party who fails to keep the Court informed of such a change in address, and who then fails to attend a hearing because of the lack of notice, may be subject to arrest.
- SO-5A. If no date appears in paragraph 5 of the USO, the first support payment shall be due on the date this order is signed by the Judge.
- SO-5B. If support is payable through BCSS, a BCSS application for child support services must be submitted before BCSS can provide services in accordance with the order.
- SO-5C. If support is payable through BCSS, BCSS is authorized and directed to collect all sums, including any arrearages, from the obligor and forward the sums collected to the obligee or person, department, or agency providing support to the children named in the USO. Any payment shall be applied first as payment towards the current child and medical support obligation due that month and second towards any arrearages.
- SO-5D. If support is ordered payable directly to the obligee, it can only be made payable through BCSS at a later time if (1) the children named in the USO receive assistance pursuant to RSA 161 or RSA 167; (2) a party applies for support enforcement services and certifies to BCSS that (a) an arrearage has accumulated to an amount equal to the support obligation for one month, or (b) a court has issued a protective order pursuant to RSA 173-B or RSA 461-A:10 which remains in full force and effect at the time of application; or (3) a court orders payment through BCSS upon motion of any party that it is in the best interest of the child, obligee, or obligor to do so. RSA 161-B:4.
- SO-5E. Collection by BCSS on any arrearage may include intercepting the obligor's federal tax refund, placing liens on the obligor's personal and real property including qualifying financial accounts. Federal tax refund intercept and lien remedies shall be used to collect arrearages even if an obligor is complying with the child support orders. Pursuant to 45 CFR 303.72 (h) any federal tax refund intercept shall be applied first as payment towards the past due support assigned to the State.
- SO-5F. In all cases where child support is payable through BCSS, obligor and obligee shall inform BCSS in writing of any change of address or change of name and address of employer, within 15 days of the change.
- SO-5G. In all cases where child support is payable through BCSS, obligor and obligee shall furnish their social security numbers to the New Hampshire Department of Health and Human Services (Department).
- SO-6. Where the court determines that, in light of the best interests of the child, special circumstances exist that result in adjustments in the application of the guidelines for the child support obligation or the reasonable medical support obligation, the court shall make written findings relative to the applicability of one or more of the special circumstances described in RSA 458-C:5, I.

INCOME ASSIGNMENT

- SO-7A. Until such time as an income assignment goes into effect, payments shall be made as follows: (1) if the case is not payable through BCSS, directly to obligee, or (2) if support is payable through the BCSS by use of payment coupons available at the local BCSS office. An income assignment will not go into effect for self-employed obligors as long as they do not receive income as defined in RSA 458-B:1, paragraph IX. Future income will be subject to assignment if the case is payable through BCSS.
- SO-7B. If a parent is ordered to provide health coverage for Medicaid-eligible child(ren), he or she must use payments received for health care services to reimburse the appropriate party, otherwise his or her income may be subject to income assignment by BCSS. RSA 161-H:2(V).
- SO-7C. Increased income assignment for the purposes of payment on arrearages shall continue until such time as the arrearages are paid in full.
- SO-8. Whenever an income assignment is suspended, it may be instituted if a Court finds obligor in violation or contempt of this order OR after notice and the opportunity to be heard (RSA 458-B:5 & 7), when the Department begins paying public assistance for the benefit of a child OR when an arrearage amounting to the support due for a one-month period has accrued.

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

REPORT CHANGES OF EMPLOYMENT

- SO-9A. If support is payable through BCSS, obligor shall report in writing weekly, or as otherwise ordered by Court, to BCSS, and shall provide details of efforts made to find a job. Efforts to obtain employment shall include registering with New Hampshire Employment Security within two weeks of the date of this order. The obligor shall immediately report employment to BCSS in writing.
- SO-9B. Immediately upon employment the obligor shall report to the obligee, **in writing**, details of employment, including name and address of employer, the starting date, number of weekly hours and the rate of pay.

MEDICAL SUPPORT PROVISIONS

- SO-10-16B (1). In all cases where support is payable through BCSS, or where the Department is providing medical assistance for the child(ren) under RSA 167, the court shall include the medical support obligation in any child support order issued. RSA 461-A:14, IX(d).
- SO-10-16B (2). The court shall establish and order a reasonable medical support obligation for each parent. The presumptive amount of a reasonable medical support obligation shall be 4 percent of the individual parent's gross income, unless the court establishes and orders a different amount based on a written finding or a specific finding, made by the presiding officer on the record, that the presumptive amount would be unjust or inappropriate, using the criteria set forth in RSA 458-C:5.
- SO-10-16B (3). The court shall determine whether health insurance is available to either parent at a cost that is at or below the reasonable medical support obligation amount, as established and ordered pursuant to RSA 458-C:3, V, or is available by combining the reasonable medical support obligations of both parents, and, if so available, the court shall order the parent, or parents, to provide such insurance for the child.
- SO-10-16B (4). The cost of providing health insurance is the cost of adding the child to existing coverage, or the difference between individual and family coverage.
- SO-12, 15. Accessible health insurance means the primary care services are located within 50 miles or one hour from the child(ren)'s primary residence. RSA 461-A:14, IX(b).
- SO-16A-16BA party providing or ordered to provide health insurance for the child(ren) shall give the other party sufficient information and documentation to make sure insurance coverage is effective. If support is payable through BCSS, or if there has been an assignment of medical support rights to BCSS, the information and documentation shall be provided to BCSS. In addition, obligor shall inform BCSS in writing when health insurance is available, obtained or discontinued.

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

6th Circuit - Family Division - Concord
32 Clinton Street
Concord NH 03301

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

NOTICE OF DECISION

**PATRICK J. SHEEHAN, ESQ
SULLOWAY & HOLLIS
35A PLEASANT STREET
CONCORD NH 03301**

Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**
Case Number: **629-2017-DM-00409**

Enclosed please find a copy of the Court's Order dated May 18, 2020 relative to:

SEE ATTACHED COURT ORDER

**RE: PETITIONER'S MOTION TO ENFORCE TEMPORARY
DECREE REGARDING TAXES ON MARITAL HOME**

GRANTED

May 19, 2020

Theresa A. McCafferty
Clerk of Court

(152)

C: Judith Ann Fairclough, ESQ

THE STATE OF NEW HAMPSHIRE

Court Name: Sixth Circuit – Family Division - Concord
Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409

RECEIVED
MAY 04 2020
Concord Family Division

**PETITIONER'S MOTION TO ENFORCE TEMPORARY DECREE REGARDING
TAXES ON MARITAL HOME**

NOW COMES Petitioner, Lura Sanborn, by and through her counsel, Orr & Reno, P.A., and requests that the Court order that Ms. Sanborn be allowed to sell the marital home or refinance the home, and states:

1. The Court entered a Temporary Decree on February 8, 2018 and a Final Decree, subject to reconsideration, which was to become effective on February 18, 2020.
2. On February 13, 2020, Mr. Bart filed a Notice of Appeal in response to which Ms. Sanborn filed a Cross-Appeal.
3. Under Family Division Rule 2.29B, the Temporary Decree remains in effect.
4. The Temporary Decree requires Mr. Bart to pay one half the property taxes on the former marital home. The Final Decree awards the former marital home to Ms. Sanborn and by implication, Mr. Bart is no longer required to pay one half of the property taxes.
5. The Final Decree anticipates that Ms. Sanborn would refinance or sell the former marital home. At the final hearing, Mr. Bart argued that Ms. Sanborn could dramatically reduce her monthly expenses by refinancing to a 30 year mortgage thus supporting this action by the Petitioner.
6. On March 26, 2020, Ms. Sanborn, acting on Mr. Bart's own suggestion and with the conditional assent of Mr. Bart's counsel, filed with this court a Motion for Permission to Sell or Refinance the Martial Home.
7. On April 14, 2020 the court denied Petitioner's Motion for Permission to Sell or

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Refinance the Marital Home on jurisdictional grounds due to the appeal of the Respondent to the Supreme Court.¹

8. Ms. Sanborn is therefore in the difficult position of not being able to sell or refinance her home, while ostensibly being saddled with the entire burden of the property tax provisions under the terms of the Final Orders.

9. The Court cannot reasonably stay the Final Order with respect to the sale and refinancing of the home while permitting it to go into effect as to the burden of property tax payments and the reduction of her alimony payment to \$1,000.

10. Ms. Sanborn therefore requests that the Court confirm that the temporary order's allocation of tax responsibility on a shared 50%-50% basis shall continue during the pendency of Mr. Bart's appeal (and Ms. Sanborn's cross appeal) in this matter.

11. It is assumed that Mr. Bart and counsel will object to this Motion, as Mr. Bart has not voluntarily agreed to share the property taxes for the marital home.

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Grant the within Motion;
- B. Order Mr. Bart to pay one half of the property taxes on the marital home during the pendency of the parties' supreme court appeal; and
- C. Grant such further relief as may be just and equitable.

Respectfully submitted,

LURA SANBORN
By her Attorneys,

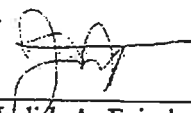
ORR & RENO, P.A.

¹ Ms. Sanborn was prepared to live with the Court's final orders despite her belief that it contained errors because her financial situation was difficult and she needed to move ahead. She has cross-appealed only because Mr. Bart first appealed the Court's final orders and there would be a significant delay in their implementation regardless of whether she appealed or not.

45 South Main Street
PO Box 3550
Concord, NH 03302-3550
(603) 224-2381

Dated: May 1, 2020

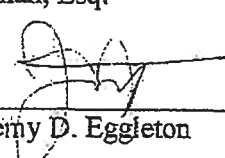
By:



Judith A. Fairclough, NH Bar #769
Jeremy D. Eggleton, NH Bar #18170

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2020 a copy of the foregoing pleading was sent by email and first class mail to Patrick Sheehan, Esq.



Jeremy D. Eggleton

2744853_1

Granted

Erin B. McIntyre

Erin B. McIntyre
5/18/20

STATE OF NEW HAMPSHIRE
6th CIRCUIT – FAMILY DIVISION -- CONCORD
IN THE MATTER OF LURA SANBORN AND JEFFREY BART
DOCKET #629-2017-DM-00409
**RESPONDENT'S 'S MOTION FOR RECONSIDERATION
OF FINAL DECREE ON PETITION FOR DIVORCE**

NOW COMES the Respondent, Jeffrey Bart, by and through his attorneys, Sheehan Law Office PLLC, and states as follows in support of this Motion for Reconsideration of Final Decree on Petition for Divorce:

1. This Court has issued an Order, Parenting Plan, Uniform Support Order, Uniform Alimony Order and Final Decree on Petition for Divorce dated November 4, 2019 (collectively “the Final Decree”)(notice of decision dated 11/18/19). The Respondent, Jeffrey Bart, respectfully contends that there are certain facts and law that the Court has overlooked or misapprehended in issuing the temporary orders. *See, In the Matter of Breault & Breault*, 149 N.H. 359 (2003).

Division of Marital Assets

2. In dividing the marital estate, the Court found that Mr. Bart accessed \$64,098 from a CMJ investment account during the divorce to pay his legal fees. Finding that “Ms. Sanborn should not have to bear the cost of Mr. Bart’s legal fees,” the Court treated this as an advance on Mr. Bart’s share of the marital estate, and deducted \$65,000 that Ms. Sanborn allegedly owes in legal fees from her side of the ledger when dividing the marital estate. (Appendix A of Final Decree). The Court found that this approach gave Ms. Sanborn the same benefit of having these litigation expenses paid from “marital assets.”

3. In so holding, the Court either overlooked or ignored the fact that Ms. Sanborn also used significant marital savings during the divorce to pay her legal fees and litigation related expenses. The final division of the marital estate made no adjustment for the marital assets used by Ms. Sanborn for this purpose.

4. The undisputed evidence and testimony at trial was that Ms. Sanborn used at least \$58,412 of marital savings to pay her attorney's fees and other litigation expenses, including her experts. According to her financial affidavit of December 12, 2017, Ms. Sanborn held the following savings and investments in her individual name (Exhibit F):

Checking Account	\$12,813
Money Market	\$25,097
Fidelity	<u>\$20,695</u>
	\$58,605

5. However, at the time of trial, these same accounts had been reduced to the following (Appendix A of Final Decree):

Checking Account	\$2,000
Money Market	\$0
Fidelity	<u>\$3,193</u>
	\$5,193

6. Ms. Sanborn testified that she spent these funds on her attorney's fees and divorce related costs. Ms. Sanborn also testified that, prior to her financial affidavit of December 12, 2017, she wrote a check to her attorneys in the amount of \$5,000 from her regular checking account on September 13, 2017. (Exhibit E).

7. There is no legal basis for treating Ms. Sanborn's use of marital assets during the divorce any differently than Mr. Bart's use of the CMJ account. New Hampshire law is well settled that all assets, no matter how they are titled, are marital assets subject to equitable distribution. In re Cohen, 207 A.3d 729 (NH 2019). The fact that Mr. Bart withdrew funds from

an account held by CMJ, whereas Ms. Sanborn withdrew funds from marital savings held in her individual name, should be of no consequence. Had Ms. Sanborn not invaded these accounts to pay her attorney fees, they would have been available for distribution by the Court in the Final Decree. They were not.

8. By way of example, on January 9, 2019, Ms. Sanborn withdrew \$20,900.84 from her Fidelity account to pay her attorney's fees. (Respondent's Exhibit H). These were funds saved during the marriage that were in the account when she filed for divorce. Why should this withdrawal be treated differently than Mr. Bart's withdrawals from the CMJ account?

9. As a result of the foregoing, page two of Appendix A of the Final Decree must be amended to reduce the amount deducted from Ms. Sanborn's Subtotal of All Assets from \$65,000.00 to \$6,588. (i.e., \$65,000 minus the \$58,412 used by Ms. Sanborn). When this correct amount is applied to the Court's formula, the amount owed by Mr. Bart to effectuate a 45/55 split of the Marital Estate is \$183,668.30, not \$215,994.90.

Child Support and Alimony

10. In the first instance, the Court ordered Mr. Bart to pay child support to Ms. Sanborn of \$1,342.00 per month. This monthly amount is in accordance with the child support guidelines based upon Mr. Bart's present annual income of \$116,616 (i.e., \$9,718 per month). However, the Court went one step further and awarded Ms. Sanborn automatic increases in child support (calculated under the guidelines) on any future income earned by Mr. Bart in excess of this amount. The Final Decree requires the parties to exchange tax returns annually and recalculate child support retroactively for the prior year in the event Mr. Bart earns more than \$116,616. The Final Decree does not call for a retroactive decrease in child support in the event Mr. Bart earns less than \$116,616.

11. It is well settled that child support orders are to be based upon present income only. Rattee v. Rattee, 146 N.H. 44 (2001). The Final Decree contravenes this established rule by automatically recalculating child support based upon the future income of Mr. Bart. Although the statute creates a rebuttable presumption that the guideline amount is the correct amount of child support, the Court's order effectively prevents Mr. Bart from rebutting this presumption by automatically recalculating child support retroactively to the beginning of the prior calendar year. The Final Decree, as presently written, would automatically establish new child support amounts retroactively without a judicial determination that the new amount is appropriate or just under the totality of circumstances.

12. NH RSA 458-C:7 sets forth the proper procedure for the review and modification of child support orders. Orders of child support may be reviewed every three years, as a matter of right, or upon the showing by one of the parties of a substantial change in circumstances. In the event a modification is found by a court to be warranted, said modification may not be effective "prior to the date that notice of the petition for modification has been given to the respondent." RSA 458-C:7, II. The procedure set forth in the Final Decree does not comply with the statutory scheme.

13. The portion of the Final Decree which calls for the automatic and retroactive recalculation of child support must be stricken in order to comply with New Hampshire law. Moreover, if the Court does not eliminate this portion of the Final Decree, there is no basis for only adjusting child support upwards in the event that Mr. Bart's income increases. If child support is to be automatically adjusted in accordance with the guidelines, it should be adjusted downward in the event Mr. Bart's income decreases.

14. In addition to awarding Ms. Sanborn child support of \$1,342.00 per month, the Court ordered Mr. Bart to pay alimony of \$1,000.00 per month for approximately six years. Mr. Bart respectfully contends that the math does not support this award of alimony. Based upon the undisputed evidence at trial, this alimony award greatly exceeds both Ms. Sanborn's reasonable need and Mr. Bart's ability to pay.

15. Without explanation, the alimony award set forth in the Final Decree would leave Ms. Sanborn with substantially more after-tax income each month than Mr. Bart.

	Mr. Bart	Ms. Sanborn
Monthly Income	\$9,718.00	\$5,155.00
Child Support	-\$1,342.00	\$1,342.00
Alimony	-\$1,000.00	\$1,000.00
Federal Tax¹	-\$1,709.41	-\$482.33
Net Total	\$5,666.59	\$7,014.67

No facts were presented at trial to support the conclusion, implicit in the Court's decision, that Ms. Sanborn's reasonable monthly need, after accounting for federal taxes, is \$1,348.08 greater than Mr. Bart's. The parties have equal parenting time and both parties need to maintain an appropriate home in Hopkinton where their son goes to school. If anything, the evidence supports the conclusion that Mr. Bart's need is greater than Ms. Sanborn's. Whereas Mr. Bart is renting a home at a cost of \$1,960 per month, Ms. Sanborn has been awarded a home which she

¹ In 2018, Mr. Bart's total federal tax liability was \$20,513 (\$1,709.41 per month), whereas Ms. Sanborn's federal tax liability was only \$5,788 (\$482.33 per month)(Exhibits 7 & 8). This disparity will be even greater in 2019 as, per the changes in federal law, Mr. Bart will be responsible for the taxes on both child support and alimony.

conceded on cross-examination could be refinanced to a monthly payment of approximately \$1,000 per month. She also has greater employment benefits than does Mr. Bart, including less expensive health insurance, a subsidized retirement plan, and a subsidized health savings account.

16. In support of its alimony award, the Court notes that it awarded Mr. Bart a greater percentage of the marital estate than Ms. Sanborn. However, as set forth above, the Court ordered Mr. Bart to pay Ms. Sanborn \$215,994.90 in cash within 120 days. If anything, this factor decreases Ms. Sanborn's need for alimony since she will be in a position to use this tax-free cash to substantially reduce her expenses, including her monthly mortgage payment. Mr. Bart, in contrast, was awarded assets that are either illiquid and required to generate the income he uses to pay his support obligations (e.g., his business and the commercial building) or consists of retirement accounts that cannot be liquidated without significant taxes and penalties.

17. The Court also ordered that Mr. Bart pay 66% of the child's uninsured medical expenses and Ms. Sanborn only pay 34%. This order is unfair considering that Ms. Sanborn has been awarded more after-tax income than Mr. Bart, and she was awarded a health savings account worth \$38,860.

18. Collectively, the Court's child support and alimony orders will prevent Mr. Bart from providing the parties' child with a standard of living that is approximately equal to that provided by Ms. Sanborn. If the Court is not inclined to eliminate or at least reduce its alimony award, then it must consider lowering the amount of child support paid by Mr. Bart to less than the guidelines as allowed under RSA 458-C:5, I, (h).

Retroactive Child Support

19. The Final Decree requires Mr. Bart to pay Ms. Sanborn retroactive child support of \$9,310 for the period dating back to February 2018. In arriving at this figure, the Court attributed \$40,000 as income to Mr. Bart for funds withdrawn from the CMJ account in June 2018.

20. However, this \$40,000 is part of the same \$64,098 that the Court treated as an advance on Mr. Bart's share of the final property settlement. Because Ms. Sanborn was awarded 45% of the marital estate, she, not Mr. Bart, has been awarded \$18,000 of this \$40,000 by the Court. The Court's treatment of the \$40,000 is, therefore, inconsistent, resulting in a double-counting of the same \$40,000: first as an asset and secondly as income for child support. This \$40,000 is either an asset subject to equitable distribution pursuant to RSA 458:16-a, or it is income on which Mr. Bart should pay child support pursuant to RSA 458-C; it cannot be both.

21. Mr. Bart also contends that, regardless of the Court's treatment of the \$40,000, this retroactive award of child support is unfair and confiscatory in light of the other orders set forth in the Final Decree, and the amount of temporary support already paid by Mr. Bart during the pendency of the divorce. No evidence was presented at trial which suggested that the child's financial needs were not adequately met while the divorce was pending.

22. Per the temporary orders, Mr. Bart paid \$3,064 per month for Ms. Sanborn's benefit, consisting of \$1,229 in child support, \$1,500 in alimony and \$335 per month for her real estate taxes. These payments totaled \$52,088 during the 17 month period from February 2018 through June 2019. These payments, coupled with her salary of \$5,155, resulted in total income

to Ms. Sanborn from all sources of \$8,219 per month, or \$98,628 annualized. The transfer of an additional \$9,310 at this time is simply not necessary for the support of the parties' child.

WHEREFORE, the Respondent, Jeffrey Bart, prays:

- A. That Respondent's Motion for Reconsideration be granted;
- B. That the amount owed by Mr. Bart to Ms. Sanborn to effectuate the final division of assets be reduced from \$215,994.90 to \$183,668.30;
- C. That the Court eliminate the provision in the Final Decree which calls for the automatic and retroactive recalculation of child support;
- D. That the Court amend the Final Decree to eliminate or at least reduce the amount of monthly alimony awarded to Ms. Sanborn [or, in the alternative, that the Court reduce Mr. Bart's child support to less than the guideline amount pursuant to RSA 458-C:5, I, (h)];
- E. That the Court amend the Final Decree to state that uninsured medical expenses for the parties' child shall be shared equally by the parties;
- F. That the Court eliminate the provision in the Final Decree that requires Mr. Sanborn to pay \$9,310 in retroactive child support to Ms. Sanborn; and
- G. For such other and further relief as may be just.

Respectfully submitted,

JEFFREY BART

By his attorneys,

SHEEHAN LAW OFFICE, PLLC

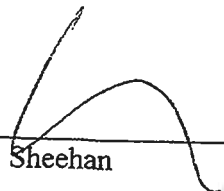
Dated: Dec. 2, 2019

By: 

Patrick J. Sheehan, NH Bar I.D. #11881
35A Pleasant Street
Concord, N.H. 03302 1256
(603) 715-2560

**** CERTIFICATE OF SERVICE ****

I hereby certify that a copy of the foregoing motion has been forwarded this date to Attorney Judith Fairclough.



Patrick J. Sheehan

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

6th Circuit - Family Division - Concord
32 Clinton Street
Concord NH 03301

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

NOTICE OF DECISION

**PATRICK J. SHEEHAN, ESQ
SULLOWAY & HOLLIS
35A PLEASANT STREET
CONCORD NH 03301**

Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**
Case Number: **629-2017-DM-00409**

Enclosed please find a copy of the Court's Order dated December 31, 2019 relative to:

SEE ATTACHED COURT ORDERS

UNIFORM SUPPORT ORDER

ORDER

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 02/18/2020 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.

January 15, 2020

Theresa A. McCafferty
Clerk of Court

(152)

C: Judith Ann Fairclough, ESQ

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

MERRIMACK COUNTY

6th CIRCUIT - FAMILY DIVISION - CONCORD

**In the Matter of:
Lura Sanborn, Petitioner, and Jeffrey Bart, Respondent
Case No. 629-2017-DM-00409**

ORDER

The Court is in receipt of the Petitioner's Motion for Reconsideration and/or Clarification, the Respondent's Motion for Reconsideration of Final Decree on Petition for Divorce, the Petitioner's Objection to Respondent's Motion for Reconsideration of Final Decree and the Petitioner's

Having reviewed the pleadings and its previous Orders, the Court notes that it failed to complete Section 5 of the Uniform Support Order and failed to account for the fact that the Obligee's health insurance is slightly more than the presumptive medical obligation. Both of these have been corrected. See attached Uniform Support Order.

Additionally, the Court clarifies "Cost of Refinance or Sale" to include reasonable closing costs, real estate commission, transfer of tax, legal and other fees incurred in deed drafting, title work and closing.

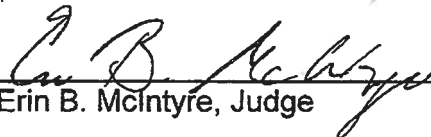
In all other respects, the Court denies the Motions for Reconsideration/Clarification. The motions identify no material fact or law that the Court overlooked or misapprehended. The allegations and arguments herein either were made or could have been made at the hearing. No further modification, other than the one described above, is warranted pursuant to Fam. Div. Rule 1.26 F based upon these motions.

So Ordered.

Date

12/31/19

Hon. Erin B. McIntyre, Judge



nominal

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 6th Circuit - Family Division - Concord
Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

Name, Residence and Mailing Address of Person
Ordered to Pay Support (Obligor):

Jeffrey Bart
67 Snowshoe Trail Hopkinton, NH
D.O.B.: _____ Telephone: _____
E-mail Address: _____
Name of Employer: Granite State Candy Shop
Address of Employer:
15 Warren Street
Concord, Nh 03301

Name, Residence and Mailing Address of
Person Receiving Support (Obligee):

Lura Sanborn
46 Stonybrook Lane Hopkinton, NH 03229
D.O.B.: _____ Telephone: _____
E-mail Address: _____
Name of Employer: St. Paul's School
Address of Employer:
St. Paul's School
Concord, NH

Child(ren) to whom this order applies:
Full Name

Date of Birth

Walden Sanborn Bart July 07, 2008

The following parties appeared: Obligor Obligee Bureau of Child Support Services
 Other _____

NOTE: SECTIONS PRECEDED BY ARE ONLY PART OF THIS ORDER IF MARKED.

1. This order is entered:
 after hearing
 upon approval of agreement
 upon default
2. This order is a:
 temporary order
 final order
3. This order modifies a final support obligation in accordance with:
 a three-year review (RSA 458-C:7) OR substantial change in circumstances, as follows:

4. Obligor is ORDERED to PAY THE FOLLOWING AMOUNTS (See Standing Orders 4A-4G):
4.1 CHILD SUPPORT: \$ 1342 per month (week, month, etc.)

4.2 Arrearage of \$ 9310 as of 11/4/19 payable in one lump sum
payable \$ _____ per _____ (week, month, etc.) *within 30 Days of the
Notice of this Decision*

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

4.3 Medical arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.4 Alimony is ordered. See the Uniform Alimony Order. N/A

4.5 Alimony arrearage of \$ _____ as of _____,
payable \$ _____ per _____ (week, month, etc.)

4.6 Alimony shall terminate 8/1/2025

5. Payments on all ordered amounts shall begin on the next pay period following the date of Decision 11/18/19. All ordered amounts shall be payable to Obligee Bureau of Child Support Services Other _____

6. This order complies with the child support guidelines. RSA 458-C.

This order, entered upon obligor's default, is based on a reasonable estimate of obligor's income. Compliance with the guidelines cannot be determined.

The following special circumstances warrant an adjustment from the guidelines (Enter applicable circumstances below. See Standing Order 6):

7. Support ordered is payable by immediate income assignment.

8. The Court finds that there is good cause to suspend the immediate income assignment because:

Obligor and obligee have agreed in writing.

Payments have been timely and it would be in the best interest of the minor child(ren) because:

9A. Obligor is unemployed and **MUST REPORT EFFORTS TO SEEK EMPLOYMENT.**
(See Standing Order 9A).

9B. Upon employment the Obligor shall bring the matter forward for recalculation of support. Failure to do so may result in a recalculated support order effective the date of employment.

MEDICAL SUPPORT FINDINGS (Paragraphs 10 through 15)

10. **OBLIGOR'S** medical support reasonable cost obligation: \$ 389 per month (week, month, etc.)

10A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

11. Health insurance coverage is not available is available to the **OBLIGOR** in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 10.

12. Health insurance coverage available to the **OBLIGOR** is not accessible to the child(ren).

13. **OBLIGEE'S** medical support reasonable cost obligation: \$ 206 per month (week, month, etc.)

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

13A. The medical support reasonable cost obligation is adjusted from the presumptive amount because of the following special circumstances (Enter applicable circumstances below. See Standing Order 6):

Petitioner is currently providing health insurance for the minor child at a slightly higher amount. The Court finds the difference nominal and not requiring a deviation from the

14. Health insurance coverage is not available is available to the OBLIGEE in an amount equal to or less than the amount of the medical support reasonable cost obligation ordered in paragraph 13. *judicial amount of child support*

15. Health insurance coverage available to the OBLIGEE is not accessible to the child(ren).

HEALTH INSURANCE COVERAGE (Paragraph 16A and/or 16B must be completed):

16A. Obligor Obligee is ordered to provide health insurance coverage for the child(ren) effective ongoing

16B. Obligor Obligee is/are not ordered to provide health insurance coverage at this time but is/are ordered to immediately obtain health insurance coverage when it becomes accessible and available at an amount equal to or less than the ordered medical support reasonable cost obligation.

UNINSURED MEDICAL EXPENSES

17. Uninsured medical expenses shall be paid in the following percentage amounts: Obligor 66 % Obligee 34 % Other: _____

18. Public assistance (TANF) or medical assistance (Medicaid) is or was provided for the children. Copies of pleadings related to medical coverage and child support were mailed to the Bureau of Child Support Services, Child Support Legal, 129 Pleasant Street, Concord, NH 03301.

19. Obligor Obligee is adjudicated the father of the minor child(ren) named above. The clerk of the city(ies) of _____ shall enter the name of the father on the birth certificate(s) of the child(ren). The father's date of birth is _____ and his state of birth is _____.

20. The State of _____ has provided public assistance for the benefit of the minor child(ren) between _____ and _____ for _____ weeks. Obligor is indebted for the assistance in the total amount of \$ _____

21. Variation to standing order (specify paragraph #), additional agreement or order of the Court:

Obligor

Obligee

Staff Attorney
Bureau of Child Support Services

Obligor's Attorney/Witness

Obligee's Attorney/Witness

Date

Date

Date

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart

Case Number: 629-2017-DM-00409

UNIFORM SUPPORT ORDER

All paragraphs of this order (except those that have a check box and have not been selected) and all paragraphs of the Standing Order, (except variations in paragraph 21) are part of this order and apply to all parties.

Recommended:

Date

Signature of Marital Master/Hearing Officer

Printed Name of Marital Master/Hearing Officer

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.

Date

11/4/19

Signature of Judge

ERIN B. McINTYRE

Printed Name of Judge

STATE OF NEW HAMPSHIRE
6th CIRCUIT COURT – FAMILY DIVISION – CONCORD

IN THE MATTER OF LURA SANBORN AND JEFFREY BART

DOCKET #629-2017-DM-00409

**RESPONDENT’S REQUESTS FOR FINDINGS OF FACT
AND RULINGS OF LAW**

NOW COMES the Respondent, Jeffrey Bart, by and through his attorneys, Sheehan Law Office, PLLC, and requests that the following Requests for Findings of Fact and Rulings of Law be adopted by this Honorable Court:

FINDINGS OF FACT

1. The parties were married July 16, 2005. 6
2. Lura Sanborn filed for divorce in September of 2017. 6
3. Ms. Sanborn is age 41 (D.O.B. 01/17/1978) and Jeffrey Bart is age 50 (D.O.B. 01/15/1969). 6
4. The parties have one minor child – Walden, age 11 (D.O.B. 07/07/2008). 6
5. Ms. Sanborn was employed throughout the entire marriage as a librarian at St. Paul’s School in Concord. 6
6. Ms Sanborn reports on her most recent financial affidavit that her income from St. Paul’s is \$5,155 per month, or \$61,860 annually. 6
7. A temporary hearing was held in February of 2018, following which the Court issued temporary orders and a temporary parenting plan dated February 8, 2018. 6
8. Pursuant to the temporary orders, Mr. Bart was ordered to pay temporary child support of \$1,229 per month, temporary alimony of \$1,500 per month, and half the real estate taxes of the marital residence (\$335.00 per month). 6
9. Mr. Bart moved out of the marital residence in March of 2018 and began renting a home from his mother at 69 Snowshoe Trail in Hopkinton. 6
10. In 2016 and 2017, the parties had \$90,000 worth of renovations done on the marital residence, including a new addition. 6

11. In 2017, prior to filing for divorce, Ms. Sanborn paid in excess of \$11,000 for cosmetic surgery.

12. Ms. Sanborn paid \$5,000 to Orr & Reno for legal services on September 13, 2017 (Exhibit E).

13. According to her financial affidavit of December 12, 2017, Ms. Sanborn still had the following cash/investments in her individual name (Exhibit F):

Checking Account	\$12,813
Money Market	\$25,097
Fidelity	<u>\$20,695</u>
	\$58,605

14. According to her financial affidavit dated December 12, 2017, Ms. Sanborn had only \$516.00 worth of credit card debt and no other personal debts other than the mortgage (Exhibit F). 6

15. Ms. Sanborn reported on her financial affidavit of July 30, 2019 that she only has the following cash/investment accounts left: 6

Checking Account	\$2,000
Money Market	\$0
Fidelity	<u>\$3,346</u>
	\$5,346

16. Ms. Sanborn testified that the reduction from \$58,605 to \$5,346 (-\$53,259) was due to the funds being spent on the divorce, including her attorney's fees and experts. 6

17. Ms. Sanborn testified and reported on her financial affidavit of July 30, 2019 that she now has the following credit card debt and other personal debts.

Chase Card	\$8,362
Citicard	\$12,863
Hugh Sanborn (promissory note)	\$4,000
Attorney Fees	<u>\$65,000</u>
	\$90,225

18. Ms. Sanborn testified that the debt to Hugh Sanborn and almost all of the credit card debt were used for attorney's fees and experts. 6

19. At the time of the temporary hearing, Mr. Bart's primary savings consisted of an investment account at Fidelity held in the name of CMJ Associates with a value of \$102,276.34 (Exhibit 37). 6

20. In April of 2018, Mr. Bart withdrew \$40,000 from the CMJ Fidelity account to pay personal expenses, including attorney's fees. (Exhibit ~~27~~). 38

6

21. In March of 2019, Mr. Bart withdrew \$50,000 from the CMJ Fidelity account to pay the parties joint tax liability in connection with the amended returns for 2014, 2015 and 2016. (Exhibit 39).

6

22. The total amount paid by Mr. Bart in 2019 for the amended returns for 2014, 2015, and 2016 was ~~\$55,047.72~~. (Exhibits L, M and N).

6

\$ 55,047.72

23. In April of 2019, Mr. Bart withdrew \$14,000 from the CMJ Fidelity account to pay personal and business expenses.

6

24. On his financial affidavit dated August 2, 2019, Mr. Bart lists credit card debt of \$9,026 and a debt to his mother, June Bart, of \$40,000.

6

25. Mr. Bart testified that the \$40,000 borrowed from his mother was used to pay attorney fees and divorce related costs.

6

26. At no time prior to the start of the divorce trial, including at the time of the pretrial conference, did Ms. Sanborn file a motion of otherwise state that she was seeking a general order requiring for Mr. Bart to be responsible for, or otherwise required to contribute towards, her legal fees in connection with this divorce .

6

27. At no time during the divorce process did Ms. Sanborn file a motion with the Court alleging that Mr. Bart had not complied with discovery, nor did she ever request any attorney's fees in connection therewith.

28. The temporary orders stated that, unless otherwise ordered therein, each party would be responsible for any debts incurred in his or her own name.

6

29. On May 30, 2019, Ms. Sanborn offered, through counsel, that the parties stipulate to the value of the marital residence at 46 Stoney Brook Lane in Hopkinton at \$332,500, which offer was accepted by Mr. Bart through counsel on June 10, 2019. (Exhibit Y).

6

30. Ms. Sanborn's home inspection report (Exhibit 9) is dated October 18, 2018 and, therefore, the various imperfections associated with the marital residence were known to her at the time the parties' stipulated to the value of \$332,500. Inspection ordered 10/18/18
Conducted 10/23/18

6 as amended

31. Mr. Bart has been actively involved in parenting Walden since he was born in July of 2018.

32. Mr. Bart's proposed parenting plan will require fewer transitions for Walden between the parties' households during the school week than the current schedule being proposed by Ms. Sanborn.

33. As a self-employed business owner, Mr. Bart has the flexibility to determine his working hours and to ensure that he is able to exercise all available parenting time with Walden. Mr. Bart has not missed any of his regularly scheduled parenting time under the temporary orders.

Granite State Candy Shop, LLC

34. Mr. Bart owns an 80% interest in Granite State Candy Shoppe, LLC (GSCS) and Ms. Sanborn and Jeffrey's mother, June Bart, each own 10%. 6

35. GSCS was founded in Concord in 1927 by Mr. Bart's paternal grandfather, Peter Bart. 6

36. In 1957, Peter Bart retired and GSCS was transferred to Mr. Bart's father, Constantine Bart, and Jeffrey's uncle, George Bart. In 1999, Constantine bought out George and became the sole owner. 6

37. Beginning when he was a teenager and throughout college, Jeffrey worked at GSCS. 6

38. After he graduated from college in 1992, Jeffrey worked in Chicago, but he returned to Concord in 1995 and began working full-time for GSCS. He has worked at GSCS ever since. 6

39. GSCS is located at 9-17 Warren Street in Concord; however, GSCS does not own the building. 6

40. 9-17 Warren Street is owned by a different entity, CMJ Associates (CMJ). 6

41. In 1999, Constantine Bart gifted a 25% interest in GSCS to each of Mr. Bart and his brother, Michael Bart.

42. Following the gift to Mr. Bart of 25% in 1999, the ownership of GSCS was as follows: 6

Constantine Bart – 25%
June Bart – 25%
Michael Bart – 25%
Jeffrey Bart – 25%

43. In 2013, Michael Bart was experiencing personal difficulties and was asked to leave the business by Mr. Bart and his parents. 6

44. When Michael Bart left the business in 2013, both his 25% interest in GSCS and his 16.5% interest in the building (CMJ) were reacquired by GSCS and CMJ, for a total of \$300,000. (Exhibit 29). 6

45. Neither GSCS nor the building were appraised at the time Michael's interests were acquired in 2013. 6

46. Pursuant to the terms of the agreement with Michael Bart, he was to be paid the sum of \$2,500 per month for 10 years, or a total of \$300,000. (Exhibit 29). 6

47. Mr. Bart testified that the goal of his family when reacquiring Michael's interest was to provide Michael with a place to live and enough income (\$2,500 per month) to meet his necessary living expenses. 6

48. Michael died in April of 2015 when he took his own life. 6

49. Michael died intestate and Mr. Bart eventually inherited Michael's estate when June Bart elected to disclaim her interest. 6

50. Although technically listed on the books of GSCS and CMJ as a debt, following Michael's death neither GSCS nor CMJ made the payments on the debt owed to Michael's estate. 6

51. Constantine Bart died in August of 2014, at which time Mr. Bart inherited Constantine's 25% interest in GSCS. (Exhibit K). 6

52. In October of 2014, a new operating agreement for GSCS was established whereby the current ownership structure of GSCS was established. (Exhibit 45). At this same time, Mr. Bart gifted a 10% interest to Ms. Sanborn. 6

53. Pursuant to the operating agreement created in October of 2014, the current ownership of GSCS is as follows: 6

Jeffrey Bart – 80%
June Bart – 10%
Lura Sanborn - 10

54. Mr. Bart's business appraiser, Richard Maloney, found that the fair market value of the parties' 90% interest in GSCS was \$152,000 as of December 31, 2018. (Expert Binder Exhibit 7). 6

55. In arriving at his valuation of \$152,000, Mr. Maloney employed a capitalization of earnings methodology. .

56. In valuing GSCS, both parties' experts relied upon the amended tax returns for 2014, 2015 and 2016, and the returns filed for 2017 and 2018. 6

57. Ms. Sanborn's business appraiser, Anthony Albright, testified that the capitalization of earnings method is the most commonly used methodology used to value small businesses like GSCS. 6

58. Both Mr. Maloney and Mr. Albright testified that it would be inappropriate to consider the fair market value of the building at 11-17 Warren Street in Concord when valuing GSCS since the building is owned by an entirely different entity. 6

59. Mr. Albright found that the value of the parties' interest in GSCS using the capitalization of earnings methodology was \$541,000. (Expert Exhibit 1 at p. 36). 6

60. Mr. Albright increased the value of the parties' interest in GSCS by assigning a weight of only 20% to the capitalization of earnings method, and assigning a 40% weight to each of a comparative sales analysis and what he referred to as a "company specific valuation." 6

61. Mr. Albright's comparative sales analysis was based on only five sales that he testified occurred in various places throughout the country from 2004 to 2016 and that he learned about on the internet at a site called DealStats.

62. Mr. Albright conceded on cross-examination that he did not know enough about the comparative sales that he relied upon to say whether those sales also included the sale of other assets, including the physical real estate in which the businesses were located.

63. The comparative sales that Mr. Albright relied upon took place over 12 years and included sales in Florida, California, and two in Montana.

64. Mr. Albright's comparative sales analysis makes no adjustment for the physical location of each business, their size, or the date of sale.

65. Mr. Albright conceded on cross-examination that the data point he relied upon from New Hampshire (Kellerhaus) was an outlier as, according to DealStats, it sold for 1.12 times revenues, whereas the next highest sale was only .60 of revenues. (Expert Exhibit 1 at p. 38). 6

66. Mr. Albright conceded on cross-examination that he did not know whether the sale of the Kellerhaus business included the real estate near Lake Winnepesaukee in which the business is located.

67. Mr. Albright conceded on cross-examination that if the Kellerhaus business sold for only \$250,000 and the balance of the purchase price was for the real estate, that the business sale price as a multiple of revenues would only be .32, not 1.12.

68. Mr. Albright conceded on cross-examination that he made no effort to independently verify the accuracy of any of the DealStats data, including that related to the Kellerhaus transaction located in New Hampshire.

69. When objecting to Mr. Bart's proposed Exhibit Q, Ms. Sanborn's counsel admitted that Mr. Albright did not know the actual terms of the Kellerhaus transaction.

70. 40% of the value found by Mr. Albright for GSCS was based upon his "company specific valuation" which requires the assumption that the acquisition of Michael's interest in 2013 was an arms-length transaction that was negotiated for fair market value. 6

71. Even though he knew the transaction involved a family member, Mr. Albright admitted on cross-examination that he made no effort or inquiries to determine if there were any circumstances surrounding the acquisition of Michael interest in 2013 that would suggest that this transaction was not an arms-length transaction.

72. Mr. Albright admitted that he had no knowledge of Michael's personal situation at the time of the 2013 transaction.

CMJ Associates/ 9-17Warren Street

73. Since it was founded, GSCS has been located at the same location at 9-17 Warren Street in Concord. 6

74. 9-17 Warren Street was originally purchased by Mr. Bart's father, Constantine Bart and Mr. Bart's uncle, George Bart, who owned the property as tenants in common.

75. In 1999, Constantine Bart bought out George Bart's interest in the property and became sole owner.

76. In June of 1999, title to 9-17 Warren Street was transferred to a newly formed entity, CMJ Associates (CMJ). 6

77. At the time CMJ was formed, Mr. Bart was gifted a 16.5% interest in the entity. 6

78. Following the formation of CMJ in 1999, the ownership structure was as follows (Exhibit 28): 6

Constantine Bart	42%
June Bart	25%
Jeffrey Bart	16.5%
Michael Bart	16.5%

79. Michael Bart's interest in CMJ was reacquired by CMJ in 2013 (Exhibit 29). 6

80. Constantine Bart died in August of 2014, at which time Jeffrey inherited Constantine's 42% interest in CMJ. (Exhibit K). 6

81. In October of 2014, the operating agreement for CMJ was restated, resulting in the existing ownership structure:

Jeffrey Bart	95%
June Bart	5%

82. The building at 9-17 Warren Street was constructed in approximately 1880 and consists of approximately 11,674 SF of gross living area which is three stories in height.

83. The first floor of 9-17 Warren Street houses GSCS, and the remaining two floors contain 9 residential apartment units.

84. Mr. Bart's expert, Louis Manias, concluded that the fair market value of 9-17 Warren Street was \$650,000 as of January 7, 2019. (Expert Binder Exhibit 11).

85. Mr. Manias arrived at his value of \$650,000 by reconciling his conclusion under the sales comparison approach (\$642,000) with his conclusion under the income approach. (Expert Binder Exhibit 11 at p. 52-53).

86. In developing his comparative sales approach, Mr. Manias compared the subject property to four other properties, three of which were located in Concord.

87. Mr. Manias and Mr. Bart both testified that the building at 9-17 Warren Street is dated and will eventually require certain necessary repairs at significant expense, including the removal of pigeon waste, a new roof, new windows, and the installation of a sprinkler system and interconnected smoke detectors.

88. There is no elevator access to the second and third floors at 9-17 Warren Street, nor do the tenants have central air, on-site laundry, or on-site parking.

89. Most of the apartment units have not been refurnished in over 20 years and some do not even have a dishwasher.

90. In applying his income approach, Mr. Manias imputed gross rental income to both the unit used by GSCS and the unit occupied by Laurena Smith.

91. In applying her sales comparison approach, Ms. Sanborn's expert, Marsha Campaniello, compared 9-17 Warren Street to five other properties, only one of which was actually located in Concord.

92. Three of the five comparable properties used by Ms. Campaniello were located in Manchester where she admitted the sale prices of comparable commercial properties are higher than in Concord. Another was located in the southern part of the state, Derry, where prices are also higher.

93. Ms. Campaniello's income based approach requires the assumption that for many years Mr. Bart has been deliberately renting the majority of the apartment units for substantially less than the market will bear.

94. Ms. Campaniello did not consider CMJ's acquisition of Michael Bart's interest in 2013 when valuing 9-17 Warren Street.

95. Ms. Campaniello testified that she does not consider transfers between family members to be arms-length transactions indicative of fair market value.

B. Rulings of Law

96. In divorce cases, a court is required to make an equitable division of property after consideration of the special circumstances set forth in RSA 458:16-a. 6

97. Special circumstances that a court may consider in determining whether an unequal distribution is equitable include:

(a) The value of property acquired prior to the marriage and property acquired in exchange for property acquired prior to the marriage; and

(b) The value of property acquired by gift, devise, or descent. RSA 458:16-a II (m) and (n)

98. The New Hampshire Supreme Court has held that a trial court may award an unequal division of marital assets where significant assets, including business interests, were brought into the marriage, or either inherited or gifted from the family of one of the parties. McAlpin v. McAlpin, 129 N.H. 737 (1987); Grandmaison v. Grandmaison, 119 N.H. 268 (1979).

99. The valuation of assets in a divorce is determined by fair market value. Rattee v. Rattee, 146 N.H. 44 (2001).

100. When determining alimony in divorce cases filed in 2017, the court must apply RSA 458:19 as it existed prior to the amendments passed in June of 2018.

101. Under the prior version of RSA 458:19, an award of alimony is only appropriate where: 6

(a) The party requesting alimony 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 requesting alimony is unable to be self-supporting at a standard of living that meets reasonable needs through appropriate employment, 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.

102. The general rule in New Hampshire is that each party is responsible for his or her own attorney's fees, and that an award of attorney's fees must be grounded upon statutory authorization, a court rule, an agreement between the parties, or an established exception to the rule that each party is responsible for paying his or her own counsel fees. LaMontagne Builders v. Brooks, 154 N.H. 252(2006). 6

103. Even in cases where an award of attorney's fees is appropriate, a Court cannot award them without having reviewed the actual statements showing the fees and such other documentation needed to determine their reasonableness, including services actually performed, the time involved and the fee arrangement. Gosselin v. Gosselin, 136 N.H. 350 (1992); In re Hampers, 154 N.H. 275 (2006).

104. In New Hampshire, a divorcing party is not entitled to "demand a shifting galaxy of legal talent" at their spouses' expense. Calderwood v. Calderwood, 114 N.H. 651 (1974).

105. The primary purpose of alimony is rehabilitative and it is designed to encourage the recipient to establish an independent source of income. In re Dube, 163 N.H. 575 (2012).

106. Rehabilitative alimony is based on the theory that modern spouses are equally able to function in the job market and to provide for their own financial needs. Id.

107. The purpose of alimony is not to "provide a life-time profit-sharing plan." Calderwood v. Calderwood, 114 N.H. 651 (1974).

Respectfully submitted,

JEFFREY BART

By his attorneys,

SHEEHAN LAW OFFICE, PLLC

Date: Sept. 20, 2019

By: 

Patrick J. Sheehan #11881
35A Pleasant Street
Concord, N.H. 03301
(603) 715-2560

**** CERTIFICATE OF SERVICE ****

I hereby certify that a copy of the foregoing has been mailed this 20th day of September, 2019 to Attorney Judith Fairclough.



Patrick J. Sheehan

STATE OF NEW HAMPSHIRE
6th CIRCUIT – FAMILY DIVISION --CONCORD

IN THE MATTER OF LURA SANBORN AND JEFFREY BART

DOCKET #629-2017-DM-00409

**RESPONDENT'S OBJECTION TO PETITIONER'S MOTION TO ENFORCE
TEMPORARY DECREE REGARDING TAXES ON MARITAL HOME**

NOW COMES the Respondent, Jeffrey Bart, through his attorney, Patrick J. Sheehan, and states as follows in response and objection to Petitioner's Motion to Enforce Temporary Decree Regarding Taxes on Marital Home (hereinafter, "Petitioner's Motion"):

1. Petitioner's Motion must be denied for two reasons.
2. First, as already noted in this Court's Order of April 14, 2020 on Petitioner's Motion for Permission to Sell or Refinance the Marital Home, the New Hampshire Supreme Court currently has exclusive jurisdiction over this divorce matter. See, Rautenberg v. Munnis, 107 N.H. 446, 447 (1966). This Court is not in a position to act on Petitioner's Motion while an appeal is pending in this case.
3. Second, even if the Court were to address the merits of Petitioner's Motion, the ongoing payment of the real estate taxes are clearly Petitioner's responsibility pursuant to the Final Decree and this Court's rules. Following the issuance of a final decree of divorce, Family Division Rule 2.29(B)(1)(d) provides that all "[o]rders for alimony or payments of on-going expenses" are "effective upon the issuance of the clerk's notice of decision, unless the court specifies, either orally or in writing, another effective date." (emphasis added).
4. In this case, Section 15 of the Final Decree on Petition for Divorce issued on November 18, 2019 clearly states that "Lura shall be responsible for the payment of the mortgage, insurance, and real estate taxes for this property and all expenses for this property."

There is no separate provision in the Final Decree which states that this responsibility is stayed in the event of an appeal. Thus, pursuant to Rule 2.29, the payment of the real estate taxes for the former marital home (which was also awarded to Petitioner) became her sole responsibility upon the issuance of the Final Decree on November 18, 2019.

5. It must be noted that, following the issuance of the final decree, the Petitioner filed a Motion for Reconsideration and/or Clarification in which she asked this Court to reconsider and/or clarify at least 11 different issues set forth in the Final Decree. However, she did not ask the Court to order that Respondent be responsible for one-half of the real estate taxes pending an appeal. Having failed to do so, the payment of the real estate taxes is now her sole responsibility.

WHEREFORE, the Respondent, Jeffrey Bart, prays:

- A. Petitioner's Motion to Enforce Temporary Decree Regarding Taxes on Marital Home be denied ; and
- B. For such other and further relief as may be just.


Respectfully submitted,

JEFFREY BART

By his attorney,

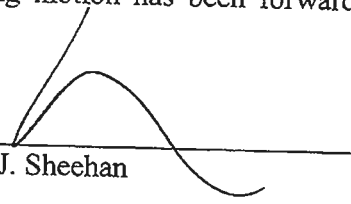
PATRICK J. SHEEHAN

Dated: May 13, 2020

By: 
Patrick J. Sheehan, NH Bar I.D. #11881
Sheehan Law Office, PLLC
35A Pleasant Street
Concord, N.H. 03301
(603) 715-2560

**** CERTIFICATE OF SERVICE ****

I hereby certify that a copy of the foregoing motion has been forwarded this date to Attorney Jeremy D. Eggleton.



Patrick J. Sheehan

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

6th Circuit - Family Division - Concord
32 Clinton Street
Concord NH 03301

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

NOTICE OF DECISION

**PATRICK J. SHEEHAN, ESQ
SULLOWAY & HOLLIS
35A PLEASANT STREET
CONCORD NH 03301**

Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**
Case Number: **629-2017-DM-00409**

Enclosed please find a copy of the Court's Order dated June 11, 2020 relative to:

SEE ATTACHED COURT ORDER

RE: RESPONDENT'S MOTION FOR RECONSIDERATION

DENIED

June 15, 2020

(152)

C: Judith Ann Fairclough, ESQ

Theresa A. McCafferty
Clerk of Court

STATE OF NEW HAMPSHIRE
6th CIRCUIT – FAMILY DIVISION -- CONCORD
IN THE MATTER OF LURA SANBORN AND JEFFREY BART
DOCKET #629-2017-DM-00409
RESPONDENT’S MOTION FOR RECONSIDERATION

NOW COMES the Respondent, Jeffrey Bart, by and through his attorneys, Sheehan Law Office PLLC, and states as follows in support of this Motion for Reconsideration:

1. This Court issued an Order dated May 18, 2020 on Petitioner’s Motion to enforce Temporary Decree Regarding Taxes on Marital Home. The Respondent, Jeffrey Bart, respectfully contends that there are certain facts and law that the Court has overlooked or misapprehended in issuing said Order. *See, In the Matter of Breault & Breault*, 149 N.H. 359 (2003).
2. The Court’s Order, without any explanation, directly contravenes Family Division Rule 2.29(B)(1)(d) which provides that all “[o]rders for alimony or payments of on-going expenses” are “effective upon the issuance of the clerk’s notice of decision, unless the court specifies, either orally or in writing, another effective date.” (emphasis added). It is not disputed that, per the terms of the Final Decree, the real estate taxes are Petitioner’s sole responsibility, and there is no language in the Final Decree that states that the real estate taxes are to be treated otherwise in the event of an appeal by either party. The deadline for filing a motion to reconsider came and went and the Petitioner never asked this Court to modify the Final Decree on this particular issue.
3. Without explanation or justification, the Court has now modified the terms of its Final Decree after an appeal was perfected and the New Hampshire Supreme Court assumed

exclusive jurisdiction over the matter.¹ See, *Rautenberg v. Munnis*, 107 N.H. 446, 447 (1966).

This is an error of law.

WHEREFORE, the Respondent, Jeffrey Bart, prays:

- A. That Respondent's Motion for Reconsideration be granted;
- B. That this Court's Order of May 18, 2020 be vacated and Petitioner's Motion to Enforce Temporary Decree Regarding Taxes on Marital Home be denied ; and
- C. For such other and further relief as may be just.

Respectfully submitted,

JEFFREY BART

By his attorneys,

SHEEHAN LAW OFFICE, PLLC

Dated: May 29, 2020

By: 

Patrick J. Sheehan, NH Bar I.D. #11881
35A Pleasant Street
Concord, N.H. 03302 1256
(603) 715-2560

**** CERTIFICATE OF SERVICE ****

I hereby certify that a copy of the foregoing motion has been forwarded this date to Attorney Jeremy Eggleton.



Patrick J. Sheehan

Denied. This motion identifies no material fact or law that this Court overlooked or misapprehended. Also, see the Comment to Supreme Court Rule 7-A.

Erin B. McIntyre

Erin B. McIntyre 6/11/20

¹ The Petitioner has not alleged an unforeseen change in circumstance or any other facts which would justify modification of the Final Decree even under normal circumstances.

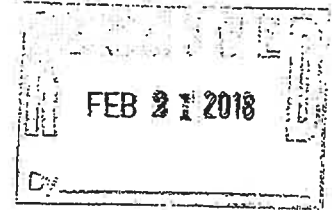
**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
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<http://www.courts.state.nh.us>

NOTICE OF DECISION

**TRACEY G. COTE, ESQ
SHAHEEN & GORDON PA
107 STORRS STREET
PO BOX 2703
CONCORD NH 03302-2703**



Case Name: **In the Matter of Lura Sanborn and Jeffrey Bart**
Case Number: **629-2017-DM-00409**

Enclosed please find a copy of the Court's Order dated February 08, 2018 relative to:

**SEE ATTACHED COURT ORDER
RE: CHILD SUPPORT GUIDELINE WORKSHEET
RE: UNIFORM SUPPORT ORDER
RE: TEMPORARY DECREE ON PETITION FOR DIVORCE
RE: TEMPORARY PARENTING PLAN
RE: SCHEDULING CONFERENCE ORDER**

***PLEASE NOTE* NOTICE OF 2 DAY HEARING TO BE SENT AT A
LATER DATE**

February 14, 2018

Theresa A. McCafferty
Clerk of Court

(950)

C: Judith Ann Fairciough, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH



ORIGINAL

Court Name: Sixth Circuit – Family Division - Concord
Case Name: In the Matter of Lura V. Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409

TEMPORARY DECREE ON PETITION FOR DIVORCE

AS
Amended

This Decree is:

Proposed by Lura V. Sanborn, Petitioner "(Lura)".

1. **Type of Case: Divorce**
2. **Parenting Plan and Uniform Support Order**

See attached Parenting Plan and Uniform Support Order. Should discovery reveal that Jeffrey has failed to disclose income on his financial affidavit, child support shall be modified retroactive to the date of commencement of child support under the Uniform Support Order and any arrearage shall be paid in a lump sum. Should Jeffrey become entitled to or paid additional income going forward above \$9,259/month, he shall immediately disclose such income and within 10 days of his receipt of same, pay additional child support on such income equal to 19% of net (reduced for federal income taxes only) accompanied by verification of such income.

3. **Tax Exemptions for Children**

Lura is awarded the dependency exemption and the child care tax credit for 2017 and is entitled to claim Walden's afterschool program expenses in 2017. Exemptions and credits for 2018 and forward shall be addressed at a final hearing.

4. **Guardian Ad Litem Fees**

Not applicable. If Jeffrey requests appointment of a Guardian *Ad Litem*, such expenses shall be paid by Jeffrey in the first instance subject to the Court's discretion in reallocating such fees at a final hearing.

5. **Alimony**

Jeffrey shall pay the sum of \$ ^{\$1,500} as temporary alimony, said payments to commence on February 1, 2018 and to continue on the 1st day of each month thereafter by direct deposit into an account designated by Lura.

Alimony shall be included in income of the recipient and deductible by the payor as provided by federal law.

6. **Health Insurance for Spouse/Child**

A. Lura shall maintain health insurance for the benefit of Jeffrey and Walden on a temporary basis. *She shall pay this expense.*

B. Each party shall be responsible for his/her own unreimbursed medical, dental, optical, and other uninsured expenses.

7. **Life Insurance**

As security for his financial obligations hereunder, Jeffrey shall, within 30 days of the signing of this Decree, confirm that he has designated Lura as primary beneficiary of \$250,000 in unencumbered life insurance benefits. Thereafter no change in beneficiaries or the amount of coverage shall be made and no encumbrances shall be placed on the policies pending further court order. Lura does not have any life insurance policies.

8. **Motor Vehicles**

Each party is awarded the use of the vehicles in his/her possession. Each party shall be responsible for all expenses related to such vehicles and shall indemnify and hold the other harmless thereon. However, Jeffrey shall continue to maintain the joint insurance policy on the parties' vehicles to include that of Lura.

9. **Furniture and Other Personal Property**

Lura is awarded the temporary use of the furniture, furnishings, and other personal property currently situated in the marital home. However, upon vacating the former marital home, Jeffrey shall be entitled to remove the contents of the guest bedroom; and such other items as the parties agree in writing (email acceptable).

10. **Retirement Plans and Other Tax Deferred Assets**

Each party shall maintain any pension, retirement, 401(k), IRA or other retirement account in his/her name, and no reduction in, withdrawal from or encumbrance shall be made. The parties shall maintain current beneficiary designations. Neither party shall access any such accounts without prior written agreement of the other party (email acceptable).

11. **Other Financial Assets**

- A. Each party is awarded the use of any bank accounts currently in his/her name subject to the temporary financial restraining order.
- B. Each party is awarded the use of any stocks, bonds, or other investments currently in his/her name subject to the financial restraining order.
- C. Jeffrey shall, within 14 days of the signing of this Decree, reimburse the HSA account for checks written by him in 2017, to wit \$1,713.20 to Citibank on September 25, 2017 and \$4,861.97 to himself on September 24, 2017. Jeffrey and Lura may access the HSA

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409
Temporary Decree

account to pay their own reasonable and necessary medical expenses and those of Walden provided they account to the other for all withdrawals and payments within 14 days of such withdrawals to include a copy of the invoice for services rendered and evidence of payment. Neither party shall otherwise access the HSA account.

D. Neither party shall make any withdrawals for any reason from Walden's 529 Plans. Jeffrey shall not interfere with Lura's ability to view on-line any 529 Plans and shall forthwith provide Lura with all necessary access codes and prompts. To the extent this is not possible, Jeffrey shall forward duplicate monthly account statements for the 529 Plans to Lura within 5 days of his access to same.

12. **Business Interests of the Parties**

Jeffrey is awarded temporary control of the family businesses known as Granite State Candy Shoppe, LLC and CJM Associates, LLC, subject to the interest of the other members. Lura is a 10% member of Granite State Candy Shoppe LLC. Jeffrey shall indemnify and hold Lura harmless against any claims, debts, liabilities, expenses, and tax obligations as regards said businesses for the past, present and future. Jeffrey shall not interfere in any way with Lura's ability to obtain information and financial documentation from Granite State Candy Shoppe, LLC. Jeffrey shall provide through counsel monthly financial statements to include balance sheets and income statements, same to be provided no later than the 15th day of the following month.

13. **Division of Debt**

Except as otherwise provided herein, the parties shall each be responsible for any debt they have incurred in his or her own name. The parties had one joint credit card with

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409
Temporary Decree

Citibank and Jeffrey removed Lura's name from that account in August 2017. Jeffrey shall be solely responsible for that account and shall indemnify and hold Lura harmless thereon.

14. **Marital Home**

Lura is awarded the temporary and exclusive use and occupancy of the marital home located at 46 Stonybrook Lane, Hopkinton, NH. Jeffrey shall vacate the home within 10 days of the date of the Clerk's Notice of Temporary Decree ("Clerk's Notice") and may remove the personal property identified above in paragraph 9 as well as any other items agreed to by the parties in writing (email acceptable). Lura shall be responsible for the payment of the ordinary and necessary expenses for the home to include the mortgage and homeowner's insurance. Jeffrey shall immediately provide Lura with the password/access to the TDS account. Should any extraordinary repair or expense arise, the parties shall attempt to resolve payment allocation of same, failing which, either may seek Court assistance. The parties shall equally share the property tax bill for the marital home.

15. **Other Real Property**

Not applicable.

16. **Restraints Against the Property**

The parties are enjoined and restrained from selling, transferring, encumbering, hypothecating, concealing or in any other manner whatsoever disposing of any property, real or personal, belonging to either or both of them except by written agreement of the parties, for reasonable and necessary expenses of living or in the ordinary course of investing, or by further order of the Court.

17. **Restraining Order**

Not applicable.

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409
Temporary Decree

18. **Other Requests**

A. **Attorney's Fees:** Any party who unreasonably fails to comply with this decree or other court orders (including "Uniform Support Order") shall be responsible to reimburse the other party for whatever costs, including reasonable attorney's fees, that may be incurred in order to enforce compliance as ordered by the Court.

B. **Change of Address or Employment:** Each party shall promptly notify the Court and the other party of any change in his/her address or telephone number, and notify the other party 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.

C. **Miscellaneous:**

1. Jeffrey shall provide to Lura within 10 days of the Clerk's Notice of the Temporary Decree ("Clerk's Notice") copies of all financial documentation removed by him from the marital home since the petition for divorce was filed on September 25, 2017.
2. Jeffrey shall within 10 days of the Clerk's Notice reimburse Lura the sum of \$99 which she had to incur to reinstate an Amazon Prime account after Jeffrey removed her access to that and cancelled her Amazon music account.
3. Jeffrey shall reinstate within 10 days of the Clerk's Notice Lura's access to the Netflix account and HULU account.
4. Jeffrey shall within 10 days of the Clerk's Notice provide Lura with a key to their safe deposit box, removed from Lura's drawer at home. Jeffrey shall not enter the box unless accompanied by Lura so that the parties may inventory the contents. Neither party shall remove any items from the safe deposit box without written agreement (email acceptable).

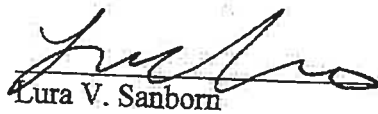
Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409
Temporary Decree

Jeffrey shall within 10 days of the Clerk's Notice provide an accounting of any items removed from the box over the last 12 months.

I request that the Court approve this temporary decree.



Judith A. Fairclough, Esq.
NH Bar #769
Orr & Reno, P.A.
45 S. Main St., PO Box 33550
Concord, NH 03302
603-223-9114



Lura V. Sanborn

2/7/2018
Date

Case Name: In the Matter of Lura Sanborn and Jeffrey Bart
Case Number: 629-2017-DM-409
Temporary Decree

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.

2/8/18

Date



Signature of Judge

MICHAEL L. ALFANO

Printed Name of Judge JUDGE